



**THE DECLARATION OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**FOR**

***Escalera Ranch 1833***

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**THE DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ESCALERA RANCH 1833**

**RECITALS**

WHEREAS, this Declaration of Covenants, Conditions and Restrictions (this "Declaration") is made this 7<sup>th</sup> day of October, 2014 by Landmark Residential Development, Ltd., a Texas limited partnership whose address is 404 Ball Airport Road , Victoria, Texas 77904, (hereinafter, "Declarant"), and which is the owner of certain real property described as approximately 35.77 acres, located in Victoria County, Texas, and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, Declarant proposes to develop and subdivide the Property for residential purposes in a subdivision to be known as Escalera Ranch 1833, said development being sometimes referred to herein as the "Project"; and

WHEREAS, Declarant desires to hold and from time to time convey the Property, or any portion thereof, subject to certain protective covenants, conditions, restrictions, liens, and charges hereinafter set forth; and

WHEREAS, Declarant desires to create and carry out a uniform plan for the improvement, development, and sale of the Property for the benefit of the present and future owners of the Property;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared: (i) that all of the Property shall be held, sold, conveyed, and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions regardless of whether or not the same are set out or referred to in said contract or deed.

## ARTICLE I

### DEFINITIONS

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

1.01. Architectural Committee. "Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property. The Architectural Committee may also be referred to as the "Design Review Committee". These terms may be used interchangeably.

1.02. Architectural Committee Rules. "Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as the same are amended from time to time.

1.03. Assessment. "Assessment" or "Assessments" shall mean such sum levied by the Association in the manner and against the Property under the terms and provisions of this Declaration.

1.04. Assessment Unit. "Assessment Unit" shall have the meaning set forth in Section 6.05(B).

1.05. Association. "Association" shall mean and refer to Escalera Ranch 1833 Property Owner's Association, Inc., a Texas nonprofit corporation created or to be created pursuant to the Certificate of Formation, its successors and assigns.

1.06. Association Rules. "Association Rules" shall mean and refer to any rules or regulations or policies adopted by the Board pursuant to Section 4.04(A) below or any rules adopted by the Architectural Committee pursuant to Section 5.07 below.

1.07. Board. "Board" shall mean the Board of Directors of the Association.

1.08. Builder. "Builder" shall mean any homebuilder who purchases a Lot or Lots from Declarant for purposes of building a Residence on the Lot or Lots for sale to a third party purchaser. Declarant may, from time to time, provide notice of the identity of each of the Builders within the development.

1.09. Bulk Rate Contract. "Bulk Rate Contract" or "Bulk Rate Contracts" shall mean and refer to one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, broadband services, security services, trash pickup services, propane service, natural gas service, lawn and/or landscaping



maintenance services and any other services of any kind or nature which are considered by the Board to be beneficial.

1.10. Bylaws. "Bylaws" shall mean the Bylaws of the Association to be adopted by the Board, as the same are from time to time amended.

1.11. Certificate of Formation. "Certificate of Formation" shall mean the Certificate of Formation of Escalera Ranch 1833 Property Owner's Association, Inc., which shall be filed in the office of the Secretary of State of the State of Texas, as the same are from time to time amended.

1.12. City. "City" shall mean the City of Victoria, Texas.

1.13. Common Areas. "Common Areas" shall mean those areas of land (to the extent not owned and maintained by appropriate governmental authorities), including any Improvements located thereon, owned by the Association or for which an easement has been created for the common use and enjoyment of the Members or otherwise held or set aside by Declarant for the benefit of the Members, including but not limited to the areas of the Subdivision which include the entry monumentation and landscaping, parks, bar-be-que areas, mail kiosk, sprinkler systems, pavement or streets, pipes, wires, conduits and other utility lines situated thereon. The Common Areas include those areas of land shown on any recorded Plat of the Property or its equivalent or any portion thereof filed or approved by Declarant and identified thereon in a manner indicating an intent to set aside for common use or benefit of the Members or similar designation (to the extent such areas are not owned, controlled, or maintained by any applicable government entity or utility provider in a manner that would be inconsistent with use of such areas by the Owners or the Association). Common Areas may be designated by Declarant from time to time and at any time.

1.14. County. "County" shall mean Victoria County, Texas.

1.15. Declarant. "Declarant" shall mean Landmark Residential Development, Ltd., a Texas limited partnership, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Landmark Residential Development, Ltd., as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder. The exercise of any rights or privileges of Declarant and the performance of any obligations or duties on the part of the Declarant shall be vested solely in Landmark Residential Development, Ltd. All decisions and actions of the Declarant shall be made and taken as set forth herein.

1.16. Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

1.17. Design Guidelines. "Design Guidelines" shall mean those certain Design Guidelines as may be set forth below in this Declaration or as a separate document, as the same may be amended from time to time.

1.18. Development. "Development" shall refer to the residential development project to be built on the Property.

1.19. Governing Documents. "Governing Documents" shall mean the following, as adopted and amended from time to time from time to time, (i) the Declaration, (ii) the Design Guidelines, (iii) Architectural Committee Rules, (iv) the Association Rules, (v) the Certificate of Formation, (vi) Bylaws, and (vii) or in any rules, regulations or policies promulgated by the Declarant or the Association pursuant to this Declaration.

1.20. Improvement. "Improvement" or "Improvements" shall mean every structure and all appurtenances thereto of every type and kind located on the Property, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, swimming pools, basketball goals, playscapes, garages, storage buildings, fences, trash enclosures, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, OSSF's, and other facilities used in connection with water, septic, propane or gas systems and tanks, gas, electric, telephone, regular or cable television, or other utilities.

1.21. Individual Assessment. "Individual Assessment" or "Individual Assessments" shall mean such sum levied by the Association in the manner and against an Owner or the Owner's Lot under Section 6.03(B) of this Declaration.

1.22. Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on the Plat of the Property, together with all Improvements located thereon, excluding, however, any Common Areas.

1.23. Manager. "Manager" shall have the meaning ascribed thereto in Section 4.04(H).

1.24. Member. "Member" or "Members" shall mean any person(s), entity or entities holding membership rights in the Association.

1.25. Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage(s) or deed(s) of trust covering all or any portion of the Property given to secure the payment of a debt.

1.26. Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.27. Owner. "Owner" or "Owners" shall mean the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but shall not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

1.28. Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including, but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, signage, lighting, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, all other documentation or information relevant to such Improvement, and any and all additional documentation or information called for by the Design Guidelines.

1.29. Plat. "Plat" shall mean a subdivision plat or plats of any portion of the Development.

1.30. Property. "Property" shall mean that real property which is subject to the terms of this Declaration, plus any additional property added thereto in accordance with the procedures set forth in this Declaration, less any property that is withdrawn from this Declaration in accordance with the procedures set forth herein.

1.31. Regular Annual Assessment. "Regular Annual Assessment" or "Regular Annual Assessments" "Regular Assessment" shall mean such sum levied by the Association prior to the beginning of each fiscal year, sufficient to cover estimated expenses to be incurred in performing its functions under the Governing Documents during such year. Regular Annual Assessments are further described in Section 6.03(A) of this Declaration.

1.32. Residence. "Residence" shall mean and refer to each single-family residence which is built on a Lot.

1.33. Residential Lot. "Residential Lot" shall mean and refer to a portion of the Development shown as a subdivided lot on a Plat, other than a Common Area that is intended and designated solely for single-family residential use.

1.34. Special Assessment. "Special Assessment" or "Special Assessments" shall mean such sum levied by the Association in the manner and whenever, in the Board's opinion, such Special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration as further described in Section 6.04 of this Declaration.

1.35. Supplemental Declaration. "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded hereafter in order (i) to subject any area of the Property to further covenants, conditions or restrictions, or (ii) to withdraw land from the Property.

1.36. Subdivision. "Subdivision" shall mean the "entirety of the land covered by the Plat and all aspects thereof."

## ARTICLE II

### DEVELOPMENT OF AND ADDITION TO THE PROPERTY

2.01. Development by Declarant. It is contemplated that the Development will be developed pursuant to a coordinated plan and in multiple phases, which may, from time to time, be amended or modified. Declarant reserves the right, but shall not be obligated, to create and/or designate Lots and Common Areas and to subdivide with respect to any of the Development pursuant to the terms of this Section 2.01, subject to any limitations imposed on portions of the Development by any applicable Plats. These rights may be exercised with respect to any portions of the Property at any time and from time to time. It is anticipated that up to 150 Lots may be created and subjected to this Declaration. It is anticipated that the Development will consist of up to eight (8) phases.

2.02. Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times and from time to time, during the time that Declarant owns any portion of the Property, Declarant shall have the right and privilege (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Development, (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices, and (iii) to maintain and locate construction trailers and construction tools and equipment within the Development. The construction placement or maintenance of Improvements by Declarant shall not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself and its successors and assigns to conduct the activities enumerated in this Section 2.02 until Declarant no longer owns any portion of the Property.

2.03. Addition of Land. Declarant may, at any time and from time to time, add additional land to the Property and, upon the filing of a notice of addition of land as hereinafter described, such land shall be considered part of the Property for purposes of this Declaration, and shall be considered part of the Development subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property hereunder, Declarant shall be required only to record in the Official Public Records of Victoria County, Texas, a notice of addition of land containing the following provisions:

- A) A reference to this Declaration, which reference shall state the document number or volume and initial page number of the Victoria County Official Public Records wherein this Declaration is recorded,

- B) A statement that such land shall be considered Property for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration shall apply to the added land, and
- C) A legal description of the added land.

2.04. Withdrawal of Land. Declarant may at any time and from time to time, reduce or withdraw from the Property, including the Development, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association (i) any portions of the Property which have not been included in a Plat, (ii) any portion of the Property included in a Plat if Declarant owns all Lots described in such Plat, and (iii) any portions of the Property included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal this Declaration and the covenants conditions, restrictions, easements and obligations set forth herein shall no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Public Records of Victoria County, Texas, a notice of withdrawal of land containing the following provisions:

- A) A reference to this Declaration, which reference shall state the volume and initial page number of the Victoria County Official Pubic Records wherein this Declaration is recorded,
- B) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
- C) A legal description of the withdrawn land.

Declarant's rights of withdrawal under this Section 2.04 shall apply to all portions of the Property, including any portions of the Property which have been previously designated as being included in the Development.

### **ARTICLE III**

### **RESTRICTIONS**

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

3.01. Telecommunications Requirements. Each Residence within the Property may, but shall not be required, to be constructed with a structured wiring (a/k/a "bundled wiring") package and other telecommunications. Declarant hereby reserves and retains an exclusive blanket easement and right of way over and across each Lot for the purpose of installing,

operating and maintaining telecommunication lines and facilities. Declarant may assign this easement at any time and from time to time to any one or more providers of telecommunication services.

3.02. Insurance. Each Owner shall be required to purchase and maintain insurance on the Improvements located upon such Owner's Lot, personal property and personal liability. Such insurance must cover 100% of replacement cost and must be written by insurance carriers which (i) are admitted to engage in the business of insurance in the State of Texas; (ii) have a Best's rating of A or better; and (iii) have a Best's financial size category of VIII or larger. Any Owner shall be required, upon request by the Association from time to time, to provide to the Association written evidence that such Owner is maintaining the insurance which is required under this Declaration. No insurance coverage obtained by an Owner will operate to decrease the amount which the Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner will include a waiver of the particular insurance company's right of subrogation against Declarant, the Board, the Association, the Manager or other Owners.

3.03. Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner of a Lot, Declarant may further divide and subdivide such Lot and convey any easements on the Lot all without the approval of the Architectural Committee.

3.04. Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, in contained, outdoor fireplaces or correctly designed fire pits while attended and only when the Property is not under a burn-ban or otherwise too dry for outdoor fires, as determined by the Board in its sole discretion, or in contained barbecue units while attended and in use for cooking purposes.

3.05. Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on any Lot or any of the Improvements located thereon.

3.06. Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property.

3.07. Noise. No horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property such that it becomes or will become excessively audible at the property line of adjoining Owners. No noise or other nuisance (expressly including noises which emanate from household pets) shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm). Outdoor A/V system speakers may be used provided they do not violate the terms of this Section.

