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DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

FOR

ELEMENTS AT VIRIDIAN

Prepared by / upon recording, please return to:

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1200 Peachtree Center Harris Tower
233 Peachtree Street, N.E.
Atlanta, Georgia 30303

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<u>Exhibit</u>	<u>Subject Matter</u>
"A"	Land Initially Submitted
"B"	Expansion Property
"C"	Initial Rules
"D"	Certificate of Formation of Elements at Viridian Homeowners Association, Inc.
"E"	By-Laws of Elements at Viridian Homeowners Association, Inc.

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
ELEMENTS AT VIRIDIAN

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made this 19th day of September, 2018, by Viridian Holdings, LP, a Delaware limited partnership (with its successors and assigns, the "**Declarant**").

ARTICLE I CREATION OF ELEMENTS AT VIRIDIAN

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A," intends by this Declaration to establish a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance and preservation of Elements at Viridian, a residential neighborhood within the master planned community known as Viridian located in the City of Arlington, Tarrant County, Texas. An integral part of such governance structure is Elements at Viridian Homeowners Association, Inc., a Texas nonprofit corporation ("**Association**") whose membership is comprised of all owners of real property made subject to this Declaration, which has been established to own, operate and/or maintain certain property and improvements as described in this Declaration and to administer and enforce this Declaration and the other Elements Documents referenced in Section 1.3 of this Declaration.

This document provides for automatic and mandatory membership in a homeowners association.

1.2. Binding Effect.

All property described in Exhibit "A," and any additional property which is made a part of Elements at Viridian in the future by recording an amendment to this Declaration or a Supplemental Declaration in accordance with Article IX (collectively, the "**Properties**" or "**Elements at Viridian**"), shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended, is intended to have perpetual duration, subject to the right of the Owners to terminate this Declaration as provided in Article XVIII.

1.3. Governing Documents.

All property now or hereafter comprising Elements at Viridian is part of the planned unit development known as Viridian and, as such, is subject to the Community Charter (as defined in Section 2.1), as supplemented and amended, the Architectural Guidelines referenced in the Community Charter, and the certificate of formation, by-laws, and rules of Viridian Residential Association, Inc., a Texas nonprofit corporation ("**Master Association**"), all as they may be amended (collectively, the "**Community Documents**").

In addition, Elements at Viridian is governed by:

- this Declaration and such Supplemental Declarations as may be recorded from time to time pursuant to Article IX; and
- the Association's Certificate of Formation and By-Laws; and
- the Rules described in Article III; and
- such resolutions as the Association's Board of Directors may adopt;

all as they may be amended (collectively, the "**Elements Documents**").

The Community Documents and the Elements Documents are collectively referred to in this Declaration as the "**Governing Documents**").

In the event of a conflict between or among any of the Elements Documents, the documents shall be given priority in the order listed above. In the event of a conflict between the Elements Documents and the Community Documents as they relate to Elements at Viridian, the Community Documents shall control except that, where one is simply more restrictive than the other, the more restrictive shall control. For purposes of this paragraph, a "conflict" shall exist when requirements of two or more documents or laws are inconsistent and mutually exclusive, making compliance with all such requirements impossible. If two or more of the foregoing impose requirements that address the same matter, but are not inconsistent or mutually exclusive, both shall be complied with, it being the intent that the Elements Documents shall supplement, and may be more restrictive or expansive than, applicable law to the extent permitted by applicable law, and that one Elements Document may be more restrictive or detailed than another so long as not in conflict with the document that would control under this paragraph in the event of a conflict.

The Governing Documents apply to all Owners and Occupants of Units within Elements at Viridian, as well as to their respective tenants, guests and invitees. If a Unit is leased, the tenant and all Occupants of the leased Unit are bound by and obligated to comply with the Governing Documents, whether or not the lease so provides.

The Association, the Declarant, and every Owner shall have the right to take legal action to enforce the Elements Documents. The Association shall have the specific enforcement powers and remedies described in Section 7.4 and elsewhere in the Elements Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Throughout the Elements Documents there are diagrams to illustrate the concepts discussed and aid in the reader's comprehension. Such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Elements Documents, the text shall control.

Diagram 1.1 identifies the various Elements Documents and their functions.

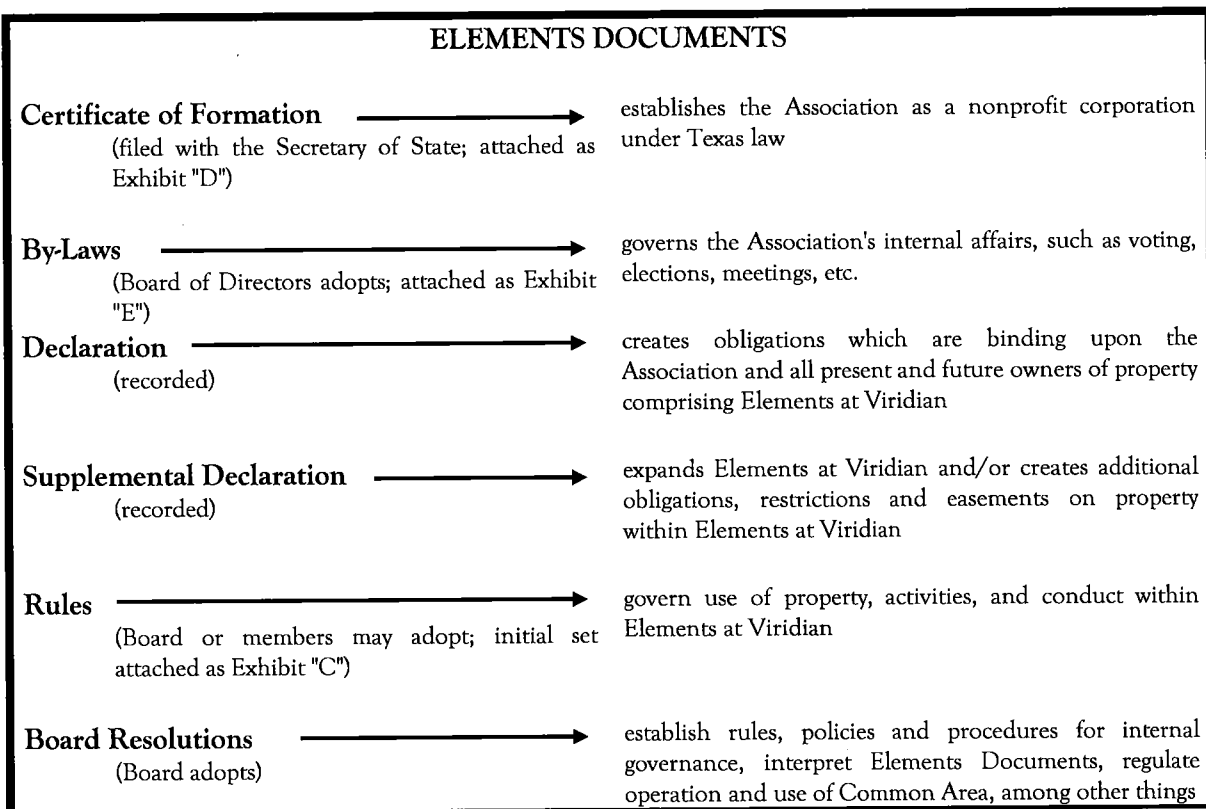


Diagram 1.1 - Elements Documents

ARTICLE II CONCEPTS AND DEFINITIONS

2.1. Defined Terms.

The terms used in the Elements Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below or as described in the paragraph where they first appear in bold print.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Architectural Guidelines": The guidelines and standards for design, construction, landscaping, and exterior items placed on Units established and administered pursuant to the Community Charter, as they may be amended.

"Association": Elements at Viridian Homeowners Association, Inc., a Texas nonprofit corporation, its successors or assigns.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Texas corporate law.

"Builder": Any Person who purchases one or more Units for the purpose of constructing a dwelling thereon for later sale to consumers, or who purchases one or more parcels of land within Elements at Viridian for further subdivision, development, and/or resale in the ordinary course of its business, and either purchases such Units directly from the Declarant or is designated a "Builder" hereunder in a written instrument executed by the Declarant.

"By-Laws": The By-Laws of Elements at Viridian Homeowners Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "E."

"Certificate of Formation": the Certificate of Formation of Elements at Viridian Homeowners Association, Inc., filed with the Office of the Secretary of State, State of Texas, as they may be amended. A copy of the original Certificate of Formation is attached to this Declaration as Exhibit "D."

"Class "B" Control Period": The period of time during which the Declarant, as the Class "B" Member, is entitled to appoint a majority of the members of the Board, as provided in Article III of the By-Laws. The Class "B" Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

(a) 90 days after 90% of the Permitted Units have been conveyed to Persons other than the Declarant or a Builder;

(b) December 31, 2027; or

(c) when, in its discretion, the Declarant so determines and declares in a recorded instrument; provided, Declarant shall not voluntarily terminate the Class "B" Control Period earlier than the first to occur of (a), (b), or (c) above without prior written notice to any Builder who then owns or has a contract to acquire one or more Units.

"Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and benefit of the Owners. The term shall include the Limited Common Area, as defined below, if any.

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary or appropriate pursuant to the Elements Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless approved by Members representing a majority of the total Class "A" votes in the Association. Payments due under leases of capital improvements such as streetlights shall not be considered an initial development expense or original construction cost.

"Community": the residential portion of that master planned community located in the City of Arlington, Texas known as Viridian, being more specifically described in and made subject to the Community Charter for Viridian Residential Properties referenced below.

"Community Charter": The Community Charter for Viridian Residential Properties recorded in the County Clerk Official Records of Tarrant County, Texas, on May 2, 2012 as Instrument No. D212104762, , as it has been and may be further amended and supplemented, which instrument applies to the Properties as well as to other real property described therein or in amendments or supplements to the Community Charter filed from time to time in the Public Records.

"Community Documents": The Community Charter, the Architectural Guidelines established pursuant to the Community Charter, the certificate of formation, by-laws and rules of Viridian Residential Association, Inc., and resolutions adopted by its board of directors.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing in the Community and Elements at Viridian, or the minimum standards established pursuant to the Community Documents and the Elements Documents, whichever is the highest standard. Declarant initially shall establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Community and Elements at Viridian change over time.

"Declarant": Viridian Holdings, LP, a Delaware limited partnership, its successors, or any successor-in-title or assign who takes title to any portion of the property described in Exhibits "A" or "B" of this Declaration for the purpose of development and/or sale and who the immediately preceding Declarant designates as the "Declarant" in a recorded instrument.

"Declarant Affiliate": Any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

"Development and Sale Period": The period of time between the recording of this Declaration and the date as of which all of the following have occurred: (i) neither the Declarant, any Declarant Affiliate, or any Builder owns any property subject to this Declaration; (ii) Declarant's right to expand Elements at Viridian pursuant to Section 9.1 has expired; and (iii) each Unit has become an Improved Unit, as define herein.

"Elements at Viridian": The age-restricted neighborhood within Viridian which is comprised of the real property now or hereafter made subject to this Declaration, also referred to herein as the "Properties."

"Elements Documents": This Declaration and any applicable Supplemental Declaration, the Certificate of Formation, By-Laws, the Rules, and Board resolutions, all as they may be amended.

"Eligible Mortgage Holder": a holder, insurer or guarantor of a first priority Mortgage on a Unit who has submitted a written request to the Association to notify it of certain events pursuant to Article XIII. The term **"Eligible Mortgage"** shall refer to the Mortgage held by an Eligible Mortgage Holder.

"Expansion Property": the real property described on Exhibit "B" to this Declaration, which may be made subject to this Declaration as provided in Article IX.

"Founder": the Person which holds the rights and status of the Founder under the Community Charter, as such rights and status have been and may hereafter be transferred or assigned pursuant to the Community Charter.

"General Assessment": Assessments levied on all Units subject to assessment under Section 8.5 to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.2.

"Improved Unit": A Unit improved with a dwelling that either (i) has been issued a certificate of occupancy by the applicable governmental authority and is owned by a Person other than Declarant, Declarant Affiliate, or Builder, or (ii) is or has been occupied for residential purposes. For purposes of this definition, use of a dwelling by Declarant or a Builder as a sales office, business office, and/or model home shall not constitute occupancy for residential purposes.

"Master Association": Viridian Residential Association, Inc., a Texas nonprofit corporation, its successors and assigns, being the owners association referenced in and responsible for administering the Community Charter.

"Member": A Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": A mortgage, a security deed, a deed of trust, or any other form of security instrument affecting title to any Unit. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Occupant": Any Person occupying all or any portion of a Unit for any period of time, regardless of whether such Person is an Owner, a tenant, or a household member or guest, except as otherwise provided in Section 3.2.

"Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Permitted Units": the maximum number of Units which the Declarant proposes to develop within Elements at Viridian, as indicated by the Site Plan.

"Person": A natural person, a corporation, a partnership, a limited liability company, trust, or any other legal entity.

"Properties": The real property described on Exhibit "A" together with such additional property as is submitted to this Declaration pursuant to Article IX.

"Public Records": The County Clerk's Official Records of Tarrant County, Texas, or such other place designated as the official location for filing documents affecting title to real estate in Tarrant County in order to make them a matter of public record.

"Reviewer": The entity with architectural review authority over a particular matter pursuant to the Community Charter.

"Rules": The initial rules set forth in Exhibit "C," as they may be supplemented, modified and repealed pursuant to Article III.

"Site Plan": The site plan for the development of Elements at Viridian established by the Declarant, as it may be supplemented or amended. Inclusion of property on the Site Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property from the Site Plan bar its later submission to this Declaration pursuant to Article IX.

"Special Assessment": Assessments levied in accordance with Section 8.3.

"Specific Assessment": Assessments levied in accordance with Section 8.4.

"Supplemental Declaration": An instrument recorded pursuant to Article IX which subjects additional property to this Declaration and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument.

"Unit": A numbered lot shown on a recorded plat of any portion of Elements at Viridian, which lot may be independently owned and conveyed and is intended for development, use, and occupancy as a residence for a single family, whether or not such residence has been constructed. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the event that a Unit is improved with a main dwelling and an accessory dwelling, each dwelling shall constitute a separate "Unit" hereunder; however, nothing herein shall authorize the creation of an accessory dwelling without the prior approval of the Declarant during the Development and Sale Period and the Board thereafter, in addition to such approval as is required under the Community Charter.

In the case of a parcel of land submitted to this Declaration prior to recordation of a subdivision plat subdividing it into lots for single family dwellings, the parcel shall be deemed to be a single Unit until such time as a subdivision plat is recorded subdividing all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any remaining portion shall constitute a single Unit. Units may be combined or further subdivided, and boundary lines of Units may be changed, only by recording of a plat or other legal instrument approved by the Declarant reflecting such change. In the absence of recording such a plat or other legal instrument, ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single dwelling.

"Viridian": that mixed use master planned community located in the City of Arlington, Texas known as "Viridian".

"VMMD": the Viridian Municipal Management District, a special taxing district created pursuant to Chapter 375 of the Tex. Local Gov't Code, to own, operate, maintain, repair, and finance the construction of certain infrastructure improvements within Viridian, or the Viridian Municipal Management Public Improvement District (the "PID") established by the VMMD pursuant to the Public Improvement District Assessment Act, Chapter 372, Tex. Local Gov't Code, as more fully described in the Community Charter.

2.2. Interpretation of Certain References.

(a) Recording. All references in the Elements Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the Public Records.

(b) Consent or Approval. All references in the Elements Documents to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Elements Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Elements Documents, a Person entitled to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

ARTICLE III RESTRICTIONS ON USE, OCCUPANCY AND CONDUCT; LEASING

3.1. Residential Use.

Except as the Declarant may otherwise authorize with respect to construction, marketing, and sale activities of the Declarant and Builders it designates, Units may be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Unit, including business uses ancillary to a primary residential use, except that an Owner or Occupant residing in a Unit may conduct business activities ancillary to a primary residential use of the Unit if the business activity:

(a) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(b) complies with applicable zoning requirements;

(c) does not involve overnight lodging or regular visitation of the Unit by employees clients, customers, suppliers, business invitees, or other persons who do not reside in the Unit, or door-to-door solicitation within Elements at Viridian; and

(d) complies with all provisions of the Governing Documents, is consistent with the residential character of Elements at Viridian, and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

The terms "trade" and "business" shall have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

3.2. Occupancy of Units.

(a) General. Elements at Viridian is established as a senior housing community designed and intended to provide housing for persons 55 years of age or older, although younger persons are not restricted from occupying a Unit along with a person 55 years of age or older so long as such co-occupancy is in compliance with this Section 3.2. In addition, certain exceptions may be made pursuant to subparagraph (b)(i). The provisions of this Paragraph are intended to be consistent with, and are set forth in order to comply with, the "housing for older persons" exemption ("**HOPA Exemption**") from prohibitions on discrimination based on familial status under the federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, as it may be amended, and the Texas Fair Housing Act, Tex. Prop. Code Title 15, Chapter 301, *et seq.*, as it may be amended (collectively, the "**Fair Housing Acts**"). Declarant, during the Development and Sale Period, and the Board thereafter, shall have the power to amend this Section 3.2, without the consent of the members of the Association or any other Person except the Founder, as necessary to make this Section 3.2 compliant with the HOPA Exemption under the Fair Housing Acts, the regulations adopted pursuant thereto, as they may be amended, and any judicial decisions arising thereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this Section 3.2.

