

**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS  
FOR  
CLEARWOOD LANDING**

**A RESIDENTIAL SUBDIVISION IN  
HARRIS COUNTY, TEXAS**

**NOTICE:** THIS DOCUMENT SUBSTANTIALLY EFFECTS YOUR RIGHTS AND OBLIGATIONS AS AN OWNER OF PROPERTY IN THIS SUBDIVISION. **READ IT CAREFULLY.** WITHOUT LIMITATION, YOU ARE SPECIFICALLY ADVISED AS FOLLOWS: (i) ARTICLE III PROVIDES FOR MANDATORY MEMBERSHIP IN A HOMEOWNERS' ASSOCIATION, AND ARTICLE V PROVIDES FOR MANDATORY PAYMENT OF ASSESSMENTS TO THE ASSOCIATION AND A CONTINUING LIEN AGAINST YOUR PROPERTY TO SECURE PAYMENT OF ASSESSMENTS WHICH MAY BE FORECLOSED EVEN IF THE PROPERTY IS YOUR HOMESTEAD. (ii) PARKING BY OWNERS AND OTHER OCCUPANTS IS PROHIBITED UPON ANY SUBDIVISION STREETS, GUEST PARKING WITHIN THE SUBDIVISION MAY NOT BE AVAILABLE, AND AVAILABLE PARKING FOR ANY VEHICLE IS EXTREMELY LIMITED (SEE SECTIONS 7.03 & 8.01.2), (iii) AVAILABLE PLAY OR OTHER RECREATIONAL AREAS FOR CHILDREN ARE EXTREMELY LIMITED (SEE SECTIONS 7.10 AND 7.17); (iv) UNDER ARTICLES I AND XI DECLARANT RETAINS SUBSTANTIAL RIGHTS DURING THE DEVELOPMENT PERIOD, INCLUDING THE UNILATERAL RIGHT TO SET RATES FOR REGULAR ASSESSMENTS AND IMPOSE SPECIAL ASSESSMENTS, AND, WITHOUT NOTICE TO OR CONSENT OF ANY OWNER, TO ANNEX ADDITIONAL PROPERTIES INTO THE SUBDIVISION, TO AMEND ANY PLAT AND TO AMEND THIS DOCUMENT AND ANY OTHER "GOVERNING DOCUMENTS", AND (v) SECTION 11.12 SETS FORTH PROCEDURES REGARDING MANDATORY DISPUTE RESOLUTION, INCLUDING A REQUIREMENT THAT A "DISPUTE NOTICE" BE GIVEN TO DECLARANT WITHIN 150 DAYS AND ESTABLISHMENT OF A MAXIMUM TWO YEAR STATUTE OF LIMITATIONS. YOUR RIGHTS TO ASSERT A "DISPUTE" MAY BE LOST IF YOU FAIL TO COMPLY WITH SECTION 11.12.

AFTER RECORDING RETURN TO:

✓  
WILLIAMS, BIRNBERG & ANDERSEN, L.L.P.  
Attn: Lou W. Burton  
2000 Bering Drive, Suite 909  
Houston, Texas 77057-3746

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
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**A RESIDENTIAL SUBDIVISION IN HARRIS COUNTY, TEXAS**

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## EXECUTION / DECLARANT'S ACKNOWLEDGMENT

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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
CLEARWOOD LANDING**

A RESIDENTIAL SUBDIVISION IN HARRIS COUNTY, TEXAS

STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

KNOW ALL BY THESE PRESENTS THAT:

WHEREAS, TREMONT HOMES, INC, a Texas corporation (hereinafter referred to as the "Declarant") is the current sole owner of all that certain real property located in Harris County, Texas, as more particularly described in **Section 1.01** hereof; and Declarant desires to create and carry out a general and uniform plan for the improvement, development, maintenance, use and continuation of a residential community on the property as set forth in **Article I** hereof for the mutual benefit of the successors in title to Declarant which property will be conveyed subject to the covenants, conditions, restrictions, liens, charges and easements as herein set forth.

NOW, THEREFORE, in order to carry out a uniform plan for the improvement, development, maintenance, sale and use of the properties within the Subdivision as herein defined, it is hereby declared that all of the properties within the Subdivision shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, charges and liens (sometimes herein collectively referred to as "covenants and restrictions"), all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said properties. These covenants and restrictions shall run with said real property and be binding upon all parties having or acquiring any right, title, or interest in said real property or any part thereof, their heirs, predecessors, successors and assigns, and shall inure to the benefit of each Owner thereof.

**Article I**

**Property Subject to This Declaration**

**SECTION 1.01**      Property Subject to Declaration. The real property which, by the recording of this Declaration, will be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is that certain real property located in Harris County, Texas, more particularly described as follows, to wit:

CLEARWOOD LANDING REPLAT NO. 2, an addition in Harris County, Texas according to the map or plat thereof filed under Clerk's File No. Y801657, Official Public Records of Real Property of Harris County, Texas, and recorded in Clerk's Film Code No. 591161, Map Records of Harris County, Texas.

SECTION 1.02      Annexation of Other Property. Declarant may annex additional real property in to and make same a part of the "Subdivision" (as hereafter defined) by amendment of this Declaration as provided in **Article XI** without the joinder or consent of, or any notice other than as set forth in the next Section to, any Owner or other Person. Any other real property may be annexed only upon approval by Owners of an amendment of this Declaration evidencing the annexation in accordance with applicable provisions of **Section 12.02**.

SECTION 1.03      Notice: Effective Date and Effect of Annexation. Whenever any real property is annexed as provided in **Section 1.02**, the annexation must be evidenced by filing of, and is effective from the date of filing of, the amendment evidencing the annexation in the Official Public Records of Real Property of Harris County, Texas. From and after the date of filing of the amendment evidencing the annexation, the real property covered thereby will be included within the "Subdivision" (as hereafter defined), and thereafter is fully covered by and subject to all terms and provisions of this Declaration (as amended).

## **Article II** **Definitions**

Unless the context otherwise prohibits and in addition to other defined terms set forth herein, the following words and substantive provisions regarding same when used in this Declaration shall apply, mean and refer to the following:

SECTION 2.01      "Architectural Control Committee" or "ACC" means the committee established pursuant to **Article IV** of this Declaration.

SECTION 2.02      "Architectural Guidelines" means all minimum construction and development standards, including as to exterior materials, colors and finishes, landscaping requirements and standards, roofing standards, foundation and other structural requirements, and any other procedural, aesthetic, environmental and/or architectural standards, requirements, limitations, policies and procedures from time to time adopted by the Architectural Control Committee in accordance with **Article IV** hereof, regardless of nomenclature or manner of designation, and may include Rules and Regulations.

SECTION 2.03      "Association" means CLEARWOOD LANDING COMMUNITY ASSOCIATION, INC., a Texas non-profit corporation, to be incorporated for the purposes contemplated by this Declaration, and its successors (by merger, consolidation or otherwise) and assigns.

SECTION 2.04      "Board" or "Board of Directors" means the Board of Directors of the Association.

SECTION 2.05      "Builder" means (i) an Owner other than Declarant who acquires any Lot for purposes of "completion of the initial sale" of the Lot, and (ii) any other Person, whether or not an Owner, who undertakes construction of any improvement, including a residence or any other Regulated Modification, upon any Lot until as to each Lot completion of the initial sale of the Lot (see also **Section 11.03**).

SECTION 2.06            "Bylaws" means the Bylaws of the Association, as from time to time amended in accordance with applicable provisions of the Bylaws.

SECTION 2.07            "City" means the City of Houston, Texas, and any other governmental authority with jurisdiction as to the subject matter to which the term refers in the context in which the term is used.

SECTION 2.08            Subject to **Section 11.05** hereof, "Community Properties" means:

2.08.1 all common areas so designated herein or by a Plat intended for the common use of Owners, including without limitation Restricted Reserves "A" through "D", inclusive, as so designated on the Initial Plat;

2.08.2 all Subdivision Facilities; and

2.08.3 all other properties, real or personal, conveyed to or dedicated to the use of, or otherwise acquired by the Association for the common use, enjoyment or benefit of, the Association, together with all improvements thereon and appurtenances thereto.

SECTION 2.09            "Declarant" means TREMONT HOMES, INC, a Texas corporation, and its successors and assigns if such successors or assigns:

2.09.1 acquire all of the then remaining undeveloped or developed but previously unoccupied or unsold Lots within the Subdivision from Declarant for purposes of development and resale; or

2.09.2 are expressly designated in writings by Declarant as a successor or assign of Declarant hereunder, in whole or in part.

SECTION 2.10            "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements for Clearwood Landing, and all lawful amendments thereto.

SECTION 2.11            "Development Period" means the period of time beginning on the date of recordation of this Declaration in the Official Public Records of Real Property of Harris County, Texas, and ending on the earlier occurrence of either of the following events:

2.11.1 five (5) years after the later to occur of the date of recordation in the Official Public Records of Real Property of Harris County, Texas, of (a) this Declaration, or (b) the last notice of annexation of real property by Declarant as permitted by **Section 1.02** which is filed of record not later than five (5) years after the date of recordation of this Declaration; or

2.11.2 upon the date of filing in the Official Public Records of Real Property of Harris County, Texas of Declarant's notice of termination of the Development Period, provided that at any time prior to complete termination of the Development Period Declarant may file one or more

statements of limited termination of the Development Period to apply only to the specific functions, rights and/or responsibilities as stated therein.

SECTION 2.12        "Emergency" means (i) any condition which may or does cause an imminent risk of infestation by termites, rats or other vermin, and any other health, fire or safety hazard, (ii) any condition which may or does cause waste of water or water infiltration to another Lot, Community Properties and any improvements located thereon, and (iii) any other thing, condition or exigent circumstances which may or does present an imminent risk of harm or damage to a Lot, Community Properties or any improvements thereon or to any Owners or occupants thereof. The determination of the Board, the ACC or their Related Parties that an emergency exists is final.