3.08. Animals - Household Pets. No dangerous animals, as determined by the Board in its sole discretion on a case-by-case or general method, are allowed as pets or to be kept on any Lot within the Property covered by this Declaration. Animals commonly found at the Zoo, in the wild, or on a farm/ranch (i.e. no pigs, cattle horses, reptiles, caged fowl, birds, etc.) are not allowed within the Property. Chickens may be allowed on the Property, if a small urban style coop is used. The coop must be approved by the Architectural Committee prior to placement. NO ROOSTERS WILL BE ALLOWED. Additionally, feeding of native wildlife is not allowed. Any animal, which poses a safety or health threat to the neighborhood, or any part thereof, shall not be raised, bred, or kept on any Lot within the Property. Any animal that is held or kept by an Owner on the Property and which creates an unreasonable nuisance or an unreasonable disturbance or is not what is commonly thought of as a household pet must be permanently removed from the Property within the time frame provided by the Board to the Lot Owner in possession or control of the subject animal. There shall be no more than three (3) "common household pets" allowed on any Lot, without prior written permission of the Board. No animal will be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed within the Property other than on the Lot of its Owner unless confined to a leash which shall be unretractable and not longer than ten feet (10') in length. No animal will be allowed to run at large, and all animals will be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and wastes at all times. Such enclosed area must be (i) constructed in accordance with Plans and Specifications approved by the Architectural Committee; (ii) of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof; and (iii) screened so as not to be visible from any other portion of the Development. All pet wastes must be removed and appropriately disposed of by the Owner of the pet. All pets must be registered and licensed and inoculated as required by law.

The Board shall have the sole right to determine what specific exceptions will be allowed, if any, to the rules stated in this Section 3.08 (no previous Board ruling on an exception is binding on the Board in deciding any subsequent request for an exception to this provision). The Board's decisions are final and binding, unless there is a subsequent unanimous Board vote which overturns the decision. No Board member may vote on the

exception, if the decision will directly apply to the Board member. THE BURDEN RESTS SOLELY ON THE LOT OWNER TO EITHER PROVE THAT THEIR PET (ANIMAL) IS A "COMMON HOUSEHOLD PET" OR IS NOT OTHERWISE PROHIBITED FROM THE PROPERTY BASED ON THE PROVISIONS OF THIS SECTION.

3.09. Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, recycling containers, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view except on the day of trash collection. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

3.10. Maintenance. Each Owner shall have the duty and responsibility, at their sole cost and expense, to keep their entire Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Declarant, the Board, and/or the Architectural Committee, in its sole discretion, shall determine whether or not a violation of the maintenance obligations set forth in this Section 3.10 has occurred. Declarant, the Board, and the Architectural Committee shall have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; to paint, repair, or otherwise maintain any Improvements in need thereof; and to charge the cost thereof to the Owner of the Lot as provided in Article VI hereof. Owner maintenance responsibilities include, but are not limited to the following, which shall be performed in a timely manner, as determined by the Association, in its sole discretion:

- A) Prompt removal of all litter, trash, refuse, and wastes;
- B) Lawn mowing and edging;
- C) Tree and shrub pruning;
- D) Watering;
- E) Keeping exterior lighting and mechanical facilities in working order;
- F) Keeping lawn and garden areas alive, free of weeds, and attractive;
- G) Keeping planting beds and tree wells free from turf grass and weeds;
- H) Keeping sidewalks and driveways in good repair;
- I) Complying with all government, health and police requirements;



- J) Repainting of Improvements;
- K) Repair of exterior damage and wear and tear to Improvements;
- L) Keeping all Improvements in good condition and repair or otherwise maintained by the Owner of such Lot; and
- M) Maintaining grinder pumps which serve individual Lots.
- N) Maintaining the on-site sewage facility or septic system serving the Owner's Lot or Lots.
- O) Owners must maintain drainage ditches fronting the Owner's Lot along the streets as part of their normal yard maintenance, including but not limited to, mowing, weed eradication, filling of ruts made by vehicles parking and/or driving into ditches.

3.11. Antennas. Except as expressly provided below, no exterior radio or television antenna or aerial or satellite dish or disc, nor any solar energy system, shall be erected, maintained or placed on a Lot without the prior written approval of the Architectural Committee; provided, however, that:

- A) It is an antenna designed to receive direct broadcast services, including direct-to-home satellite services, and is of a normal and customary size and diameter and not be visible from the any street within the Subdivision;
- B) It is an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and is one meter or less in diameter or diagonal measurement; or
- C) It is an antenna designed to receive television broadcast signals.

(Collectively, A through C are referred to herein as the "Permitted Antennas.")

Antennas will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Architectural Committee, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent Lots. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Development.

3.12. Location of Permitted Antennas. A permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, or any other portion of the Development. A Permitted Antenna shall be installed in a location on the Lot

from which an acceptable quality signal can be obtained and where least visible from the street and Common Areas, other than the Lot.

Owners are required to comply with the rules regarding installation and placement of satellite dishes, and these rules and regulations may be modified by the Architectural Committee from time to time. Please contact the Architectural Committee for the current rules regarding installation and placement.

3.13. Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Residence, fence or other Improvement upon such Lot so as to be visible from public view without the prior written approval of the Architectural Committee, except the following:

- A) For Sale Signs. Unless otherwise permitted by the Board, no "For Sale" or similar sign advertising an unimproved Lot for sale may be placed on any Lot or any portion of the Property without the prior consent of the Declarant for so long as the Declarant owns all or any portion of the Property. After the Declarant no longer owns any portion of the Property, "For Sale" or similar signs advertising an unimproved Lot for sale may be placed on Lots for sale, subject to any rules or conditions the Board deems appropriate;
- B) Declarant's and Builder's Signs. Signs may be erected by the Declarant or any Builder, subject to approval by Declarant, on Lots owned by Declarant or the Builder advertising the Lot and/or Residence located thereon for sale;
- C) Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election and are a maximum of 600 square inches total;
- D) For Lease Signs. No sign may advertise any Lot within the Property for lease or for rent, including signs displayed in the window of any Residence;
- E) Permits. Permits may be displayed as are required by legal proceedings and/or required by any governmental entity or quasi-governmental entity; and
- F) No Soliciting Signs. An Owner or resident will be permitted to post a "No Soliciting" and "Beware of Dog" sign near the front door to their Residence, provided, that the sign may not exceed eighty-eight (88) square inches and must comply with the standard form adopted by the Architectural Committee.

- G) Spirit Signs. Signs displaying a school sport, cheerleading, band or club, league or other youth-related extracurricular activity may be placed in the front yard or planting bed, etc. but not exceeding 600 square inches in size.

3.14. Tanks. Except as set forth herein, with regard to rainwater harvesting, the Architectural Committee shall have the right to approve the location of any tank used or proposed in connection with a single-family residential structure, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No elevated tanks of any kind shall be erected, placed or permitted on any Lot without prior Architectural Committee approval and proper screening. All tanks shall be screened so as not to be visible from any other portion of the Property. No more than two (2) standard twenty (20) pound propane/natural gas tanks used to operate a standard residential gas grill are allowed to be stored on the Lot. LPG storage tanks must be installed underground, unless fully shielded from view of the street and/or adjacent property owners.

3.15. Barbecue Units. Barbecue units are only permitted within the rear yard of each Lot in and placed in such manner as to be reasonably screened from any other portion of the Development, if possible. The "rear yard" for the purpose of this provision means the yard area in the rear or posterior to the Residence constructed on a Lot including, without limitations, rear porches, patios, or decks. In the event of any dispute regarding what portion of a Lot constitutes the "rear yard" the opinion of the Architectural Committee will be final, binding, and conclusive. Such units will not be excessively large or for commercial use. Units will be of a size and design deemed suitable to cook for a family.

3.16. Clotheslines; Awnings; Window AC Units. No clotheslines and no outdoor clothes drying or hanging shall be permitted in the Development, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of or any Residence on any Lot, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed in accordance with Plans and Specifications approved by the Architectural Committee) shall be affixed or placed upon the exterior walls or roofs of any Residence on any Lot, or any part thereof, nor relocated or extended, without the prior written consent of the Architectural Committee. Window air conditioners are prohibited.

3.17. Temporary Structures. No tent, shack, or other temporary building, Improvement, or structure shall be placed upon the Property without the prior written approval of the Architectural Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. No shed, outbuilding, greenhouse, gazebo or other storage building may be erected on any Lot without the advance written approval of the Architectural Committee, which approval may include requirements regarding placement, design, screening, and construction materials. No building previously

constructed elsewhere shall be moved onto any Lot, it being intended that only new construction be placed, moved and erected thereon.

3.18. Unightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single-family residential structure constructed within the Property shall have sufficient garage space, as approved by the Architectural Committee. Service areas, storage areas, compost piles shall be appropriately screened from view from public or private thoroughfares and adjacent properties; and, except during construction of Improvements, no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, or scrap or refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view from public or private thoroughfares and adjacent properties.

3.19. Doors and Windows. No aluminum foil, reflective film or similar treatment shall be placed on any windows or glass doors. No steel or wrought iron "burglar bars", or similar fixtures, whether designed for decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any dwelling. Sheets or similar temporary window treatments may be used for a short time after taking occupancy of a dwelling, provided they are removed and replaced with permanent window treatments within a reasonable time after taking occupancy of the dwelling, as determined in the sole discretion of the Board. Exterior paint colors on doors will be consistent with a normal color palette for such use at all times.

3.20. On Street Parking. No Owner or resident may park a vehicle on any road or street within the Project in a manner that unreasonably obstructs or hinders the flow of traffic within the Project. In no event shall an inoperable or disabled vehicle be parked on any road or street within the Project for any period of time, except as necessary to have the vehicle towed or removed for repairs. Guests and/or visitors may not park a vehicle on any road or street within the Development for more than twenty-four (24) consecutive hours in a seven (7) day period unless in the event of an emergency or as otherwise approved in writing by the Board. "Emergency" for purpose of this Section means an event which jeopardizes life or property. "Parked" as used herein shall be defined as a vehicle left unattended for more than thirty (30) consecutive minutes. Vehicles parked in violation of these rules may be towed without notice at Owner's expense.

3.21. Mobile Homes, Manufactured Homes, Travel Trailers, Recreational Vehicles, and Other Motorized Recreational Vehicles. No mobile home (with or without wheels, temporarily or permanently affixed), manufactured home, travel trailer or recreation vehicle may be parked or placed on any street, either temporary or permanent, at any time. The

aforementioned vehicles that are the property of Owner are permitted to be kept on the Owner's Lot but shall be permanently stored within a garage of such Owner's Residence and such vehicle physically will be fully enclosed in the garage so that the garage door can close. Guests of Owners may park RV's, travel busses, or travel trailers on the Owner's Lot for reasonable periods of time while visiting the Owner; however, at no time, longer than 14 days, without prior written approval from the Architectural Committee. In the event of any dispute regarding the effect or application of this Section, the interpretation of the Architectural Committee or the Board will be final. Vehicles parked in violation of these rules may be towed without notice at Owner's expense.

3.22. Basketball Goals. Permanent basketball goals are permitted on a Lot provided that the basketball goal location and all materials are approved in advance and in writing by the Architectural Committee. Portable basketball goals are permitted, provided that: (i) no portable basketball goal may be placed or utilized on or within any right-of-way including public streets; and (ii) the basketball goal location must be approved by the Architectural Committee. All basketball goals must be properly maintained and painted, with the net in good repair. In the event that an Owner fails to comply with the provisions of this Section, the Architectural Committee, or its agent shall have the express authority to remove the offending Improvements, the expense of which shall be borne by the Owner thereof.

3.23. Air Conditioning Units. Air conditioning units shall be screened from visibility from any street by appropriate landscaping or fencing. No window or wall type air conditioner that is visible from any street or any other Improvement shall be permitted to be used, placed or maintained on or in any home on any part of the Property.

3.24. Wind Energy Generation Equipment. No windmills, wind generators or other apparatus for generating power from wind shall be erected or installed on any Lot.

3.25. Nuisances. No noise, light pollution or other nuisance shall be permitted to exist or operate upon any of the Lots so as to be offensive or detrimental to any other of the Lots or to its occupants (other than security devices used exclusively for security purposes and temporary lighting necessary for the illumination of model homes or any portion of the Property used for the display of any model home).

3.26. Compliance with the Restrictions. Each Owner shall comply strictly with the provisions of the Governing Documents as the same may be amended from time to time. Failure to comply with any of the Governing Documents shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by an aggrieved Owner.

3.27. Liability of Owners for Damage to Common Area. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Areas without the prior written approval of the Board. Each Owner shall be liable to the Association for (i) any and all

damages to the Common Areas and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an Assessment against such Owner's Lot secured by a lien against such Owner's Lot and collectable in the same manner as provided in Article VI.

3.28. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this article or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

3.29. Recreational Courts and Playscapes. No recreational, e.g., "sport courts" or tennis courts, shall be constructed on any Lot unless expressly approved by the Architectural Committee. Playscapes or any similar recreational facilities may not be constructed on any Lot without the advance written approval of the Architectural Committee and may not, in any event, be floodlit. The Architectural Committee may prohibit the installation of recreational courts, playscapes or similar recreational facilities on any Lot.