(b) Requirements for Occupied Units.

(i) Each occupied Unit shall at all times have as a "Permanent Resident" (as defined herein) at least one person who is 55 years of age or older (the "**Qualifying Occupant**"), except that:

(A) in the event of the death of a person who was the sole Qualifying Occupant of a Unit, or the illness or disability of the sole Qualifying Occupant requiring their transfer to a health care facility, nursing home, or assisted living, personal care, continuing care, or similar facility providing assistance with daily personal needs and/or health care, the spouse of such Qualifying Occupant residing in the Unit immediately prior to such event and any other person then occupying the Unit in compliance with this Section 3.2 may continue to occupy the Unit, provided that they notify the Board in writing within 10 days after the death or relocation of the Qualifying Occupant and such continued occupancy would not cause Elements at Viridian to be in noncompliance with the requirements of the HOPA Exemption under the Fair Housing Acts or the requirements of applicable zoning as of the date of the Board's receipt of such notice;

(B) During the Development and Sale Period, Declarant may grant an exception to this requirement, provided the requirements for the HOPA Exemption under the Fair Housing Acts and the requirements of applicable zoning would still be met, to permit occupancy of a specific Unit by the particular individuals for whom the exception is made. Any such exception shall be made only in a writing signed by the Declarant, and shall identify the specific individuals and Unit which they are authorized to occupy, and shall apply only to occupancy by the specific individuals so named; and

(C) In addition to the above, Declarant and any other Owner may request in writing that the Board make an exception to the requirements of this Section 3.2(b)(i) with respect to such Owner's Unit. The Board may adopt and publish rules and policies for

considering and granting such requests, including policies regarding the form of such request and the information that must be provided with such request. The Board shall respond to any such request within 10 calendar days after receipt of such request and all information required to accompany such request, as specified by Board rules and policies. The Board may, but shall not be obligated to, grant exceptions under this subparagraph (C) in its sole discretion, provided the requirements for the HOPA Exemption under the Fair Housing Acts and the requirements of applicable zoning would still be met.

For purposes of this Section 3.2(b)(i), an occupant shall not be considered a "**Permanent Resident**" unless such occupant considers the Unit to be his or her legal residence and actually resides in the Unit for at least six months during every calendar year or such shorter period as the Unit is actually occupied by any person.

(ii) Nothing in this Section 3.2(b) is intended to restrict the ownership of or transfer of title to any Unit; however, no Owner may occupy the Unit unless the requirements of this Section 3.2(b) are met, nor shall any Owner permit occupancy of the Unit by any person in violation of this Section 3.2(b).

(c) Restrictions on Occupancy by Persons under the Age of 30. No Unit shall be occupied by any person under the age of 30, except that one person under the age of 30 may occupy a Unit with prior notice to and approval of the Board if such person is at least 18 years of age and the Board reasonably determines that such occupancy is necessary to provide reasonable accommodation for the health care needs of the person's handicapped parent or grandparent who is residing in the Unit in full compliance with this Section and would be unable to continue to reside in the Unit without such person's care. For purposes of this subsection (c), a Unit shall be deemed to be "occupied" by any person who stays overnight in the Unit more than 28 nights, consecutive or nonconsecutive, in any 12-month period.

(d) Restrictions on Regular Visitation by Persons under the Age of 18. No person shall provide care or supervision in or from a Unit on a regular or frequent basis to a person under the age of 18, regardless of whether compensation is received and regardless of the caregiver's relationship to the person under the age of 18. Such activity shall be not be considered "regular or frequent" if it occurs on no more than 10 days in any calendar month and no more than 56 days in any 12-month period and does not involve overnight stays in violation of subsection (c) above. This subsection (d) shall not apply to restrict visits by any person under the age of 18 who is accompanied during the duration of such visit by a parent or legal guardian, provided that such visits do not involve overnight stays in violation of subsection (c) above, whether or not accompanied by a parent or legal guardian.

(e) Change in Occupancy; Sales and Leases.

(i) Any lease or other occupancy agreement or contract of sale relating to a Unit shall be in writing, shall be signed by the tenant or purchaser, and shall include a statement in conspicuous type that the Units in Elements at Viridian are intended for the housing of persons 55 years of age or older, as set forth in Section 3.2(a). Owners shall clearly disclose such intent to any prospective tenant, purchaser, or other prospective resident of the Unit. Every lease of a Unit

shall provide that failure to comply with the requirements and restrictions of this Section 3.2 shall constitute a default under the lease.

(ii) In the event of any change in occupancy of any Unit as a result of a transfer of title, a lease, a birth or death, a change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Unit shall immediately notify the Board in writing and provide to the Board the names and ages of all persons residing in the Unit immediately following such change in occupancy and such other information as the Board may reasonably require to verify the age of each such person. In the event that an Owner fails to notify the Board and provide all required information within 10 days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Unit for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the Unit continues to meet the requirements of Section 3.2(b), in addition to all other remedies available to the Association under this Declaration and Texas law, which may include dispossession or eviction proceedings, subject to any limitations of Texas law.

(iii) Within 30 days after the Qualifying Occupant of a Unit or any other person granted an exemption pursuant to Section 3.2(b)(i), ceases to be a Permanent Resident of the Unit, the remaining occupants shall vacate the Unit unless the Board has granted an exception for the remaining occupants pursuant to Section 3.2(b)(i).

(f) Monitoring Compliance; Appointment of Attorney-in-Fact.

(i) The Association shall maintain age records on all persons residing in each Unit. The Board shall adopt and publish policies, procedures, and rules to monitor and maintain compliance with this Section 3.2, including policies regarding visitors, updating of age records, the granting of exceptions pursuant to Section 3.2(b)(i), and enforcement. The Association shall periodically distribute such policies, procedures, and rules to Owners and make copies available to Owners, their tenants, and holders of security interests in any Unit upon reasonable request.

(ii) The Association shall have the power and authority to enforce this Section 3.2 in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the persons occupying each Unit, requiring copies of birth certificates or other proof of age for each person occupying the Unit to be provided to the Board on a periodic basis, and taking action to evict the occupants of any Unit which is not in compliance with the requirements and restrictions of this Section 3.2. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT, OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SECTION 3.2. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Unit that, in the judgment of the Board, are reasonably necessary to monitor compliance with this Section 3.2.

(iii) Each Owner shall be responsible for ensuring compliance of its Unit with the requirements and restrictions of this Section 3.2 and the rules of the Association adopted hereunder. EACH OWNER, BY ACCEPTANCE OF TITLE TO A UNIT, AGREES TO

INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION THAT MAY ARISE FROM FAILURE OF SUCH OWNER'S UNIT TO SO COMPLY. In addition, the Association shall be entitled to recover all attorneys' fees and costs actually incurred in enforcing this Section 3.2 from the Owner of the non-compliant Unit, whether or not suit is filed.

(g) Restriction on Number of Persons Occupying Each Unit. Occupancy of each Unit shall be limited to that number of persons equal to the number of bedrooms in the Unit (as depicted on the Plans referenced in Paragraph 3) plus one additional person. For purposes of this subparagraph (g), "occupancy" means staying overnight in a Unit for a total of more than 28 nights, either consecutive or nonconsecutive, in any calendar year.

(h) Association Action. Notwithstanding anything to the contrary herein, the Association shall not take any action that would cause Elements at Viridian to lose eligibility for the HOPA Exemption described in this Section 3.2 without the prior written consent of any Builder which owns or is under contract to acquire from the Declarant one or more Units in Elements at Viridian at the time of such action.

3.3. Leasing of Units.

(a) Definition. "Leasing," as used in this Declaration, shall mean the regular, exclusive occupancy of a Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

(b) Conditions. All leasing of Units shall comply with the leasing conditions set forth in the Community Charter and with the following:

(i) No signs advertising the Unit for rent or lease or otherwise indicating that the Unit is available for rent or lease shall be posted on the Unit, elsewhere in Viridian, or on any right-of-way adjacent to Viridian, except as may specifically be authorized by the Architectural Guidelines.

(ii) **Any lease of a Unit shall be in writing and shall be subject to and shall specifically reference the occupancy requirements and restrictions set forth in Section 3.2.**

(iii) All leases shall have an initial term which complies with the minimum lease term set forth in the Community Charter. If the lease is terminated or the lessee occupying the Unit under the lease vacates the Unit prior to expiration of such minimum initial term, the Unit may not be leased or subleased to another lessee until expiration of such minimum initial term, unless otherwise approved in advance by the board of directors of the Master Association.

(iv) Units may be leased only in their entirety; no fraction, portion, or rooms constituting less than the entire Unit may be leased and no Unit shall be subject to more than one lease at a time (i.e., concurrent leases with multiple parties shall not be permitted). This subsection (b)(iv) shall not prohibit unrelated persons from sharing occupancy of a Unit as part of a common

household and sharing expenses in such manner as they determine among themselves, providing that such occupancy complies with Section 3.2.

(v) The Owner of a leased Unit shall provide to the lessee copies of the Declaration, By-Laws, and the Rules prior to the lessee entering into any agreement to lease a Unit.

(vi) Prior to the lessee taking occupancy of the Unit, the Owner shall give notice to the Association as required under Section 3.2(d). Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee. The notice of any lease shall provide an alternate mailing address for the Owner, a copy of the lease, and any additional information the Board may reasonably require, and shall be accompanied by a fee ("Administrative Lease Fee") in such reasonable amount as the Board may establish from time to time to help fund costs of processing lease applications, updating resident records, and other administrative burdens associated with leasing.

(vii) Each Owner of a leased Unit and each lessee, by occupancy of a Unit, agrees to the following provisions and further agrees that, if such provisions are not expressly contained in the lease, then such provisions shall be incorporated into the lease by existence of this covenant on the Unit:

Compliance With Governing Documents. The lessee acknowledges receipt of a copy of the Community Charter for Viridian Residential Properties and the other governing documents referenced therein as well as the Declaration of Covenants, Restrictions and Easements for Elements at Viridian and the other governing documents referenced therein (collectively, the "Governing Documents") and agrees to comply with the Governing Documents and to control the conduct of all other occupants and guests of the leased premises in order to ensure their compliance. Any violation of the Governing Documents by the lessee, any person residing in the Unit, or any guest of the lessee or other members of the lessee's household shall constitute a default under the terms of the lease and shall authorize the lessor to terminate the lease without liability and to evict the lessee in accordance with Texas law. The lessor hereby delegates and assigns to Elements at Viridian Homeowners Association, Inc., acting through its board of directors, the power and authority to enforce this provision against the lessee, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the lessor, in accordance with the terms hereof.

Liability for Assessments. If the lessor fails to pay any monetary obligation due to Elements at Viridian Homeowners Association, Inc. (the "Association") for a period of more than 30 days after it is due and payable, then upon the Association's demand, the lessee shall pay to the Association the rental payments due under the lease as of the date of such demand and thereafter continue to pay all rent due under the lease to the Association as it comes due until all the monetary obligations of the Owner related to the Unit have been paid in full to the Association and the Association releases the tenant or until the termination of the lease, whichever

occurs first. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Governing Documents as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(viii) In the event the Association proceeds to evict a lessee pursuant to the language in subsection (b)(vii) above, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment against the Unit, secured by the Association's lien under Section 8.6 of this Declaration.

(ix) Any demand for payment of rents due under the lease pursuant to the language in subsection (b)(vii) above shall be in writing and shall be delivered to the lessee by hand or by United States mail. Any Owner hereby consents to the assignment of any rent due from the lessee during the period of any delinquency. The Association may, but shall have no duty to, take legal action to collect rents from any lessee pursuant to subparagraph (vii), and nothing in that subparagraph shall be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she is otherwise responsible.

(x) The Owner of a leased Unit shall be responsible for any violations of the Governing Documents by the lessee or other Occupants of the Unit, notwithstanding that the lessee and Occupants are fully liable and may be sanctioned for their violations. In the event that the Association imposes a fine for violation of the Governing Documents by the lessee or Occupants of the leased Unit, the Association shall give notice to the Owner and the lessee and the Owner shall be responsible for payment if the lessee fails to pay the fine. Unpaid fines shall constitute a lien against the Unit.

(xi) An Owner and any other Owners to whom such Owner is related by blood, adoption, or marriage, or with whom such Owner is affiliated through a common ownership interest, shall not individually or collectively lease or offer for lease more than one Unit at the same time, except that this prohibition shall not apply to restrict:

(A) leasing of Units to Declarant or any Builder authorized by Declarant for use as model homes or sales offices, or to the continued leasing of such Units by the same Owner after expiration of any such lease if Declarant or Builder does not offer to renew or extend the lease on substantially similar terms; or

(B) the leasing of Units by an institutional lender following foreclosure on any Unit(s).

3.4. Rule Making Authority.

The Elements Documents establish a framework of covenants and conditions that govern Elements at Viridian. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Properties. Therefore, the Rules may be modified in accordance with the following procedures, subject to the limitations set forth in Section 3.6.

(a) Declarant Authority. So long as the Declarant has the right unilaterally to amend this Declaration pursuant to Section 17.1, the Declarant may unilaterally amend the Rules to add new Rules or to modify or rescind existing Rules.

(b) Board Authority. Subject to the terms of this Article and the Board's duty to exercise its powers in a reasonable, fair and nondiscriminatory manner, the Board may modify, cancel, limit, create exceptions to, or expand the Rules by majority vote of the directors and, during the Development and Sale Period, the written consent of Declarant. The Board shall send notice to all Owners concerning any proposed action that would affect use of Units at least 14 days prior to the Board meeting at which such action is to be considered and Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

(c) Member Authority. Subject to the terms of this Article, the Members may, at an Association meeting duly called for such purpose, modify, cancel, limit, create exceptions to, or expand the Rules then in effect. Any such action shall require approval of Members entitled to cast more than 50% of the total Class "A" votes in the Association and, during the Development and Sale Period, the written consent of Declarant.

(d) Notice of Proposed Rule Change. Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new Rule or explanation of any changes to the Rules to each Owner. The effective date shall be not less than 10 days following distribution to Owners. The Association shall provide, without cost, a copy of the Rules then in effect to any requesting Member or Mortgagee.

(e) Limitation. No action taken under this Article shall have the effect of modifying, repealing or expanding the Architectural Guidelines or any provision of this Declaration other than the initial Rules set forth in Exhibit "C." In the event of a conflict between the Architectural Guidelines and the Rules, the Architectural Guidelines shall control.

(e) This Section 3.4 shall not apply rules or operating policies relating to the Common Area, which the Board may establish by resolution without prior notice.

3.5. Owners' Acknowledgment and Notice to Purchasers.

ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR UNITS AND THE COMMON AREA IS LIMITED BY THE RULES AS AMENDED, EXPANDED AND OTHERWISE MODIFIED FROM TIME TO TIME. Each Owner, by acceptance of a deed,

acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Rules may be obtained from the Association.

3.6. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," the exercise of rulemaking authority under Section 3.4 shall be subject to the following:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly.

(b) Religious and Holiday Displays; Political Signs. Rules shall not prohibit an Owner's right to display other religious or holiday symbols and decorations on such Owner's Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs, except that the Association may adopt time, place, and manner restrictions with respect to such symbols, decorations, and signs as are visible from outside structures on the Unit, including reasonable limitations on size, number, and time period within which they may be displayed, consistent with Tex. Prop. Code Chapter 202 and any other applicable provisions of Texas law.