SECTION 2.13        "Governing Documents" means all documents and applicable provisions thereof regarding the use, maintenance, repair, replacement, modification or appearance of any properties within the Subdivision, including each Lot, or any rights, responsibilities or obligations of any Owners pertaining thereto or to the Association, ACC or Declarant, including without limitation this Declaration, the Bylaws and Articles of Incorporation of the Association, Rules and Regulations, Architectural Guidelines, all written decisions and resolutions of the ACC and Board, and all lawful amendments to any of the foregoing.

SECTION 2.14        "Lot" means any of the numbered plots of land shown upon any Plat upon which a single family residence is, or may be, built. The term "Lot" does not include Community Properties, and does not include commercial or other reserves so designated by a Plat, if any.

SECTION 2.15        "Member" means every Person who is an Owner and holds a membership in the Association. Every Member which is not a natural person must designate a representative of such entity who is a natural person as provided in **Section 3.03**.

SECTION 2.16        "Owner" means, whether one or more Persons:

2.16.1 the owner according to the Official Public Records of Real Property of Harris County, Texas, whether one or more Persons, of the fee simple title to a Lot, including any mortgagee or other lien holder who acquires such ownership through judicial or non-judicial foreclosure or proceedings in lieu thereof, but excluding any Person holding a lien or other encumbrance, easement, mineral interest or royalty interest burdening title or otherwise having an interest merely as security for the performance of an obligation; and

2.16.2 as to an executory contract for conveyance until fee simple legal title is conveyed of record to the purchaser and notwithstanding any provisions in the contract to the contrary (i) the seller if the contract or notice thereof is not filed of record in which case the purchaser will be deemed a lessee and not an Owner or Member for purposes of the Governing Documents, and (ii) the seller and the purchaser if the contract is filed of record in which case the seller and purchaser are deemed to be joint Owners ("filed of record" herein meaning filed in the Official Public Records of Real Property of Harris County, Texas).

SECTION 2.17      "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other entity.

SECTION 2.18      "Plat" means the initial map or plat of the Subdivision as described in **Section 1.01** which initial map or plat is sometimes herein referred to as the "Initial Plat", all maps or plats of properties made a part of the Subdivision as provided in **Article I**, if any, hereafter filed in the Map Records of Harris County, Texas, and all lawful modifications, amendments and/or replats of any of the foregoing.

SECTION 2.19      "Prevailing Community Standards" means those standards of aesthetics, environment, appearance, architectural design and style, maintenance, conduct and usage generally prevailing in the Subdivision as reasonably determined by the Board or ACC at any given pertinent time and from time to time, including as to each particular Regulated Modification and each other matter or circumstance considered as of the date of the evaluation **(i)** prevailing standards as to harmony and compatibility with surrounding aesthetics, appearance and patterns of maintenance and use, harmony and compatibility with surrounding buildings, structures and other improvements, and harmony and compatibility with surrounding grades, topography, finished ground elevations, locations, colors, finishes, styles, workmanship, type and quality of materials and designs, and **(ii)** compliance with this Declaration and other applicable Governing Documents, and with applicable governmental laws, ordinances and regulations.

SECTION 2.20      "Regulated Modification" means (without implication that any particular matter is permitted or prohibited by this Declaration and without limitation as to **Article IV** hereof) the commencement, placement, construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, improvement, thing or device, and any usage thereof, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, grades, topography or any other Prevailing Community Standards generally prevailing in the Subdivision as of the date of establishment of the Regulated Modification, excluding any such matters and activities conducted wholly within the interior of a residence which do not effect the exterior appearance of the residence or an adjacent or area residence, structure or improvement, and excluding any such matters or activities conducted by the Association as to Community Properties, but including by way of illustration and not of limitation:

2.20.1 any building, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, swimming pool, clothes lines, radio or television antenna, satellite dish, microwave and similar systems, fence, wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters (including any mobile home) or any other temporary or permanent modification or alteration;

2.20.2 any material change to the design or appearance of the exterior of any residence or garage upon any Lot, or to any other permitted outbuilding, including without limitation any change in the style, color, quality, grade or appearance of exterior brick, siding, shingles or other roof materials, and windows and doors (including garage doors, fixtures and fenestrations);

2.20.3 any demolition of a residence or garage upon any Lot, the approval of which may be conditioned upon reconstruction in accordance with approval of plans and specification prior to demolition;

2.20.4 any change to the interior of a residence, garage and any other permitted outbuilding which in the sole opinion of the ACC materially affects the exterior appearance thereof; including without limitation of the foregoing any demolition of the single family residence or garage located on any Lot;

2.20.5 an excavation, fill, ditch, diversion, dam, drainage system or other thing or device which affects or alters the flow of surface or subsurface waters to, from, upon or across any Lot or any other portion of the Subdivision, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel to, from, upon, under or across any Lot or any other portion of the Subdivision;

2.20.6 any change in the grade of any Lot or any other portion of the Subdivision, and any similar disturbance to the surface of the land within the Subdivision;

2.20.7 any erosion control system or devices permitted or required as to any Lot or any other portion of the Subdivision; and

2.20.8 any other building, structure, improvement, thing or device, and any activities related thereto and any usage thereof, as specified from time to time by applicable Architectural Guidelines, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the Subdivision.

SECTION 2.21        "Related Parties" means and applies as follows:

2.21.1 Owners and Tenants. Tenants of each Owner are Related Parties of that Owner, and with respect to each such Owner and each such tenant, Related Parties of each include (i) their respective family and other household members (including in particular but without limitation all children and other dependents), (ii) their respective guests, invitees, servants, agents, representatives and employees, and (iii) all other Persons over which each has a right of control or under the circumstances could exercise or obtain a right of control.

2.21.2 Association, ACC and Declarant. Related Parties of the Association, ACC and Declarant include their respective officers, directors, partners, co-venturers, committee members, servants, agents, representatives and employees regarding all acts or omissions related to any of the foregoing representative capacities.

SECTION 2.22        "Rules and Regulations" means the policies and procedures from time to time adopted by the Board of Directors regulating the maintenance, operation, use or occupancy of the Subdivision, including the Lots and Community Properties, in accordance with **Article VII** hereof, regardless of nomenclature or manner of designation, and may include Architectural Guidelines.

SECTION 2.23      "Street" means an open way to be used primarily for common vehicular travel, whether public or private, and regardless of whether designated as a street, road, lane, common drive, common driveway, shared drive, shared driveway, private access easement or similar nomenclature.

SECTION 2.24      "Subdivision" means the residential community as more particularly described in **Section 1.01** hereof, and any other real property subjected to this Declaration as herein provided from time to time.

SECTION 2.25      "Subdivision Facilities" means all facilities and services built, installed, maintained, operated or provided by the Association for the general benefit of the Subdivision, INCLUDING WITHOUT LIMITATION BUT WITHOUT ANY REPRESENTATION, WARRANTY OR IMPLICATION WHATSOEVER THAT ANY PARTICULAR FACILITIES OR SERVICES WILL BE BUILT, INSTALLED, MAINTAINED, OPERATED OR PROVIDED, AND SUBJECT TO THE RIGHT OF DECLARANT DURING THE DEVELOPMENT PERIOD, AND OF THE BOARD THEREAFTER, FROM TIME TO TIME AND AT ANY TIME TO ADD TO, MODIFY OR DISCONTINUE ANY PARTICULAR FACILITY OR SERVICE:

2.25.1    all Subdivision entry esplanades and entry and other identification monuments, if any;

2.25.2    any patrol or access limiting type services, structures or devices specifically obtained and maintained by the Association for such purposes, including without limitation any controlled access gates, guardhouses and related structures or devices;

2.25.3    all mail box banks, and/or water meters, water meter banks or water meter vaults and/or electrical meter banks, and similar facilities or devices so designated by Declarant as permitted by **Section 9.06**, if any, including entry, access and exit areas regarding same;

2.25.4    any garbage or recycling collection, cable or satellite television, utilities or other services provided by or through the Association, and any structures or devices related thereto; and

2.25.5    detention pond and storm water pollution control, filtration and related devices and facilities, and any other common drainage facilities as provided in **Section 8.04.8**; and

2.25.6    any other facilities or services as from time to time so designated by Declarant or the Board.

### Article III Clearwood Landing Community Association, Inc.

SECTION 3.01      Organization. The Association will be organized and formed as a non-profit corporation under the laws of the State of Texas. The Association has full power, authority

and standing to enforce all provisions of the Governing Documents. The principal purposes of the Association are the collection, expenditure and management of the funds and financial affairs of the Association, enforcement of all provisions of the Governing Documents, providing for maintenance, preservation and architectural control within the Subdivision, the providing of such Subdivision Facilities as herein permitted or required, and all other acts and undertakings reasonably incident to any of the foregoing or in furtherance thereof as determined in the sole good faith opinions of the Board of Directors or Members.

SECTION 3.02      Board of Directors. The Association acts through a Board of Directors which manages the affairs of the Association as specified in this Declaration, the Bylaws and other applicable Governing Documents. Unless otherwise expressly required by law or other applicable provision of the Governing Documents, the Board of Directors shall exercise and have all rights, powers, authority and responsibilities of the Association. The Board is specifically authorized to compromise and settle any and all claims, demands, liabilities and causes of action whatsoever held by or asserted against the Association upon such terms and conditions as the Board may determine, and the decisions of the Board as to any of the foregoing are final and conclusive. UNTIL THE DATE OF TRANSFER OF DECLARANT CONTROL AS PROVIDED IN SECTION 11.04, DECLARANT WILL APPOINT ALL MEMBERS OF THE BOARD OF DIRECTORS, AND IS ENTITLED TO REMOVE AND REPLACE ANY OF SAME, AND IN ALL OTHER RESPECTS TO EXERCISE ALL RIGHTS AND AUTHORITY OF THE ASSOCIATION AS SET FORTH IN THIS DECLARATION AND ALL OTHER GOVERNING DOCUMENTS.

