

# **Declaration of Restrictive Covenants of the Agave Estates Subdivision**

## **Basic Information**

Date: January \_\_\_\_\_, 2025

Declarant: RD Agave Estates LLC

Declarant's Address: 306 W. Nolana, McAllen, Texas 78504

Property Owners' Association: Agave Estates HOA, Inc., a Texas nonprofit corporation

Property Owners' Association's Address: 306 W. Nolana, McAllen, Texas 78504

Property: All of Lots 1 through 80 and Common Lot "A", AGAVE ESTATES SUBDIVISION, an addition to the City of Harlingen, Cameron County, Texas, according to the Map or Plat thereof recorded in the Map Records of Cameron County, Texas, under document number \_\_\_\_\_, reference to which is here made for all purposes.

## **Definitions**

"ACC" means the Architectural Control Committee established in this Declaration with an initial mailing address of 306 W. Nolana, McAllen, Texas 78504.

"Assessment" means any amount due to the Property Owners' Association by an Owner or levied against an Owner by the Property Owners' Association under this Declaration.

"Association" shall mean and refer to Property Owners' Association, its successors and assigns or replacements, which has been formed by the Declarant for the purpose of enforcing the covenants, restrictions and agreements set forth herein, and shall be more specifically identified in the Management Certificate prescribed by Texas Property Code Section 209.004.

"Board" means the Board of Directors of the Property Owners' Association.

"Bylaws" means the Bylaws of the Property Owners' Association adopted by the Board.

"Common Area" means all property within the Subdivision not designated as a Lot on the Plat, or Lot A, the right of way along Palm Boulevard and any area that has not been accepted for maintenance by the applicable governmental body. Declarant will convey Lot A to the Property Owners' Association.

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

“Declarant” means RD Agave Estates LLC, a Texas limited liability company and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

“Dedictory Instruments” means this Declaration and the certificate of formation, Bylaws, rules of the Property Owners’ Association, and standards of the ACC, as amended.

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

“Exotic Pet” means Exotic Animals, Dangerous Wild Animals or Residential Controlled Exotic Snakes.

“Lot” means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

“Maintenance” shall mean the exercise of reasonable care to keep buildings, streets, alleys, curbs, gates, fences, sprinklers, fountains, signs, landscaping, lighting and other related improvements and fixtures, whether enumerated or not, in the Common Areas in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth.

“Member” means Owner.

“Owner” means every record Owner of a fee interest in a Lot.

“Plat” means the Plat of the Property recorded under document \_\_\_\_\_ of the real property records of Cameron County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

“Renting” means granting the right to occupy and use a Residence or Structure in exchange for consideration.

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

“Short Term Renting” means granting the right to occupy and use a Residence or Structure in exchange for consideration for a period of time less than 30 days.

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

“Structure” means any improvement on a Lot (other than a Residence), including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

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

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

## **Clauses and Covenants**

### **A. Imposition of Covenants**

1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.
2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.
3. Each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him to a fine, an action for amounts due to the Property Owners’ Association, damages, or injunctive relief.

### **B. Plat and Easements**

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.
2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.
3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.
4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

### **C. Use and Activities**

1. *Permitted Use.* A Lot may be used only for an approved Residence and approved Structures for Single Family residential use.

2. *Prohibited Activities.* Prohibited activities are—
- a. any activity that is otherwise prohibited by the Dedicatory Instruments;
  - b. any illegal activity;
  - c. any nuisance, noxious, or offensive activity;
  - d. any dumping of rubbish;
  - e. any storage of—
    - i. building materials except during the construction or renovation of a Residence or a Structure;
    - ii. Tractor Trailers, “Eighteen Wheelers”, or other commercial hauling Vehicles shall not be permitted on, or parked in front of, any Lot;
    - iii. Vehicles, except Vehicles in a garage or Structure or operable automobiles on a driveway; or
    - iv. unsightly objects unless completely shielded by a Structure;
  - f. Parking—
    - i. no Vehicle shall ever be permitted to be parked on the front or side lawn within view of the public. No Vehicles shall ever be permitted to park on a driveway at a point where the Vehicle obstructs pedestrians from use of a sidewalk.
  - g. any exploration for or extraction of minerals;
  - h. any keeping or raising of animals, livestock, or poultry, except for common domesticated household pets, such as dogs and cats, **not to exceed 4 total**, confined to a fenced yard or within the Residence; Exotic Pets are not permitted;
  - i. any commercial or professional activity except reasonable home office use;
  - j. the Renting of a portion of a Residence or Structure;
  - k. the drying of clothes in a manner that is visible from any street;
  - l. the display of any sign except—
    - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
    - ii. political signage not prohibited by law or the Dedicatory Instruments;