(c) Flags. Rules shall not regulate the content of political signs or prohibit the display of the official flag of the United States of America in accordance with 4 U.S.C. Sections 5-10, the flag of the State of Texas in accordance with Chapter 3100 of the Texas Government Code, or an official or replica flag of any branch of the United States armed forces, on the Unit owned or occupied by such Owner, except that Architectural Guidelines and the Reviewer under the Community Charter may regulate the location, size, use and manner of display of such flags and flagpoles and associated lighting to the extent permitted by Tex. Prop. Code Chapter 202 and the Community Charter.

(d) Allocation of Burdens and Benefits. No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association within 10 days after receipt of the notice required by Section 3.4(c). Nothing in this provision shall prevent the Association from changing the Common Area available, adopting generally applicable Rules for use of Common Area, limiting the number of Occupants of each Unit that may use the Common Area without additional charge, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Elements Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(e) Alienation. No Rule shall prohibit leasing or transfer of any Unit or require consent of the Association or Board for leasing or transfer of any Unit; however, the Rules may prohibit entering into multiple leases of a Unit with concurrent terms and restrict the number of Units that a single Owner or group of related or affiliated Owners may collectively lease, may require a

minimum lease term consistent with Section 3.3(b), and may require that Owners use lease forms or lease addenda or otherwise include in their leases various provisions specified by the Board for the benefit of the Association.

(f) Abridging Existing Rights. No Rule shall be applied to require an Owner or Occupant to dispose of personal property kept in or on a Unit by such Owner or Occupant in compliance with all Rules in effect immediately prior to the adoption of such Rule; however, the Association may adopt Rules permitting current Owners and Occupants to keep such personal property during their period of ownership or occupancy while prohibiting the keeping of similar items by subsequent Owners of the same Unit.

(g) Interference with Easements. No Rule or action shall unreasonably interfere with the exercise of any easement affecting the Properties.

(h) Reasonable Rights to Develop and Sell. No Rule or action by the Association or Board shall impede Declarant's right to develop the Properties, nor restrict Declarant or such Builders as Declarant may so authorize from maintaining upon Common Areas and Units which they own any facilities necessary or incidental to construction or sale of Units. By way of example and not limitation, no Rule shall prohibit Declarant or such Builders as Declarant may so authorize from maintaining temporary structures for use during construction of a Unit or from using any home as a sales office.

The limitations in subsections (a) through (h) of this Section 3.6 shall only limit rulemaking authority exercised by the Board and the Members under Section 3.4; they shall not apply to Rules set forth on Exhibit "C" initially or amendments to this Declaration adopted in accordance with Article XVII.

ARTICLE IV CONSTRUCTION; ARCHITECTURE AND LANDSCAPING

4.1. Required Approvals and Compliance.

(a) Builder Approval. During the Development and Sale Period and so long as the Declarant owns any property subject to the Community Charter or has the right to submit additional property to the Community Charter or this Declaration, the construction of a dwelling and related improvements on a Unit may be performed only by a Builder who has been approved by the Declarant in accordance with such criteria as the Declarant may establish. The Declarant's approval of a Builder shall be for the protection of Declarant only and shall not be construed as an endorsement of the Builder. **The Declarant and its affiliates do not warrant or guarantee any Builder's capabilities, nor do they warrant or guarantee the design, engineering, construction, use, benefits, or value of any improvements constructed by a Builder on any Unit.** The Declarant and its affiliate shall not be liable for any loss, damage, or injury to any Person arising out of use of any Builder, regardless of any approval granted by Declarant. The approved Builder shall be responsible for supervising all construction activities on the Unit until such time as a certificate of occupancy has been issued for the dwelling on the Unit.

(b) Architectural Approval. All site work, landscaping, structures, improvements, and other items (including sports, play, and maintenance equipment, outdoor furniture and storage, and decorative items) placed or stored on any property in Elements at Viridian in a manner or location visible from outside of any existing structure ("**Improvements**") are subject to the Architectural Guidelines and construction rules adopted pursuant to the Community Charter and the approval procedures set forth therein. The Association shall have no jurisdiction over architectural or design matters.

(c) Compliance. The Owner of each Unit shall be responsible for obtaining all necessary approvals and permits prior to commencement of construction activity on the Unit and for ensuring that all construction activity and Improvements on the Unit comply with the Community Charter and Design Guidelines adopted pursuant thereto and all applicable building codes, ordinances, and other governmental requirements.

4.2. Limitation of Liability.

The Declarant, the Association, its officers, the Board, and members of any of the foregoing shall not be liable for (a) soil conditions, drainage, or other general site work on any Unit; (b) any defects in design or construction of improvements on any Unit; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any Builder, architect or contractor, or their respective subcontractors, employees, or agents; (d) view preservation; (e) construction delays or schedule modifications; or (f) any injury, damages, or loss arising out of the manner or quality or other circumstances of construction or modifications. In all such matters, the Association shall defend and indemnify the Board, the Reviewer, and the members of each, as provided in the By-Laws.

ARTICLE V MAINTENANCE AND REPAIR OF UNITS

5.1. Maintenance of Units.

(a) Each Owner shall be responsible for maintaining such Owner's Units and all improvements on the Unit, except to the extent that such responsibility is specifically assigned to the Association hereunder. The Association shall be responsible for the following:

(i) mowing and fertilizing of lawns; pruning and fertilizing of shrubbery; mulching of shrub beds; edging of driveways, sidewalks and shrub beds; treating shrubbery for disease and insects as needed, and removing and replacing dead or diseased shrubs, on the Units and, to the extent that the Owners would otherwise be responsible for such maintenance pursuant to Section 6.1 of the Community Charter, on property adjacent to the Units, all on such schedule as the Board determines appropriate consistent with the Community-Wide Standard; and

(ii) leaf removal from lawns and shrub beds and snow removal on driveways and sidewalks, in each case on such schedule as the Board deems appropriate (there being no obligation to keep Units free of leaves and snow or ice at all times);

except that, notwithstanding assumption of responsibility for any of the above, the Association shall have no responsibility for lawns or landscaping within any courtyard or other portion of the rear yard enclosed by a fence, nor for any landscaping improvements or modifications added or made to any Unit by or on behalf of the Owner or occupant after the conveyance of the Unit by the Builder.

(b) Except as provided above, all maintenance of the Unit, including, without limitation, maintenance, repair and replacements of all structures, irrigation systems and equipment, fences, patios, courtyards, sidewalks, and driveways on Units; cleaning of gutters and downspouts;; and maintenance, removal and replacement as needed of any landscaping installed by the Owners or occupants of any Unit after first occupancy of the Unit; shall be the responsibility of the respective Owners, as provided in Section 6.1 of the Charter. In addition, each Owner shall be responsible for irrigation of all lawns and landscaping on the Owner's Unit as necessary to maintain it in a healthy and attractive condition. No Person shall remove or modify existing landscaping on a Unit without prior approval of the Association and such approval as required under Article 5 of the Community Charter.

(c) All maintenance on Units shall be performed in a manner and on a schedule consistent with the Community-Wide Standard.

(d) The Association's responsibilities under this Section 1 shall commence as to each Unit at such time as:

(i) all construction and landscaping on the Unit has been completed in accordance with the approved plans and the Reviewer under the Community Charter has issued a letter so stating; and

(ii) the Builder has either (A) delivered written notice to the Association that the final inspection of the dwelling on the Unit has been performed as required by the City of Arlington, Texas; or (B) has conveyed the Unit for residential occupancy;

at which time it shall be considered an "Improved Unit" hereunder. Until the Association's maintenance responsibilities commence hereunder, the Owner/Builder shall be responsible for all maintenance on the Unit.

The Association shall have an easement for entry upon each Unit to perform any maintenance assumed by it pursuant to this Section 5.1(b). Each Owner shall clear the lawn and sidewalks on such Owner's Unit and adjacent rights-of-way of personal property and obstructions to enable the Association's personnel or contractors to perform such maintenance.

If an Owner undertakes to perform maintenance which would otherwise be performed by the Association under this Section 5.1(b), there shall be no reduction or abatement in the assessment levied on such Unit hereunder by reason of the Owner providing such maintenance.

5.2. Insurance by Owners.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. In the event of damage to or destruction of structures on or comprising a Unit, the Owner shall, within 180 days thereafter, complete the repair or reconstruction of the damaged structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with the Community Charter. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds. Each Owner shall submit to the Association, within 7 days of any written request from the Board of Directors, a certificate evidencing that such insurance coverage is in effect. The Association shall have no responsibility to ensure compliance with this Section, and no liability arising out of any Owner's noncompliance.

Each Owner and Occupant of a Unit shall also be responsible for insuring their personal property to the extent that they deem necessary or appropriate. Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or Occupant of a Unit, their family, guests or invitees, nor shall the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of the Association, Declarant or their respective agents or employees.

ARTICLE VI THE ASSOCIATION AND ITS MEMBERS

6.1. Function of Association.

The Association has been established to administer Elements at Viridian in accordance with the Elements Documents. Its responsibilities include, but are not limited to:

- (a) management, maintenance, operation and control of the Area of Common Responsibility; and
- (b) interpretation and enforcement of the Elements Documents; and
- (c) establishing and upholding the Community-Wide Standard.

6.2. Membership.

(a) Classes of Membership. The Association initially shall have two classes of membership, Class "A" and Class "B". Class "A" Members shall be all Owners, including the Declarant and Builders as to any Units which they own. The sole Class "B" Member shall be the

Declarant. The Class "B" membership shall terminate two years after termination of the Class "B" Control Period.

(b) Automatic Membership; Exercise of Privileges. Every Owner automatically becomes a Member of the Association upon taking title to a Unit and remains a Member as long as the Owner holds title to such Unit. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

The voting rights of each class of membership shall be as follows:

(a) Class "A". Each Unit owned by a Class "A" Member, including the Declarant, is assigned one vote equal to that of every other Unit owned by a Class "A" Member. If title to a Unit is held by more than one Person as co-Owners, any one of the co-Owners of such Unit may cast the vote for the Unit; provided, no more than one vote shall be cast for any Unit. If more than one co-Owner of a Unit attempts to casts the vote allocated to such Unit, the act of a majority of the co-Owners attempting to cast the vote for such Unit shall bind all co-Owners of the Unit. If the co-Owners attempting to vote are evenly split on a particular matter, each co-Owner may cast a proportional fractional vote with respect to such matter. No Class "A" vote shall be exercised for any property that is exempt from assessment under Section 8.7. The Declarant shall not exercise the Class "A" votes for Units it owns during the Class "B" Control Period.

(b) Class "B". The Class "B" Member shall not have a specific number of Class "B" votes; rather, the consent of the Class "B" Member shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Elements Documents. In addition, the Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III of the By-Laws, and one additional director thereafter until termination of the Class "B" Membership. Additional rights of the Class "B" Member are specified in the relevant sections of the Elements Documents. In addition, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

ARTICLE VII ASSOCIATION POWERS AND RESPONSIBILITIES

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of Article XVI. The Association may enter into leases, licenses or operating

agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of Owners and Occupants of Units. The Association may borrow money to make improvements to the Common Area and pledge or assign specified assessment income for repayment of such loan, subject to the limitations on borrowing set forth in the By-Laws.

(b) Declarant, any Declarant Affiliate, and their respective designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B." Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area which Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation and control of the Common Area, if any, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

(d) The Declarant may convey or dedicate any property it owns to the Master Association, the VMMD or the City of Arlington. Nothing herein shall be construed to require conveyance of any property to the Association.

7.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area; and
- (b) all streets and any alleys within Elements at Viridian, unless dedicated to and maintained by the Master Association, VMMD, or a governmental body; and
- (c) any landscaping, entry monumentation, signage, decorative or perimeter walls, fencing and columns, vehicular and pedestrian gates, lighting, landscaping, and irrigation systems installed by the Declarant or the Association within the Common Area, public rights-of-way, or landscape/wall easements within Elements at Viridian, and replacements thereof;
- (d) any landscaping, signage, street lights and sidewalks within public rights-of-way or sidewalk easements lying within or abutting Elements at Viridian, except to the extent such responsibility is assigned to or assumed by the Master Association, VMMD, or a governmental body or utility provider pursuant to recorded plats or written agreement;

(e) such other property, if any, as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(f) any pipes, lines, pumps, or other apparatus comprising the irrigation system, if any, serving the Common Area, to the extent located within Common Area, rights-of-way, or easements granted to the Association;

(g) any wetlands located on Common Area or on property designated to be owned or maintained by the Association on a recorded plat of any portion of Elements at Viridian, including ongoing monitoring and maintenance of the same to the extent required by and in accordance with applicable laws and ordinances; and

(h) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Some portions of the Area of Common Responsibility may consist of open space, wetlands, or conservancy or buffer areas intentionally left in a natural or relatively undisturbed state. The level of maintenance that the Association provides to the Area of Common Responsibility may vary from a high level of landscaping and regular, weekly maintenance to intermittent or no maintenance, depending on the nature and intended use of the particular open space area. Open space, wetlands, and other natural areas may serve as habitats for a variety of native plant, animal, and insect species, and may contain creeks, fallen trees and other naturally occurring conditions, some of which may pose hazards to persons or pets coming in contact with them. Neither the Association, the Declarant, or any Builder shall have any responsibility for providing maintenance in such areas or taking action to abate such conditions.

The Association shall maintain the facilities and equipment, if any, within the Common Area in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members entitled to cast 75% of the total Class "A" votes in the Association and, during the Development and Sale Period, the Declarant, agree in writing to discontinue such operation.

At any time, and from time to time, the Declarant or the Association may transfer ownership and/or maintenance responsibility for properties within Elements at Viridian to the Master Association, VMMD, or City of Arlington. As a result of any such transfer, the scope of the Association's maintenance responsibilities under this Declaration may be reduced. Except as provided above, the Area of Common Responsibility shall not be reduced during the Development and Sale Period without Declarant's prior written approval.

Except as otherwise specifically provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

7.3. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, protecting against loss or damage due to fire, lightning, wind, smoke, hail, civil commotion (including riots), aircraft, vehicle, explosion, water, vandalism, and malicious mischief, among other things. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes, excluding foundation and excavation costs; and

(ii) Commercial general liability insurance, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits; and

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law; and

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering the Association's officers and all other Persons responsible for handling Association funds, in an amount determined in the Board's business judgment but not less than the maximum amount that will be in the custody of the Association or its managing agent at any point in time. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

Premiums for all insurance on the Common Area shall be a Common Expense.

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Dallas-Fort Worth area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member.

Association policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be allocated in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in Texas which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate; and

(ii) identify the Association as the named insured, as trustee for the benefit of the Association and its Members; and

(iii) be primary and not be brought into contribution with insurance separately purchased by Owners, Occupants, or Mortgagees; and

(iv) contain a building ordinance or law endorsement, if enforcement of any building, zoning, or land use law could increase the cost of demolition, repairs or reconstruction in the event of a casualty; and

(v) contain an inflation guard endorsement, if available, and include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member); and

(vii) provide a waiver of subrogation under the policy against any Owner or Occupant of any Unit; and

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners or members of their households, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests; and

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; and

(iii) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal; and

(iv) a cross liability provision; and

(v) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which

it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall cause damaged improvements on the Common Area to be repaired or reconstructed unless a decision not to repair or reconstruct is approved within 60 days after the loss or damage by Owners of at least 80% of the Units, and during the Development and Sale Period, by the Declarant. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed to all of the Owners or their Mortgagees, as their interests may appear, at an equal rate per Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall.

7.4. Compliance and Enforcement.

(a) Every Owner and Occupant of a Unit shall comply with the Elements Documents and shall be responsible for ensuring that their guests and invitees comply with the Elements Documents. The Association, the Declarant during the Development and Sale Period, and every affected Owner shall have the right to file suit at law or in equity to enforce the Elements Documents, subject to the dispute resolution procedures set forth in Article XII and the Community Charter. In addition, the Board may impose sanctions for violation of the Elements Documents as set forth in this Section 7.4 and elsewhere in the Elements Documents.