SECTION 3.03      Membership.

3.03.1 Owners as Members. Every Owner must be and is a Member of the Association, and as such is subject to and shall have such rights, responsibilities and obligations as set forth in this Declaration and other applicable Governing Documents. The Association is entitled to rely on the Official Public Records of Real Property of Harris County, Texas in determining such status as an Owner, and may require submission to the Board of appropriate certified copies of such records as a condition precedent to recognition of status as an Owner. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate any Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Memberships shall be appurtenant to and may not be separated from ownership of any Lot, and shall automatically pass with the title to the Lot.

3.03.2 When Member Required to Designate Representative; Effect. Each Member which is not a natural person is required to designate one natural person to act on such Member's behalf in accordance with applicable provisions of the Bylaws and as otherwise determined in the sole opinion of the Board. A designation as aforesaid fully authorizes the designated representative to bind the designating party as to all matters. Any such representative may serve as a Director in accordance with the Bylaws. The foregoing shall not apply to Declarant during the Development Period who may act through any of its officers or employees as Declarant may direct. The provisions of this Section do not apply to Declarant who may act through any of its officers or employees as Declarant may direct.

3.04.1 Development Period. During the Development Period there will be two classes of membership entitled to voting rights in the Association which are as follows:

(a) Class A: All Members of the Association other than the Declarant are Class A Members. DURING THE DEVELOPMENT PERIOD, CLASS A MEMBERS HAVE NO VOTING RIGHTS WHATSOEVER EXCEPT AS PROVIDED IN **SECTION 11.04.**

(b) Class B: Class B Members are Declarant. DURING THE DEVELOPMENT PERIOD DECLARANT SHALL HAVE ONE VOTE FOR EACH LOT OWNED AND SHALL ADDITIONALLY HAVE ONE "AT LARGE" VOTE.

3.04.2 Post-Development Period. Upon termination of the Development Period, Declarant's one "at large" vote will automatically terminate and any remaining Class B membership will automatically convert to Class A membership. Thereafter there will be only one class of voting membership, and the Owner of each Lot, whether one or more, will be entitled to one vote on each matter coming before the membership.

3.04.3 Multiple Owners. When more than one Person holds an ownership interest in a Lot, all such Persons are Members, but in no event will they be entitled to more than one vote with respect to each particular Lot owned. The single vote, approve, or consent of such joint Owners must be cast or given in accordance with the decision of a majority, or if such joint Owners cannot reach a majority decision, then none of the joint Owners will be permitted to vote, approve, or consent as to any such matter upon which a majority decision cannot be reached. The vote, approval or consent of any single Owner from among such joint Owners is conclusively presumed to be cast or given in accordance with the decision of the majority of the joint Owners and with their full authority.

3.04.4 Cumulative Voting Prohibited. Cumulative voting is prohibited as to any matter placed before the membership for a vote, including election of Directors.

3.04.5 Suspension of Voting Rights. Voting rights of any Member may or will be suspended for breach of the Governing Documents as provided herein or in the Bylaws or Articles of Incorporation, including without limitation, suspension as provided in **Section 5.08.1.**

SECTION 3.05 Inspection by Members of Books and Records. Subject to protection of privileged and confidential communication, rules for inspection and other exclusions as set forth in the Bylaws, every Member of the Association, on written demand stating the purpose of the demand, has the right to examine and copy, in person or by agent, accountant, or attorney, at any reasonable time, for any proper purpose, the books and records of the Association relevant to that purpose, at the expense of the Member.

3.06.1 General. Except for intentional and willful misconduct, knowing violation of the law, or as otherwise required by the Texas Non-Profit Corporation Act (including Article 1396-2.22A thereof, as amended), no officer or Director of the Association is liable to the Association or its Members, and the Association and its Related Parties are not liable to any Member, for monetary damages or otherwise for: (i) any act or omission of an officer or Director within their official capacity; or (ii) any act or omission by or on behalf of the Association within the scope of its purposes. The Association shall indemnify and keep indemnified, and hold harmless, any current or former officer or Director to the fullest extent necessary to accomplishment of the foregoing and to the fullest extent otherwise allowed by law, and hold any such officer or Director harmless from and against all claims, demands, suits, judgements, court costs, attorney's fees attachments and all other legal action as contemplated thereby. All provisions of this **Section 3.06** also apply to all Association committees and members thereof (current or former), including the Architectural Control Committee.

3.06.2 Security Services. The Association may from time to time engage in activities or provide Subdivision Facilities, including activities, devices or services intended to or which may have the effect of enhancing safety or security, including activities, devices or services limiting or controlling Subdivision access, or providing of patrol services or otherwise monitor activities within the Subdivision (including Community Properties), and may from time to time provide information through newsletters or otherwise regarding same (all such matters and all activities, services or devices of a similar nature or incident thereto herein referred to as, "*Security Services*"). Without limitation of **Section 3.06.1**, each Owner and their tenants covenant and agree with respect to any and all Security Services provided directly or indirectly by the Association as follows:

(a) SECURITY IS THE SOLE RESPONSIBILITY OF LOCAL LAW ENFORCEMENT AGENCIES AND INDIVIDUAL OWNERS AND THEIR TENANTS, AND THEIR RESPECTIVE RELATED PARTIES. Security Services may be provided at the sole discretion of the Board of Directors. The providing of any Security Services at any time will in no way prevent the Board from thereafter discontinuing, or from temporarily or permanently modifying, terminating or removing, any Security Services, in whole or in part.

(b) Any third party providers of Security Services are independent contractors, the acts or omissions of which are not imputable to the Association or its Related Parties.

(c) Providing of any Security Services may never be construed as (i) an undertaking by the Association or its Related Parties to provide personal security as to any Owner, tenant or their Related Parties, or as to any other Person, or (ii) a representation or undertaking that any Security Services will be continued, or (iii) a representation, guarantee or warranty that the presence of any Security Service will in any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause. WITHOUT LIMITATION OF THE FOREGOING, DECLARANT, THE ASSOCIATION AND THEIR RELATED PARTIES SHALL NOT HAVE ANY DUTY WHATSOEVER TO WARN, ADVISE

OR INFORM ANY OWNER, TENANT OR THEIR RELATED PARTIES AS TO CRIMINAL CONDUCT OF ANY KIND OR AS TO ANY OTHER MATTERS REGARDING OR RELATING TO SECURITY SERVICES, PAST OR PRESENT.

(d) Declarant, the Association and their Related Parties are not liable for, and each Owner, their tenants, and their respective Related Parties, must indemnify, keep indemnified and hold Declarant, the Association and their Related Parties harmless at all times from, any injury, loss or damages whatsoever, including without limitation any injury or damages caused by theft, burglary, trespass, assault, vandalism or any other crime, to any Person or property arising, directly or indirectly, from the providing or failure to provide any Security Services, or the discontinuation, modification, disruption, defect, malfunction, operation, repair, replacement or use of any Security Services.

(e) DECLARANT, THE ASSOCIATION AND THEIR RELATED PARTIES, HAVE NO DUTY, OBLIGATION OR RESPONSIBILITY OF ANY KIND WHATSOEVER TO WARN, ADVISE OR IN ANY OTHER MANNER INFORM ANY OWNERS, TENANTS, OR THEIR RELATED PARTIES, OR ANY OTHER RESIDENTS OR OCCUPANTS OF ANY LOT OR COMMUNITY PROPERTIES, OR ANY LAW ENFORCEMENT AGENCY, OR ANY OTHER PERSON AS TO ANY ALLEGED, SUSPECTED OR KNOWN CRIMINAL ACTIVITIES OF ANY KIND, CRIMINAL HISTORY OR BACKGROUND OF ANY PERSON, OR CRIMINAL INVESTIGATIONS BY LAW ENFORCEMENT AGENCIES OR BY ANY OTHER PERSON (ALL SUCH MATTERS, ACTIVITIES AND INVESTIGATIONS HEREIN REFERRED TO AS "CRIMINAL MATTERS"), regardless of whether the Criminal Matters involve the Subdivision, other areas in the vicinity or any other place or lands. The Association may (but has no obligation to) from time to time disclose and/or transmit information concerning Criminal Matters to Owners, tenants, and any other occupants of Lots and/or any Community Properties, to any law enforcement agencies, and to any other Person which the Association's officers, directors, agents, employees and other Related Parties in their sole discretion deem advisable. Each Owner and tenant by acceptance of any right, title or interest in any Lot, and every Owner, tenant and occupant of a Lot or any Community Properties by virtue of such occupancy, hereby consents, on their behalf and on behalf of their respective Related Parties, and on behalf of all other Persons coming upon a Lot or any Community Properties at their invitation, or with their consent or permission, to any such disclosure and/or transmittal of information. Any such disclosure and/or transmittal of information shall in no way be deemed an undertaking to do so in the future, either as to the Criminal Matters then involved or as to any other current or future Criminal Matters. All other provisions of this Section apply to any disclosure and/or transmittal of information, and to any failure to disclose and/or transmit information, concerning Criminal Matters, including in particular but without limitation, the provisions of **Section 3.06.2(d)** regarding the indemnity obligations of Owners, their tenants and their respective Related Parties.

3.06.3 Liability Arising From Conduct of Owners. Each Owner, their tenants, and their respective Related Parties must indemnify and keep indemnified, and hold harmless, Declarant, the Association and their Related Parties from and against all claims, damages, suits, judgments, court costs, attorney's fees, attachments and all other legal actions caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective Related Parties.

3.06.4 Subsequent Statutory Authority. If the Texas Non-Profit Corporation Act, Texas Miscellaneous Corporation Laws Act, Chapter 84 of the Texas Civil Practice and Remedies Code or any other applicable statute, state or federal, is construed or amended to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this **Section 3.06**, then liability will be eliminated or limited and right to indemnification will be expanded to the fullest extent permitted by such construction or amendment.