3.30. Display of Flags. Notwithstanding any provision in this Declaration to the contrary, each Owner shall be permitted to display the flag of the United States, the State of Texas or an official or replica flag of any branch of the United States armed forces, subject to the following conditions:

- A) No flag may be installed by an Owner in Common Areas and Owner installed flags must be entirely located on the Owner's Lot;
- B) Flagpoles shall be constructed of durable materials and with a finish that is harmonious with the dwelling on the Lot, normally aluminum or powder-coated white paint, subject to the discretion of the Architectural Committee;
- C) No flag or flagpole may be installed within an easement, building setback line or other area where Improvements are prohibited as provided in this Declaration, applicable ordinances, any Plat or separate instrument;
- D) The flag and flagpole must be kept in good condition and repair at all times, subject to the discretion of the Board;

- E) The U. S. Flag must be displayed in accordance with the requirements of 4 U.S.C. Sections 5-10;
- F) The State of Texas Flag must be displayed in accordance with the requirements of Chapter 3100, Texas Government Code;
- G) Only two (2) flags or flagpoles, only 1 of which may be freestanding, shall be permitted per Lot;
- H) Freestanding flagpoles may not exceed twenty (20) feet in height and flagpoles attached to a Residence may not exceed five (5) feet in height. A flagpole associated with a model home or sales office used by the Declarant or a Builder may be taller than twenty (20) feet in height but only during such time as the model home or sales office is in use for such purpose;
- I) Any halyard or securing device must be installed to eliminate noise from flapping against the flagpole;
- J) The Architectural Committee may adopt additional standards governing the size of the flag or the location and intensity of lights illuminating the flag;
- K) Prior to installation of a flag or flagpole, the Owner shall submit an application to the Architectural Committee to ensure compliance with the standards set forth in this Section and the application shall be processed according to the procedures and conditions set forth in Article 5.

3.31. Single-Family Residential Use. The Lots shall be used solely for private single-family residential purposes and there shall not be constructed on or maintained thereon more than one detached single-family Residence.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot, except an Owner or occupant of a Residence may conduct business activities within a Residence so long as (i) such activity complies with all the applicable zoning ordinances (if any); (ii) the business activity is conducted without the employment of persons other than the residents of the home constructed on the Lot. This would include occupations such as consulting, telecommuting or similar occupations; (iii) the existence or operation of the business activity is not apparent or detectable by sight (i.e., no sign may be erected advertising the business on any Lot), nor may any sound or smell resulting from the business be detectable from outside the Residence; (iv) the business activity does not involve door-to-door solicitation of residents within the Development; (v) the business does not, in the Board's sole discretion, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Development which is noticeably greater than that which is typical of residences in which no business activity is being conducted. Excessive use of delivery trucks, customer parking, warehousing, or similar activities that are more typical of a true commercial business shall be prohibited; (vi) the business activity is consistent with the

residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a Residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or an Owner engaged in the business of constructing homes for resale who acquires a Lot for the purpose of constructing a Residence thereon for resale to a third party.

Declarant and/or its licensees may construct and maintain upon portions of the Property, Common Areas and may conduct activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single-family Residences constructed upon the Lots, including but not limited to, business offices, signs, model homes, sales offices and sales/construction trailers. Declarant and/or its licensees shall have an easement over and across the Common Area for access and use of such facilities at no charge.

No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Architectural Committee and an auxiliary garage building replaces the enclosed garage. The enclosing of the garage must utilize the same materials as the Residence.

3.32. Plat Provisions. Each Owner covenants to comply with all provisions on the any final Plat applicable to the Property, including without limitation, no build zones, setbacks, impervious cover limits, and access restrictions.

3.33. Owner Conduct in Common Areas. Owners and their guests, invitees, residents and family shall, at all times, exhibit good behavior while present in the Commons Areas. The Board may adopt additional rules governing the use of the Common Areas. At a minimum, the following standards shall apply to all Owners and their guests, invitees, residents and family while present in the Common Areas and such standards shall be in addition to the standards otherwise set forth in this Declaration:

- A) noise including, without limitation, playing of music, shall be kept at reasonable levels at all times and at no time should excessively loud outdoor



music/parties continue past 10:00 pm on weeknights and 11:00 pm weekend nights;

- B) rude, obnoxious or lewd behavior while in Common Areas shall be strictly prohibited;
- C) pets shall remain on a leash at all times and all pet waste shall be immediately removed from the Common Areas;
- D) no child under the age of 10 shall be allowed within the Common Areas without the supervision of an adult; and
- E) there shall be no obstruction of the Common Areas, nor shall anything be kept on, stored on or removed from any part of the Common Area without prior written consent of the Board thereafter, except as specifically provided herein.

3.34. Religious Displays on Doors. Owners may display religious objects on the front door or door frame of the Owner's Residence if the display is motivated by a resident's sincere religious belief, subject to the following conditions:

- A) To the extent not in conflict with state or federal law, the following restrictions shall apply to the display(s):
  - 1) The display represents a threat to public health or safety;
  - 2) The display violates any applicable law;
  - 3) The display contains language, graphics, or anything patently offensive to a passerby; and
  - 4) Individually or in combination with each other, the religious item displayed or affixed on the entry door or door frame may not have a total size not exceeding 25 square inches.
- B) The allowance of displays as provided in this Section shall not authorize an Owner to deviate from any of the other provisions of this Declaration, the Design Guidelines or other applicable rules such as provisions related to the material or color of the door of any Improvement.

3.35. Rainwater Harvesting Systems. Notwithstanding any provision in this Declaration to the contrary, each Owner shall be permitted to install rain barrels or rainwater harvesting systems on their Lot in connection with the Improvements on the Lot and for purposes of domestic water use and subject to the following conditions:

- A) such device must be consistent with the color scheme of the Residence constructed on the Lot;

- B) the device does not include any language or other graphic depiction that is not typically present on such device;
- C) the device is not located between the front of the Residence on the Lot and any adjacent or adjoining street or thoroughfare;
- D) there is sufficient area on the Lot to install the devices per manufacturers intended design specifications;
- E) if the device is to be installed on or within the side yard of a Lot or would be visible from a street, Common Area or another Owner's property, the Architectural Committee may regulate the size, type, shielding of, and materials used in the construction of the device;
- F) installation of the device must be commenced within thirty (30) days after approval by the Architectural Committee and diligently completed thereafter;  
and
- G) prior to installation of such a device, the Owner shall submit an application to the Architectural Committee to ensure compliance with the standards set forth in this Section and the application shall be processed according to the procedures and conditions set forth in Article 5.

3.36. Solar Devices. Each Owner shall be permitted to install Solar Energy Devices on their Lot in connection with the Improvements on the Lot subject to the following conditions:

- A) "Solar Energy Device" shall be defined as a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power;
- B) the Solar Energy Device does not represent a threat to public health or safety;
- C) the Solar Energy Device does not violate any applicable law;
- D) no portion of the Solar Energy Device is located on any Common Area;
- E) the Solar Energy Device must only be located on the roof of the Residence located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the Residence, the Architectural Committee may designate the location for placement unless the location

proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the Solar Energy Device if installed in the location designated by the Architectural Committee. If the device is to be installed within a fenced area or patio, then no portion of the Solar Energy Device may be installed above the fence line. If the Solar Energy Device is mounted on the roof of the Residence located on the Owner's Lot, the (i) the Solar Energy Device may not extend higher than or beyond the roofline; (ii) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Energy Device must be parallel to the roofline; and (iii) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black;

- F) the Solar Energy Device, as installed, will not void any manufacturer's warranty;
- G) prior to installation of such a device, the Owner shall submit an application to the Architectural Committee to ensure compliance with the standards set forth in this Section and the application shall be processed according to the procedures and conditions set forth in Article 5. In any event, the Architectural Committee may withhold approval of a Solar Energy Device, even if it meets the standards set forth in this Section, if the Architectural Committee determines in writing that the placement of the Solar Energy Device, as proposed by the Owner, constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to person of ordinary sensibilities. The written approval of the Solar Energy Device by each of the Owners adjoining Lots shall constitute prima facie evidence that such a condition does not exist; and
- H) during the period when Declarant owns any portion of the Property, no Solar Energy Device may be installed by an Owner unless approved by Declarant, which approval may be withheld in Declarant's sole discretion.

3.37. Energy Efficient Roofing. "Energy Efficient Roofing" shall be defined as shingles that are designed primarily to: a.) be wind and hail resistant; b.) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or c.) provide solar generation capabilities. Each Owner shall be permitted to install Energy Efficient Roofing on the Improvements on the Lot provided that the Energy Efficient Roofing shingles: a.) resemble the singles used or otherwise authorized for use within the Design Guidelines; b.) are more durable than, and are of equal or superior quality to the shingles used or otherwise authorized for use within the Development; and c.) match the aesthetics of the adjacent Lots. Authorization for Energy Efficient Roofing from the Architectural Committee shall be sought in connection with the approval of the Improvements as set forth in Article 5.

3.38. Propane Tanks. If the Subdivision is not equipped with natural gas service from a Provider, then private propane systems may be installed for the Residence on each Lot. Propane tanks must be installed underground, unless they are totally screened with planting or an architecturally appearing material, such as stone wall or decorative fencing to conceal from street and adjacent properties view and shall be the Owner's sole responsibility for installation, repair, maintenance, regular service, and inspection.

3.39. Septic Systems. Each Owner, by taking title to its Lot, agrees and acknowledges that the Subdivision is not served by a centralized sewer system and that individual on-site sewer facilities (ie: septic systems), referred to herein as "OSSF" shall be installed for the Residence on each Lot. OSSF systems shall be required to comply with all applicable laws and regulations, including without limitation, the applicable rules and regulations of the Victoria County and Cities Health District and the Texas Commission on Environmental Quality ("TCEQ"). The OSSF associated with a Residence shall be the Residence Owner's sole responsibility for installation, repair, maintenance and regular service. The OSSF must be located as depicted on the applicable governmental approved OSSF location plan. The OSSF location plan is available from Declarant upon request. No septic tank or septic disposal field may be placed within 50' of the "AUTHORIZED DRILLING AREA," as defined in Section 3.40 below. No Residence shall be occupied until it is connected to a functioning OSSF approved by the Texas Commission on Environmental Quality (TCEQ) or their authorized agent.

3.40 Water Wells. Water service to the Lots shall be by private water well. Each Owner shall be responsible for the repair, maintenance and replacement of their water well. Water wells shall be maintained and kept in good working order. The following restrictions shall apply to Owners with respect to the water well located on their Lot.

- A) Water wells shall be located within the "AUTHORIZED DRILLING AREA" established by the Plat. The "AUTHORIZED DRILLING AREAS" are defined by applying the following setback requirements to each Lot.

Water wells shall not be located:

- i) Closer than fifty feet (50') to the perimeter boundary of the Subdivision;
- ii) Closer than five feet (5') to an interior side Lot line;
- iii) Further than fifty feet (50') from the street right-of-way line of the street fronting the Lot; and
- iv) Within any easement established by the Plat.

- B) The annular space between the borehole wall and the casing of the water well shall be filled with an authorized annular space sealant from the ground level to the top of the water producing strata or to 100 feet below the land surface.

- C) No septic tank or septic disposal field shall be located within fifty feet (50') of the "AUTHORIZED DRILLING AREA" of any lot within the subdivision.

3.41 Storm Sewer. The County does not maintain drainage systems outside of the City's corporate limits. The City strongly recommends that any Improvements of significant value be placed with a finished floor elevation of at least 24 inches above the grade of the centerline of the adjacent street, or 12 inches above the highest adjacent grade, whichever elevation is more appropriate based on the topography of the Lot and the surrounding property.

3.42 City Limits Restriction. The restriction in this Section 3.42 appears on the Plat and shall be enforceable by the Association as part of this Declaration. *This plat has been approved by the City of Victory pursuant to the city's Extraterritorial Jurisdiction (ETJ) powers in effect on the approval date with the following restriction, condition and covenant which is hereby agreed to by the developer of this subdivision as well as any other present property owner in said subdivision. In the event the undersigned developer or any person, firm or corporation who shall acquire property in this subdivision subsequent to this date, shall request additional improvements to bring such subdivision or any part thereof up to subdivision standards required within the corporate limits of the city or up to the greater standards than are required for a subdivision in the ETJ of the city, then one hundred (100) percent of the cost of such improvements shall be borne by the then property owners of said subdivision and this obligation regarding the cost of the additional improvements to said property of this subdivision shall be considered a restriction, condition, and covenant running with the land of all property or properties in said subdivision to bind the then owners of the property in said subdivision. Any future conveyance of property in this subdivision shall reference a statement in said conveyance setting out the aforementioned restriction, condition, and covenant running with the land.*

## ARTICLE IV

### ESCALERA RANCH 1833 PROPERTY OWNER'S ASSOCIATION, INC.

4.01. Organization. The Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Association as a nonprofit corporation under the laws of the State of Texas. The Association shall be created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Certificate of Formation and Bylaws or in this Declaration. Neither the Certificate of Formation nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.02. Membership.

- A) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership,

and membership may not be severed from the ownership of the Lot , or in any way transferred, pledged, mortgaged or alienated, except together with the title to said Lot.