(b) Except as otherwise specifically provided herein, the Board may impose the following sanctions only after notice and a hearing in accordance with the procedures set forth in Article VIII of the By-Laws:

(i) reasonable monetary fines, not to exceed \$100.00 for a single violation or \$100 per day in the case of a continuing violation, with no limit on the aggregate amount of any fine for a continuing violation. In the case of a continuing violation, only a single notice and opportunity for hearing is required. The Board may adopt a schedule of fines establishing a range of fines for particular types of violations, which range may vary depending on the nature of the violation. In the event that any Occupant, guest or invitee of a Unit violates the Elements Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is

not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspension of the right of the Owner and Occupants of any Unit to use any Common Area facilities (other than portions of the Common Area required to provide access and utilities to the Unit which they own or occupy) and/or suspension of any services which the Association provides to a Unit (other than essential utilities, e.g., electricity, water, natural gas) if the Owner of the Unit is more than 90 days delinquent in paying any assessments or other charges owed to the Association, which suspension may continue until such assessments or other charges have been paid in full, except that the Association may temporarily suspend a Person's right to use Common Area for a violation that occurred in the Common Area and involved a significant and immediate risk of harm to others pending compliance with, and a final determination of sanctions pursuant to, the notice and hearing procedures in Article VIII of the By-Laws.

(iii) levying Specific Assessments pursuant to Section 8.4 to cover costs which the Association incurs to bring a Unit into compliance with the Elements Documents, or costs incurred as a consequence of the conduct of an Owner or Occupant of a Unit, their guests or invitees;

(iv) recording a notice of violation with respect to any Unit on which a physical violation exists; and

(v) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the dispute resolution procedures set forth in Article 12, if applicable, except that notice and a hearing pursuant to Article VIII of the By-Laws shall not be required prior to filing suit seeking temporary injunctive relief or to collect any assessment or foreclose the Association's lien.

(c) In addition, the Association, acting through the Board or its designee, may take the following action to enforce the Elements Documents without the necessity of compliance with the procedures set forth in Article VIII of the By-Laws:

(i) requiring an Owner, at such Owner's expense, to perform maintenance on such Owner's Unit, or to remove any structure, item or improvement on such Owner's Unit in violation of the Elements Documents and to restore the Unit to its previous condition; or

(ii) entering the property and exercising self-help to remove or cure a violating condition upon failure of an Owner to take action as required pursuant to subsection (i) above within 14 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(iii) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property

(specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and/or

(d) All remedies set forth in the Elements Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Elements Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action, in addition to such other amounts as may be authorized by Texas law.

(e) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, 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

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

(f) The Association, by contract or other agreement, may enforce applicable county ordinances and permit the City of Arlington to enforce ordinances within Elements at Viridian for the benefit of the Association and its Members.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Elements Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. The Board may exercise all rights and powers of the Association without a vote of the membership except to the extent that the Elements Documents or Texas law specifically requires a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters

pertaining to the Area of Common Responsibility, interpretation or enforcement of the Elements Documents, or any other civil claim or action affecting the rights, powers, and responsibilities of the Association under the Elements Documents. However, the Elements Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Article VI of the By-Laws.

7.6. Provision of Services to Units.

The Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. By way of example, such services and facilities might include landscape maintenance; pest control service; cable, digital, satellite or similar television service; telecommunication and internet connection services; security monitoring; utilities; and other services and facilities. The Association may enter into bulk service agreements by which a particular service is provided (a) to all Units, with the charges allocated among all Units as part of the General Assessment, or (b) to all Improved Units, with the charges allocated only among Improved Units, as a Specific Assessment. Alternatively, the Association may arrange for or offer various services at the option of each Owner and assess the cost thereof against such Owner's Unit as a Specific Assessment.

Any contract entered into by the Association for services may provide the option for individual Owners or Occupants to contract directly with the Persons providing components or services in order to gain access to or obtain specified services. Such individual contracts may contain terms and conditions that, if violated by the Owner or Occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit pursuant to this Article.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Elements Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.7. Safety and Security.

The Association may, but shall not be obligated to, maintain or support certain activities designed to enhance the level of safety or security that each person provides for himself and his property within Elements at Viridian. However, no representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Elements at

Viridian or any portion thereof, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Neither the Association, the Declarant, any Builder, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall in any way be considered insurers or guarantors of safety or security within Elements at Viridian, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner and Occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Elements at Viridian and each of them assumes all risks of personal injury and loss or damage to their property, including Units and their contents, resulting from acts of third parties.

ARTICLE VIII ASSOCIATION FINANCES

8.1. Authority to Levy Assessments for Association Expenses.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under the Elements Documents, specifically including but not limited to: any amounts charged to the Association by the Master Association pursuant to the Community Charter; the cost of water and sewer service provided to the Area of Common Responsibility by any public utility and billed to the Association; expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility, to the extent the Association is responsible therefor; expenses of monitoring and enforcing compliance with the provisions of the Elements Documents; expenses arising out of the Association's indemnification obligations; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; expenses associated with borrowing and debt service; hard and soft costs associated with improvements to the Common Area, and such other expenses as the Board deems necessary or desirable to maintain the Community-Wide Standard, protect property values and enhance marketability of Units.

There shall be four (4) types of assessments: (a) General Assessments; (b) Special Assessments as described in Section 8.3; (c) Specific Assessments as described in Section 8.4; and (d) an assessment for the working capital contribution described in Section 8.8. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Unit, is deemed to covenant and agree to pay these assessments. Such assessments shall commence at the time and in the manner set forth in Section 8.5.

(b) Personal Obligation and Lien. By accepting title to a Unit or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments

authorized in the Elements Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such rate as the Board may establish by resolution (subject to the limitations of Texas law), late charges in the amount of \$25 per month or such amount as the Board may establish by resolution (subject to the limitations of Texas law), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full; provided, an Owner shall not be liable for attorneys' fees or fees of a collection agent retained by the Association except as provided in Tex. Prop. Code §209.008 and §209.0064, respectively.

Upon a transfer of title to a Unit, the new Owner shall be jointly and severally liable with the previous Owner for any assessments and other charges due at the time of conveyance, except as otherwise provided in Section 8.6; however, for purposes of this provision, the term "previous Owner" shall not include the Association if the Association acquired title to the Unit through foreclosure or deed in lieu of foreclosure of its lien on the Unit.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(c) Declarant's Obligations for Assessments. Notwithstanding anything to the contrary herein, the Declarant shall not be liable for General Assessments or Special Assessments on any Units it owns during any period for which the Declarant elects to fund the shortfall, if any, under the Association's general operating budget, such shortfall to be calculated as the amount by which the sum of general operating expenses incurred by the Association plus budgeted contributions to reserves exceeds the General Assessments and Special Assessments receivable from other Owners plus other income of the Association, exclusive of cash advances by the Declarant ("**Excess Operating Expenses**"). To the extent that the Excess Operating Expenses funded by the Declarant pursuant to this subsection (c) exceed the assessments that would otherwise be payable by the Declarant on Units which it owns, the Declarant may treat such excess as a loan to be repaid by the Association out of any cash surplus in the current or future fiscal years or as an advance against future assessments levied on Units owned by the Declarant during any period for which the Declarant elects to pay assessments in lieu of funding shortfalls. The Declarant shall be deemed to have elected to fund shortfalls unless and until it otherwise advises the Association in writing and may change such election, to be effective prospectively or retroactively, at any time.

Regardless of the Declarant's election under this subsection (c), any of the Declarant's financial obligations to the Association may be satisfied in the form of cash, by "in kind" contributions of services or materials, or by a combination of these.

(d) Assessment Statement. Within seven days after receipt of a written request from any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Association's registered agent or designee, the Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Unit, the amount of current periodic assessments, and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Association as to Persons who rely thereon in good faith.

8.2. Budgeting and Allocating Association Expenses.

(a) Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. The estimated expenses in the budget shall include, in addition to any operating reserves, a contribution to a reserve fund for deferred maintenance and repair and replacement of any capital improvements to be maintained by the Association as a Common Expense, in such amount as the Board deems appropriate pursuant to a separate reserve budget established by the Board. In establishing such reserve budget and determining the amount of the reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost or deferred maintenance expense, and the contribution required to fund the projected need by annual contributions over the useful life of the asset. So long as the Board exercises business judgment, which may include relying in good faith on the advice of its accountants or other professional advisers in determining the amount or necessity of the reserve fund, the Board members shall have no liability if the reserve funding proves insufficient to fully fund necessary repairs and replacements.

The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of assessments. The budget shall also reflect the estimated surplus or deficit as of the end of the current year.

(b) Calculation of General Assessments. Upon determining the total amount of income required to be generated through the levy of General Assessments, the Board shall establish the General Assessment at an equal rate per Unit subject to assessment under Section 8.5, subject to the provisions of subsection (c) below.

Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Declarant under Section 8.1(c)). Any such subsidy may be treated as a contribution or an advance against future assessments

due from Declarant, in Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

In addition, Declarant may loan funds to the Association to cover any budget shortfall or Common Expenses; provided, any such loans and the debt service shall also be disclosed in the budget each year thereafter as long as the loan remains outstanding. The Declarant may charge and collect interest on the outstanding principal balance of any loan at a rate not to exceed the greater of 10% per annum or two percentage points over the prime rate published by the Wall Street Journal on the date of such loan, such interest rate to be set forth in a promissory note executed on behalf of the Association.

(c) Notice of Budget and Assessment; Right to Disapprove. The Board shall send a copy or summary of the budget, together with notice of the amount of the General Assessment to be levied pursuant to such budget, to each Owner to be assessed thereunder at least 30 days prior to the due date of the General Assessment to be levied pursuant to such budget. Such General Assessment shall automatically take effect unless disapproved at a meeting by Members entitled to cast at least 67% of the votes allocated to Units subject to such assessment under Section 8.5.

There shall be no obligation to call a meeting for the purpose of considering any budget except on petition of Members as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment. In addition, if required by Texas law, Owners shall be given notice of and the opportunity to attend Board meetings at which assessments are to be considered and levied.

If any proposed budget is rejected or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

(d) Budget Revisions. The Board may revise the budget and adjust the General Assessment from time to time during the year, subject to the same notice requirements and rights to disapprove set forth above.

8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted under Section 8.2. A Special Assessment shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the votes attributable to Units subject to assessment under Section 8.5 and shall be allocated equally among all such Units. In addition, during the Development and Sale Period, any Special Assessment shall also be subject to the Declarant's written consent.

8.4. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to such Unit upon request of the Owner pursuant to any menu of special services which the Association may offer pursuant to Section 7.6. Specific Assessments for special services may be levied in advance of the provision of the requested service;

(b) for monetary fines assessed pursuant to Section 7.4 and to cover costs incurred in bringing the Unit into compliance with the Elements Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b); and

(c) to cover any insurance deductible levied against a Unit pursuant to Section 5.2 or Section 7.3(b);

(d) to cover the charges for services provided to less than all Units pursuant to Section 5.1(b) or any bulk service or similar agreement entered into by the Association pursuant to Section 7.6; and

(e) for capitalization of the Association as provided in Section 8.8.

8.5. Payment of Assessments.

(a) Commencement. Except as otherwise provided herein and in Section 8.1(c) with respect to Units owned by the Declarant, the obligation to pay General Assessments and any Special Assessments and Specific Assessments levied hereunder shall commence as to each Unit on the first day of the month following the month in which the Unit is made subject to this Declaration, or the effective date of the Association's first budget, whichever is later. Assessments due under Sections 8.8 and 8.9 shall be due and payable as stated in those sections. If a Unit is made subject to this Declaration after the Board has adopted a budget and levied assessments, the first General Assessment levied on such Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

(b) Payment Schedule. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of up to one year of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The Board may permit assessments to be paid in two or more installments.

(c) Delinquencies. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, prior to taking any collection action the Board shall give written notice to the Owner by certified mail which:

(i) specifies each delinquent amount and the total amount of the payment required to make the account current;

(ii) describes the options the Owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the Association;

(iii) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken; and

(iv) states that, if the Owner fails to cure the delinquency within the Cure Period provided under clause (iii) ("**Cure Period**"), the Association shall be entitled to reimbursement of reasonable attorneys' fees and other reasonable costs which the Association incurs to collect the amounts due.

If the Owner fails to cure the delinquency and bring such Owner's account current within the Cure Period, the Association may revoke the privilege of paying assessments in installments and require the outstanding balance on all assessments to be paid in full immediately and may proceed with collection action unless, within such Cure Period, the Owner submits a written request to the Board to establish a payment plan, the Owner is eligible for a payment plan hereunder or the Board otherwise agrees to provide one, and within 10 days after receipt of a documentation from the Association setting forth a proposed payment plan, the Owner executes such documentation agreeing to such payment plan and delivers it to the Association.

The Board shall adopt and record in the Public Records (and may amend from time to time by further resolutions so recorded), reasonable guidelines for establishing an alternative payment schedule by which an Owner may make partial payments to the Association to satisfy the delinquency over a period of not less than 3 months nor more than 18 months from the date of such Owner's request without accruing additional monetary penalties (reasonable costs associated with administering the payment plan and interest on delinquent amounts are not considered monetary penalties hereunder). The Association shall not be required to enter into a payment plan with the same Owner more than once in any 12-month period, or with any Owner who has defaulted under the terms of a previous payment plan entered into within the preceding two years, or with any Owner who fails to request a payment plan within the Cure Period or sign and deliver documentation establishing a payment plan within 10 days after receipt thereof. It shall be a condition of any alternative payment plan that the Owner remains current on all assessments accruing after the effective date of the alternative payment plan. If the Owner requests and enters into an alternative payment plan within the time periods required hereunder, then so long as the Owner is not in default under the terms thereof and remains current in payment of all assessments and other charges accruing after the effective date of the alternative payment plan, the Association shall not impose additional late charges after the effective date of the payment plan for any

amounts which are the subject of such payment plan, nor sue to collect any amounts which are the subject of such payment plan or to foreclose its lien under Section 8.6.

(d) Application of Payments. Payments received from an Owner by the Association shall be applied to the amounts owed by such Owner in the following order of priority:

- (i) first to delinquent assessments;
- (ii) then to any current assessment;
- (iii) then to any attorneys' fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (iv) then to any other attorneys' fees incurred by the Association which the Association is entitled to charge to such Owner's account;
- (v) then to any fines assessed by the Association against such Owner or the occupants of such Owner's Unit; and
- (vi) then to any other amount owed by such Owner to the Association.

Notwithstanding the above, if the Owner is in default under a payment plan entered into pursuant to subsection (c) at the time the Association receives a payment from an Owner, the Association shall not be required to apply the payment in the order of priority specified herein. However, in applying the payment, a fine assessed by the Association may not be given priority over any other amount due.

8.6. Lien for Assessments.

(a) Existence of Lien. The Association shall have a lien against each Unit to secure payment of assessments due hereunder, as well as interest, late charges and costs of collection (including attorneys' fees and expenses), subject to the limitations of Texas law. Such lien shall be superior to all other liens except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; (ii) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit; and (iii) the lien of the Master Association under the Community Charter.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) Enforcement of Lien. Subject to Section 12.5 and this subsection (b), the Association's lien may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Tex. Prop. Code Section 51.002, as it may be amended, in like manner of any deed of trust on real property, after compliance with the

procedures set forth in Chapters 51 and 209 of the Tex. Prop. Code, if applicable. Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Section 51.002, as it may be amended. The Association shall not foreclose its lien if the debt secured by the lien consists solely of (i) fines or attorneys' fees associated with fines; or (ii) charges related to the compilation, production, or reproduction of information requested pursuant to the Owner's right to inspect the Association's books and records under the By-Laws; or (iii) charges for performing a recount of votes cast in any election or other vote pursuant to Tex. Prop. Code §209.0057.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association.

Subject to Section 8.5, the Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) Effect of Sale or Transfer. Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments, except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish the Association's lien for assessments which became payable prior to such sale or transfer. A purchaser at a foreclosure sale or subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such foreclosure. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

Any such sale or transfer pursuant to foreclosure shall not relieve the purchaser or transferee of the Unit from liability for, nor the Unit so sold or transferred from the lien of, any assessments thereafter becoming due.

8.7. Exempt Property.

The following property shall be exempt from payment of General Assessments and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility for public purposes; and
- (c) Property owned by the VMMD or the Master Association.

8.8. Capitalization of Association.

Except as otherwise exempted in this Section, upon conveyance of an Improved Unit by the Builder or upon first occupancy of the dwelling on an Improved Unit for residential purposes, whichever first occurs, and thereafter upon each transfer of title to the Improved Unit, the Owner thereof shall make a contribution to the working capital of the Association in such amount as the Board may establish by resolution, not to exceed \$500 per transfer. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessments, but rather shall be considered a Specific Assessment secured by the Association's lien for assessments under Section 8.6. This amount may be used by the Association for operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws, or for funding of reserves as the Board may determine in its discretion. The following transfers shall be exempt from payment of the working capital contribution hereunder: (a) transfer by a co-Owner to any Person who was a co-Owner immediately prior to such transfer; (b) transfer to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner; (c) transfer to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law (provided, upon any subsequent transfer of an ownership or beneficial interest in such entity, such contribution shall be required); (d) transfer to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage; or (e) transfer under other circumstances which the Board, in its discretion, deems to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes may be, but is not required to be, exempt from this provision).