3.06.5 No Impairment. Any repeal, amendment or modification of this **Section 3.06** may not adversely affect any rights or protection existing at the time of the amendment.

## **Article IV**

### **Architectural Control Committee**

#### **SECTION 4.01      Organization; Compensation.**

4.01.1 General. There is hereby established an Architectural Control Committee (herein sometimes referred to as the "ACC"). The Board of Directors shall act as the ACC unless an executive committee is appointed by the Board of Directors to act as the ACC as permitted by the next Section. The act of a majority of the members of the ACC constitutes an act of the ACC; provided, THE ACC MAY FROM TIME TO TIME DESIGNATE ANY ONE OF ITS MEMBERS AS ITS DESIGNATED REPRESENTATIVE TO ACT IN ITS STEAD.

4.01.2 ACC Executive Committee. If an executive committee is appointed by the Board of Directors to act as the ACC, then the provisions of this Section apply. Such executive committee must be composed of three or five persons. A majority of such persons must at all times also be Directors, but the remaining persons need not be Directors or Members. All such persons will serve at the discretion of the Board, and all of its decisions are subject to review and modification by the Board except as herein otherwise expressly provided. In the event of the death or resignation of any person serving on the ACC, the Board of Directors shall designate a successor or successors who will have all of the authority and power of his or their predecessor(s). Until such successor has been appointed, the remaining member or members have full authority to exercise all rights, duties and powers of the ACC.

4.01.3 Compensation. No person serving on the ACC is entitled to compensation for services performed; provided, the ACC may employ one or more architects, engineers, attorneys or other consultants, as approved by the Board of Directors, to assist the ACC in carrying out its duties, and the Association shall pay such consultants for services rendered to the ACC. Members of the ACC may also be reimbursed for reasonable expenses in such manner and amounts as may be approved by the Board of Directors.

#### **SECTION 4.02      Function and Powers.**

4.02.1 Submission of Plans Required. No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Lot or within any part of the Subdivision unless and until complete plans and specifications covering all aspects of the

Regulated Modification have been submitted to and approved in writing by the ACC as to compliance with applicable Architectural Review Criteria as set forth in **Section 4.03**. One complete set of plans and specifications must be submitted with each request for approval unless a greater number is required by applicable Architectural Guidelines. Any plans and specifications to be submitted must specify, as applicable and in such detail and form as the ACC may reasonably require:

(a) the location upon the Lot or within the Subdivision where the Regulated Modification will occur or be placed;

(b) the dimensions, nature, kind, shape, height, and color scheme of and all materials to be used in connection with the Regulated Modification;

(c) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking and landscaping details;

(d) intended uses; and

(e) such other information, plans or specifications as may from time to time be required by applicable Architectural Guidelines, or in specific instances as may be requested or required by the ACC, which in the sole opinion of the ACC is reasonably necessary to fairly and fully evaluate all aspects of the proposed Regulated Modification.

4.02.2 Architectural Guidelines. The ACC may, from time to time, adopt, modify and delete such reasonable Architectural Guidelines applicable to the Subdivision, including Lots and Community Properties, as it deems appropriate to maintain or reasonably enhance Prevailing Community Standards of the Subdivision at the time of adoption. Such authority includes, but is not limited to, the right to specify:

(a) specific procedural guidelines for submission of requests for, and plans, specifications and other information necessary to obtain, ACC approval, and procedural requirements for the conducting of all activities necessary to accomplish same;

(b) the amount and manner of payment of any fees or charges reasonably anticipated to cover administrative costs, fees for architectural, engineering, construction, legal or other expert advice or consultation, and all other costs and expenses in connection with review and evaluation of an application (such costs and expenses herein referred to as the "Architectural Review Fee");

(c) specific types of Regulated Modifications which may be commenced, constructed, erected or maintained upon any Lot or anywhere within the Subdivision, as well as specific types of Regulated Modifications which will not be permitted upon any Lot or within the Subdivision;

(d) a limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of Regulated Modifications;

(e) minimum setbacks (except that minimum setbacks as shown on the Plat will control if in conflict with Architectural Guidelines);

(f) the location, height, and extent of fences, walls or other screening devices, walk, decks, patios or courtyards;

(g) the orientation of structures and landscaping with respect to streets, walks, driveways and structures on adjacent properties; and

(h) in general, all requirements reasonably deemed necessary to maximize compliance with Architectural Review Criteria as set forth in **Section 4.03**.

#### 4.02.3 Manner and Effect of Adoption of Architectural Guidelines.

(a) No prior notice of any kind to any Owner or any other Person need be given as to adoption or amendment of Architectural Guidelines. The ACC shall provide applicable Architectural Guidelines to Owners upon request.

(b) Architectural Guidelines shall be of equal dignity with, and shall be enforceable in the same manner as, the provisions of this Declaration, provided: (a) such Architectural Guidelines shall not be deemed a waiver, modification, or repeal of any of the provisions of this Declaration; and (b) such Architectural Guidelines shall not be enacted retroactively except that all repairs, modifications or maintenance performed subsequent to adoption shall be performed in such manner as to bring the Regulated Modification, so far as practicable, in compliance with all then applicable Architectural Guidelines.

4.02.4 Variances. The Board, by vote of two-thirds (2/3rds) of all members of the Board, may grant specific variances to Architectural Guidelines and Rules and Regulations, and to the architectural and use restrictions set forth in **Articles VII and VIII** of this Declaration as herein provided. A variance may be granted only with respect to specific instances upon written request therefor, is not binding with respect to any other request for a variance whether or not similar in nature, and does not constitute a waiver, modification or repeal of any of the provisions of this Declaration or other Governing Documents except for the limited purpose of and to the extent of the specific variance expressly granted. A variance may be granted only upon specific findings (a) that the variance is necessary due to (i) unusual circumstances which are reasonably beyond the control of the applicant to mitigate or rectify, or (ii) that other circumstances, such as topography or natural obstructions, exist which the ACC determines reasonably requires a variance, or (iii) that there is other good cause as determined by the ACC for granting of a variance, and (b) that the granting of a specific variance will not materially and adversely affect the architectural, aesthetic or environmental integrity of the Subdivision or the scheme of development therein. EXCEPT AS OTHERWISE EXPRESSLY STATED IN A VARIANCE, BUT OTHERWISE WHETHER OR NOT SO STATED IN A VARIANCE, EACH VARIANCE SHALL EXTEND ONLY FOR THE PERIOD OF TIME DURING WHICH AND TO THE EXTENT THAT THE CIRCUMSTANCES THAT FORMED THE BASIS THEREFOR CONTINUE TO EXIST. THE BOARD RETAINS FULL AUTHORITY AS TO ANY VARIANCE AT ANY TIME TO TERMINATE OR MODIFY

SAME IN ACCORDANCE WITH ANY SUCH CHANGE IN CIRCUMSTANCES. Variances are not assignable and do not pass to any subsequent Owner or tenant unless otherwise expressly stated in the variance. The foregoing does not apply to permanent structures or fixtures which are constructed and maintained in accordance with the applicable variance except as otherwise expressly stated in the applicable variance. The good faith determinations of the ACC that the conditions for granting of a variance have or have not been met and as to any change in circumstances as aforesaid are final.

SECTION 4.03      Architectural Review Criteria. The ACC will evaluate all submitted applications for ACC approval on the individual merits of the particular application, and based on evaluation of the compatibility of the proposed Regulated Modification with Prevailing Community Standards as of the date of submission of an application. The ACC must also use reasonable efforts to achieve consistency in the approval or disapproval of specific types of Regulated Modifications. To this end, consideration will be given to (but the ACC is not bound by) similar applications for architectural approval and the decisions and actions of the ACC with regard thereto.

SECTION 4.04      Submission and Response; Failure of ACC to Act; ACC Decisions.

4.04.1 Submission and Response. Applications for ACC approval and requests for variances are deemed submitted to the ACC only upon actual receipt. Lessees shall file applications or requests for variance in the name of their lessors, and shall also join therein. Where more than one Owner applies for approval or a variance, the delivery or mailing of a response to any one of the Owners as aforesaid constitutes notice to all such Owners. All responses of the ACC are deemed given when delivered to the applicant or when deposited in the United States mail, with postage prepaid and properly addressed to the applicant. If the ACC fails to respond to an application for approval within thirty days after receipt of a properly submitted and complete application, then no further compliance with this Article is required regarding the applicable application. If the ACC fails to respond to a request for variance within thirty days after receipt of the request, then the request is automatically denied.

4.04.2 ACC Decisions. The ACC may fully approve any request for approval made pursuant to this **Article IV**, or the ACC may approve any such request subject to compliance with conditions stated in a conditional approval. A conditional approval is effective only upon full compliance with the stated condition(s). The ACC may disapprove any request for approval for any of the following reasons: (i) failure to comply with any applicable Architectural Review Criteria as set forth in **Section 4.03**; (ii) lack of sufficient information, plans or specifications as reasonably determined by the ACC to enable the ACC to fairly and fully evaluate the proposed Regulated Modification or the uses thereof; or (iii) failure to include any information, plans or specifications required by applicable Governing Documents, or as may be reasonably requested by the ACC. THE ACC MAY ALSO REQUIRE AS A CONDITION FOR APPROVAL (REGARDLESS OF WHETHER OR NOT ANY OTHER CONDITIONS APPLY) THAT THE APPLICANT RETURN TO THE ACC A SIGNED AGREEMENT ACKNOWLEDGING THE APPLICANT'S OBLIGATIONS REGARDING THE APPROVAL AND ANY OTHER CONDITIONS APPLICABLE THERETO. The ACC shall notify the applicant of its decisions in writing. Except for compliance with this Article, no action or omission of the ACC shall otherwise constitute a

waiver as to any other provisions of this Declaration or preclude by estoppel or otherwise full enforcement thereof.