B) Every Member shall have a right and easement of enjoyment in and to all of the Common Area and an access easement by and through any Common Area, which easements shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:

- 1) The right of the Association to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot remains past due for at least thirty (30) days and for any period during which such Member is in violation of any provisions of this Declaration;
- 2) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and conditions as may be approved by Declarant at its sole discretion;
- 3) The right of the Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;
- 4) The right of the Association to make reasonable rules and regulations regarding the use of the Common Area and any Improvements thereon;
- 5) The right of the Association to contract for services with any third parties on such terms as the Association may determine; and
- 6) The right of any third party owner of property that may contain Common Areas.

4.03. Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members shall be calculated as follows:

- A) The Owner of each Residential Lot shall have one (1) vote for each Residential Lot so owned. In the event of the re-subdivision of any Residential Lot into two or more Residential Lots, the number of votes to which such Residential Lot is entitled shall be increased as necessary to retain the ratio of one (1) vote for each Residential Lot resulting from such re-subdivision. In the event of the consolidation of two (2) or more Residential Lots for purposes of construction of a single Residence thereon, voting rights shall continue to be determined according to the number of original Residential Lots contained in such consolidated Residential Lot. Nothing herein shall be construed as authorization for any re-subdivision or consolidation of Residential Lots.
- B) In addition to the votes to which Declarant is entitled by reason of Section

4.03(A), for every one (1) vote outstanding in favor of any other person or entity, Declarant shall have four (4) additional votes until the first time that Declarant owns no portion of the Property.

- C) When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities shall be Members. The vote or votes (or fraction thereof) for such Lot shall be exercised by the person so designated in writing by the Owner thereof to the Secretary of the Association, and in no event shall the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this Section 4.03.

4.04. Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two (2) preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

- A) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact such Association Rules and Bylaws, as it deems proper, covering any and all aspects of its functions. The content of the Association Rules and Bylaws may be established by the Board, provided the same are not in conflict with this Declaration.
- B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.
- C) Records. To keep books and records of the Association's affairs, and to make all such books and records available to any Owner in accordance with the policies and procedures set forth in the Bylaws.
- D) Assessments. To levy Assessments as provided in Article VI below, in order to raise the total amount for which the levy in question is being made.
- E) Right of Entry and Enforcement. To enter at any time in an emergency or in the case of a non-emergency, after written notice, by certified mail return receipt requested, without being liable to any Owner, upon any Lot and into any Improvement thereon, for the purpose of enforcing the Governing Documents or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Governing Documents. The expense incurred by the Association in connection with the entry upon any Lot

and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VI hereof for Regular and Special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Governing Documents. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Governing Documents; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors, or assigns. Notwithstanding any provision herein to the contrary, the Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.04(E) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

- F) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- G) Conveyances. To grant and convey to any Person the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way or mortgages out of, in, on, over or under any of the Property for the purpose of constructing, erecting, operating or maintaining the following:
  - 1) Roads, streets, walks, sidewalks, signs, street lights, driveways, trails and paths;



- 2) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- 3) Water systems, storm water drainage systems, sprinkler systems and pipelines;
- 4) Entry monuments, landscaping, lighting or irrigation, or other subdivision-related improvements that relate to the Property or the Project; and/or
- 5) Any similar public, quasi-public or private improvements or facilities;

provided; however, that the Association shall not convey fee simple title in and to, or mortgage all or any portion of, any Common Areas without complying fully with the requirements of Section 4.07 below.

Nothing above contained, however, shall be construed to permit use or occupancy of any Improvement or other facility in a way which would violate applicable use and occupancy restrictions imposed thereon by other provisions of this Declaration.

- H) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its Property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees, or any other fees associated with the provisions of management services to the Association or its Members. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.
- I) Association Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for all Association Property; to maintain and repair easements, roads, roadways, private drives, entry improvements, rights-of-way, sidewalks, mail kiosk, non-standard street signs, non-standard street lights, drainage and water quality facilities, and other areas of the Property, as appropriate; and to own and operate any and all types of facilities as necessary for the Project. Upon the conveyance to any Person a residential Lot, the Owner of such Lot will maintain (unless otherwise maintained by the Association) all landscaping and any Improvements thereon and between the Lot boundary and the nearest curb or pavement edge of the adjoining street(s) or the nearest fence, wall or berm constructed on the adjacent Common Area.

- J) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Certificate of Formation or Bylaws of the Association.
- K) Construction on Association Property. To construct new Improvements or additions to Common Areas or Association properties, subject to the approval of the Architectural Committee as provided in this Declaration.
- L) Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board of the Association or the Members or any Person.
- M) Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.
- N) Reserve Account. The Association may establish and maintain a reserve fund for the maintenance, repair or replacement of the Common Area and Improvements located within the Common Area.
- O) Allocation of Votes. To determine votes as provided in Section 4.03 above
- P) Membership Privileges. To establish rules and regulations governing and limiting the use of the Common Area and any Improvements thereon
- Q) Use of Common Areas. With prior written approval, and subject to any restrictions imposed by Declarant or the Board, an Owner may reserve portions of the Common Areas for use for a period of time based on terms and conditions set by Declarant or the Board, but only if such exclusive use is allowed by the Board. Any Owner who reserves a portion of the Common Area as provided herein shall assume, on behalf of himself or herself and his or her guests, residents and family, all risks associated with the use of Common Areas and all liability for any damage or injury to any Person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful or gross negligence of the Association, its agents or employees. Further, the Board is authorized to establish rules, procedures and policies for the reservation of Common Areas subject to reservation, if any.

4.05. Roadway Maintenance. The Association shall maintain all streets and roadways within the Property which have been completed but not accepted by the appropriate

governmental entity for maintenance. The Association shall be authorized, but shall have no obligation, to landscape, maintain, and repair easements, access easements, rights-of-way, median strips, sidewalks, and other areas of the Property, as appropriate. Declarant shall have the authority to elect to do or handle any of the matters set forth in this Section 4.05.

4.06. Lighting. The Association shall pay for electrical service, and for all other costs and expenses necessary to operate and maintain the lights within any Common Areas. The Association shall further pay any and all costs for the repair and replacement of any damaged light fixtures and facilities within street rights-of-way (such obligation shall not apply to the routine operation and maintenance of such fixtures and facilities). The duties of the Association as set forth in this Section 4.06 shall apply provided there is no governmental entity or utility provider which performs such functions.

4.07. Common Properties.

- A) No Dedication to the Public. Nothing in this Declaration or the other Governing Documents will be construed as a dedication to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any Common Area by such authority or utility, absent an express written agreement to that effect.
- B) Association's Duties. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:
  - 1) To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Declarant, together with all Improvements of whatever kind and for whatever purpose which may be located in said areas; to accept, own, operate and maintain all other Common Properties, real and personal, conveyed or leased to the Association by Declarant; and to maintain in good repair and condition all lands, Improvements, and other Association property owned by or leased to the Association. Such maintenance shall include but not be limited to mowing and removal of rubbish or debris of any kind.
  - 2) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
  - 3) Upon the approval of two-thirds (~~2~~<sup>3</sup>) of the Owners (excluding Declarant) and full compliance with the provisions of Section 7.11 below, to execute mortgages, both construction and permanent, for construction of facilities, including Improvements on property owned by or leased to the Association.

- 4) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment of the Common Areas. Such insurance shall be in an amount as the Board shall deem appropriate.
- C) Declarant's Right to Perform for the Account of the Association. In the event the Association fails to maintain the Common Area in good condition and repair, Declarant will have the right, but not the obligation, to perform such duties on behalf of the Association. In such event, Declarant will be entitled to reimbursement from the Association of all costs incurred by Declarant, such reimbursement being due within thirty (30) days after the receipt by the Association of an invoice from Declarant itemizing the costs incurred. After expiration of the thirty (30) day period allowed for payment, Declarant may collect interest on the amount due at the highest rate allowed by applicable usury law and in effect from the due date thereof (or if there is no such highest rate, then at the rate of one and one half percent (1.5 %) per month).
- D) Declarant's Agreements Regarding Common Area. Upon the transfer by Declarant to the Association of any Common Area as provided in this Declaration, Declarant may agree under the terms of the transfer that the Association will be required to contract with organizations operating within or in the vicinity of the Property to allow use of all or part of the Common Area under such terms and for such charges as may be acceptable to Declarant and such associations or other organizations.

4.08. Subdivision Fencing and Retaining Walls. In the event Declarant shall erect or cause to be erected a fence or wall along or around the perimeter of the Property (hereinafter "Subdivision Fencing"), then each Owner shall be responsible for all maintenance of the portions of such Subdivision Fencing located on the Owner's Lot, including the obligation to rebuild the same upon approval by the Board. Maintenance, repair and replacement of any Subdivision Fencing located on a common property line, shall be shared equally by the Owners of the Lots sharing such Lot line. If any Subdivision Fencing is not located on a Lot Line or is not clearly related to a single Lot or Lots, then the Association shall be responsible for maintaining, repairing and replacing such Subdivision Fencing. Notwithstanding the forgoing, the landscaping, entry monumentation, fencing and related improvements which are located at the entry of the Subdivision and which serve as an entry feature to the Subdivision shall be maintained by the Association. Lot Association shall have any and all easements necessary to allow the Association, its employees, agents or assigns access over and across any Lot within the Property for the purpose of erecting, maintaining, replacing and repairing such Subdivision Fencing for which it is responsible or in the event of an individual Owner's failure to maintain, repair or replace its own Subdivision Fencing. All fencing within the Project shall comply with the requirements of the Design Guidelines.

4.09. Indemnification. The Association shall indemnify any person who was, is or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, and (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful.

4.10. Insurance. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

4.11. Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in Section 4.04 hereinabove, the Association shall have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant and/or any entities in which Declarant or the Owners or partners of Declarant are Owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association shall be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the occupant of such Owner's Lot) directly to the applicable service or utility provider. Such notice shall consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination

notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where the Owner (or the occupant of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service shall be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

4.12. Control by Declarant. Notwithstanding anything to the contrary, Declarant, or its successors or assigns, shall have the absolute right to appoint members of the Board and their successors (any appointment of a successor will be deemed a removal of the Board member being replaced by such appointment) until the date Declarant no longer owns any portion of the Property. Declarant, at its option, may assign or delegate, in whole or in part, its rights and powers to the Association, the Board or any other entity provided such designation is in writing. Notwithstanding the forgoing, at least one-third (1/3) of the Board members must be elected by the Owners (not including Declarant) no later than 120 days after seventy-five percent (75%) of the Lots that may be created and subjected to this Declaration are sold to purchasers other than Declarant.

4.13. Community Technology.

- A) Community Systems. Without limiting the generality of Section 4.04, the Association may, but shall not be obligated, to provide, or to enter into contracts with other persons to provide, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. The Association will have no obligation to utilize any particular provider(s).
- B) Opportunities for Community Interaction. The Association may, but shall not be obligated to, make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may, but shall have no obligation to, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology related services and opportunities for Owners and occupants to interact and participate in Association-sponsored activities. To the extent Texas law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect Assessments and other invoices by electronic means. The Board will specifically have the authority to adopt policies and procedures related to: (i)

Community Systems access by Owners, residents and other parties; (ii) using the Community Systems for the purpose of sending any notice required by the Governing Documents; (iii) electronic voting and the establishment of any quorum.

4.14. Intentionally Left Blank

**ARTICLE V**

**ARCHITECTURAL CONTROL**

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

5.01. Approval of Plans and Specifications. No Improvement shall be commenced, erected, constructed, placed or maintained upon any Lot, nor shall any exterior addition to, change thereto or alteration therein be made until the Plans and Specifications therefor shall have been submitted to and approved in writing by the Architectural Committee in accordance herewith and otherwise meet all requirements of any applicable governmental rules, laws or ordinance.

5.02. Membership of Architectural Committee. The Architectural Committee shall consist of not more than three (3) voting members ("Voting Members"), and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate. The initial Voting Members of the Architectural Committee shall be appointed by Declarant, as provided in Section 5.06.

Members of the Architectural Committee need not be Owners or Residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

5.03. Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.

5.04. Advisory Members. The Voting Members may from time to time designate Advisory Members.

5.05. Term. Each Voting Member of the Architectural Committee shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. In the event of death or resignation of any Voting Member, the remaining Voting Member or Voting Members shall have full authority to act until a replacement Voting Member or Voting Members have been designated.

5.06. Declarant's Rights of Appointment. Declarant, its successors or assigns, shall have the right to appoint and remove all members of the Architectural Committee. Declarant may delegate this right to the Board by written instrument. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee. Declarant has a substantial interest in ensuring that Improvements within the Development maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the Architectural Committee to the Board as herein provided, the Architectural Committee shall be acting solely in Declarant's interest and shall owe no duty to any other Owner or the Association.