8.9. Use and Consumption Fees.

The Board may charge use, consumption, or activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

ARTICLE IX EXPANSION OF ELEMENTS AT VIRIDIAN

9.1. Expansion by Declarant.

Declarant may from time to time expand Elements at Viridian to include all or any portion of the property described in Exhibit "B" by recording a Supplemental Declaration describing the additional property and stating the intent to submit it to the provisions of this Declaration. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand Elements at Viridian pursuant to this Section shall expire when all of the Expansion Property has been subjected to this Declaration or 20 years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer, assign, or otherwise permit this right to be exercised by any Person or Persons who are the developers of at

least a portion of the real property described in Exhibits "A" or "B." Any such transfer, assignment or permission shall be memorialized in a written, recorded instrument executed by Declarant and the Person to whom it is assigned.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the Expansion Property in any manner whatsoever.

9.2. Expansion by the Association.

The Association may also expand Elements at Viridian to include additional property by recording a Supplemental Declaration describing the additional property and the intent to submit it to the provisions of this Declaration. Any such Supplemental Declaration shall require the affirmative vote of persons entitled to cast more than 50% of the Class "A" votes in the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

Declarant may subject any property within Elements at Viridian to additional covenants and easements, with the consent of the Owner(s) of such property. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property, but shall not except any Unit from the applicability of Section 3.2.

9.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

ARTICLE X ADDITIONAL RIGHTS RESERVED TO DECLARANT

10.1. Special Development Rights.

In addition to the rights specifically reserved to the Declarant under Article IX with respect to expanding Elements at Viridian, the Declarant reserves the right:

(a) during the Development and Sale Period, to replat any portion of the Properties which it owns to subdivide or combine Units, change boundaries of Units and Common Areas, convert Common Areas to Units and vice versa, and to create roadways and provide for utilities;

(b) during the Class "B" Control Period, to amend this Declaration or any Supplemental Declaration to withdraw any portion of the Properties from the coverage of this Declaration, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Development and Sales Activities.

Notwithstanding anything in the Governance Documents to the contrary, during the Development and Sale Period:

(a) Declarant and any Builder whom the Declarant so authorizes may construct and maintain such facilities on the Common Area and conduct such activities and sales and marketing events on the Common Area and Units that they own as, in Declarant's sole opinion, may be reasonably required, convenient, desirable, or incidental to the construction, marketing, or sale of Units, subject to any limitations imposed by applicable zoning or the Community Charter. Such facilities may include, but need not be limited to, business offices, signs, model homes, sales offices, parking facilities, and exterior lighting features or displays. Declarant and authorized Builders and their invitees shall have easements for access to and use of such facilities at no charge. There shall be no limit on the number or location of such facilities, except as otherwise restricted by the Community Charter, state law or local ordinance or regulations.

(b) Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area, roads within Elements at Viridian, and those portions of each Unit outside of a dwelling, for the purpose of

(i) exercising any rights reserved to the Declarant pursuant to this Declaration; and
(ii) making, constructing, and installing any improvements indicated on recorded subdivision plats of Elements at Viridian and such other improvements to the Common Area as it deems appropriate; and

(iii) making repairs or correcting any condition on the Common Area or any Unit.

10.3. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. Declarant shall give written notice to any Builder who then owns any Unit or has a contract to acquire any Unit from Declarant prior to assignment of all of Declarant's rights and

status to a third party. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and the transferee and recorded. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.4. Exclusive Rights To Use Name of Development.

The names "Elements at Viridian" and "Viridian," along with all logos associated with such names, are the proprietary trade names and/or service marks of the Founder, the Declarant, or Declarant Affiliates. No Person shall use either such name, or any associated logo, for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, in any signage, on any Internet website, or in any logo or depiction, without the prior written consent of the Person who owns such mark. In addition, due to the nature of Viridian as a planned community and the public identification of the Units with Viridian, any other name or logo to be used in connection with, or displayed on any signage or in any sales or other materials or documentation related to, any Unit shall be subject to the Founder's prior written consent. Such approval may be given or withheld in the Founder's discretion and may be subject to such terms and conditions as the Founder deems appropriate.

The owner of any mark or trademark may condition the Association's or any Owner's use of protected trade names or marks upon the signing of one or more license agreement(s), which are intended to protect the trade names and service marks from unauthorized use by others. Such license agreement(s) shall be non-exclusive, non-transferable, and in form and substance acceptable to the owner of the mark. Subject to such licensing agreements, the Association may use the words "Elements at Viridian" and "Viridian" in its name and Owners may use the names "Elements at Viridian" and "Viridian" solely to specify that particular property is located within Elements at Viridian or Viridian (subject, however, to such terms and conditions as the owner of associated tradenames and service marks may impose in order to protect its registered trade names and service marks). Other use by the Association or any Owner is subject to the restrictions set out in this Section or otherwise imposed by the owner of the mark.

10.5. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Elements at Viridian in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection pursuant to the rights reserved in Section 11.6.

ARTICLE XI EASEMENTS

11.1. Easements in Common Area.

Declarant grants to each Owner of a Unit within Elements at Viridian (but not owners of other properties in Viridian) a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Elements Documents and any other applicable covenants;
- (b) any restrictions, limitations, and easements contained in any deed conveying such property to the Association;
- (c) the Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including, without limitation, rules limiting the number of guests who may use the Common Area facilities, rules restricting who may use the Common Area facilities as a guest, and rules requiring guests to be registered or accompanied by their host when using the Common Area facilities; and
 - (ii) suspend the right of an Owner to use facilities within the Common Area pursuant to Section 7.4; and
 - (iii) dedicate or transfer all or any part of the Common Area, subject to Section 16.3; and
 - (iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 16.3; and

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

No person residing outside of Elements at Viridian shall have any right to use or access the Common Area within Elements at Viridian. Except as the Board may otherwise specifically provide by resolution, residents of Elements at Viridian must accompany their guests when using the clubhouse, pool, fitness center or other facilities within the Common Area.

11.2. Easements of Encroachment.

- (a) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units due to the unintentional placement or

settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions), to a distance of not more than two feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(b) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units as reasonably necessary to install, maintain, repair and replace any fence constructed on or within one foot of the boundary line of any Unit.

11.3. Easements for Access Over Private Streets.

(a) Declarant hereby reserves for itself and its agents, employees, successors, and assigns, and their respective invitees, a perpetual, non-exclusive easement of access, ingress, and egress over any private streets within Elements at Viridian ("**Private Streets**") and through any gate limiting vehicular or pedestrian access to Elements at Viridian, for the purpose of:

(i) constructing, installing, maintaining, repairing, and rebuilding subdivision improvements and performing any other work that the Declarant deems reasonably necessary, in its discretion, or that the Declarant is required to perform pursuant to any development agreement or order, contract, court order, or requirements of any government agency having jurisdiction over the Properties; and

(i) development, marketing and sale of property in Elements at Viridian, the Expansion Property, and other properties being developed, marketed, or sold by the Declarant, its affiliates, agents, or designees;

(b) Declarant hereby grants a perpetual, nonexclusive easement for access, ingress, and egress over the Private Streets to the Owners, for themselves and their invitees, which may include persons providing construction services and materials to their Units, subject to such Rules as the Association may adopt, which may include, without limitation, Rules limiting construction traffic during specified hours, Rules requiring construction traffic to enter and exit through a designated construction entrance.

(c) Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the Private Streets for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage collection service to Elements at Viridian, provided that such easement shall not authorize any such Persons to enter Elements at Viridian except while acting in their official capacities.

The existence of the foregoing easements shall not preclude the Association from maintaining gates or other devices or systems designed to limit vehicular or pedestrian access to any portion of Elements at Viridian, provided that the Association at all times maintains systems and/or procedures to permit the entry of Persons authorized to exercise the easements granted in this subsection without unreasonable interference or delay.

11.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Expansion Property, whether or not such Expansion Property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

11.5. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2 and otherwise exercise its authority and fulfill its duties under the Elements Documents. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform other maintenance, to inspect for the purpose of ensuring compliance with and enforce the Elements Documents, and to exercise self-help under Section 7.4. Any member of the Board and its duly authorized agents and designees, and all emergency personnel in the performance of their duties, may exercise such right of entry. Except in an emergency situation, entry onto an occupied Unit for any purpose other than performing, during daylight hours, any exterior maintenance which is the Association's responsibility under this Declaration or any Supplemental Declaration, shall only be during reasonable hours and after notice to the Owner.

11.6. Easement to Inspect and Right to Correct.

Declarant reserves for itself, the Builders, and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Properties, including Units, and a perpetual, nonexclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right; however, except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person

exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

11.7. Landscaping, Wall, and Signage Easements.

Declarant and its designees and the Association shall have perpetual, nonexclusive easements exercisable by their respective employees, agents, and contractors:

(a) over areas within five feet of the rights-of-way of streets within Elements at Viridian and over any easement designated on recorded plats of any portion of Elements at Viridian for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, decorative walls or fencing, and landscaping within the easement area; and

(b) over portions of Units lying within five feet of the perimeter boundary of any Unit or Common Area parcel for the purpose of installation, maintenance, repair, and replacement of decorative or privacy walls and/or fencing.

Nothing herein shall obligate Declarant or the Association to exercise such easements or to construct or install any of the foregoing. No fences, structures, driveways, plantings, or any other objects, temporary or permanent, shall be permitted in such easement areas which would interfere with the exercise of this easement without the Association's prior written approval, other than those installed by Declarant or its designees or the Association.

No person shall interfere with the exercise of this easement by Declarant, its designees, or the Association, by removing, defacing, or otherwise vandalizing any signs (temporary or permanent) or other improvements placed within such easement area by Declarant, its designees, or the Association, or otherwise. The Declarant, its designees and the Association, respectively, may remove signs or other improvements which they have placed on the easement area.

ARTICLE XII DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

12.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Elements at Viridian without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to:

(i) any Claim described in Chapter 19 of the Community Charter, without first submitting such Claim to the alternative dispute resolution procedures set forth in Chapter 19 of the Community Charter;

(ii) any Claim described in Section 12.1(b), without first submitting such Claim to the alternative dispute resolution procedures set forth in Section 12.2;

all in a good faith effort to resolve such Claim. Nothing herein shall be construed to require any dispute to be submitted to more than one of the processes described in clauses (i) and (ii) of this Section 12.1(a).

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute, other than a claim subject to Section 12.1(a)(i), arising out of or relating to:

(i) the interpretation, application, or enforcement of the Elements Documents; or

(ii) the rights, obligations, and duties of any Bound Party under the Elements Documents; or

(iii) the design or construction of improvements within the Properties, other than matters of aesthetic judgment exercised by the Reviewer under the Community Charter, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner; and

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Articles III, IV or V of this Declaration (relating to creation and maintenance of community standards); and

(iii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Elements Documents; and

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 12.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

12.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

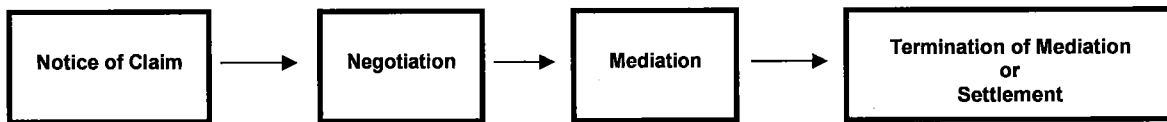
(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 12.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Dallas-Forth Worth metropolitan area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, except as otherwise provided in Section 12.3.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

Alternative Dispute Resolution Process



(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) Satisfaction of Requirements. In the event that any Claim would be subject to the dispute resolution procedures set forth herein and also to the dispute resolution procedures set forth in the Community Charter, compliance with the procedures set forth in the Community Charter shall constitute compliance with the procedures set forth in this Article.

12.3. Initiation of Actions by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, neither the Association nor any claimant or group of claimants acting on behalf of or in the name of the Association shall initiate any judicial, arbitration, or administrative proceeding unless first approved by a vote of persons entitled to cast at least 75% of the total Class "A" votes in the Association, except that no such approval shall be required to defend claims filed against the Association or to assert counterclaims in proceedings instituted against the Association, or for actions or proceedings where the amount in controversy is \$100,000 or less, if initiated:

- (a) during the Class "B" Control Period; or
- (b) to enforce the provisions of the Elements Documents, including collection of assessments and foreclosure of liens; or
- (c) to challenge ad valorem taxation or condemnation proceedings; or
- (d) against any contractor, vendor, or supplier of goods or services arising out of a contract with the Association for services or supplies;

or if otherwise prohibited by Texas law.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

ARTICLE XIII MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units.

13.1. Notices of Action.

Upon written request of an institutional holder, insurer, or guarantor of a first Mortgage stating the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, the requesting holder, insurer, or guarantor ("**Eligible Mortgage Holder**"), will be entitled to timely written notice of any of the following which occurs within 12 months of the date of such request:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Unit subject to the Eligible Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of 60 days, or any other known violation of the Elements Documents relating to such Unit or the Owner or Occupant which has not been cured within 60 days after notice from the Association; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

13.2. Right to Examine Books and Records.

Upon written request of any Mortgagee stating the name and address of such Mortgagee and the street address of the Unit to which its Mortgage relates, the Association shall provide the Mortgagee with a copy of the Association's most recent financial statement and shall permit such Mortgagee or its agent to inspect the books and records of the Association during normal business hours, subject to the terms of the By-Laws.

13.3. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.4. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

ARTICLE XIV MASTER ASSOCIATION

14.1. Membership in Master Association.

The Master Association has been established as a unifying entity for the residential portions of Viridian, of which Elements at Viridian is a part. Each Owner shall be a member of the Master Association and shall fulfill the responsibilities and be entitled to exercise the privileges of membership under the certificate of formation and bylaws of the Master Association. The Association shall cooperate with the Master Association and its other members in upholding a community-wide standard within Viridian. Each Owner shall be subject to and pay assessments and fees levied by the Master Association pursuant to the Community Charter in addition to assessments levied by the Association under this Declaration.

14.2. Management and Operating Agreements.

The Association may enter into agreements with the Master Association delegating to the Master Association such management, maintenance, operational or other duties of the Association as the Board deems appropriate, or assuming any such duties of the Master Association, on such terms and conditions and for such consideration as the Board deems appropriate.

ARTICLE XV CHANGES IN OWNERSHIP OF UNITS

15.1. Notice of Lease or Transfer of Unit.

Any Owner desiring to lease, sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the lessee, purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. In the case of a transfer of title, the Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

ARTICLE XVI CHANGES IN COMMON AREA

16.1. Condemnation.

If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking

or conveyance prior to disbursement of any condemnation award. Any condemnation award shall be payable to the Association and shall be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, during the Development and Sale Period, and Members entitled to cast at least 75% of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply as if the condemnation proceeds were insurance proceeds.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as if proceeds from the sale of Common Area pursuant to Section 16.3.

16.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to such approval as may be required under Section 16.3.

16.3. Transfer, Dedication or Conveyance of Common Area.

The Association may dedicate portions of the Common Area to any local, state, or federal governmental or quasi-governmental entity or utility company, may subject Common Area to a security interest, or may transfer or convey Common Area, as follows:

- (a) upon request of the Declarant pursuant to Section 7.1;
- (b) if Limited Common Area, upon written approval of Owners of the Units to which such Limited Common Area is assigned;
- (c) if Common Area other than Limited Common Area, upon the written direction of Members entitled to cast at least 67% of the total Class "A" votes in the Association and the Declarant during the Development and Sale Period, except that no Class "A" approval shall be required for the Board to grant easements for access and utility purposes over and through the Common Area, so long as such easements do not interfere with the intended use of such Common Area by the Owners.

No dedication or conveyance of Common Area may deprive any Unit of rights of access.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines, unless otherwise directed by the Class "A" Members at the time such sale or mortgage is authorized pursuant to subsection (c) above. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

ARTICLE XVII AMENDMENT OF DECLARATION

17.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, the Declarant may unilaterally amend this Declaration for any purpose, except that any amendment shall be subject to the approval requirements set forth in Section 17.3, if applicable, and no unilateral amendment by the Declarant shall be arbitrary, capricious, or in bad faith; destroy the general plan of development; prejudice the rights of Owners other than the Declarant to use and enjoy the Common Area; materially shift economic burdens from the Declarant to Owners other than the Declarant; or create easements over property owned by Persons other than Declarant unless such amendment is executed by such Persons to evidence their consent.