- m. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- n. moving a previously constructed house onto a Lot;
- o. interfering with a drainage pattern without ACC approval;
- p. hunting and shooting;
- q. occupying a Structure that does not comply with the construction standards of a Residence; and
- r. Short Term Renting; allowing a renter, guest, or other person who is a registered sex offender to reside at the Property; using the Property in a timeshare program or rental service platform (such as Airbab, Vrbo). Leasing the entire property to a single tenant for a minimum period of 1 year or more is permitted;
- s. No maintenance shall be allowed on any type of Vehicle on the Lot or the street;
- t. No septic tanks, privy, or cesspool shall be placed or maintained on the Property;
- u. No burglar bars are permitted on doors or windows without ACC approval;

#### **D. Construction and Maintenance Standards**

##### *1. Lots*

- a. *Consolidation of Lots.* An Owner of adjoining Lots, with ACC approval, may consolidate those Lots into one site for the construction of a Residence.
- b. *Subdivision Prohibited.* No Lot may be further subdivided.
- c. *Easements.* No easement in a Lot may be granted without ACC approval.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

##### *2. Residences and Structures*

- a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.
- b. *Maximum Height.* The maximum height of a Residence is two (2) stories.
- c. *Required Area.* The total area of a Residence, exclusive of porches, garages, or carports, must meet a minimum square footage of 1,200 square feet for a single story and 1,600 square feet for a two story. The ground floor living area of any

- two-story residence shall not have less than One Thousand (1000) square feet of air conditioned living area, exclusive of open or screened porches, terraces, patios, driveways, carports and garages.
- d. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages, must not be visible from any street.
  - e. *Garages.* Each Residence must have at least a one-car garage accessed by a minimum 16 foot wide driveway. The garage must be attached and incorporated into the main structure. No carports are allowed. All garages must be approved in advance by the Committee.
  - f. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within 90 days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within 180 days and the Lot restored to a clean and attractive condition.
  - g. *Fences, Walls, and Hedges.* No fence, wall, or hedge may be located forward of the front wall line of the Residence.
    - (a) All Lots shall have a rear Lot line boundary fence and a fenced backyard constructed in accordance with the provisions of this section at the time of construction of a residence on a Lot.
    - (b) All fences shall be constructed of block with stucco finish, western cedar or treated pine. There shall be no chain-link or inferior constructed fences whatsoever, unless completely concealed within a fence constructed in accordance this subparagraph. Pine or Cedar fencing shall be six (6) or eight (8) inch wide boards with a minimum height of six (6') feet.
  - h. *Antennas.* No antenna, satellite dish, or associated wires may be visible from the street or be located behind the back setback line of any Lot.
  - i. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
  - j. *Sidewalks.* When the Residence is constructed, the Lot must be improved with sidewalks connecting with the sidewalks on adjacent Lots.
  - k. *Landscaping.* Grass such as coastal Bermuda, Saint Augustine or other commercially approved lawn grass must be installed in front yards of all

dwellings which are not composed of sidewalks, shrubs, hedges, ground covers and trees. Front yards shall be landscaped with shrubs, hedges and/or ground cover plus one (1) trees of a minimum of two (2) inches in diameter and seven (7') feet in height. Each Owner shall maintain grass, trees and shrubbery, including mowing, edging, watering, trimming, pruning and fertilizing, and keep them disease free and healthy, and if any such trees or shrubbery either die or become diseased or of unhealthy appearance they shall be removed and new trees or shrubbery shall be planted in their place. The Owner shall pay for the cost of all grass, trees and shrubbery.

- l. *Exterior lights.* must be designed with adequate shielding to avoid glare onto streets or common areas and other homes. Subtle lighting used to highlight architectural or landscaping detail is encouraged. Holiday lighting shall be permitted beginning during the month of December of each year. All holiday lights must be removed by January 15th of the following year.
- m. *Windows Coverings.* All windows, sliding doors etc. shall be properly covered with appropriate window dressing. Sheets, blankets, flags, boards, foil wraps or other such items shall be specifically prohibited. Window dressing shall be shutters, curtains, drapes or blinds and be of a reasonable quality.
- n. *Mailboxes.* All mailboxes shall be cluster type and provided by Declarant.