When all of the Property been developed and conveyed to residential purchasers in the normal course of development and sale and Declarant no longer owns any portion of the Property, the Board shall have this right to appoint and remove all members of the Architectural Committee, even if such right has not been delegated to it by Declarant.

5.07. Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including, but not limited to, a building code, a fire code, a housing code, and other similar codes as it may deem necessary and desirable.

5.08. Design Guidelines. Declarant will have the power to adopt the initial Design Guidelines. The Architectural Committee will have the power, from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. A copy of the Design Guidelines shall be supplied to each Owner. All Improvements shall be constructed in accordance with the Design Guidelines, and the Architectural Committee shall have the authority to disapprove any proposed Improvements based on the restrictions set forth in the Design Guidelines. Any decision of the Architectural Committee pursuant to this Article V shall be final and binding so long as it is made in good faith. The Architectural Committee may charge Owners a reasonable fee for each set of Design Guidelines supplied to an Owner. The Architectural Committee will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

The Design Guidelines may include, among other things, those restrictions and limitations set forth below:



- A) Procedures for making application to the Architectural Committee for design review approval, including the documents to be submitted and the time limits in which the Architectural Committee must act to approve or disapprove any submissions;
- B) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Design Guidelines;
- C) Designation of the building site on a Lot, establishing the maximum developable area of the Lot;
- D) Minimum and maximum square foot areas of living space that may be developed on any Lot;
- E) Landscaping regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the use of plants indigenous to the locale, and other practices benefiting the protection of the environment, aesthetics and architectural harmony of the Development; and
- F) General instructions for the construction, reconstruction, refinishing or alteration of any Improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits on the Property, addressing matters such as a waste storage, trash removal, equipment and materials storage, grading, transformers, and meters.

5.09. Review of Proposed Construction. Whenever in this Declaration, the approval of the Architectural Committee is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in question, the Design Guidelines and all other facts which, in its sole discretion, it considers relevant, and may require an Owner to provide such other information as it deems relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Committee. The Architectural Committee may review Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the Architectural Committee of any information or documents deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes,

exterior finishes, and materials and similar features as to be incompatible with development within the Property and the surrounding area. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes. The Architectural Committee shall have no responsibility or liability with regard to protecting views of other Improvements with the Development. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement, provided that such action is not visible from any other portion of the Development or Property.

5.10. Actions of the Architectural Committee. The Architectural Committee may, by resolution, unanimously adopted in writing, designate one (1) or two (2) of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of the majority of all of the Voting Members of the Architectural Committee taken without a meeting shall constitute an act of the Architectural Committee.

5.11. Submission and Plan Review. Two (2) copies of the construction Plans and Specifications (including but not limited to exterior views, exterior materials, colors and elevation, a drainage plan, a site plan showing the location of any proposed structure or Improvement, a landscaping plan, and a driveway construction plan) or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal in the form required by the Architectural Committee, and any other information or documents that may be required by the Architectural Committee, shall be delivered, together with any review fee which is imposed by the Architectural Committee in accordance with Article V to the Architectural Committee at the offices of Declarant at 404 Ball Airport Road Victoria, Texas 77904 or such other address as may be designated by the Association, its successors and assigns, from time to time, not less than thirty (30) days prior to the date on which the Owner proposes to commence construction or re-subdivision/consolidation. No re-subdivision or consolidation shall be made, nor any Improvement placed or allowed on any Lot, until the Plans and Specifications therefor and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a majority of the Voting Members of the Architectural Committee. The Architectural Committee may, in reviewing such Plans and Specifications consider any information that it deems proper, including, without limitation, any permits, environmental impact statements or tests that may be required by the Architectural Committee or any other entity, and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Architectural Committee may postpone its review of any Plans and Specifications submitted for approval pending receipt of any information or material which the Architectural Committee, in its sole

discretion, may require. Site plans must be approved by the Architectural Committee prior to the clearing, scraping, cutting or filling of any Lot, or the construction of any Improvements thereon. The Architectural Committee may refuse to approve Plans and Specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Architectural Committee, are deemed sufficient, including but not limited to, purely aesthetic grounds.

5.12. Variance. The Architectural Committee may grant variances from compliance with any of the provisions of this Declaration or the Design Guidelines when, in the opinion of the Architectural Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property, and such variance is justified. All variances must be evidenced by a written instrument, in recordable form, and must be signed by at least two (2) of the Voting Members. If a variance is granted, no violation of the covenants, conditions, or restriction contained in this Declaration will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof.

5.13. No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different Person.

5.14. Work in Progress. The Architectural Committee, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications. The Architectural Committee may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Lot to determine whether the Improvements have been or are being built in compliance with the Governing Documents and the Plans and Specifications approved by the Architectural Committee.

5.15. Failure to Act. In the event that any Plans and Specifications are submitted to the Architectural Committee as provided herein, and the Architectural Committee shall fail either to approve or reject such Plans and Specifications for a period of forty-five (45) days following such submission, the Plans and Specifications will be deemed disapproved. Furthermore, any failure of the Architectural Committee to act upon a request for a variance hereunder shall not be deemed a consent to such variance, and the Architectural Committee's written approval of all requests for variances shall be expressly required.

5.16. Fees. The Architectural Committee shall have the right to require a reasonable submission fee for each set of Plans and Specifications submitted for its review.

5.17. Duration of Approval. The approval of the Architectural Committee of any final Plans and Specifications, and any variances granted by the Architectural Committee will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such Plans and Specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final Plans and Specifications or request for a variance to the Architectural Committee, and the Architectural Committee will have the authority to re-evaluate such Plans and Specifications in accordance with this Article and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

5.18. Limits on Liability. The Architectural Committee has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the Architectural Committee have no liability for the Architectural Committee's decisions made in good faith, and which are not arbitrary or capricious. The Architectural Committee is not responsible for: (i) errors in or omissions from the Plans and Specifications submitted to the Architectural Committee; (ii) supervising construction for the Owner's compliance with approved Plans and Specifications; (iii) the compliance of the Owner's Plans and Specifications with governmental codes and ordinances, state and federal laws; (iv) structural integrity or soundness of approved construction or modifications; and (v) conformity of quality, value, size or design among Lots. Notwithstanding that the Architectural Committee has approved Plans and Specifications, the Architectural Committee will not be responsible or liable to any Owner or to any other Person with respect to any loss, liability, claim or expense which may arise by reason of the Architectural Committee's approval of the construction of the Improvements. The Architectural Committee's approval of any application shall not be deemed to be a representation or warranty that the construction or modification of any Improvement pursuant to such approval will be free of defects in the quality of materials or labor provided or in its design. Each Owner should obtain whatever soil reports, foundation studies, and/or engineering studies the Owner deems necessary to determine the adequacy of construction of any Improvements prior to the purchase of a Lot. Neither the Board, nor the Architectural Committee, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Governing Documents, nor for any structural or other defects in any work done according to such Plans and Specifications. In all events, the Architectural Committee will be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Architectural Committee's review or decisions in accordance with the Texas Non-Profit Corporations Act, as amended (but, in the case of any such amendment, only to the extent that such amendment permits broader indemnification than permitted prior to such amendment).

5.19. Removal of Nonconforming Improvements. The Association, upon request of the Architectural Committee and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of the Governing Documents. The Owner of the Improvement will immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within thirty (30) days after the Association gives the Owner notice of the expenses, the sum owed to the Association will bear interest at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one half percent (1.5 %) per month, from the date the expense was incurred by the Association through the date of reimbursement in full, and all such sums and interest will be an Individual Assessment enforceable as provided in this Declaration.

5.20. Continuity of Construction. All Improvements commenced on the Property, other than Improvements constructed by the Declarant, will be prosecuted diligently to completion and will be completed within twenty-four (24) months after commencement, unless an exception is granted in writing by the Architectural Committee. If an Improvement on any Lot is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required twenty-four (24) month period, then such delay will constitute a violation of this Declaration and the Owner of such Lot will be subject to fine in accordance with Section 6.11 of this Declaration. Any fine and/or charge for damage levied in accordance with this Section will be considered an Individual Assessment pursuant to this Declaration.

5.21. Builder Performance. In no event will the Association, the Architectural Committee, Declarant or affiliates of Declarant be responsible for, or guarantors of, performance by any builder of all or any of its obligations to any Owner pursuant to any contracts for the sale or construction of Improvements or otherwise. Neither the Association, the Architectural Committee, Declarant nor any affiliates of Declarant has made, or have made, any warranty or representation with respect to performance by any builder under any contract or otherwise.

5.22. Waiver by Declarant. Notwithstanding anything to the contrary in the Governing Documents, Declarant may waive the requirement for architectural approvals or any other requirement of this Article V, based on Declarant's sole and absolute discretion. Evidence of such a waiver by Declarant shall be in writing and kept in the records of the Association or Architectural Committee. By taking title to a Lot, each Owner acknowledges and agrees that Declarant may act in its own self-interest in granting waivers as described in this Section and that the right of Declarant to issue such waivers is a critical right necessary for Declarant to develop the Project.

## ARTICLE VI

### FUNDS AND ASSESSMENTS

#### 6.01. Assessments.

- A) The Association may from time to time levy Assessments against each Lot whether or not improved. The Board shall levy Assessments against each Lot in proportion to the number of "Assessment Units" assigned to such Lot as provided herein. Each Residential Lot shall be assigned one (1) Assessment Unit. Assessments are due and payable when assessed and will be considered delinquent if not timely paid.
- B) Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.
- C) Each unpaid Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which the Assessment fell due, and shall be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon. All successors to the fee simple title of a Lot will be subject to the Association's lien for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' and legal assistants' fees due against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor will terminate upon termination of such successor's fee simple interest in the Lot. The Association may enforce payment of such Assessments in accordance with the provisions of this Article VI.
- D) If the Association has not received full payment of an Assessment by the due date, the Association may send written notice of nonpayment to the defaulting Owner, by hand delivery, first class mail, and/or by certified mail, stating the amount delinquent. The Association's delinquency-related correspondence may state that if full payment is not timely received, the Association may pursue any or all of the Association's remedies, at the sole cost and expense of the defaulting Owner. The Association may delegate all its authority with regard to collection of Assessments to the Manager, its attorney or a bill collector. For purposes of this Article 6, the Manager shall not be considered a third party bill collector in performing the task of collection.

6.02. Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

6.03(A). Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Governing Documents, including, but not limited to, the cost of all maintenance, routine repairs, administrative costs, management fees, landscaping, lighting, irrigation, utilities costs, insurance, legal costs, accounting costs, the cost of all roadway and right-of-way maintenance, the cost of maintaining non-standard street lighting and non-standard street signs, the cost of enforcing the Governing Documents, a reasonable provision for contingencies and appropriate replacement reserves, or any other costs or expenses associated with the Association or its functions, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Individual Assessment, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such Regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each quarter in equal quarterly installments, or in such other manner as the Board may designate in its sole and absolute discretion.

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

6.04. Special Assessments. In addition to the Regular Annual Assessments and the Individual Assessments provided for above, the Board may levy Special Assessments whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration. The amount and frequency of any Special Assessments shall be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year,

levy a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area shall be levied against all Owners based on Assessment Units.

6.05. Amount of Assessment.

- A) The Board shall levy Assessments against each "Assessment Unit" (as defined in Section 6.05(B) below), unless otherwise provided in 6.05(D). Unless otherwise provided in this Declaration, Assessments levied pursuant to Section 6.03 and 6.04 shall be levied uniformly against each Assessment Unit.
- B) Each Lot shall constitute one "Assessment Unit".
- C) Notwithstanding anything in Declaration to the contrary, no Assessments shall be levied upon Lots owned by Declarant without the consent of Declarant.
- D) Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Development or Lot from any Assessments levied or charged pursuant to this Article; or (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Development or Lot. Declarant or the Board may also exempt any portion of the Development which is dedicated and accepted by public authority from Assessments.

6.06. Late Charges. If any Assessment, whether Regular or Special, is not paid by 5:00 p.m. by the due date applicable thereto, the Owner responsible for the payment thereof may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge of \$25.00 per month and/or interest at the highest rate allowed by applicable usury laws then in effect, and the late charge (and any reasonable handling costs therefor) will be levied as an Individual Assessment against the Lot(s) owned by such Owner, collectible in the manner as herein provided for collection of Assessments, including foreclosure of the lien against such Lot(s) hereinabove granted, provided, however, such charge shall never exceed the maximum charge permitted under applicable law.

6.07. Declarant's Obligations Concerning Assessments. As provided in Section 6.09 below, any portion of the Property or Development owned by Declarant shall be exempt from the levy of Assessments in accordance with this Article VI. Notwithstanding the foregoing, until such time as Declarant no longer owns any portion of the Property, Declarant may, at its sole election, either (i) pay any and all Assessments which would have been levied against the Lots owned by Declarant in the same manner as any other Owner or (ii) pay the difference between the amount of Assessments (exclusive of reserve contributions) levied on all other Lots subject to Assessment and the amount of actual expenditures (exclusive of reserve



contributions) incurred by the Association during the fiscal year (the "budget deficit"). Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

6.08. Owner's Personal Obligation for Payment of Assessments. The Regular, Special and Individual Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of two percent (2%) per month), together with all costs and expenses of collection, including reasonable attorney's fees and other reasonable and necessary costs such as title reports, credit reports, certified mail, long distance calls, court costs, and filing fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner. Failure to pay any such Assessments does not constitute a default under an insured Mortgage.