17.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Persons entitled to cast at least 67% of the total Class "A" votes in the Association, and during the Development and Sale Period, the Declarant's written consent. In addition, any amendment shall be subject to the approval requirements set forth in Section 17.3, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Any amendment pursuant to this Section 17.2 shall be prepared, executed, certified, and recorded on behalf of the Association by any officer designated for such purpose or, in the absence of such designation, by the Association's President.

17.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

No amendment which alters the rights or responsibilities of the Association or the Owners with respect to the Master Association shall be effective without the prior written consent of the Master Association.

Notwithstanding Section 17.1 and 17.2, any amendment which would be inconsistent with, or cause Elements at Viridian to become ineligible for, the HOPA Exemption described in Section 3.2(a) shall require the prior written consent of any Builder who then owns Units in Elements at Viridian or is under contract to purchase Units in Elements at Viridian from the Declarant.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within 6 months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. The Association shall provide a copy of any Declaration amendment to each Member within 30 days after recordation of the amendment.

17.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is incorporated by this reference and may be amended pursuant to Section 3.3 or this Article. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

ARTICLE XVIII TERMINATION OF DECLARATION

Subject to the rights to amend set forth in Article XVII and elsewhere in this Declaration, this Declaration shall remain in effect for 50 years from the date of recording and thereafter shall be extended automatically for successive 10-year periods unless at least 80% of the then Owners sign a document stating that this Declaration is terminated and that document is recorded within the year before any extension, in which case this Declaration shall terminate on the date specified in such termination document. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

If any provision of this Charter would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

[continued on next page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

FOUNDER: VIRIDIAN HOLDINGS LP, a Delaware limited partnership

BY: Johnson Viridian GP LLC, a Texas limited liability company, its general partner

By:

Name: Robert Kembel

Its: Vice President

STATE OF TEXAS §

§

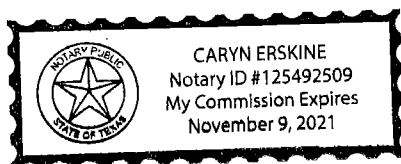
COUNTY OF TARRANT §

This instrument was acknowledged before me on this 19th day of September, 2018, by Robert Kembel, Vice President of Johnson Viridian GP LLC, a Texas limited liability company, in its capacity as general partner of VIRIDIAN HOLDINGS LP, a Delaware limited partnership, on behalf of said company, for the purposes therein expressed.

Caryn Erskine

Notary Public, State of Texas

[Notarial Seal]



My commission expires: 11/9/2021

This document was prepared by:
Jo Anne P. Stubblefield
HYATT & STUBBLEFIELD, P.C.
Peachtree Center Harris Tower
233 Peachtree Street, NE, Suite 1200
Atlanta, Georgia 30303

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EXHIBIT "A"

Land Initially Submitted

Being a 51.393-acre tract of land out of the John Childress Survey, Abstract No. 249, and the John Condra Survey, Abstract No. 347, City of Arlington, Tarrant County, Texas, and being more particularly described on that certain Final Plat of Viridian, Village 3A, filed of record in the Office of the County Clerk of Tarrant County, Texas, on June 29, 2018, as Instrument No. D218143303, Plat Records, as such plat may be revised and amended.

EXHIBIT "B"

Expansion Property

Any real property located in the City of Arlington, Tarrant County, Texas which has first or simultaneously been submitted to the Community Charter in accordance with the terms thereof.

Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described on this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplemental Declaration in accordance with Article IX.

EXHIBIT "C"

Initial Rules

In addition to the use and occupancy restrictions contained in Article III of this Declaration, the use restrictions contained in the Community Charter and the rules of the Master Association, the following rules shall apply within Elements at Viridian until such time as they are amended, modified, repealed or limited pursuant to Article III of the Declaration:

1. Age Qualification for Occupancy; Verification of Age

(a) In order to monitor compliance with the occupancy requirements and restrictions set forth in Article III of the Declaration, each individual who desires or intends to occupy a Unit shall provide to the Association acceptable evidence of such individual's age prior to taking occupancy of the Unit and prior to the Association's issuance of an identification card permitting use of the Association's facilities and participation in programs and activities sponsored by the Association.

(b) The Association will conduct surveys at least every two years and maintain a data base to verify age compliance as required by law.

All occupants of Units, whether Owners, renters or house guests of absentee Owners or renters, must participate in surveys and comply with requests from the Association to verify the ages of all occupants of the Units, including signing and returning in a timely manner any certification or affidavit which the Association may request. Proof of occupancy by at least one Qualifying Occupant (as defined in Article III of the Declaration) must be provided in response to the survey. Any of the following documents will be acceptable evidence of the age of the occupants, provided that it contains specific information about current age or date of birth:

- Driver's license
- Birth certificate
- Passport
- Immigration card
- Military identification
- Any other state, local, national or international official documents containing a birth date of comparable reliability

If any occupant of a Unit refuses to comply with the age verification procedures, the Association may, in its discretion, rely upon other forms of verification to determine the age of occupants, including:

- Government records or documents such as a local household census
- Prior forms or applications; or
- A statement from an individual who has personal knowledge of the age of the occupants, setting forth the basis for such knowledge and signed under penalty of perjury.

EXHIBIT "C"

Initial Rules (continued)

A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

2. Disclosure of 55+ Occupancy Policies

(a) Any Owner or real estate broker or agent who sells, leases, or assists in selling or leasing real property in Elements at Viridian shall disclose in any advertisements and in the purchase or lease documents that Elements at Viridian is a 55+ age restricted community, intended and operated to provide housing for persons age 55 and older. The purchase contract or lease shall contain a disclosure in substantially the following form, to be initialed by the purchaser or lessee:

OCCUPANCY OF UNIT. Purchaser acknowledges that Elements at Viridian is designed and intended to provide housing for persons age 55 and older. Purchaser has reviewed the Declaration of Covenants, Restrictions and Easements for Elements at Viridian ("Declaration") and understands that the Declaration requires, with limited exceptions, that each occupied Unit have, as a permanent resident, at least one occupant who is age 55 or older and that every occupant be at least 30 years of age or older. Furthermore, no person shall provide care or supervision in or from the Unit of a person under the age of 18 more than 10 days in any calendar month or more than 56 days in any 12-month period.

Purchaser agrees to provide, at closing of the purchase hereunder, evidence acceptable to Seller of the names and ages of the intended occupants of the Unit and to execute at such closing an affidavit, in such form as Elements at Viridian Homeowners Association, Inc. (the "Association") may require, affirming that occupancy of the Unit will be in compliance with the occupancy restrictions set forth in the Declaration. Purchaser acknowledges and understands that the Declaration requires the Purchaser to report changes in occupancy of the Unit to the Association and to cooperate with the Association in responding to surveys and providing such information as the Association may request to monitor compliance with the occupancy requirements of the Declaration.

Purchaser's Initials

(b) Any "For Sale" or "For Rent/Lease" signs permitted in Elements at Viridian, whether erected by the Owner or by a real estate agent, shall follow the sign guidelines established pursuant to the Community Charter and shall prominently display that the Unit is part of a "55+ AGE-RESTRICTED" community.

(c) Any sales contract or lease of real property in Elements at Viridian shall include the certification of the buyer or lessee, in such form as the Board shall make available, certifying that at all times after taking occupancy of the Unit, at least one permanent resident of the Unit will be 55 years of age or older and specifying the current age or date of birth of such person. The Owner

EXHIBIT "C"

Initial Rules (continued)

shall provide a copy of such certification to the Association prior to the buyer taking title to, or the lessee taking occupancy of, the Unit.

(d) The Board shall prepare and make available to Owners a disclosure statement setting forth the occupancy policies applicable to Elements at Viridian consistent with Article III of the Declaration and these Rules and a form of certification to be executed by the buyer or lessee, acknowledging the age restrictions applicable to the Unit and Each Owner shall attach a copy of such disclosure statement to any contract for the sale or lease of a Unit in Elements at Viridian.

EXHIBIT "D"

Certificate of Formation of Elements at Viridian Homeowners Association, Inc.

[see attached]



Office of the Secretary of State

CERTIFICATE OF FILING OF

Elements at Viridian Homeowners Association, Inc.
File Number: 803097841

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 08/21/2018

Effective: 08/21/2018



A handwritten signature in black ink, appearing to read "R. Pablos".

Rolando B. Pablos
Secretary of State

Form 202

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709

Filing Fee: \$25

**Certificate of Formation
Nonprofit Corporation**

Filed in the Office of the
Secretary of State of Texas
Filing #: 803097841 08/21/2018
Document #: 832361310002
Image Generated Electronically
for Web Filing

Article 1 - Corporate Name

The filing entity formed is a nonprofit corporation. The name of the entity is :

Elements at Viridian Homeowners Association, Inc.

Article 2 - Registered Agent and Registered Office

☒ A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

Viridian Holdings, LP

OR

☐ B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:

Street Address:

835 E Lamar Boulevard #235 Arlington TX 76011

Consent of Registered Agent

☐ A. A copy of the consent of registered agent is attached.

OR

☒ B. The consent of the registered agent is maintained by the entity.

Article 3 - Management

☐ A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

☒ B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Robert Kembel**

Title: **Director**

Address: **835 E Lamar Boulevard #235 Arlington TX, USA 76011**

Director 2: **Caryn Erskine**

Title: **Director**

Address: **835 E Lamar Boulevard #235 Arlington TX, USA 76011**

Director 3: **Howard Porteus**

Title: **Director**

Address: **835 E Lamar Boulevard #235 Arlington TX, USA 76011**

Article 4 - Organization Structure

☒ A. The corporation will have members.

or

☐ B. The corporation will not have members.

Article 5 - Purpose

The corporation is organized for the following purpose or purposes:

By way of explanation and not of limitation: (a) to be and constitute the "Association" to which reference is made in the Declaration of Covenants, Restrictions and Easements for Elements at Viridian executed by Viridian Holdings, LP as "Declarant" and recorded or to be recorded in the County Clerk

Official Records of Tarrant County, Texas (as amended and supplemented, the "Declaration"), to perform all obligations and duties of such Association, and to exercise all rights and powers of such Association, as set forth in the Declaration and other "Elements Documents" referenced therein, and as provided by law; and (b) to provide an entity for the furtherance of the interests of the owners of real property now and hereafter made subject to the Declaration. The Corporation does not contemplate pecuniary gain or benefit, direct or indirect, to its members.

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Addendum to Certificate of Formation-Elements at Viridian Homeowners Association, Inc.- Supplemental Provisions.pdf

Effectiveness of Filing

☒ A. This document becomes effective when the document is filed by the secretary of state.

OR

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Organizer

The name and address of the organizer are set forth below.

Jo Anne P. Stubblefield **233 Peachtree Street, N.E., Suite 1200, Atlanta, GA 30303**

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Jo Anne P. Stubblefield

Signature of organizer.

FILING OFFICE COPY

**Addendum to
CERTIFICATE OF FORMATION
OF
ELEMENTS AT VIRIDIAN HOMEOWNERS ASSOCIATION, INC.**

Supplemental Provisions

Article 1. Applicable Statute. The corporation (hereafter, the "**Association**") is organized pursuant to the provisions of the Texas Nonprofit Corporation Law, as set forth in Chapters 20 and 22, and the provisions of Title 1 applicable to nonprofit corporations, of the Texas Business Organizations Code, as it may be amended (the "**Act**").

Article 2. Defined Terms. Capitalized terms used in this Certificate of Formation and not otherwise defined in this Certificate shall have the meanings set forth in the Declaration of Covenants, Restrictions and Easements for Elements at Viridian executed by Viridian Holdings, LP, a Delaware limited partnership (the "**Declarant**"), and recorded in the Office of the County Clerk of Tarrant County, Texas, as it may be amended (the "**Declaration**").

Article 3. Powers. In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or the by-laws of the Association ("**By-Laws**"), may be exercised by its board of directors:

(a) all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of Texas in effect from time to time;

(b) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in this Certificate of Formation, the By-Laws, or the Declaration, including, without limitation, the following:

(1) to fix and to collect assessments and other charges to be levied pursuant to the Declaration;

(2) to manage, control, operate, maintain, repair, and improve property subject to the Declaration or any other property as to which the Association has a right or duty to provide such services pursuant to the Declaration, By-Laws, or any covenant, easement, contract, or other legal instrument;

(3) to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration, By-Laws, or other recorded covenant;

(4) to engage in activities which will actively foster, promote, and advance the common interests of all owners of property subject to the Declaration;

(5) to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

(6) to borrow money for any purpose;

(7) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(8) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests of such corporations, firms, or individuals;

(9) to adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such By-Laws may not be inconsistent with or contrary to any provisions of the Declaration; and

(10) to provide any and all services to the properties subject to the Declaration as the Board of Directors may determine to be necessary or desirable to supplement the services provided by local government.

(c) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 3 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article 3. None of the objects or purposes set out above shall be construed to authorize the Association to do any act in violation of the Act, and all such objects or purposes are subject to the Act.

Article 4. Membership. The Association shall be a membership corporation without certificates or shares of stock. The Declarant, for such period as is specified in the Declaration, and each Person who is the Owner of a Unit subject to the Declaration, shall be a member of the Association ("**Member**") and shall be entitled to such voting rights and membership privileges as are set forth in the Declaration and the By-Laws.

Article 5. Board of Directors. The business and affairs of the Association shall be conducted, managed, and controlled by a Board of Directors. The Board may delegate its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

The Board of Directors shall consist of not less than three nor more than seven directors, as determined in accordance with the By-Laws. The initial Board of Directors shall consist of the three directors identified in this Certificate of Formation, who shall hold office until their

successors are elected and have qualified, or until their resignation or removal. The number, the method of selection, removal, and filling of vacancies on the Board of Directors, and the term of office of members of the Board of Directors, shall be as set forth in the By-Laws.

Article 6. Indemnification of Directors. The Association shall indemnify its officers, directors and committee members as and to the extent required by the By-Laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

Article 7. Action by Less Than Unanimous Consent. Except as otherwise limited by Texas law or the By-Laws, whenever the Declaration, the By-Laws, or Texas law require or authorize an action of the Association's membership and the Board of Directors to be taken at a meeting, such action may be taken without holding a meeting, providing notice, or taking a vote, if members of the Association or Board who hold at least the minimum number of votes that would be necessary to take the action at a meeting if every member entitled to vote on the action were present and voted, signs and dates a written consent or consents to such action, setting forth the action for which consent is given, and such consents are delivered to the Association by such deadline as the Board may establish, which shall be no later than the 60th day after the date the earliest dated consent is delivered. The Association shall promptly notify each member of the Association or Board, as applicable, who did not sign a consent, of any action taken by consent pursuant to this Section.

Article 8. Dissolution. The Association may be dissolved only upon a resolution duly adopted by its Board of Directors and approved by the affirmative vote of Members representing not less than two-thirds (2/3) of the Units subject to the Declaration. In addition, so long as the Declarant owns any property subject to the Declaration or which the Declarant may unilaterally make subject to the Declaration pursuant to the provisions of the Declaration, the written consent of the Declarant shall be required. The Association is authorized, upon its winding up, to distribute its assets in a manner other than as provided by Section 22.304 of the Texas Business Organizations Code, in accordance with a plan of distribution adopted pursuant to Chapter 22 of the Texas Business Organizations Code, which plan may, but shall not be required to, provide for distribution of the remaining property of the Association for tax-exempt purposes to an organization exempt under Section 501(c)(3) of the Internal Revenue Code, or described by Section 170(c)(1) or (2) of the Internal Revenue Code.

Article 9. Merger and Consolidation. The Association may merge or consolidate only upon a resolution duly adopted by its Board of Directors and the affirmative vote of Members representing not less than two-thirds (2/3) of the Units subject to the Declaration. In addition, so long as the Declaration owns any property subject to the Declaration or which it may unilaterally make subject to the Declaration, the written consent of the Declaration shall be required.

Article 10. Amendments. The Board may amend this Certificate of Formation without membership approval for the limited purposes provided in Tex. Business Organizations Code Section 22.107, and for the purpose of complying with the requirements of any governmental or quasi-governmental entity or institutional lender authorized to fund, insure or

guarantee mortgages on individual Units. Otherwise, this Certificate of Formation may be amended only upon a resolution duly adopted by the Board of Directors and approved by the affirmative vote of Members representing at least two-thirds (2/3) of the total eligible votes of the membership. So long as the Declarant owns any property subject to the Declaration or which it may unilaterally make subject to the Declaration, the consent of the Declarant shall be required for any amendment.