3. *Building Materials for Residences and Structures*

- a. *Roofs.* Only thirty (30) year life composition, clay tile, or cement tile roofs may be used on Residences and Structures, unless otherwise approved by the ACC. All roof stacks must be painted to match the roof color.
- b. *Air Conditioning.* Window- or wall-type air conditioners may not be used in a Residence. No evaporative cooler or air conditioner shall be placed, installed, or maintained on the roof or wall of any building or structure. All coolers and air conditioning units shall be concealed in the back or side of the residence.
- c. *Exterior Walls.* All Residences must have at least 85% of their exterior walls, including exposed foundation, of stucco, stone, brick or fiber cement siding, minus windows and doors, unless otherwise approved by the ACC. Stone, rock or cantera accents will be allowed materials, with selections being submitted and approved by the Committee prior to the commencement of construction. In the event that fiber cement siding is used on the front façade, there shall be a minimum 36" wainscot accompanying such use.
- d. *Driveways and Sidewalks.* All driveways and sidewalks must be surfaced with concrete. Driveways and sidewalks may not be surfaced with asphalt, dirt, gravel, shell, or crushed rock.

- e. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.

4. *Model Homes*

- a. Builders of homes in the Subdivision may maintain “model homes” for marketing and showing their product. However, a residence may only be utilized as a “model home” for twenty-four (24) months after completion, unless extended by the Declarant. All model homes must be constructed in accordance with the construction standards contained herein and with the prior approval of the Committee.

**E. Property Owners’ Association**

- 1. *Establishment and Governance.* The Property Owners’ Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners’ Association has the powers of a nonprofit corporation and a property owners’ association under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.
- 2. *Rules.* The Board may adopt rules that do not conflict with law or the other Dedicatory Instruments. On request, Owners will be provided a copy of any rules.
- 3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners’ Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners’ Association has two classes of voting Members:
  - a. *Class A.* Class A Members are all Owners, other than Declarant. Class A Members have one vote per Lot. When more than one person is an Owner, each is a Class A Member, but only one vote may be cast for a Lot.
  - b. *Class B.* The Class B Member is Declarant and has the number of votes for each Lot owned specified in the Bylaws. The Class B Membership ceases and converts to Class A Membership on the earlier of—
    - i. when the Class A Members’ votes exceed the total of Class B Member’s votes or
    - ii. January 1, 2027.

**F. ACC**

- 1. *Establishment*
  - a. *Purpose.* The ACC is established as a committee of the Property Owners’ Association to assist the Property Owners’ Association in ensuring that all



Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Dedicatory Instruments.

- b. *Members.* The ACC consists of at least three (3) persons appointed by the Board. The Board may remove or replace an ACC member at any time.
- c. *Term.* ACC members serve until replaced by the Board or they resign.
- d. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Dedicatory Instruments to carry out its purpose. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.

## 2. *Plan Review*

- a. *Required Review by ACC.* No Residence or Structure may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.
- b. *Procedures*
  - i. *Complete Submission.* Within 20 days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.
  - ii. *Basis of Approval.* Approval of plans and specifications shall be based upon any one or more of the following:
    - (a) The architectural and structural integrity of design.
    - (b) Harmony and conformity of the design with the surroundings both natural and built.
    - (c) Adequacy of the design to the conditions of the site. Relation of finished grades and elevations to the neighboring sites.
    - (d) Conformity to specific and general intent of these restrictions covering the particular platted unit of which the lot in question forms a part.
    - (e) Aesthetic considerations determined in the Committee's sole discretion.

- iii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within 7 days after complete submission, the submitted plans and specifications are deemed approved.
  - (a) *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within seven (7) days after the ACC's action. The Board shall determine the appeal within ten (10) days after timely notice of appeal is given. The determination by the Board is final.
  - (b) *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.
  - (c) *No Liability.* The Property Owners' Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

## **G. Assessments**

1. *Authority.* The Property Owners' Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Property Owners' Association, and to improve and maintain the Common Areas.
2. *Purpose of Annual Assessments.* The annual assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents in the Subdivision, and for the improvements, security, preservation, operation and Maintenance of the Common Areas and/or of improvements situated within same or within the control of the Association. Annual assessments may include, and the Association shall acquire and pay for out of the funds derived from annual assessments, the following:
  - a. Maintenance and/or repair of the Common Areas to the extent not performed by a governmental authority or an Owner.
  - b. Water, sewer, garbage, electrical, lighting, telephone, gas, and other necessary utility service for the Common Areas.