6.09. Exemptions. Notwithstanding any provision herein to the contrary, all: (i) Common Areas and Association Property; (ii) areas dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Public Records of Victoria County, Texas; and (iii) any portion of the Property owned by Declarant (except as provided in Section 6.07 above) shall be exempt from the payment of any Assessments, whether Regular, Special or Individual.

6.10. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid shall, together with late charges as provided in Section 6.06 and interest as provided in Section 6.08 hereof and the cost of collection, including attorney's fees as herein provided, thereupon become a continuing Assessment lien granted to the Association pursuant to Section 6.01(C) above, and shall bind such Lot in the hands of the Owner thereof, such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for:

- A) All liens for taxes;
- B) All liens secured by amounts due or to become due under any first Mortgage lien or first deed of trust lien filed for record securing, in either instance, sums borrowed for acquisition or Improvements of the Lot in question, provided such Mortgage was recorded in the Official Public Records of Victoria County, Texas before the delinquent Assessment was due.

The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination may be signed by an officer of the Association. To evidence the aforesaid Assessment lien, the Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be prepared by an attorney, signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Victoria County, Texas. In that event, a copy of the notice will be sent to the defaulting Owner, and may also be sent to the Owner's mortgagee. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration shall be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. Such lien for payment of Assessments shall attach with the priority set forth above from the date that such payment becomes delinquent. The Assessment liens and rights to foreclosure thereof shall be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration. In any foreclosure proceeding, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The Association may obtain a title report to determine the name of the Owner and the identity of other lienholders, including the mortgage company. The Association must provide written notice of the amount of any delinquency to any Mortgagee on the Lot whose lien is recorded in the Official Public Records of Victoria County, Texas and provide such Mortgagee a period of sixty (60) days to cure the delinquency prior to commencing foreclosure of a lien as set forth in this Section. The lien hereunder shall not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any first-lien Mortgage securing indebtedness incurred to acquire such Lot, the lien for Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first lien Mortgagee. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this Section 6.10, the Association shall execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release shall be signed by an officer of the Association. The Association may require the Owner to prepay the cost of preparing and recording the release. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than a first lien Mortgagee or Assessment Liens and charges in favor of the State of Texas or a

political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Lot to a third party. Mortgagees are not required to collect Assessments.

All foreclosures of Lots as described in this Section must be through expedited, judicial foreclosure. Non-judicial foreclosure shall only be allowed to be used by an Association as a method of foreclosing a lien pursuant to this Section if the non-judicial foreclosure method is agreed to, in writing, by the Owner whose Lot is being foreclosed and in advance of the foreclosure sale.

By a vote of sixty-seven percent (67%) of the votes in the Association, the Association may amend this Declaration to remove the provisions of this Section having to do with foreclosure of a lien by the Association or adopt alternate provisions dealing with foreclosure, provided such provisions comply with the applicable provisions of the Texas Property Code.

6.11. Fines and Damages Assessment. The Board may assess fines against an Owner for violations of any provisions of the Governing Documents, which have been committed by an Owner, an occupant of the Owner's Lot, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this Section 6.11 shall be considered an Individual Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities located thereon by the Owner or the Owner's family, guests, agents, occupants, or tenants. The Manager shall have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage Assessments. The Board may from time to time adopt a schedule of fines.

The procedure for Assessment of fines and damage charges shall be as follows:

- A) The Association, acting through an officer, Board member or Manager, must give the Owner a dated and signed notice of the fine or damage charge not later than thirty (30) days after the Assessment of the fine or damage charge by the Board;
- B) The notice of the fine or damage charge must describe the violation or damage and including reference to the rule or provision that has been violated;
- C) The notice of the fine or damage charge must state the amount of the fine or damage charge and the date the fine attaches or begins accruing;

- D) The notice of the fine or damage must describe the action required to cure the violation and the required timeframe for doing so;
- E) The notice of a fine or damage charge must state that the Owner may, not later than thirty (30) days after the date of the notice, request a hearing before the Board to contest the fine or damage charge; special rights or relief may be applicable to an Owner serving on active military duty pursuant to the Servicemembers Civil Relief Act in 50 U.S.C. app. Section 501 et seq.;
- F) The notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months;
- G) The notice must state that any future violation of the same rule may result in the levy of additional fines; and
- H) If the matter will involve the collection of fees for a collection agent, the notice must comply with the provisions of Section 6.14 below.

Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges shall be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

If a hearing is requested by an Owner, then within fifteen (15) days after such request, the Association shall give the Owner at least fifteen (15) days advance notice of the hearing date, time and place. The hearing will be scheduled to reasonably accommodate the schedules of the Board and the Owner; however, the Association shall not be required to schedule, cancel, reschedule numerous times or tolerate undue lack of responsiveness or cooperation by an Owner in the process of scheduling the hearing. The hearing shall be a closed session of the Board. Minutes of the hearing shall be prepared by the Secretary of the Board and shall include copies of the notices and statement of the results of the hearing.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with any late charges as provided in Section 6.06 hereof and interest as provided in Section 6.08 hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to Section 6.01(C) of this Declaration. Unless otherwise provided in this Section 6.11, the fine and/or damage charge shall be considered an Individual Assessment for the purpose of this Article, and shall be enforced in accordance with the terms and provisions governing the enforcement of Assessments pursuant to this Article VI.

6.12. Application of Payments. The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order:

- A) Individual Assessments or delinquent Assessments;
- B) Other Assessments that are currently due;
- C) Attorney's fees or third party collection costs associated solely with the Assessment;
- D) Other attorney's fees;
- E) Fines or damages; and
- F) Other amounts.

The Association may refuse to accept partial payments or payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs with the Association posts the payment to the Owner's account. If the Association does not accept the payment at that time, it will promptly refund the payment to the payer. A payment that is not refunded to the payer within thirty (30) days after being deposited by the Association may be deemed accepted as to payment, but not as to words of limitation or instruction accompanying the payment. The acceptance by the Association of partial payment of delinquent Assessments does not waive the Association's right to pursue or to continue pursuing its remedies for payment in full of all outstanding obligations.

6.13. Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

6.14. Third Party Collections. Delinquent Owners shall not be held liable for the fees of a collection agent unless the Association provides notice, thirty (30) days in advance, to the Owner via certified mail, return receipt requested, that notifies the Owner of the delinquency and provides the Owner the option of entering into the payment plan set forth in this Declaration, as it may be modified by the Board. Delinquent Owners shall not be liable for the fees of a collection agent if the obligation for payment by the Association is in any way contingent on the amount recovered or if the agreement fails to require the Association to pay the agent's fee.

6.15. Collection by Attorney. If the Owner's account remains delinquent for a period of ninety (90) days, the manager of the Association or the Board of the Association shall refer the delinquent account to the Association's attorney for collection. In the event an account is referred to the Association's attorney, the Owner will be liable to the Association for its legal fees and expenses. Upon referral of a delinquent account to the Association's attorney, the Association's attorney will provide the following notices and take the following actions unless otherwise directed by the Board:

- (a) Initial Notice: Preparation of the Initial Notice of Demand for Payment Letter. If the account is not paid in full within thirty (30) days (unless such notice has previously been provided by the Association), then
- (b) Lien Notice: Preparation of the Lien Notice of Demand for Payment Letter and record a Notice of Unpaid Assessment Lien. If the account is not paid in full within thirty (30) days, then
- (c) Final Notice: Preparation of the Final Notice of Demand for Payment Letter and Intent to Foreclose and Notice of Intent to Foreclose to Lender. If the account is not paid in full within thirty (30) days, then
- (d) Foreclosure of Lien: Only upon specific approval by a majority of the Board.

6.16. Payment Plans. The Association shall offer each delinquent Owner a payment plan for the payment of delinquent Assessments. The minimum term of such plan must be three (3) months and the maximum term must be eighteen (18) months from the date the payment plan is requested by the Owner and instituted. No additional monetary penalties for delinquent assessment will accrue during the period of the payment plan; however, reasonable costs associated with administering the payment plan may be charged to the delinquent Owner. The Board shall determine the exact payment plan on a case-by-case basis and may delegate such authority to the Manager. The Board may refuse to offer the payment plan to any Owner who has previously been delinquent within the two years preceding the payment plan request or who, in the Board's sole discretion, has demonstrated a pattern of delinquencies.

If an Assessment, other than a Regular Assessment, is payable in installments, and if an Owner defaults in the payment of any installment, the Association may declare the entire Assessment in default and accelerate the due date on all remaining installments of the Assessment. An Assessment, other than a Regular Assessment, payable in installments may be accelerated only after the Association gives the Owner at least fifteen (15) days prior notice of the default and the Association's intent to accelerate the unpaid balance if the default is not timely cured. Following acceleration of the indebtedness, the Association has no duty to reinstate the installment program upon partial payment by the Owner.

6.17. Form of Payment. The Association may require that payment of delinquent Assessments be made only in the form of cash, cashier's check or certified funds.

6.18. Insufficient Funds. The Association may levy a charge of \$25.00 for any check returned to the Association marked "not sufficient funds" or the equivalent.

6.19. Notification of Credit Bureau. The Association may report the defaulting Owner to one or more credit reporting services. If the Association receives full payment of the delinquency after reporting the defaulting Owner to a credit reporting service, the Association will report receipt of payment to the credit reporting service.

6.20. Waiver or Cancellation of Debt. Properly levied collection costs, late fees and interest may only be waived by a majority of the Board. If the Board deems the debt to be uncollectible, the Board may elect to cancel the debt on the books of the Association, in which case the Association may report the full amount of the forgiven indebtedness to the Internal Revenue Service as income to the defaulting Owner.

6.21. Notices. Unless the Declaration, applicable law, or this policy provide otherwise, any notice or other written communication given to an Owner pursuant to this policy will be deemed to be delivered to Owner upon depositing same with the United States Postal Service, addressed to the Owner at the most recent address shown on the Association's records, or on personal delivery to the Owner. If the Association's records show that an Owner's property is owned by two (2) or more persons, notice to one co-Owner is deemed notice to all co-Owners. Similarly, notice to one resident is deemed notice to all residents. Written communications to the Association, pursuant to this policy, will be deemed given on actual receipt by the Association's president, secretary, managing agent or attorney.

## ARTICLE VII

### PROPERTY RIGHTS, EASEMENTS, AND SPECIAL DECLARANT RIGHTS

7.01. Title to Common Areas. Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Areas that it owns, to the Association. EACH OWNER ACKNOWLEDGES, BY TAKING TITLE TO ITS LOT, THAT THE DEVELOPMENT HAS LIMITED OR NO AMENITIES, RECREATIONAL FACILITIES OR SIMILAR ITEMS. BY TAKING TITLE TO ITS LOT, EACH OWNER AGREES TO INDEMNIFY AND HOLD DECLARANT HARMLESS FOR ANY CLAIMS RELATED TO A LACK OF AMENITIES WITHIN THE DEVELOPMENT. THE INDEMNITY SET FORTH IN THE PRECEDING SENTENCE SHALL APPLY TO DECLARANT, AND ITS PARTNERS, OFFICERS, DIRECTORS, MANAGERS, OFFICERS, REPRESENTATIVES, ATTORNEYS OR OTHERS ACTING ON DECLARANT'S BEHALF.

7.02. Right of Ingress and Egress. Declarant, its agents and employees, shall have a right of ingress and egress over and the right of access to the Common Area to the extent necessary to use the Common Area and the right to such other temporary uses of the Common

Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property.

7.03. Reserved Easements. All dedications, limitations, restrictions, and reservations shown on the Plat or dedicated by separate instrument and all grants and dedications of easements, rights-of-way, restrictions, and related rights, made by Declarant prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other Person, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, electricity, cable television, telephone and drainage) in favor of any Owner along any front, rear, or side boundary line of any Lot.