## SECTION 4.05      Implied Conditions of Approval.

4.05.1 Applicability. Unless expressly waived or modified by the ACC in writing and except as otherwise provided as to initial construction of a single family residence upon a Lot as set forth in **Section 8.04** hereof, each and every approval or conditional approval by the ACC of a Regulated Modification is subject to all provisions of this **Section 4.05** whether or not stated in the approval or conditional approval.

4.05.2 Commencement and Completion of Work. Work on each Regulated Modification must commence within thirty days after ACC approval or conditional approval is given. Upon commencement, the work must be prosecuted diligently to obtain completion of all work as reasonably soon thereafter as possible, and in any event the work must be substantially completed within sixty days. The foregoing sixty-day period will be extended in the event of and only for the duration of delays due to strikes, war, acts of God or other good cause beyond the reasonable control of the Owner as determined in the sole opinion of the ACC. **Section 8.04.2** and not this **Section 4.05.2** applies to initial construction of a single family residence upon a Lot.

4.05.3 Equipment and Materials. No equipment, materials or other things or devices necessary to completion of a Regulated Modification may be placed or stored upon a Lot or within the Subdivision any longer than necessary prior to, and in no event more than ten days prior to, commencement of the work on the Regulated Modification. All such equipment, materials, things and devices must be placed within the property lines of the affected Lot, and so far as practical must be stored in locations not visible from any street, or from any other Lot or the Community Properties. Upon completion of the work on the Regulated Modification, any such equipment, materials, things or devices not incorporated in the Regulated Modification must be promptly removed from the Lot and Subdivision and in any event within five business days. **Section 8.04.4** regarding storage of materials and not this **Section 4.05.3** applies to initial construction of a residence upon a Lot.

4.05.4 New Construction Materials Required. Only new construction materials may be used in construction of any Regular Modification except as otherwise approved by the ACC (such as the use of used brick).

4.05.5 Drainage. Each Owner is wholly and solely responsible for compliance with the provisions of **Section 8.04** regarding drainage, including the obligation to comply with all requests or requirements of the ACC as authorized by said Section, and is liable for all consequences of any failure to comply.

4.05.6 Compliance With Plans. All work on a Regulated Modification must proceed in strict compliance with the application and plans and specifications approved by the ACC, all conditions stated by the ACC, if any, and all applicable Governing Documents and governmental rules, regulations and ordinances.

4.05.7 Permit Requirements. Applicants shall be solely responsible for full compliance with all permitting requirements of the City and all other governmental agencies having jurisdiction, and shall apply for and diligently pursue obtaining of all required permits promptly after ACC approval or conditional approval is received. The ACC is expressly authorized to deny approval pending, or condition approval upon, prior compliance with applicable permitting requirements or upon receipt of certification satisfactory to the ACC that no such permitting requirements exist.

4.05.8 Compliance With Laws and Governing Documents. Each applicant is solely responsible for insuring that every Regulated Modification, as proposed and as completed, is in compliance with applicable governmental laws, ordinances and regulations (including building codes, and permit and licensing requirements), and with applicable requirements of the Governing Documents.

SECTION 4.06 Inspection Rights. Upon reasonable notice (oral or written), any member of the ACC or the Board of Directors or their designated representatives may enter upon a Lot without liability for trespass or otherwise for purposes of confirming compliance with any applicable provisions of the Governing Documents regarding a proposed Regulated Modification, the work in progress, and the completed Regulated Modification. Except for gross negligence, willful misconduct or knowing violation of the law, the Owner of any Lot so inspected by the ACC is not liable for any personal injuries, death or property damage of or to any person or entity performing such inspection.

SECTION 4.07 Records of Architectural Control Committee. The ACC is not required to maintain records of any of its meetings. The ACC must keep and maintain records evidencing the final decision(s) of the ACC regarding all requests for approval and requests for variance for not less than four years. The ACC must also maintain a record of all current Architectural Guidelines, and must provide copies to Owners upon written request and at the Owner's expense.

SECTION 4.08 Liability of Architectural Control Committee. Except as provided in **Section 3.06**, neither the Association nor the ACC, nor their respective Related Parties are liable to any Owner, the Owner's tenants, the Related Parties of either, or to any other Person for any actions or failure to act or in connection with any approval, conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgement, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Architectural Guidelines may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship or suitability for any purpose of the Regulated Modification. The provisions hereof are cumulative of the provisions of **Section 3.06**.

**Article V**  
**Maintenance Fund**

**SECTION 5.01**

**Obligation for Payments to Maintenance Fund.**

5.01.1 Establishment of Maintenance Fund. There is hereby established a Maintenance Fund in to which will be paid all assessments as provided for herein. The Board is responsible for the collection, management, control and expenditure of the Maintenance Fund which must be deposited in accounts specifically designated for the Association as from time to time designated by the Board.

5.01.2 Types and Obligation for Payment of Assessments. Each Owner of a Lot, by acquisition of any rights, title or interest therein or acceptance of an executory contract of conveyance, or a deed or other instrument of conveyance therefore, whether or not so expressed therein, covenants and agrees to pay to the Association regular assessments, special assessments and specific assessments, all as herein set forth.

5.01.3 Purpose of Maintenance Fund. The Maintenance Fund must be used exclusively for the purpose of promoting the recreation, welfare, common benefit and enjoyment of the Owners and occupants of the Subdivision, including the maintenance of all Community Properties (including any maintenance required by the City or other governmental entity), the discharge of all obligations of the Association pursuant to this Declaration and other Governing Documents, and the doing of any other thing necessary or desirable in the opinion of the Board for accomplishment of any of the foregoing, including the establishment and maintenance of reserves for repairs, maintenance, taxes, insurance, and other charges, and the expenditure of funds for the benefit of other properties within the vicinity of the Subdivision if in the judgement of the Board the Subdivision will benefit thereby. The judgement of the Board in establishing any assessments and in the collection, management and expenditure of the Maintenance Fund is final and conclusive.

5.01.4 Personal Obligation; Transferees. In addition to the assessment lien herein established, each assessment is the personal obligation of each Owner of the Lot charged therewith at the time liability for the assessment accrued notwithstanding any subsequent transfer of ownership. Except as to statements of account as provided in **Section 5.01.5** or as to a transferee pursuant to lawful and valid foreclosure of a superior lien as provided in **Section 5.07.3**, each Owner's transferee, whether by purchase, gift, devise or otherwise, and whether voluntary or by operation of law, is also jointly and severally liable for payment of all unpaid assessments owed to the Association at the time of transfer without prejudice to the rights of the transferee to recover from the transferor the amounts paid by said transferee.

5.01.5 Statement of Assessments. Any transferee (or prospective transferee upon presentment of an executed earnest money contract or other writing satisfactory to the Board) shall be entitled to a statement from the Association setting forth all assessments due as of the date of the written request. The request must be in writing, must be addressed to the Association and must be delivered by registered or certified mail, return receipt requested, or by personal delivery with receipt acknowledged in writing. The Board may set a reasonable charge for providing a statement of indebtedness, the payment of which is a condition precedent to the Association's obligation to

provide same. Except for fraud or misrepresentation, the Association is bound by any statement provided pursuant to a proper request as aforesaid. Except for fraud or misrepresentation, if the Association fails to respond to a proper written request for a statement of indebtedness within ten business days after receipt of the request by the Association, and upon submission of a properly executed registered or certified mail return receipt or delivery receipt evidencing receipt of the request by the Association, upon transfer the transferee is not liable for, nor shall the Lot transferred be subject to a lien for, any unpaid assessments against the Lot accruing prior to the date of the written request.

## SECTION 5.02      Administration of Maintenance Fund.

5.02.1 Commencement of Assessments; Accrual. The obligation to pay assessments shall begin on the first day of the calendar month following the date that the first Lot is conveyed by Declarant to an Owner other than Declarant. Regular assessments shall be pro rated based on the number of months remaining in the calendar year in which the obligation to pay assessments begins. Regular assessments accrue (are assessed) on a monthly basis, but are payable as hereafter provided.

5.02.2 Uniform Rates for Regular and Special Assessments. Except as provided in the next subsection regarding Declarant and Builder rates, regular and special assessments on all Lots must be fixed at a uniform rate, and must be determined on a per Lot basis.

### 5.02.3 Declarant and Builder Rates.

(a) Declarant is obligated to pay assessments only as provided in **Section 11.08**. Declarant may also exempt (in whole or in part) any Builder from payment of assessments to the same extent as provided in **Section 11.08** regarding Declarant.

(b) Unless exempted (in whole or in part) as provided in the preceding subsection, each Builder is obligated to pay regular and special assessments at the Construction Period Rate until the first day of the month following termination of the Construction Period. The "Construction Period" begins on the first day of the month following the date of conveyance of the applicable Lot to a Builder and ends on the earlier to occur of (i) the date upon which initial construction of a single family residence is substantially completed and the residence is ready for occupancy as determined in the sole good faith opinion of Declarant during the Development Period or the ACC thereafter, or (ii) one year after the date of conveyance of the applicable Lot. The "Construction Period Rate" is one-half of the full rate of regular and/or special assessment rate otherwise applicable. Upon termination of the Construction Period, the Owner/Builder shall thereafter pay the full rate of assessments. If assessments have been paid in advance upon termination of the Construction Period, the Owner/Builder shall also then pay any additional assessments due by reason of application of the full rate of assessments prorated from the first day of the month following termination of the Construction Period. Once commenced the Construction Period continues to run to termination as aforesaid irrespective of any intervening conveyance to another Builder, but will terminate in the event of reacquisition by Declarant in which case the then applicable Declarant rate again applies and Declarant may restart the Construction Period by reconveyance thereafter to a Builder.