EXHIBIT "E"

By-Laws of Elements at Viridian Homeowners Association, Inc.

[see attached]

BY-LAWS
OF
ELEMENTS AT VIRIDIAN HOMEOWNERS ASSOCIATION, INC.

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**BY-LAWS
OF
ELEMENTS AT VIRIDIAN HOMEOWNERS ASSOCIATION, INC.**

**Article 1
Name, Principal Office, and Definitions**

1.1. Name.

The name of the corporation is Elements at Viridian Homeowners Association, Inc. (the "Association").

1.2. Principal Office.

The Association may have such offices in the State of Texas as the Board may determine or as the Association's affairs may require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the meaning ascribed to them in the Declaration of Covenants, Restrictions and Easements for Elements at Viridian recorded by Viridian Holdings, LP, a Delaware limited partnership (the "Declarant"), in the Office of the County Clerk of Tarrant County, Texas, as it may be amended (the "Declaration"). The term "majority," as used in these By-Laws, means those votes, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**Article 2
Membership: Meetings, Quorum, Voting, Proxies**

2.1. Membership.

The Association shall have two classes of membership: Class "A" Membership and Class "B" Membership, as more fully described in the Declaration. Each Owner of a Unit automatically becomes a Member of the Association upon accepting title to a Unit. Additional provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

2.3. Membership Meetings.

(a) **General.** The first Association meeting, whether an annual or special meeting, shall be held within one year after the conveyance of the first Unit to a Class "A" Member other than the Declarant.

(b) **Annual Meetings.** The Board shall schedule regular annual meetings of the Members to occur within 90 days before the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) **Special Meetings.** The President may call special meetings of the Members. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or within 30 days after receipt of a petition stating the purpose of the meeting and signed by Members holding at least 10% of the total votes in the Association.

2.4. Notice of Meetings.

(a) At least 10 but not more than 60 days before any meeting of the membership, the President, the Secretary, or the officers or other persons calling the meeting shall deliver or cause to be delivered to each Member a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including the general nature of any proposed amendment to the Declaration or By-Laws, any proposed budget changes, any proposal to remove a director, and any other matter required by *Tex. Business Organizations Code* §§ 22.253 and 22.303. If proxies are permitted, the notice shall also state the procedures for appointing proxies. If the meeting is to be held solely by electronic communications or if participation in the meeting is permitted by electronic communications, as described in Section 2.5 below, the notice shall state the form of communications system to be used for the meeting and the means of accessing the communications system. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 9.5.

(b) The Board shall set a record date for determining who is entitled to receive notice of a meeting, which shall not be earlier than the 60th day before the meeting date, and shall prepare an alphabetical list of the names of all Members entitled to vote, indicating (i) the address of each Member, and (ii) the number of votes each Member is entitled to cast at the meeting. Not later than the second business day after the date notice of the meeting is given, and continuing through the meeting, the list shall be made available at the Association's principal office or at a reasonable place in the municipality in which the meeting will be held, as identified in the notice of the meeting, for inspection and copying by Members entitled to vote at the meeting, or their agents, for the purpose of communication with other Members concerning the meeting. The Association shall also make the list available at the meeting for inspection at any time during the meeting or any adjournment of the meeting.

2.5. Electronic Participation in Meetings.

The Association may hold Association meetings and/or allow Members to participate in any Association meeting by conference telephone or similar communications equipment or another

er suitable electronic communications system, including videoconferencing technology or the Internet, if each person entitled to participate in the meeting consents to the meeting being held by means of that system and system permits each person participating in the meeting to communicate concurrently with all other persons participating in the meeting. If voting is to take place at the meeting, the Association must implement measures to verify that every Member voting at the meeting by means of remote communication is sufficiently identified.

2.6. Waiver of Notice.

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless the Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If any Association meeting cannot be held because a quorum is not present, persons entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time at least 5 but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Declaration or applicable law for specific actions, must approve any action taken.

2.8. Voting.

(a) ***Voting Rights.*** Members shall have such voting rights as are set forth in the Declaration, which provisions are specifically incorporated by this reference.

(b) ***Notice of Vote.*** Not later than the 10 days or earlier than 60 days before the date of any election or vote, the Association shall give written notice of the election or vote to each Member entitled to vote.

(c) ***Method of Voting.*** A membership vote on any matter shall be conducted by written ballot signed by the Member entitled to vote, unless the vote is to be conducted by secret ballot

and the Association has adopted procedures to reasonably ensure that (i) a Member cannot cast more votes than the member is eligible to cast; and (ii) the Association counts every vote cast by a Member that is eligible to cast a vote. Ballots on any matter may be cast in person or by proxy at a meeting, by mail or electronic transmission (including facsimile transmission, electronic mail, or by means of an Internet website), or by any combination of those methods; provided, any ballot submitted electronically must be submitted in a manner that permits confirmation of the identity of the Member casting the vote and allows the Member to receive a receipt evidencing the transmission and receipt of the ballot.

A ballot to be submitted by mail or electronic transmission (an "**Absentee Ballot**") shall:

(i) describe each proposed action and providing an opportunity to vote for or against each proposed action; and

(ii) include the following language or such other language as may be authorized in lieu of the following language by future amendment of Texas Property Code Chapter 209:

By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail.

Any solicitation of votes to be cast by Absentee Ballot shall include instructions for delivery of the completed ballot, including the delivery location. If the Absentee Ballot is posted on an Internet website, a notice of posting shall be sent to each Member entitled to vote on the matter with instructions for obtaining access to the website and casting such ballot.

(d) ***Tabulation of Votes.*** A ballot cast at a meeting shall revoke and supersede any ballot casting the same vote submitted by other means. A ballot cast prior to a meeting (i) may be counted as a Member present and voting for the purpose of establishing a quorum only for items appearing on the ballot; (ii) may not be counted if the Member attends the meeting to vote in person; and (iii) may not be counted if the motion was amended at the meeting so as to deviate from the exact language on the ballot previously cast.

The person who tabulates votes on any matter shall not disclose to any other person how any particular Member's votes were cast. No person who is a candidate for election or is the subject of any other Association vote, nor any person related to such person within the third degree of consanguinity or affinity, as determined under Texas Government Code Chapter 573, may tabulate ballots cast in any election or vote hereunder. No person other than a person designated to tabulate the votes shall be given access to the ballots cast other than as part of a recount process authorized by law.

Within 15 days after the date of any election, any Member may demand a recount of the votes in accordance with Texas Property Code §209.0057.

2.9. Proxies.

Any Member may vote in person or by proxy, subject to the limitations of Texas law and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, shall be signed by the Member or the Member's duly authorized attorney-in-fact, and shall be dated and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease (a) if the Member attends the meeting and votes in person, (b) upon conveyance of any Unit for which it was given, (c) upon the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (d) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Quorum.

Except as these By-Laws or the Declaration otherwise provide(s), the presence of Members or their proxies entitled to cast at least 20% of the total votes in the Association shall constitute a quorum at any membership meeting, and the casting of ballots representing at least 20% of the total votes in the Association shall constitute a quorum for any membership vote conducted by means other than at a meeting; provided, if a quorum is not established at any meeting when initially called or for any membership vote when initially conducted, then the quorum for any subsequent attempt to convene such meeting or conduct such membership vote shall be reduced to 10%. A ballot cast by mail or electronically may be counted for purposes of establishing a quorum only as to those action items appearing on the ballot.

2.11. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are prepared, reflecting all resolutions adopted and all other transactions occurring at such meetings. The minutes shall be kept with the Association's books and records.

2.12. Action Without a Meeting.

In accordance with the Certificate of Formation, any action that is required or that may be taken at a meeting of the Members may be taken without a meeting if:

- (a) the Association mails or delivers to every Member entitled to vote on the action:

- (i) an Absentee Ballot meeting the requirements of Section 2.8(b); or
- (ii) notice of the posting of such a ballot on an Internet website, with instructions for obtaining access to such website and casting the ballot; and
- (b) the number of votes cast equals or exceeds the quorum required for a meeting to consider such action; and
- (c) the number of votes cast in favor of the proposed action equals or exceeds the number of votes required to approve such action if the vote were conducted at a meeting.

Voting instructions or solicitations for any vote conducted in a manner other than at a meeting must be delivered at least 20 days before the deadline for casting ballots and must indicate the deadline for casting the ballot in order to be counted. The period for submitting ballots to the Association shall not be more than 60 days. Each ballot cast must be signed and dated by the Member; provided, electronic votes cast pursuant to Section 2.8(b) shall constitute written and signed ballots and written and signed ballots shall not be required for candidates in uncontested elections. A signed ballot may not be revoked once submitted to the Association, except as provided in Section 2.8(a). The Board shall notify the Members of the results of the vote within 30 days after the expiration of the voting period.

Article 3

Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Class "B" Member, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within Elements at Viridian.

If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time, except in the case of directors that the Class "B" Member appoints.

3.2. Number of Directors.

The Board shall consist of three to five directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office.

(a) **Initial Board.** The initial Board shall consist of the three directors identified in the Certificate of Formation, who shall serve until their successors are appointed or elected as provided in this section.

(b) **Directors During Class "B" Control Period.** Except as otherwise provided in this subsection (b) and in Section 3.5, the Class "B" Member may appoint, remove, and replace Board members until termination of the Class "B" Control Period. During such period, the Class "A" Members other than the Declarant shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Class "A" Members other than Declarant are referred to as "Owner Directors"):

(i) Not later than 60 days after the time that Owners other than the Declarant, Declarant Affiliates, or Builders own 50% of the Permitted Units, the President shall call for an election by which the Class "A" Members other than the Declarant shall be entitled to elect one of the three directors. The remaining directors shall be appointees of the Declarant. The Owner Director shall be elected for a term of two years or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such Owner Director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) Not later than 60 days after the time that Owners other than the Declarant, Declarant Affiliates, or Builders own 70% of the Permitted Units, the Board shall be increased to five directors and the President shall call for an election by which the Class "A" Members other than the Declarant shall be entitled to elect two of the five directors. The Declarant shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such Owner Directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

Notwithstanding the above or the percentage of Units that may have been conveyed, Class "A" Members other than that Declarant shall be entitled to elect at least one-third of the members of the Board no later than 10 years after the date of recording of the Declaration.

(c) **Directors After the Class "B" Control Period.** Not later than termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Members other than Declarant shall be entitled to elect four of the five directors. Two Owner Directors shall be elected to serve until the second annual meeting following their election and two Owner Directors shall be elected to serve until the third annual meeting following their election, as such Owner Directors determine among themselves. The Declarant shall be entitled to continue to appoint one director to serve until the third annual meeting following such election.

Upon expiration of the term of office of each director elected or appointed pursuant to this subsection (c), the Class "A" Members (including the Declarant in its capacity as the Class "A" Member for Units which it owns) shall be entitled to elect a successor to serve a term of two years.

Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

The diagram below illustrates the concept of transition of control of the Board during and after the Class "B" Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS				
Initial Board	50% of Total Units Conveyed	70% of Total Units Conveyed	Termination of Class "B" Control Period	3 rd Annual Meeting After Election in 3.3(c)
Declarant	Owner	Owner	Owner	Owner
Declarant	Declarant	Owner	Owner	Owner
Declarant	Declarant	Declarant	Owner	Owner
		Declarant	Owner	Owner
		Declarant	Declarant	Owner

3.4. Nomination and Election Procedures.

(a) ***Nomination of Candidates.*** At least 30 days prior to any election of directors by the Class "A" Members, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners. The Nominating Committee shall serve until the close of the election for which they were appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Class "A" Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at the meeting at which any election is held or, if the election is to be held without a meeting pursuant to Section 2.12, the Board shall establish a reasonable procedure by which any Owner may declare his or her candidacy for election to the Board prior to the solicitation of ballots under that Section. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

In addition to or in lieu of appointing a Nominating Committee, the Board may (and if there are more than 100 Units in Elements at Viridian, it shall) give notice the Members soliciting candidates interested in running for any position on the Board to be filled by such election. Such notice shall be given at least 10 days prior to disseminating any ballots for purposes of voting in an election of directors and must contain instructions for an eligible candidate to notify the Association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request, which deadline may not be earlier than the 10th day after the date of such notice. The notice shall either be: (i) mailed to each Member; or (ii) provided by e-mail to each Member

who has registered an e-mail address with the Association and posted (A) in a conspicuous manner reasonably designed to provide notice to the Members, either on the Common Area or on other property within Elements at Viridian, with the permission of the owner of such property, or (B) on an Internet website maintained by the Association or on other Internet media. The Association shall include on the ballot for such election the name of each eligible candidate from whom the Association received a request to be placed on the ballot in accordance with this section.

(b) ***Election Procedures.*** At each election, voting shall be by ballot, which may be cast in any manner authorized by the Board consistent with Section 2.8. Each Member entitled to vote in such election under Section 3.3 may cast all votes assigned to such Member's Unit(s) for each position to be filled by such election. Cumulative voting shall not be permitted. Notwithstanding this, if the number of candidates equals the number of positions to be filled and there are no nominations from the floor, any Member may move to accept the slate of candidates nominated by the Nominating Committee, and, if approved, no balloting shall be required. Otherwise, the candidates receiving the most votes shall be elected.

In the event of a tie vote, the Members shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. If the second vote again results in a tie, then the Board shall flip a coin to determine the winner. Such election shall be held by mail, with ballots to be sent by first class mail to each Member entitled to vote within 10 days after the meeting at which the original election was held.

3.5. Removal of Directors and Vacancies.

Any Owner Director may be removed, with or without cause, by the vote of Class "A" Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Class "A" Members, the Class "A" Members shall elect a successor for the remainder of the term of such director.

If the Board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a director was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the Board is presented with such evidence, the director shall be automatically considered removed from the Board and ineligible for future service on the Board.

In the event of a vacancy in any position on the Board previously filled by an Owner Director, the Board may appoint a successor to fill the vacancy for the remainder of the unexpired term.

The Declarant shall have no unilateral right to remove or replace Owner Directors, and neither the Class "A" Members nor the Board shall have any right to remove or replace directors that the Declarant appoints. The Declarant may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Declarant.

B. Meetings.

3.6. Organizational Meetings.

The Board shall hold an organizational meeting within 10 days following each annual meeting of the membership, at such time and place (subject to Section 3.10) as the Board shall fix.

3.7. Regular Meetings.

The Board shall hold regular meetings at such time and place (subject to Section 3.10) as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

3.8. Special Meetings.

The President, Vice President, or any two directors may call a special meeting of the Board.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the date and time of the meeting and, unless the meeting is being held solely by use of a conference telephone or other remote communications system in accordance with Section 3.10, the location of the meeting. Notice of any meeting which is conducted or which may be attended by conference telephone or other remote communications system in accordance with Section 3.10 shall specify the form of communications system to be used for the meeting and the means of accessing the communications system.

(b) The Board shall notify each director of Board meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the day of the meeting. Notices sent by personal delivery, telephone, or electronic communication shall be delivered at least 72 hours before the time set for the meeting. No notice shall be required for regular meetings conducted in accordance with a published schedule, provided notice of the schedule was delivered to each director in accordance with this subsection (b).

(c) Except as provided in Sections 3.14 and 3.15, Members shall be given notice of all Board meetings setting forth the date, hour, place, and general subject of the meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

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

(ii) provided at least 72 hours before the start of the meeting by e-mail to each Member who has registered an e-mail address with the Association; and

(iii) posted either:

(A) in a conspicuous manner reasonably designed to provide notice to the Members, either on the Common Area or on other property within Elements at Viridian, with the permission of the owner of such property; or

(B) on an Internet website maintained by the Association or on other Internet media.

Each Member is responsible for registering their email address with the Association for purposes of receiving notices under subsection (c)(ii) and notifying the Association in writing of any change in such email address. If the Board recesses a Board meeting until the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent the requirements of this Article 3, Part B. If a Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner prescribed by subsection (c)(ii)(A) or (B) above within two hours after adjournment of the meeting being continued.

(d) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Place of Meetings; Participation by Telephonic or Electronic Means.

(a) All Board meetings shall be held within Tarrant County or an adjacent county, except for meetings held by telephone or other communications system pursuant to subsection (b).