- c. Acquisition of furnishings and equipment for the Common Areas as may be determined by the Association.
- d. Maintenance and repair of all structures in the Common Areas, including, but not limited to, streets, gates, fences, sprinkler systems, street lighting and subdivision signs within the confines of the Subdivision and/or any Maintenance and repair required by the City of Harlingen.
- e. Fire insurance, if obtainable, covering the full insurable replacement value of the improvements in the Common Areas with extended coverage.
- f. Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees or tenants of any Owner arising out of their occupation and/or use of the Common Areas. The policy limits shall be set by the Association and shall be reviewed at least annually and increased or decreased in the reasonable discretion of the Association.
- g. Workmen's compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the Association.
- h. A standard fidelity bond covering all Officers of the Association, Members of the Board of Directors, and all other employees of the Association in an amount to be determined by the Association.
- i. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this declaration or by law, or which shall be necessary or proper in the opinion of the Association for the operation of the Common Areas, for the benefit of Lot Owners, or for the enforcement of these restrictions.
- j. In addition to the maintenance of the Common Areas, the Association may provide exterior maintenance on each Lot as follows. In the event an Owner of any Lot, its family, guests, invitees, agents or other persons using the Lot, shall fail to maintain the premises and the improvements situated thereon in a reasonably neat and orderly manner, the Association, Declarant or the Committee shall have the right, through their agents and employees, to enter upon said Lot and repair, maintain and restore the Lot and exterior of the buildings and any other improvements erected thereon, all at the expense of Owner, and such expense of Maintenance or repair shall be added to and become part of the assessment to which said Lot is subject to.
- k. Maintenance and repair of all structures or improvements, formerly within the Common Areas, if any, and which may be situated in an area dedicated and/or transferred to the public use in the future, as set forth in Article IV, Section 1(b),

for which the Association reserved the right to continue the operation and concurrently has the obligation to maintain and repair

3. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.
4. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by Declarant and hereby assigned to the Property Owners' Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Property Owners' Association to secure Assessments.
5. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant.
6. *Regular Assessments*
  - a. *Rate.* Regular Assessments are levied annually by the Board to fund the anticipated operating and maintenance expenses of the Property Owners' Association. Until changed by the Board, the Regular Assessment is Three Hundred Fifty (\$350.00) per year per Lot.
  - b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty days before its effective date.
  - c. *HOA Construction Deposit.* Each Owner must deposit \$500.00 with the Association prior to the commencement of construction of a dwelling on such lot. The Committee will not approve the construction plans for a lot until the Construction Deposit has been made. The Construction Deposit is refundable (less any deductions) to an Owner upon the completion of the home on such lot and the issuance of a Certificate of Occupancy by the City of Harlingen. Provided, however, that the Association shall deduct from the refund of the Construction Deposit: 1) all amounts expended by the Association for the cleanup of trash and debris attributable to the construction on such lot; 2) all amounts expended by the Association for repairing any damage caused by the contractors and subcontractors of an Owner; and 3) any legal or other fees expended by the Association to enforce the terms, conditions and requirements of this Declaration.
  - d. *Collections.* Regular Assessments will be collected annually, semiannually, or monthly in advance, and determined by the Board, payable on the tenth (10<sup>th</sup>) day of the month and on the same day of each succeeding month or year.
  - e. **Declarant is hereby exempted from any and all annual and/or special**

**assessments. No Lot owned by Declarant shall be assessed nor shall Declarant be liable for any assessment described herein.**

7. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefiting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.
8. *Approval of Special Assessments.* Any Special Assessment must be approved by a two-thirds vote at a meeting of the Members in accordance with the Bylaws.
9. *Fines.* The Board may levy a fine against an Owner for a violation of the Dedicatory Instruments as permitted by law.
10. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Property Owners' Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Property Owners' Association's lien as to Assessments due before the foreclosure.
11. *Delinquent Assessments.* Any Assessment not paid within fifteen (15) days after it is due is delinquent.