5.02.4 Application of Payments. All payments made by or on behalf of an Owner for assessments (regular, special or specific) are deemed made upon the date of receipt of the payment by the Association or its designated representative. All payments received, including payments received in consequence of judicial or non-judicial foreclosure, will be applied **(i)** first to payment of accrued interest, then to payment of accrued late charges, then to payment of compliance costs (including attorneys fees), and then to payment of all other specific assessments listed in **Section 5.06.1**, **(ii)** then to payment of all special assessments; and **(iii)** finally to payment of all regular assessments. Application within each category shall be on a first in, first out basis.

## SECTION 5.03

### Base Rate and Subsequent Computation of Regular Assessments.

5.03.1 Initial Base Rate of Regular Assessments; Due Dates. The initial full base rate of the regular annual assessment for 2005 per Lot (and continuing during 2005 and thereafter unless and until modified as herein provided) is THREE HUNDRED NINETY-FIVE DOLLARS (\$395.00) per Lot per year. The Board shall have the right to require regular annual assessments be paid semi-annually, quarterly or monthly, in advance (instead of annually). If the Board does so, the semi-annual, quarterly or monthly installments of regular annual assessments, as the case may be, shall be rounded upward to the next dollar, and the regular annual assessment shall be automatically adjusted upward by the amount of such rounding. UNLESS AND UNTIL OTHERWISE DETERMINED BY THE BOARD AS AFORESAID, THE FULL AMOUNT OF REGULAR ANNUAL ASSESSMENTS SHALL BE DUE AND PAYABLE ANNUALLY, IN ADVANCE, ON THE FIRST DAY OF JANUARY OF EACH CALENDAR YEAR.

5.03.2 Subsequent Computation of Regular Assessments. DURING THE DEVELOPMENT PERIOD, DECLARANT IS ENTITLED TO SET AND CHANGE THE ANNUAL RATE OF REGULAR ASSESSMENTS AS PROVIDED IN **SECTION 11.08**. Thereafter, the annual rate of regular assessment per Lot as specified by **Section 5.03.1** may be adjusted from time to time as follows:

(a) The Board shall adopt a budget at least annually to determine sums necessary and adequate to provide for the expenses of the Association for the succeeding twelve month period (including funding of capital, contingency and other reserves). The Board shall set the annual rate of regular assessments based on the budget, and determine whether same will be payable annually, semi-annually, quarterly or monthly. At least thirty days written notice of such determinations must be given to Owners of all Lots if any change is made as to the due dates or amount of the annual rate of regular assessment. THE FOREGOING NOTICE REQUIREMENT DOES NOT APPLY DURING ALL PERIODS OF TIME DURING WHICH A DELINQUENT ASSESSMENT ACCOUNT HAS BEEN TURNED OVER TO AN ATTORNEY FOR PROCEEDINGS TO COLLECT SAME.

(b) Any change in the amount of the annual rate of regular assessment may be disapproved at a special meeting of the Members to be called upon the written and signed petition of the Owners of not less than one-third of the Lots then contained in the Subdivision and the vote to disapprove of the Owners of at least two-thirds of the Lots then contained in the Subdivision voting in person or by proxy at the special meeting. The petition to disapprove must be submitted to the Association not later than the thirtieth day after the date of the notice to Owners

given as required by **Section 5.03.2(a)**. If a petition to disapprove is properly submitted, the Board shall call and conduct the special meeting within sixty days after the date of the notice. Notice of the results of the special meeting must be given to Owners of all Lots not later than the thirtieth day after the date of the special meeting. NOTWITHSTANDING FILING OF A PETITION TO DISAPPROVE AS AFORESAID, ALL OWNERS MUST NONETHELESS PAY ASSESSMENTS IN ACCORDANCE WITH THE NOTICE GIVEN UNDER SECTION 5.03.2(a).

(c) A petition to disapprove fails if either the Owners of two-thirds of the Lots then contained in the Subdivision do not approve the petition or a quorum is not obtained at the applicable special meeting in person or by proxy. If a petition to disapprove is approved, the amount of the annual rate of regular assessment in effect immediately prior to giving of the notice required by **Section 5.03.2(a)** will continue in effect; and in such event the notice of results of the special meeting must advise as to any refund or charge, in accordance with the change in the amount of the annual rate of regular assessment disapproved by Owners. Any such refund or charge is due and payable, without interest, not later than the thirtieth day after the date of the notice setting forth same; provided, in lieu of payment as aforesaid, any refund may be made by credit of same against any delinquent assessments then due or as an advance payment of future assessments.

**SECTION 5.04**      No Waiver or Release. Notwithstanding anything to the contrary herein, the omission or failure for any reason of the Board to adopt a budget or determine an annual rate of regular assessment, or to mail or deliver a notice of an annual rate of regular assessment or due date for payment thereof or any other notice regarding same does not constitute a waiver, modification or release of an Owner's obligation to pay assessments as otherwise herein provided.

**SECTION 5.05**      Special Assessments. In addition to the other assessments authorized herein, including other special assessments authorized by this Declaration, the Board may levy special assessments at any time during each fiscal year for purposes of defraying, in whole or in part, any expenses not anticipated by the budget then in effect, or to replace part or all of any contingency, capital or other reserve fund, or for any other purpose as may be deemed necessary or appropriate by the Board. SO LONG AS THE TOTAL AMOUNT OF SPECIAL ASSESSMENTS IN ANY ONE FISCAL YEAR ALLOCABLE TO EACH LOT DOES NOT EXCEED SIXTY PERCENT (60%) OF THE AMOUNT OF THE REGULAR ANNUAL ASSESSMENT THEN IN EFFECT, THE BOARD MAY IMPOSE THE SPECIAL ASSESSMENT WITHOUT VOTE OR APPROVAL OF ANY OWNER; PROVIDED, AT LEAST SIXTY DAYS WRITTEN NOTICE MUST BE GIVEN TO THE OWNERS OF ALL LOTS OF ANY SUCH SPECIAL ASSESSMENT, AND THE OWNERS MAY DISAPPROVE SAME IN THE MANNER PROVIDED IN **SECTION 5.03.2** FOR DISAPPROVAL OF A CHANGE IN THE ANNUAL RATE OF REGULAR ASSESSMENT. Special assessments allocable to each Lot exceeding the foregoing limitation will be effective only if approved by the Owners of a majority of the Lots then contained within the Subdivision. The approval may be obtained in any manner as provided in **Section 12.02.3** for approval of an amendment of this Declaration. Special assessments are payable as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

5.06.1 Types. Specific assessments must be assessed against individual Lots and the Owner(s) thereof at the time liability for same accrues as follows:

(a) Interest. Interest compounded monthly from the due date at the rate of the lesser of eighteen percent (18%) per annum or the maximum legal rate will be charged on all delinquent assessments, regular, special or specific, which are not paid in full within thirty days after the due date.

(b) Late Charges. A late charge in the amount of TWENTY-FIVE DOLLARS (\$25.00), or such other reasonable amount as from time to time determined by the Board, is hereby imposed as to any regular, special or specific assessment which is not paid in full within thirty days after payment of same is due.

(c) Compliance Costs. All expenses reasonably attributable to or incurred by reason of a breach or violation of or to obtain compliance with any provisions of this Declaration or other Governing Documents must be assessed against the Owner who occasioned the incurrence of such expenses, including reasonable attorney's fees whether incurred prior to, during the pendency of or after successful completion of any actions in a court of competent jurisdiction. The foregoing shall include, without limitation, all costs, expenses and reasonable attorneys fees incurred in connection with the judicial or non-judicial foreclosure of the Association's assessment lien, including prosecution or defense of any claims or actions relating to any such foreclosure proceedings.

(d) Foreclosure of Assessment Lien. In the event of foreclosure of the Association's assessment lien as herein provided, the Owner is required to pay to the Association a reasonable rental as determined by the Board for the use of the Lot and improvements thereon during the period of foreclosure, and the Board at its election is entitled to a receiver to collect same. The "period of foreclosure" commences on the date of posting for foreclosure in the event of non-judicial foreclosure, or on the date of entry of judgment granting foreclosure in the event of judicial foreclosure. The "period of foreclosure" continues through the first day of the month following the date of acquisition of actual possession by the purchaser at the foreclosure sale.

(e) Other Obligations (Including Fines, and Transfer and ACC Fees):  
Assignment to Managing Agent. All other monetary obligations established by or pursuant to this Declaration or other Governing Documents which are intended to apply to one or several but not all Lots must be assessed against the applicable Owner(s). Such charges may include without limitation reasonable charges for the following (each and all of which are hereby authorized and established): (i) providing an estoppel letter or certificate, and/or any other statement of assessments or indebtedness; (ii) providing of a resale certificate; (iii) transfer fees to reflect changes of ownership, tenancy or occupancy, or to reflect a refinance or other change regarding any obligation secured by a lien on the Owner's Lot, on the records of the Association; (iv) providing copies of Governing Documents; (v) delinquent assessment account and/or restriction violation processing and similar "pass through" charges or expenses imposed by a Managing Agent or other third party for services provided for or on behalf of the Association; (vi) charges for processing of applications for

architectural approval, including architectural Review Fees as provided in **Section 4.02.2(b)**; (vii) insurance deductibles; (viii) fines for any violation of any provisions of this Declaration or other Governing Documents; (ix) admission or usage fees applicable to Community Properties; and (x) any other charges otherwise permitted or authorized by law, including without limitation as permitted or authorized by Chapter 204 of the Texas Property Code. Except for imposition of fines, the Board may from time to time contract with Managing Agents to provide any of the services and/or to perform any of the functions associated with any of the foregoing charges, and in connection therewith (but subject to authority of the Board to waive any specific assessment as herein provided) may by contract or resolution assign to such Managing Agent the right to set the amount of and to receive payment of the applicable charge. The right and authority to set the amount of and receive payment of charges pursuant to the foregoing subsections (i) through (vi), and pursuant to subsection (x) as applicable, is deemed to be assigned by virtue of contracting with a Managing Agent to provide the associated functions and services for so long as the applicable contract remains in effect unless the applicable contract expressly provides otherwise, subject, however, to the continuing right of the Board to modify, waive or set aside any such charge as the Board deems appropriate. Except for fines and admission or usage fees and subject to authority of a Managing Agent as aforesaid, the foregoing charges may be adopted, set, imposed, amended and/or repealed by resolution duly adopted by the Board of Directors, regardless of whether such charges are incorporated in Rules and Regulations and without notice of any kind to any Owner or any other Person. Fines and admission or usage fees must be adopted by adoption of appropriate Rules and Regulations.

