

871-00-0484

Reserves", "Multi-purpose Reserves", or "Unrestricted Reserves," (defined herein as any Common Areas, Reserves, Restricted Reserves, Multi-purpose Reserves, or Unrestricted Reserves shown on the Plat) in the Subdivision, regardless of the use made of such area.

MARKUP #1 ->

Section 1.10 "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 1.11 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely as security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01 Recorded Subdivision Map of the Property. The plat ("Plat") of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat, replats or amendments of the Plat of the Subdivision recorded or hereafter recorded shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Developer, conveying said Property or any part thereof whether specifically referred to therein or not.

Section 2.02 Easements. Developer reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Montgomery County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. Developer further expressly reserves the right to enter upon any lot for the purpose of improving, constructing or maintaining any natural or man made drainage pattern, area or easement. All utility easements in the Subdivision may be used for the construction of drainage swales or detention ponds in order to provide for improved surface drainage of the Reserves, Common Area and/or lots. The record owner of any detention pond Reserve shall, subject to applicable utility easements, have the exclusive use and enjoyment of such pond and may enhance the appearance thereof with appropriate vegetation and structures. No owner shall place any fill dirt or other material in the drainage easement, provided, however, any Owner may increase the depth, volume or capacity of said drainage easement. Such improvements must be in conformity with the Architectural Control Committee and the City of Conroe or other authorized governmental agency. Owner shall maintain and repair the dams, berms, and swales forming such pond provided, however, The Association shall ultimately be responsible for the maintenance and repair of such dams, berms, and swales. In the event of the failure of Owner to maintain and repair the dams, berms, and swales, The Association, after 10 days written notice, may enter upon said lot(s) so as to maintain and/or repair the dams, berms, and swales and may charge Owner(s) of such lot(s) for the cost of such work and associated materials plus a ten (10%) percent fee. In regard to Article VI, Section 03, as it relates to detention facility repair and maintenance, these covenants hereby authorize, but do not obligate, the City of Conroe or other authorized governmental agency to exercise such maintenance and assessment power in place of the Association and to secure the assessed costs with a lien against the subdivision lots. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or any Utility District serving the subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility company, water district, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements.

Section 2.03 Title Subject to Easements. It is expressly agreed and understood that the title conveyed by Developer to any of the lots by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water line, gas, sewer, electric lighting, electric power, telegraph or telephone purposes and other easements hereafter granted affecting the lots. The Owners of the respective lots shall not be deemed to own pipes, wires, conduits or other service lines running through their lots which are utilized for or service other lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his lot. The Developer may convey title to said easements to the public, a public utility company or the Association.

Section 2.04 Utility Easements.

ISSUE #1 (a) Utility ground and aerial easements have been dedicated in accordance with the Plat and/or by separate recorded easements documents.

(b) No building shall be located over, under, upon or across any portion of any utility easement. The Owner of each lot shall have the right to construct, keep and maintain drives, fences (accept where otherwise prohibited by these restrictions), and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such lots, provided, however, any drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the drives, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

MARKUP #1 · CONFLICTS WITH FED LAW BOARD & COUNSEL REVIEW

Sec. 2. (p. 2): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)
Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:
(a) Utility ground and aerial easements have been dedicated in accordance with the Plat ,and/or by separate recorded easements dOGUlllents. . (b) , No bu.i1-ng lhaU be located over, -d-- , up,on or acroas -y portion of any -tility'-e--ent.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):
Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).