7.04. Easements for Utilities, Installation and Maintenance. There is hereby created a perpetual non-exclusive easement upon, across, over, and under all of the easement areas affecting the Property for ingress and egress in connection with installing, replacing, repairing, operating, and maintaining all utilities, including, but not limited to, water, sewer, gas, cable television, telephones, and electricity lines and appurtenances thereto. Utility providers within the Development may include, without limitation, Victoria Electric Cooperative, AT&T, Time Warner Cable, Sudden Link and/or others. By virtue of this easement, it shall be expressly permissible for these and any other utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, tanks, pumps, lift stations or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement and further across any other portion of the Property where easements do not already exist but where such improvements are necessary to provide service to the Improvements or the Development. Notwithstanding any provision contained in this section, no electrical lines, water lines, or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Committee. The utility companies and other entities furnishing service shall have the right to remove all trees situated within the utility easements shown on the Plat or dedicated by separate instrument, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

7.05. Easement for Drainage and Water Quality. Declarant reserves for itself and its successors, assigns, and designees and the Association the non-exclusive right and easement, but not the obligation, to enter upon the drainage areas or easements, if any, located within the Property (a) to construct, maintain and repair any wall, dam, or other structure retaining water therein, and (b) to remove trash and other debris and fulfill their maintenance responsibilities



as provided in this Declaration or as may otherwise be required of Declarant or the Association by any governmental entity. Declarant's rights and easements hereunder shall be transferred to the Association at such time as Declarant shall cease to own property subject to this Declaration, or such earlier time as Declarant may decide, in its sole discretion, and transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Lots abutting or containing any portion of any of the ponds, streams, or wetlands, if any, to the extent reasonably necessary to exercise their rights and responsibilities under this section.

There is further reserved herein for the benefit of Declarant, the Association and their designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and Lots (but not the Residences thereon) adjacent to or within fifty (50) feet of lake beds, ponds and streams within the Property and the Development, in order to (i) temporarily flood and back water upon and maintain water over such portions of the Property, (ii) fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the lakes, ponds, streams and wetlands within the Common Area, (iii) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams and wetlands and (iv) enter upon and across such portions of the Property and Development for the purpose of exercising its rights under this Section. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage from flooding due to heavy rainfall or other natural disasters.

Because of fluctuations in water elevations within the immediate area, the water level of lakes, creeks, and streams will rise and fall. Declarant has no control over such elevations. Therefore, each Owner releases Declarant and the Association, and their affiliates, successors and assigns, from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including attorney's fees and costs and appellate fees and costs, related to or arising out of the water elevations, including the absence of any water in the lakes, creeks, streams and ponds. Neither the Association nor any Owner shall alter, modify, expand, or fill any lakes or wetlands located on or in the vicinity of the Property and the Development, without the prior written approval of Declarant, so long as Declarant owns any portion of the Property, and such local, state, and federal authorities as may have jurisdiction over such matters.

7.06. Easement for Construction and Maintenance of Fences. Declarant reserves for itself, the Association, its successors, assigns, and designees the non-exclusive right and easement, to enter upon, across, over, and under those portions of the Property falling within existing public utility easements or utility easements ("PUE's") shown on the Plat or dedicated by separate instrument, and/or the portion of any Lot falling between such Lot's boundary line and the building setback line for such Lot as shown on the Plat in connection with installing, replacing, repairing, and maintaining any and all Subdivision Fencing as defined in Section 4.08. Declarant's rights and easements hereunder shall be transferred to the Association at such time as Declarant shall cease to own property subject to this Declaration, or such earlier

time as Declarant may decide, in its sole discretion, and transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Lots abutting or containing any portion of any such fences, to the extent reasonably necessary to exercise their rights and responsibilities under this section.

7.07. Lateral Support Easement. In the event that Declarant shall erect or cause to be erected a retaining wall for lateral support upon any Lot, or any shared retaining wall upon any two or more adjacent Lots as shown on any approved subdivision construction plans for the Property, maintenance of such retaining wall shall be the responsibility of the Owner or Owners jointly, and all damage shall be repaired within thirty (30) days of written notification by the Association. Each Owner shall maintain that portion of any retaining wall on its respective Lot in accordance with the requirements of any applicable governmental entity (if any) and in a good and functioning condition and repair at such Owner's sole cost. Declarant hereby reserves for the benefit of each Owner of a Lot on which Declarant has constructed a retaining wall, a non-exclusive easement in, upon, over and across any adjacent Lot on which a portion of such retaining wall exists for the use, operation, replacement, upgrading, inspection, maintenance and repair of such retaining wall. In the event any such Owner, or their agents and employees in exercising the easement rights granted by this paragraph, disturbs or otherwise damages any portion of another Owner's Lot, or Improvements thereon, such Owner shall within a reasonable time period restore the Lot and/or repair such Improvements, including without limitation landscaping, grasses, curbs, asphalt, retaining wall, and concrete paving, to their prior condition. Such Owners and their heirs, executors, successors and assigns, are hereby further granted an easement upon, over and across the Lots subject to the retaining wall, at any and all reasonable times, to reasonably enter such Lots, or any part thereof, for the purpose of operating, inspecting, monitoring, maintaining and repairing such retaining wall.

7.08. Owner Conveyance of Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon, require. Each Owner further covenants to comply with applicable rules and regulations with regard to the disturbance or displacement of trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat or separate instrument. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as approved in writing by the Architectural Committee.

7.09. Surface Areas. Each Owner shall maintain the surface area of all easements located within his Lot and all Improvements located therein, except for such Improvements for which a public authority or utility provider is responsible. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid

vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

7.10. Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways, drainage, water, gas, sewer, storm sewer, electrical light, electrical power, telegraph or telephone way, or any pipes, lines, poles or conduits on or in any utility facility, or appurtenances thereto, constructed by or under Declarant or its agents, through, along, or upon any Lot, or any part thereof, to serve said Lot or any other portion of the Property; and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency, or to any public service corporation or to any other party, is hereby expressly reserved in Declarant.

7.11. Owner's Easements of Enjoyment of Common Areas. Each Owner shall have an easement of use and enjoyment in and to all Common Areas which shall be appurtenant to and shall pass with title to such Owner's Lot, subject to the following provisions:

- A) The right of the Association to suspend the Owner's right to use the Common Areas for any period during which any Assessment against such Owner's Lot remains unpaid for at least thirty (30) days, and for any period during which the Owner is in violation of the rules and regulations of the Association. No such suspension shall be effective unless written notice is given to the Owner by certified mail, return receipt requested, describing the violation, in accordance with the Texas Property Code.
- B) The right of Declarant or the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless: (1) an instrument of agreement to such dedication or transfer, signed by at least two-thirds (2/3) of each class of Members entitled to vote, is recorded; and (2) written notice of the proposed action under this provision is sent to every Owner and Mortgagee not less than thirty (30) days and not more than sixty (60) days in advance of such action. If ingress or egress to any Lot is through any part of a Common Area, any conveyance or encumbrance of such Common Area shall be subject to a Lot Owner's ingress and egress easement.
- C) The right of the Association to borrow money for the purpose of improving the Common Areas and, in furtherance thereof, to mortgage the Common Areas, all in accordance with the Certificate of Formation and Bylaws. No such mortgage shall be effective unless: (1) an instrument of agreement to such mortgage, signed by at least two-thirds (2/3) of each class of Members entitled to vote, is recorded; and (2) written notice of the proposed action under this

provision is sent to every Owner and Mortgagee not less than thirty (30) days and not more than sixty (60) days in advance of such action.

- D) The right of the Association to make reasonable rules and regulations regarding the use of the Common Areas and any facilities thereon.
- E) The right of the Association to contract for services with third parties on such terms as the Association may determine.

7.12. Drainage Easements. All drainage or water quality easements, except those in roadway right-of-way areas, utility construction, and construction of water quality and detention controls, are to remain undisturbed. The following activities are prohibited on all water quality easements:

- A) Parking of any vehicles;
- B) Access to single family Lots through water quality easement areas by any vehicle;
- C) Storage of boats, trailers, or non-passenger vehicles;
- D) Trash container storage;
- E) Materials or construction accessories storage;
- F) Clearing in any manner without written approval from the Architectural Committee;
- G) Altering drainage; and
- H) Gathering native rock or harvesting native and indigenous plants.

7.13. Roadway and Utility Easements. Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, relocated, constructed, erected, and maintained in and on any streets maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Common Area, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purpose of repair and maintenance.

7.14. Landscape and Entry Feature Easements. Declarant plans to install certain landscaping and entry features, which may, but shall not be required to include associated irrigation, lighting and related improvements at the entry of the Subdivision. Certain of such improvements may be located on portions of Lots. If any such improvements are installed on any Lot by Declarant prior to its sale to a Builder or other person, then the Association shall

automatically have an easement for the construction, maintenance, repair, or upgrade of any such improvements, whether or not an easement is actually shown in any Plat or separate document. Declarant shall further have the right to document such easement through separate, recorded document, without the consent of the Owner of such Lot, if the easement has not previously been documented.

7.15. Easements Deemed Created. All conveyances of Lots hereafter made, whether by Declarant or otherwise, will be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

7.16. Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and shall be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

## ARTICLE VIII

### INSURANCE

8.01 Authority to Purchase. All insurance policies relating to the Common Area will be purchased by the Association or its duly authorized agent. The Board of Directors, the Manager and Declarant will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs.

8.02. General Insurance Provisions. All such insurance coverage obtained by the Association will be governed by the following provisions:

- A) As long as Declarant owns any portion of the Property, Declarant will be protected by all such policies in the same manner as any other Owner.
- B) The deductible, if any, on any insurance policy purchased by the Association

may be treated as a common expense payable from annual Assessments or Special Assessments (allocable to all of the Lots or to only some of the Lots, if the claims for damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners), or as an item to be paid from any operating account established by the Association.

8.03. Physical Damage Insurance on Common Area. The Association will obtain insurance for such insurable Improvements and with such coverages, limits, deductibles and other terms and conditions as the Board may determine from time to time.

8.04. Liability Insurance. The Association will obtain a comprehensive policy of public liability insurance and property damages insurance with such coverages and limits as the Board of Directors may from time to time determine, insuring each member of the Board, the Association, the Manager, and the respective employees, agents, and all Persons acting as agents against any liability to the public or the Owners (and their guests, invitees, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance, or use of the Common Area and streets and roads within the Development and any other areas under the control of the Association. Declarant will be included in the coverage as an additional insured in Declarant's capacity as an Owner or Director. The Owners will be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area.

The Board will review the coverage limits from time to time, but in no event will such coverage be less than \$1,000,000.00 for all claims for bodily injury or property damage arising out of one occurrence.

8.05. Fidelity Insurance. Fidelity bonds or insurance coverage may, at the Board's sole discretion, be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees, and on the part of all others who handle or are responsible for handling funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds or insurance coverage will be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity bonds or insurance coverage will name the Association as an obligee or insured and will be written in such amount as the Board may determine appropriate.

8.06. Provisions Common to Physical Damage Insurance, Liability Insurance, and Fidelity Insurance. Any insurance coverage obtained by the Association under the provisions of this Article will be subject to the following provisions and limitations:

- A) The named insured under any such policies will include Declarant, until Declarant no longer owns any portion of the Property, and the Association, as attorney-in-fact for the Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into any insurance trust agreement, or any successor trustee, each of which is

sometimes referred to in this Declaration as the "Insurance Trustee"), who will have the exclusive authority to negotiate losses under such policies.

- B) Each Owner will be an insured Person with respect to liability arising out of the Owner's interest in the Common Area or membership in the Association
- C) The policies will contain a waiver by the insurer of any right to claim by way of subrogation against Declarant, the Board, the Association, the Manager, and any Owner and their respective agents, employees, or tenants, and in the case of Owners, members of their households.

8.07. Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable costs, appropriate officers' and directors' personal liability insurance will be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

8.08. Worker's Compensation Insurance. The Association may obtain worker's compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

8.09. Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it will deem appropriate with respect to the Association's responsibilities and duties.

8.10. Restoration. In the event of any fire or other casualty to Improvements, the Owner of such Improvements shall promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement shall be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean up, and such Owner shall be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the costs thereof plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, then at the rate of two percent (2%) per month shall be added to the Assessment chargeable to the Owner's Lot. Any such amounts

added to the Assessments chargeable against a Lot shall be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COSTS, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 8.10, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

8.11. Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this Article VIII, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

## ARTICLE IX

### MISCELLANEOUS

9.01. Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2044, unless amended as herein provided. After December 31, 2044, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless terminated by a written instrument executed by the Owners of at least seventy-five percent (75%) of the Lots within the Property then subject to this Declaration.

9.02. Property Code. To the extent that the provisions of this Declaration apply to a Residential Lot that is not part of a "Condominium Regime," the provisions of this Declaration are also subject to the Texas Residential Property Owners Protection Act, Chapter 209 of the Texas Property Code, as amended from time to time.

9.03. Amendment.

A) By Declarant. This Declaration may be amended by the Declarant so long as Declarant owns or controls any of the Property. No amendment by Declarant



shall be effective until there has been recorded in the Official Public Records of Victoria County, Texas an instrument executed and acknowledged by Declarant and setting forth the amendment. Notwithstanding the foregoing, Declarant may amend this Declaration at any time to correct typographical and grammatical errors.

- B) By Owners. In addition to the method in Section 9.03(A), at such time which Declarant no longer owns any portion of the Property, this Declaration, may be amended by the recording in the Official Public Records of Victoria County of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by a vote of at least sixty seven percent (67%) of the votes entitled to be cast in the Association.