(f) As Approved by Owners. The Owners of a majority of the Lots may approve any other specific assessments in the same manner as provided in **Section 12.02.3** for approval of an amendment of this Declaration.

5.06.2 Payment; Waiver. Specific assessments are due and payable immediately upon the occurrence of the event giving rise to liability for payment of same. Failure of the Association to impose or collect any specific assessment is not grounds for any action against the Association, or any Director, officer, agent or employee thereof, and does not constitute a waiver of the Association's right to exercise its authority to collect any specific assessments in the future. For good cause shown as determined in the sole opinion of the Board, the Board may waive, wholly or partially, imposition of any specific assessment; provided, any such waiver is conditioned upon payment in full of all remaining monetary obligations then owed to the Association or receipt of written commitment that same will be paid within a specified period of time.

## SECTION 5.07 Lien for Assessments.

5.07.1 Establishment of Lien. All sums assessed against any Lot pursuant to this Declaration, whether by regular, special or specific assessment as provided herein, are secured by a continuing lien on such Lot in favor of the Association.

5.07.2 Perfection of Lien. The recordation of this Declaration constitutes record notice and perfection of the Association's continuing lien, effective from the date of recordation of this Declaration. No further recordation of a claim of lien or other notice of any type or kind whatsoever is required to establish or perfect such lien. To further evidence such lien, the

Association may, but is not required to, prepare and file in the Official Public Records of Real Property of Harris County, Texas, written notice of default in payment of assessments in such form as the Board may direct.

5.07.3 Priority of Lien. The Association's continuing lien is superior to all other liens or encumbrances on each Lot except:

(a) a lien for real property taxes and other governmental assessments or charges on a Lot (a "Tax Lien") to the extent so required by law but not otherwise (it being the intent hereof that the Association's continuing lien is superior to any Tax Lien if permitted by law, including Section 32.05 of the Texas Tax Code);

(b) a first lien securing payment of purchase money for a Lot, or a lien securing payment for work and materials used in constructing improvements on a Lot (a "First Lien") (i) as to and only as to assessments (regular, special or specific) the obligation for payment of which accrues from or after the applicable First Lien is duly recorded in the Official Public Records of Real Property of Harris County, Texas, and (ii) as to and only to the extent of unpaid sums secured by such First Lien;

(c) an extension of credit (commonly known as a home equity loan) made in accordance with and pursuant to Section 50(a)(6), Article XVI, of the Texas Constitution, as amended;

(d) a reverse mortgage made in accordance with and pursuant to Section 50(a)(7), Article XVI, of the Texas Constitution, as amended; and

(e) such other mortgages, deeds of trust, liens or other encumbrances to which the Board may from time to time by written agreement specifically and expressly agree, subject to such terms and conditions as set forth in the applicable written agreement.

5.07.4 Other Liens. Except as provided in **Section 5.07.3** or as otherwise expressly provided herein, all other Persons acquiring liens or encumbrances on any Lot are deemed to consent that such liens or encumbrances are inferior to the Association's lien for assessments, as provided herein, whether or not consent is specifically set forth in, and notwithstanding any contrary provisions in, any instruments creating such liens or encumbrances.

## SECTION 5.08 Effect of Nonpayment of Assessments.

5.08.1 Delinquency Date. Any assessments, regular, special or specific, which are not paid by the due date are delinquent as of midnight of the due date.

5.08.2 Automatic Remedies. Except to the extent otherwise expressly agreed in writing by the Board, if any assessments are not paid by the due date, then:

(a) late charges, interest from the due date, and all compliance costs (including reasonable attorney's fees), all as set forth in **Section 5.06**, shall be added to and included in the amount of such assessment; and

(b) all voting rights of the Owner, and all rights to use of all recreational facilities, if any, by the Owner, their tenants and their respective Related Parties, will be automatically suspended until all assessments (including all specific assessments) are paid in full.

5.08.3 Elective Remedies After Notice. If any assessments are not paid within thirty days after the due date, then the Association may elect to exercise any or all of the following remedies without prejudice to any other rights or remedies, provided that notice and opportunity to be heard is first given:

(a) Acceleration of Assessments. The Association may accelerate, through the end of the year in which notice of default is given and for an additional twelve month period thereafter, all regular assessments, and any installments for special or specific assessments due or to become due during said period. All such accelerated assessments are deemed to be specific assessments as to the applicable Lot and Owner thereof.

(b) Suspension of Services. In addition to automatic suspension of rights to use of recreational facilities as above provided, the Association may suspend until all assessments (including all specific assessments) are paid in full, all other rights of the delinquent Owner, the Owner's tenants, and the Related Parties of either, to the usage of any and all other Community Properties and/or Subdivision Facilities.

(c) Collection of Rents. The Association may impound all rental income of the defaulting Owner as to the Lot as to which assessments are delinquent, and may apply the impounded rents to payment of delinquent assessments (regular, special and specific) as herein provided. In the event of impoundment of rents, the affected Owner's tenant must pay all rentals coming due after notice is given of the impoundment to the tenant until otherwise notified in writing by the Association. In the event of impoundment of rents the Association will continue to collect the rents and apply same to payment of assessments until all delinquent assessments (regular, utility, special or specific, and including accelerated assessments, if any) are paid in full. After the Association is paid, it will notify the affected Owner and their tenant of such payment and at such time remit any surplus in collected rents to the affected Owner, without interest.

#### 5.08.4 Action for Debt; Foreclosure.

(a) Each Owner, by acquisition of any Lot within the Subdivision or any right, title or interest therein, expressly grants to and vests in the Association (i) the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt; (ii) the right and power to foreclose the Association's continuing lien for assessments by all methods available for the enforcement of a mortgage, deed of trust or any other contractual lien, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale; and (iii) a continuing power of sale in connection with the non-judicial foreclosure of the Association's continuing lien for assessments as herein provided.

(b) The Board or the then President of the Association may appoint, in writing, from time to time, an officer, agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of and as the agent of the Association, including without

limitation to deliver and file the notices required by Section 51.002 of the Texas Property Code (as amended), and to conduct the sale and to otherwise comply with said statute. The Board or the then President of the Association may from time to time, remove any such Trustee and appoint a successor or substitute Trustee without further formality than an appointment and designation in writing. Except as otherwise provided by this Declaration, the Association will exercise its power of sale pursuant to Section 51.002 of the Texas Property Code (as amended). The Association has the right and power to bid on any Lot at any foreclosure sale, either judicial or non-judicial, and to acquire, hold, lease, mortgage, or convey the same.

(c) If directed by the Association to foreclose the Association's continuing lien, Trustee will, either personally or by agent, give notice of the foreclosure sale as required by the Texas Property Code as then in effect, and sell and convey all or part of the applicable property "AS IS", "WHERE IS", and "WITH ALL FAULTS" to the highest bidder for cash with a general warranty binding the applicable Owner, subject to prior liens and any other matters of record and without representation of warranty, express or implied, by Trustee or the Association. From the proceeds of the sale, Trustee shall pay in order, (i) expenses of foreclosure, including a reasonable commission to Trustee and attorneys fees, (ii) to the Association the full amount of assessments, interest, late charges, attorneys fees, and other amounts due to the Association pursuant to this Declaration or other Governing Documents, including without limitation all costs, expenses and reasonable attorneys' fees incurred in the defense of any actions of the trustee hereunder and/or the Association's indemnity obligation as to Trustee regarding same; (iii) any amounts required by law to be paid before payment to Owner; and (iv) pay to Owner any balance. The Association shall indemnify Trustee and hold Trustee harmless from and against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the Association's lien or otherwise pursuant to this Declaration or other Governing Documents, including all court and other costs, and attorneys fees incurred by Trustee in defense of any action or proceeding taken against Trustee regarding any of the foregoing.

(d) The filing of suit to collect any sums due hereunder or to foreclose the Association's continuing lien for assessments may never be considered an election so as to preclude exercise of any other rights or remedies, including without limitation foreclosure under power of sale before or after a final judgment. After foreclosure, either judicial or non-judicial, the former Owner and anyone claiming under the former Owner must immediately surrender possession to the purchaser. If not, the former Owner and anyone claiming under the former Owner will be mere tenants at sufferance of the purchaser, and the purchaser may obtain immediate possession either pursuant to a judgment for foreclosure or by forcible detainer or eviction to be maintainable by the purchaser.

(e) Each owner, by acquisition of any Lot within the Subdivision or right, title or interest therein, specifically covenants and stipulates as to each and every Trustee's foreclosure sale that the recitals in any appointment or designation of Trustee, any conveyance by the Trustee and any affidavit of the Trustee or the Association related thereto shall be full proof and evidence of the matters therein stated, that all prerequisites of the foreclosure sale shall be presumed to have been performed, and that the foreclosure sale made under the powers herein granted shall be a perpetual bar against the Owner(s) of the Lot(s) sold and their heirs, executors and administrators, successors and assigns, and any Persons whatsoever claiming or to claim thereunder.