**H. Remedial Rights**

1. *Late Charges and Interest.* A late charge of \$25.00 of the delinquent amount is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of Eight percent (8%) per year. The Board may change the late charge and the interest rate.
2. *Costs, Attorney's Fees, and Expenses.* If the Property Owners' Association complies with all applicable notice requirements, an Owner is liable to the Property Owners' Association for all costs and reasonable attorney's fees incurred by the Property Owners' Association in collecting delinquent Assessments, foreclosing the Property Owners' Association's lien, and enforcing the Dedicatory Instruments.
3. *Judicial Enforcement.* The Property Owners' Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Property Owners' Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments.

4. *Remedy of Violations.* The Property Owners' Association may levy a fine against an Owner for a violation of the Dedicatory Instruments.
5. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, the Property Owners' Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law.
6. *Damage to Property.* An Owner is liable to the Property Owners' Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

## **I. Common Area**

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Property Owners' Association to—
  - a. charge reasonable admission and other fees for the use of recreational facilities situated on the Common Area, and if an Owner does not pay these fees, the Owner may not use the recreational facilities;
  - b. suspend an Owner's rights to use a Common Area under the Dedicatory Instruments;
  - c. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and
  - d. dedicate or convey any of the Common Area for public purposes, on approval by a vote of two-thirds of the Members at a meeting in accordance with the Bylaws.
2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Dedicatory Instruments.
3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

## **J. Amendments**

1. *Declarant.* So long as the Class B membership exists, the Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time as otherwise specifically authorized by this Declaration, or if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which is in conflict therewith, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Property, or (iii) required by an

institutional or governmental lender, purchaser, insure or guarantor of mortgage loans to enable it to make, purchase, insure or guarantee mortgage loans on any portion of the Property. Further, so long as it still owns any portion of the Property for development, the Declarant may unilaterally amend for other purposes, provided the amendment has no material adverse effect upon any right of any Owner.

2. *Owners.* This Declaration may be amended at any time by vote of SIXTY-SEVEN percent (67%) of Owners entitled to vote on the amendment. An instrument containing the approved amendment will be signed by the Property Owners' Association and recorded.
3. *Validity and Effective Date of Amendments.* Amendments to this Declaration shall become effective upon recordation in the real property records of Cameron County, Texas, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (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 as a waiver or amendment of any provision of this Declaration.

#### **K. General Provisions**

1. *Term.* This Declaration runs with the land and is binding in perpetuity.
2. *No Waiver.* Failure by the Property Owners' Association or an Owner to enforce the Dedicatory Instruments is not a waiver.
3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.
4. *Conflict.* This Declaration controls over the other Dedicatory Instruments.
5. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.
6. *Notices.* All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners' Association's records, and (b) to the Property Owners' Association, the Board, the ACC, or a managing agent at the Property Owners' Association's principal office or another address designated in a notice to

the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

7. *Annexation of Additional Property.*

- a. *Declarant.* At any time following the recordation of this Declaration, Declarant, its successors or assigns, in its sole discretion, may annex additional property into the Subdivision and/or into and under the scope of this Declaration and subject to the terms and provisions of this Declaration (as an additional or new lot, phase, section or otherwise), without notice to or the consent or joinder of any other Owner (except the owner(s) of any such annexed property at the time of the annexation). To annex additional property, Declarant shall prepare, execute and record in the Real Property Records of Cameron County, Texas, an amendment to this Declaration describing the property to be annexed and declaring same to be part of the Subdivision and subject to the terms and provisions of this Declaration.
  
- b. *Owners.* On written approval of the Board and not less than Fifty percent (50%) of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

EXECUTED by the Declarant, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

RD Agave Estates LLC

BY: \_\_\_\_\_  
Jason Garza, Manager



THE STATE OF TEXAS §

COUNTY OF CAMERON §

BEFORE ME, a Notary Public, on this day personally appeared Jason Garza, Member of RD Agave Estates LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same in the capacity stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_ day of \_\_\_\_\_, 2024.

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Notary Public, State of Texas

After recording, please return to: RD Agave Estates LLC  
Prepared by: Wingate Law Office, 7000 N 10<sup>th</sup> Street, Suite C5, McAllen, Texas 78504