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

9.05. Notice to Association. An Owner who mortgages such Owner's Lot shall notify the Board, giving the name and address of such Owner's Mortgagee. The Board shall maintain such information in a book entitled "Mortgages of Owners".

9.06. Protection of Mortgagees. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours. Additionally, all taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law shall relate only to the individual Lots and not to any other portion of the Property.

9.07. Construction Matters. Land development activities and construction activities will occur within and around the Property and such activities will create noise, dust, traffic disruption and general inconvenience to the residents within the Property.

9.08. Views. VIEWS WITHIN THE PROPERTY ARE NOT PROTECTED. No warranty, representation or guaranty is made to any Owner by Declarant or by any builder or developer of any portion of the Property, that any views from any portion of the Property will be protected or remain the same. Further, no officer, director, committee member, manager or other authorized representative of the Association shall have any duty or responsibility to protect the view of any Lot or Improvement within the Property. Each Owner with a view from their Lot should take into consideration all allowable options for the construction of Improvements anywhere in the vicinity of such Owner's Lot and the effect it may have on their view prior to purchasing their Lot or building a home thereon.

9.09. Storm Water Damage. Each Owner is responsible for complying with all governmental and/or regulatory requirements which may apply with respect to the drainage or detention of storm water within such Owner's Lot. Declarant expressly disclaims any responsibility, representations, or warranty with respect to the drainage and/or detention of storm water within any Lot.

9.10. Wildlife. Deer and other wildlife are present within the Property. Accordingly, caution should be used when driving, walking or biking on all roadways, sidewalks and/or trails within the Property so as to avoid encounters with such wildlife. Wildlife feeding by Owners is strictly prohibited.

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

9.12. Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct any and alter drainage patterns and facilities, to construct any and all other types of Improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales, and leasing anywhere within the Property. No Lot owned by Declarant shall be subject to any Assessments.

9.13. Mergers and Consolidations. The Association may participate in mergers and consolidations with other nonprofit operations organized for the same purposes, provided that any such merger, consolidation or annexation shall have the consent (in writing or at a meeting duly called for such purpose) of those Members entitled to cast not less than two-thirds (2/3) of the votes of the Association.

9.14. Assignment of Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person and may permit the participation, in whole or in part, by any other Person in any of its privileges, exemptions, rights, and duties hereunder.

9.15. Enforcement and Nonwaiver.

- A) Right of Enforcement. The Association and/or the Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter

imposed by the provisions of this Declaration and/or any of the other Governing Documents. Failure to enforce any right, provision, covenant, or condition granted by this Declaration and/or any of the other Governing Documents shall not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

- B) Nonwaiver. The failure to enforce any provision of the Governing Documents at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.
- C) Liens. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

9.16. Violation of Governing Documents. In the event the Governing Documents are violated by any Owner, its employees, lessees, invitees or licensees, Declarant and/or the Board may seek any one or more of the following remedies, in addition to any other remedy or right provided in the Governing Documents:

- A) The suspension of an Owner's right to use any Common Area;
- B) The right to enforce the Governing Documents (and if necessary in connection therewith, to enter upon the Owner's Lot or any Improvements constructed thereon or therein), and levy an Assessment against the Lot for any expense occasioned by such violation, as provided in Section 4.04(D) above;
- C) The right to levy fines as a result of such violation as provided in Section 6.11;
- D) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to, attorneys' fees and court costs. Each day a violation continues shall be deemed a separate violation; or
- E) The right to exercise any other remedy stated herein or available at law or equity for such violation.

9.17. Conflicts. If there is any conflict between the provisions of this Declaration, Design Guidelines, the Certificate of Formation, the Bylaws, or any rules and regulations adopted pursuant to the terms of such documents, or any, the provisions of this Declaration shall govern.

9.18. Acceptance by Grantees. Each grantee of Declarant of a Lot or other real property interest in the Development, by the acceptance of a deed of conveyance, or each

subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed shall constitute covenants running with the land within the Development, and shall bind any person having at any time any interest or estate in the Development, and shall inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

9.19. Damage and Destruction.

- A) Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this Section, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.
- B) Any damage to or destruction of the Common Area shall be repaired unless a majority of the Board shall decide within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available.
- C) In the event that it should be determined by the Board that the damage or destruction of the Common Area shall not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.
- D) If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board shall levy a Special Assessment, as provided in Article V, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.
- E) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments shall

be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

- F) In the event that any proceeds of insurance policies are paid to Owners, such payments shall be allocated based on Assessment Units and shall be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

9.20. No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part thereof shall be permitted, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development in question has been removed from the provisions of this Declaration pursuant to Section 2.04 above. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

9.21. Construction.

- A) Restrictions Severable. The provisions of the Governing Documents shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.
- B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- C) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles hereof.
- D) Gender. Whenever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

9.22. Eminent Domain. In the event it shall become necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be a party, and in any event the proceeds received shall be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to

Owners, such payments shall be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot.

9.23. Higher Authority. The terms and provisions of this Declaration are subordinate to federal and state law and local ordinances. Generally, the terms and provisions of this Declaration are enforceable to the extent that they do not violate or conflict with local, state or federal law or ordinances.

9.24. Water and Sewer Service Notice. Pursuant to Section 13.257 of the *Texas Water Code*, each Owner is notified of the following: "The real property that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. By taking title to its Lot, each Owner acknowledges receipt of the foregoing notice prior to the purchase of the real property described in the notice or at closing of purchase of the real property." At each Closing, each Owner shall be required to execute a separate copy of the foregoing notice to be subsequently recorded in the real property records of the county in which the Lots are located.

9.25. Intentionally Left Blank

## ARTICLE X

### DISPUTE RESOLUTION

10.01. Agreement to Encourage Resolution of Disputes without Litigation.

- A) Declarant, the Association and its officers, directors, and committee members, all parties subject to this Declaration and each Owner (collectively, the "Bound Parties"), will benefit from the amicable resolution of disputes involving the Development and the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party shall be prohibited from filing suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 10.02 in a good faith effort to resolve such Claim.
- B) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

- 1) the interpretation, application, or enforcement of the Declaration, the Design Guidelines, the Certificate of Formation, Bylaws, and rules and regulations adopted by the Board;
- 2) the rights, obligations, and duties of any Bound Party under the Declaration, the Design Guidelines, the Certificate of Formation, Bylaws, and rules and regulations adopted by the Board; or
- 3) the design or construction of Improvements within the Property or the Development, other than matters of aesthetic judgment under Article V, which shall not be subject to review.

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 10.02 (the following being considered an "Exempt Claim"):

- 1) Any suit by the Association to collect Assessments or other amounts due from any Owner;
- 2) 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 this Declaration;
- 3) 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 Declaration, the Design Guidelines, the Certificate of Formation, Bylaws, and rules and regulations adopted by the Board; or
- 4) Any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 10.02(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.

#### 10.02. 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:

- 1) The nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- 2) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- 3) The Claimant's proposed resolution or remedy; and
- 4) 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 thirty (30) days of the date of the notice described in Section 10.02(A) (or within such other period as the parties may agree upon), the Claimant shall have thirty (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 Victoria County, Texas.

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 thirty (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.

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

- D) Binding Arbitration. All Claims which are not successfully resolved through Negotiations or Mediation must be settled by binding arbitration. Any Claimant or Respondent may, by summary proceedings, bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 10.02. This Section may not be amended without the prior written approval of Declarant, the Association (acting through a Majority of the Board), and Owners holding at least sixty-seven percent (67%) of the votes of the Association.

- 1) Governing Rules. If a Claim has not been resolved after Mediation as required in this Article, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 10.02 and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the



arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Victoria County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's Construction Industry Dispute Resolution Procedures and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any claim, if the AAA has, by the time of the Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this Section, this Section will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

- a) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;
  - b) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and
  - c) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.
- 2) Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under this Section will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise for the purpose of realizing upon, preserving or protection upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute

a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

- 3) Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding hereunder.
- 4) Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope hereof; provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the Claim within fifteen (15) days from the date the award is rendered. The arbitrator's findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by applicable law. In no event may an arbitrator award speculative, consequential, or punitive damages for any claim.
- 5) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Victoria County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or

grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

10.03. Allocation of Costs. Except as otherwise provided in this Article, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

10.04. General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release a Respondent from liability to persons who are not party to Claimant's Claim. A party having an Exempt Claim may submit it to the procedures of this Article.

10.05. Period of Limitation.

- A) For Actions by an Owner or Resident of a Lot. The exclusive period of limitation for any of the parties to bring any Claim of any nature against Declarant, or its contractors, including, but not limited to, a Claim of construction defect or defective design of the Development or a Lot, shall be the earliest of (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no event shall the limitation period exceed four (4) years and one (1) day from the date Declarant conveyed the Lot to the original Owner unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; or (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant conveyed the Lot to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom Declarant initially conveyed the Lot, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the applicable law governing the limitation period and period of repose shall apply to the Claim.
- B) For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant, or its contractors, including, but not limited to, a Claim of construction defect or defective design of the Common Elements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date the Association or its agents discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no

event shall the limitation period exceed four (4) years from the date Declarant substantially completed the Development unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; or (ii) for Claims other than those alleging construction defect or defective design of the Development, two (2) years and one (1) day after the Declarant Control Period, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the applicable law governing the limitation period and period of repose shall apply to the Claim. Any claim regarding defects in the Development must be instituted and maintained solely by the Association, on behalf of the Owners and such claims may not be made separately by individual Owners or a group of Owners.

10.06. Approval and Settlement. Notwithstanding any provision in this Article to the contrary, the initiation of binding arbitration as required by this Article is subject to the following conditions:

- A) Owner Acceptance. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Article.
- B) Funding Arbitration and Litigation. Except for Exempt Claims, the Association must levy a Special Assessment to fund the estimated costs of arbitration conducted pursuant to this Article or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

10.07. Board Authorization. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate, mediate, arbitrate, settle, and or litigate any dispute to which the Association is a party, and may execute any document related thereto, such as settlement agreements and waiver or release of claims.

10.08. Initiation of Litigation By Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any Claim, judicial or administrative proceeding unless first approved by a vote of the Owners entitled to cast seventy-five percent (75%) of the votes in the Association, excluding the votes held by Declarant and any Grantor, except that no such approval shall be required for actions or proceedings:

- A) Initiated while Declarant owns any portion of the Property, including any land able to be added to the Property;

- B) Initiated to enforce the provisions of the Declaration, the Design Guidelines, the Certificate of Formation, Bylaws, and rules and regulations adopted by the Board, including collection of Assessments and foreclosure of liens;
- C) Initiated to challenge ad valorem taxation or condemnation proceedings;
- D) Initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies to the Association; or
- E) To defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment shall also be approved by Declarant for so long as Declarant owns any portion of the Property.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this the 7<sup>th</sup> day of OCTOBER, 2014.

**DECLARANT:**

**LANDMARK RESIDENTIAL  
DEVELOPMENT, LTD.**  
a Texas limited partnership

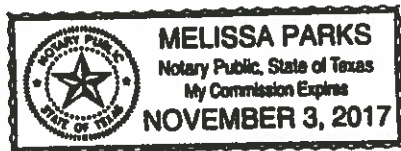
By: Landmark Residential Development GP, LLC,  
a Texas limited liability company  
its general partner

By: 

Steve Klein, President

THE STATE OF TEXAS §  
§  
COUNTY OF VICTORIA §

This instrument was acknowledged before me on the 7<sup>th</sup> day of October, 2014, by Steve Klein, President for Landmark Residential Development GP, LLC, a Texas limited liability company, the general partner of Landmark Residential Development, Ltd., a Texas limited partnership, on behalf of said limited liability and limited partnership.



  
Notary Public Signature

**AFTER RECORDING, RETURN TO:**

McLean & Howard, LLP  
Attn: William P. McLean  
Barton Oaks Plaza, Building 2  
901 S. Mopac Expressway, Suite 225  
Austin, Texas 78746

**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

Being a 35.77 acre tract of land situated partially in the J. Escalera Survey, Abstract 26 and partially in the J. Wright Survey, Abstract 125, Victoria County, Texas and being all of that certain 35.77 acre tract of land as conveyed from Marcie Butschek to Landmark Residential Development, Ltd. according to the document recorded in Instrument No. 201404675 of the Official Records of Victoria County, Texas, and as further described in the plat recorded in Instrument No. 201410943 of the Official Records of Victoria County, Texas, and all subsequent phases of the Subdivision as they are recorded.

ORIGINAL SCANNED &  
RETURNED TO:  
*Lesley Smeykal*  
DATE *10-9-2014*

**FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS**

*Robert S. Cortez*

Robert S. Cortez, County Clerk  
Victoria County Texas

October 09, 2014 01:11:20 PM

JWILLIAMS

FEE: \$328.00

RST

201411472