(b) A meeting of the Board, or of any committee the Board appoints, may be held using a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, provided that:

(i) all Board or committee members, as applicable, entitled to participate in the meeting consent to the meeting being held by means of that system;

(ii) the electronic or telephonic system used allows each director or committee member, as applicable, to communicate concurrently with every other director or committee member;

(iii) except for any portion of the meeting conducted in executive session as described in Section 3.13, all Members in attendance may hear all directors or committee members;

(iv) Members are allowed to listen using any electronic or telephonic communication method used or expected to be used by any director or committee member; and

(v) notice of the meeting includes instructions for accessing the meeting using any such communication method.

Participation in a meeting pursuant to this section shall constitute presence at such meeting, unless the participation is for the express purpose of objecting to the transaction of business at the meeting on the ground that the meeting has not been lawfully called or convened.

3.11. Quorum of Board; Voting.

(a) At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Texas law, these By-Laws, or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken.

(b) Board members may not vote by proxy. Voting may be conducted at a meeting or without a meeting in accordance with Section 3.14.

3.12. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that written minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

3.13. Open Meetings; Executive Session.

(a) Subject to the provisions of Section 3.13(b) and Section 3.14, all Board meetings shall be open to attendance by all Members or their representatives, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak. The Board shall make agendas for its meetings reasonably available for examination by all Members or their representatives prior to the meeting.

(b) Notwithstanding the above, any Board meeting may be adjourned and reconvened in executive session, and attendance at such meeting restricted to directors and such other persons as the Board may specifically invite and announce during the open portion of the Board meeting, to discuss pending or threatened litigation, personnel matters, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the inva-

sion of privacy of Members, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of any Members, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

3.14. Action Without a Formal Meeting.

(a) Except as provided in subsection (b), the Board may take action outside of a meeting, by written consent to such action in the manner authorized in the Certificate of Formation, or by voting by electronic or telephonic means, without prior notice to the Members, if each Board member is given a reasonable opportunity to express his or her opinion to all other board members and to vote or execute a consent to such action. Except as provided in Section 3.15, any action taken without notice to Members under Section 3.9 must be summarized orally at, and documented in the minutes of, the next Board meeting, including an explanation of any known actual or estimated expenditures approved at the meeting.

(b) Except as provided in Section 3.15, the Board may not consider or vote on any of the following matters except in an open meeting for which prior notice was given to the Members pursuant to Section 3.9: fines; damage assessments; initiation of foreclosure actions; initiation of enforcement actions (other than temporary restraining orders or violations involving a threat to health or safety); increases in assessments; levying of special assessments; suspension of a right of a particular Member before the Member has an opportunity to attend a Board meeting to present the Member's position, including any defense, on the issue; lending or borrowing money; the adoption or amendment of any of the Elements Documents; the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent; the sale or purchase of real property; the filling of a vacancy on the Board; the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or the election of an officer.

3.15. Board Action During Development and Sale Period.

The requirements and limitations set forth in Sections 3.9(c), 3.10(a), 3.13, and 3.14 shall not apply to meetings of the Board conducted during the Class "B" Control Period unless conducted for the purpose of:

- (a) adopting or amending the Elements Documents;
- (b) increasing the amount of the Base Assessment or adopting or increasing a Special Assessment;
- (c) electing Owner Directors or establishing or modifying the process for their election;
- or
- (d) changing the voting rights of Members.

Nothing in this Section 3.15 shall be construed to authorize the Board to take action on any matter listed in clauses (i) through (iv) in contravention of the approval that would otherwise be required under the Elements Documents or Texas law.

C. Powers and Duties.

3.16. Powers.

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Elements Documents and as provided by law. The Board may do, or cause to be done on the Association's behalf, all acts and things except those which the Elements Documents or Texas law require(s) to be done and exercised exclusively by the Owners or the membership generally.

3.17. Duties.

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and, where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) opening bank accounts on the Association's behalf and designating the signatories required;
- (f) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Elements Documents;
- (h) determining when action to enforce the Elements Documents is appropriate and the nature of any sanctions to be imposed, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

- (i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (j) paying the cost of all services rendered to the Association;
- (k) keeping a detailed accounting of the Association's receipts and expenditures;
- (l) making available to any prospective purchaser of a Unit, any Member, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Elements Documents and all other books, records, and financial statements of the Association as provided in Section 9.4; and
- (m) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Texas law, the Certificate of Formation, or these By-Laws.

Article 4

Officers

4.1. Officers.

The Association's officers shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the membership, to serve until their successors are elected.

4.3. Removal and Vacancies.

The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the Association's budgets as provided for in the Declaration, and may

delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Article 5 Committees

5.1. General.

In addition to such committees as the Declarant or Board may appoint pursuant to the Declaration, the Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article 8 of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Elements Documents.

Article 6 Standards of Conduct; Liability and Indemnification; Conflicts

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Elements Documents.

Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Texas law.

6.2. Liability.

In performing their duties, directors and officers shall be insulated from liability as provided for directors of corporations under Texas law and as otherwise provided by the Elements Documents. The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for any action taken or omitted in such capacities, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

6.3. Indemnification.

Subject to the limitations of Texas law, the Association shall indemnify every present and former officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Texas law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in Texas law, the Board may authorize the Association to advance funds to pay for or reimburse

the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Conflicts of Interest.

(a) A director shall promptly disclose to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. Notwithstanding this, the fact that a director appointed by the Declarant may be employed by or otherwise transact business with the Declarant or a Declarant Affiliate, and that the Declarant may transact business with the Association or its contractors, shall not require disclosure as a potential conflict of interest hereunder.

(b) The Association shall not enter into a contract with a current Board member, a person related to a current Board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Texas Government Code (a "Board Relative"), a company in which a current Board member has a financial interest in at least 51% of profits, or a company in which a Board Relative has a financial interest in at least 51% of profits, unless all of the following conditions are satisfied:

(i) the Board member, Board Relative, or company bids on the proposed contract and the Association has received at least two other bids for the contract from persons not associated with the Board member, Board Relative, or company, if reasonably available in the community;

(ii) the Board member is not given access to the other bids, does not participate in any Board discussion regarding the contract, and does not vote on the award of the contract;

(iii) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the Board and the Board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of a majority of the directors who do not have an interest governed by this Section; and

(iv) the Board certifies that the other requirements of this Section 6.5 have been satisfied by a resolution approved by an affirmative vote of the majority of the Board members who do not have an interest governed by this Section.

(c) Except as provided in subsections (c) and (d), no director may transact business with the Association or any Association contractor within two years after the director's term expires.

(d) This Section does not apply to any contract entered into by the Association during the Development and Sale Period with the Declarant or any Declarant Affiliate.

6.6. Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall be encouraged to complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audiotape, or in other format. The cost of such seminar shall be a Common Expense.

The Board may also provide, or provide for, Owner and resident education designed to foster a better understanding of Elements at Viridian's governance and operations, and leadership training classes designed to educate Members and Owners as to the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

The Board may apply for and maintain, as a Common Expense, membership for the Association, its officers and directors, in the Community Associations Institute or any similar nonprofit organization that provides educational opportunities for Association directors, officers and managers in operation and management of Associations.

Article 7 Management and Accounting

7.1. Compensation of Directors and Officers.

The Association shall not compensate directors and officers for acting as such unless Members representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

7.2. Right of Class "B" Member to Disapprove Actions.

So long as there is a Class "B" Membership, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Class "B" Member's sole judgment, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, interfere with development or construction of any portion of Elements at Viridian, or diminish the level of services the Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

(a) **Notice.** The Association shall give the Class "B" Member written notice of all meetings of the membership, the Board, and committees, and any actions proposed to be taken by any of them by written consent in lieu of a meeting. Such notice shall comply, as to Board meetings, with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) **Opportunity to be Heard.** At any such meeting, the Association shall give the Class "B" Member the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Class "B" Member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

The Class "B" Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Class "B" Member may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

7.3. Managing Agent.

(a) The Board may employ for the Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.17. The Board may employ the Declarant or its affiliate as managing agent or manager.

(b) The Association shall record a management certificate as required by Texas Property Code Section 209.004.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Class "B" Control Period upon not more than 90 days' written notice.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

7.4. Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) accounting and controls should conform to generally accepted accounting principles; and

(ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

(d) The Board shall report in writing to the Members any indemnification of or advancement of legal expenses to any officer, director, or committee member in accordance with Texas Business Organizations Code § 8.152, as it may be amended.

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain membership approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

7.6. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions, subject to the provisions of Section 6.5, if applicable. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with condominium, cooperative, or other owners or residents associations, within and outside Elements at Viridian.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

Article 8 Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Elements Documents. To the extent specifically required by the Declaration or Texas law, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator and the responsible Owner, if the alleged violator is not an Owner, with written notice, by certified mail, return receipt requested, to the Owner's last known address as shown in the Association's records:

- (a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable;

- (b) describing the proposed sanction to be imposed; and

- (c) informing the alleged violator and/or Owner that:

- (i) he or she has 30 days after receipt of the notice to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant

to Article 5, and if the hearing is to be held before a Covenants Committee, that the alleged violator has the right to appeal the decision of the Covenants Committee to the Board;

(ii) he or she may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if serving on active military duty;

(iii) the Association may recover from the Owner reasonable attorneys' fees and other reasonable costs incurred by the Association in enforcing the Elements Documents after the date of the hearing pursuant to subsection (c)(i), or if no hearing is requested, after the deadline for requesting a hearing, including such fees and costs incurred in collecting amounts, including damages, due to the Association if not paid by a date specified in such notice, or in the case of a violation of a curable nature, the violation continues after a date specified in such notice; and

(d) if the alleged violation is of a curable nature and does not pose a threat to public health or safety, informing the alleged violator that he or she may avoid the proposed sanction by curing the violation within a reasonable cure period stated in the notice, except that the Association shall have no obligation to provide a cure period if the alleged violator has been given notice of a similar violation within the preceding six months. A violation is considered a threat to public health or safety if it could materially affect the physical health or safety of an ordinary resident. A violation is considered not to be of a curable nature if it has already occurred and is not a continuous action (for example, holding a garage sale or other event prohibited by the Declaration or Rules which cannot be undone) or is not a condition capable of being remedied by affirmative action.

The alleged violator shall respond to the notice of the alleged violation in writing within such 30-day period, regardless of whether the alleged violator intends to request a hearing or challenge the imposition of the proposed sanction, or the proposed sanction shall be imposed, except that no fine shall be imposed if the alleged violator is entitled to an opportunity to cure the violation under subsection (d) above and cures the alleged violation within the period provided.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 30-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session within 30 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 10 days, and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing

of the time, date, and place of the hearing. At the hearing, the alleged violator shall be afforded a reasonable opportunity to be heard and shall be entitled to make an audio recording of the hearing. If the alleged violator fails to appear, the hearing may be held in his or her absence. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the Board's or Committee's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three business days after the hearing.

8.3. Appeal.

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date.

Article 9 Miscellaneous

9.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Texas law or the Elements Documents.

9.3. Conflicts.

If there are conflicts among the provisions of Texas law, the Certificate of Formation, the Declaration, and these By-Laws, the provisions of Texas law, the Declaration, the Certificate of Formation, and these By-Laws (in that order) shall prevail.

9.4. Books and Records.

(a) ***Document Retention.*** The Board shall be responsible for compliance with the following document retention policy relating to the Association's books and records:

(i) the Certificate of Formation, By-Laws, Declaration, and all amendments thereto, shall be retained permanently;

(ii) financial books and records shall be retained for seven years;

(iii) account records of current owners shall be retained for five years;

(iv) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

(v) minutes of meetings of the owners and the board shall be retained for seven years; and

(vi) tax returns and audit records shall be retained for seven years.

(b) ***Turnover of Books and Records.*** Within 60 days after termination of the Class "B" Control Period, the Declarant shall deliver to the Association all property, books and records of the Association in the Declarant's possession.

(c) ***Inspection by Members and Mortgagees.*** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Elements Documents, the membership register, books of account, the minutes of meetings of the Members, the Board, and committees, and other records of the Association, to the extent required by Texas Property Code §209.005 or other provisions of Texas law. The Board shall provide for such inspection to take place at the Association's office or at such other place within Elements at Viridian as the Board shall designate. The Association shall not be required to make available for inspection or copying any records that identify:

(A) a particular Member's violation history, personal financial information, history of payments or delinquencies in paying amounts due to the Association, or contact information other than address; or

(B) information related to an Association employee, including personnel files;

unless the Member or employee whose records would be disclosed has given his or her prior written approval to release such information or a court orders such records to be released or made available to the requesting Member or his or her representative.

(d) ***Rules for Inspection.*** A Member or the Member's authorized representative must submit to the Association a written request for access to inspect or copies of books and records under subsection (b), identifying the specific books and records or information desired. Such request shall be mailed by certified mail to the Association's mailing address or that of its authorized representative as reflected on the most current management certificate filed under Texas Property Code §209.004. The request must contain an election either to inspect the books and records before obtaining copies or to have the Association forward copies of the requested books and records and:

(i) if an inspection is requested, then on or before the 10th business day after the date the Association receives the request, the Association shall send written notice to the Owner of dates during normal business hours that the Owner or its authorized representative may inspect

the requested books and records, to the extent those books and records are in the possession, custody, or control of the Association; or

(ii) if copies of identified books and records are requested, then the Association shall produce the requested books and records, to the extent required under subsection (c) and in the possession, custody, or control of the Association, on or before the 10th business day after the date the Association receives the request, except as otherwise provided by Texas Property Code §209.005.

The Board shall establish a records production and copying policy that prescribes the charges to be paid by the Member for compilation, production, and reproduction of information requested by such Member or its authorized representative under this Section, which charges may include all reasonable costs of materials, labor, and overhead, but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3 ("**Authorized Charges**"). No charge shall be made pursuant to such policy until the policy has been recorded as required by Texas Property Code §209.005 and §202.006. The Association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the Authorized Charges vary from the estimate, the Association shall submit a final invoice to the Member on or before the 30th business day after the date the information is delivered reflecting the variance and any balance or refund due. Any balance due which is not reimbursed to the Association before the 30th business day after the date the invoice is sent to the Member may be added to the Member's account as an assessment. Any amount paid in excess of Authorized Charges shall be refunded to the Member not later than the 30th business day after the date the invoice is sent to the Member.

(e) ***Inspection by Directors.*** Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

9.5. Notices.

(a) ***Form of Notice and Method of Delivery.*** Except as otherwise provided in the Declaration or these By-Laws or by Texas law, all notices, demands, bills, statements, or other communications to be given under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has provided a telephone facsimile number or an email address for use by the Association, by facsimile or electronic mail with written confirmation of transmission. It is the responsibility of each Member to give notice to the Association of any change in the Member's address, facsimile number, or email address. Where the Elements Documents or applicable law require notice to an Owner or Member, notice given to any co-Owner of a Unit shall be deemed notice to all co-Owners of such Unit.

(b) ***Delivery Address.*** Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the mailing address, telephone facsimile number, or e-mail address which the Member has designated by notice to the Secretary in accordance with this Section 9.5 or, if no such address or number has been designated, at the address of the Unit owned by such Member;

(ii) if to the Association, the Board, or a committee of either, at the mailing address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association has designated by notice to the Members in accordance with this Section 9.5; or

(iii) if to the Declarant, at the Declarant's principal address as it appears on the Secretary of State's records, or at such other address as the Declarant has designated by notice to the Association in accordance with this Section 9.5.

(c) ***Effective Date.*** Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

Until termination of the Class "B" Control Period, the Board of Directors may amend these By-Laws for any purpose by a majority vote of the total number of directors. Thereafter, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least a majority of the total votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, no amendment to these By-Laws may conflict with the Declaration and the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment shall be prepared and signed by the President or Vice President and by the Secretary or Treasurer of the Association certifying that the requisite approval was obtained.

Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within one year of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

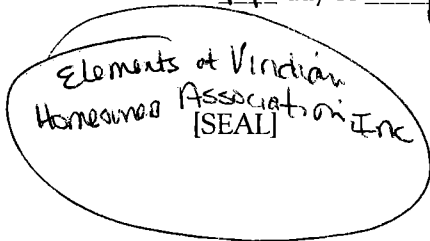
CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Elements at Viridian Homeowners Association, Inc., a Texas nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of Elements at Viridian Homeowners Association, Inc. as duly adopted by resolution of the Board of Directors thereof on the 19th day of September, 2018.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 19th day of September, 2018.



Caryn Etkens
Secretary