5.08.5 Extinguishment of Inferior Liens. Foreclosure of the Association's continuing lien for assessments terminates, extinguishes and forever discharges all inferior or subordinate liens and encumbrances (being all liens and encumbrances except as provided by **Section 5.07.3**) as to the affected Lot. The foregoing applies to judicial and non-judicial foreclosure of the Association's continuing lien for assessments regardless of whether or not the holder of the inferior or subordinate lien or encumbrance is made a party to or given notice of any proceedings in connection therewith, including without limitation whether or not made a party to or given notice of any judicial foreclosure suit and any other proceedings in connection therewith.

## SECTION 5.09      Foreclosure; Bankruptcy.

5.09.1 Effect of Foreclosure or Bankruptcy. The effect of judicial or non-judicial foreclosure of a lien which is superior to the Association's continuing assessment lien under this Declaration, or acceptance of a deed in lieu thereof, and the effect of the discharge of an Owner in bankruptcy is determined as of the date of foreclosure, the date of signing of a deed in lieu which is accepted by the grantee or the date of filing of the bankruptcy in which the Owner is discharged, as the case may be (the "Discharge Date"). Foreclosure or acceptance of a deed in lieu as aforesaid does not relieve the former Owner from the personal obligation for payment of assessments due as of the Discharge Date, but does release the Association's continuing assessment lien as to and only as to assessments due prior to the Discharge Date. The purchaser at foreclosure or grantee under a deed in lieu and an Owner discharged in bankruptcy is also relieved from any obligation for payment of assessments due prior to the Discharge Date, but is obligated to pay all assessments assessed or assessable from and after the Discharge Date and the Association's continuing assessment lien fully secures payment of said assessments. For purposes of the foregoing "assessments assessed or assessable" means (i) prorated regular annual assessments based on the number of months remaining in the calendar year in which the Discharge Date occurs regardless of whether the applicable regular annual assessment is payable in advance annually, semi-annually or quarterly, and (ii) any installments for special or specific assessments so payable which become due after the Discharge Date.

5.09.2 Revival of Assessment Lien; No Merger. The Association's assessment lien is automatically revived as to any Owner who reacquires ownership of any Lot within the Subdivision within two years after the Discharge Date (as defined in the immediately preceding Section) to the same effect as if none of the events causing the Discharge Date to occur had occurred. The Association's assessment lien is not, by merger or otherwise, extinguished or otherwise effected by acquisition of ownership of a Lot at any time and in any manner by the Association except as otherwise expressly agreed in writing by the Association.

SECTION 5.10      Assessments as Independent Covenant. The obligation to pay assessments is a separate and independent covenant and contractual obligation on the part of each Owner. No off-set, credit, waiver, diminution or abatement may be claimed by any Owner to avoid or diminish the obligation for payment of assessments for any reason, including, by way of illustration but not limitation (i) by nonuse of any Community Properties or abandonment of a Lot, (ii) by reason of any alleged actions or failure to act by the Association, or its officers, Directors, agents or employees, whether or not required under this Declaration or other Governing Documents, (iii) for inconvenience or discomfort arising from the making of repairs or improvements which are

the responsibility of the Association, or (iv) by reason of any action taken by the Association, or its officers, Directors, agents or employees to comply with any law, ordinance, or any order or directive of any governmental authority, or pursuant to any judgment or order of a court of competent jurisdiction.

**Article VI**  
**Maintenance, Insurance, Casualty Losses and Condemnation**

**SECTION 6.01      Association Maintenance Responsibilities.**

**6.01.1   Community Properties; Governmental Agreements and Requirements.**

(a)      The Association will maintain, repair and replace the Community Properties, including all Subdivision Facilities, and keep same in good repair. This maintenance includes, without limitation, maintenance, repair, and replacement of all landscaping and improvements situated on the Community Properties. Without limitation of the foregoing, the Association's maintenance responsibilities shall also include maintenance of the detention pond to be located upon Restricted Reserve "A" (as more particularly described in **Section 1.01**), and compliance regarding same with (and payment of inspection and other costs relating to) any storm water quality permitting and other requirements of the City or other governmental authorities (such as for example but without limitation, Chapter 47, Article XII, Division 2 of the Code of Ordinance, City of Houston, Texas).

(b)      The Association shall maintain such other properties, real or personal, and such other facilities, services and improvements as may be required by governmental authorities, including the City, or other utility providers, any special tax and development districts, and any other similar entities, such maintenance to be in accordance with applicable contracts, agreements, ordinances, rules, regulations and decisions of such authorities. Declarant is specifically authorized to enter any such contracts or agreements on behalf of the Association, and to bind the Association thereto, at any time prior to termination of the Development Period, and Declarant may amend this Declaration at any time prior to or after termination of the Development Period to the extent it deems necessary by reason of any such contract or agreement.

6.01.2   Owner's Liability for Payment of Association Costs. Each Owner, their tenants, and their respective Related Parties, are expressly prohibited from doing anything which could or does (i) increase the Association's costs of insurance or result in cancellation or diminution in insurance coverage, (ii) cause damage to any Community Properties, or (iii) increase costs of maintenance, repair, replacement, management, operation or discharge of any other obligations of the Association regarding the Community Properties, or any other areas maintained by the Association. Regardless of availability of insurance coverage, the Association may charge to each responsible Owner, as a specific assessment, all increased costs and all other damages resulting, directly or indirectly, from the acts or omissions of an Owner, their tenants, or their respective Related Parties, in violation of the foregoing provisions.

6.02.1 General; Interior Maintenance. All maintenance of each Lot and all improvements thereon is the sole responsibility of the Owner thereof. Each Owner must maintain their Lot and all improvements thereon at all times in such manner as to obtain and maintain Prevailing Community Standards on a continuing basis as may be more specifically determined by this Declaration and other Governing Documents, including as determined from time to time by duly adopted Architectural Guidelines and Rules and Regulations. Without limitation of the foregoing, each Owner must maintain, at each Owner's sole cost and expense, the interior of the Owner's residence and garage, including all fixtures, equipment, appliances, things and devices located therein. MAINTENANCE WHICH AFFECTS THE EXTERIOR APPEARANCE OF A RESIDENCE OR GARAGE IS SUBJECT TO APPLICABLE PROVISIONS OF ARTICLE IV REGARDING ARCHITECTURAL CONTROL COMMITTEE APPROVAL.

6.02.2 Residences and Other Improvements. Each Owner shall maintain the exterior of each Owner's residence, garage, and all other buildings, structures, fences, walls, recreational equipment and improvements located upon each Owner's Lot, in an attractive, sound and well maintained condition, including proper maintenance and repair as needed of paint, bricks, siding, roofs, rain gutters, downspouts, exterior walls, driveways, parking areas and all other exterior portions of the Owner's residence and garage. Without limitation of the foregoing, each Owner shall provide proper repair and maintenance as and when needed as follows (the term "residence" includes garage, as applicable):

(a) The exterior paint on each Owner's residence must be maintained so that no portion thereof peels, scales or cracks excessively, and all painted portions remain neat and free of mildew and discoloration. NO CHANGE IN THE EXTERIOR COLOR SCHEME OF A RESIDENCE AS ORIGINALLY CONSTRUCTED IS PERMITTED WITHOUT PRIOR WRITTEN APPROVAL FROM THE ACC.

(b) The windows must be maintained so that no caulking thereon is chipped or cracked and no window panes are cracked or broken.

(c) All exterior doors, including garage doors, must be maintained, repaired, replaced and/or repainted as needed to prevent an unkept or unsightly appearance and such as to maintain same in proper working condition, including replacement as needed of damaged or dented garage door panels and any cracked or broken glass in any door.

(d) The exterior woodwork on each Owner's residence, and all windowsills, door jams and thresholds, framing, hinges, latches and locks, must be maintained so that it remains whole, sound, neat and fully operational.

(e) The roof on each Owner's residence must be maintained to prevent sagging, to prevent leaks, so that all shingles are properly secured, curled or damaged shingles are replaced and no worn areas or holes are permitted to remain, and such that the structural integrity and exterior appearance of the roof is maintained. The appearance of the roof shall not be changed by any such maintenance without the express written approval of the ACC.

(f) The rain gutters and downspouts on each Owner's residence, if any, must be maintained so that all are properly painted or treated to prevent rust and corrosion, are properly secured to roof, eaves, gables or exterior walls (as the case may be), are maintained without holes, and are promptly repaired or replaced if dented or otherwise damaged.

(g) All concrete areas on each Owner's Lot, including sidewalks and any driveway, must be maintained, repaired and replaced as needed to maintain their appearance and functional and structural integrity. Without limitation of the foregoing, all such areas must be maintained so that all cracks are appropriately patched or surfaced as they appear, expansion joints are maintained, repaired or replaced, as needed, and oil, grease and other stains are removed as they appear, and all such areas must be kept free of weeds, grass or other vegetation.

(h) All fences or walls erected on each Owner's Lot must be maintained to prevent any listing or leaning, so that all broken or damaged members and all holes and cracks are repaired as they appear and so that no portion thereof is permitted to rot or decay. PAINTING OR STAINING OF WOODEN FENCES IS PROHIBITED UNLESS APPROVED IN WRITING BY THE ACC.

(i) All recreational equipment, which may be installed if and only if approved by the Architectural Control Committee, must be maintained to prevent any unsightly or unkept condition, including for example but without limitation, proper maintenance of swing sets to prevent rust and corrosion, and proper maintenance of basketball goals to prevent rust and corrosion and by replacement as needed of torn or worn nets.

6.02.3 Utilities. The Owner of each Lot must maintain in proper working order, and on a continuing basis, all sanitary sewer lines and facilities, drainage or storm water lines and facilities, water pipelines, water sprinkler system, water meters and related water lines and facilities, electrical and gas lines, meters and facilities, telephone and any other telecommunication lines, devices or facilities, and all other facilities, utilities and services which service each Lot (the "Owner Utilities"), regardless of the location of the Owner Utilities, save and except to the extent the Association is expressly required by this Declaration to provide such maintenance or to the extent maintenance of any Owner Utilities is provided and actually performed by any governmental entity or utility company. Utilities which service more than one Lot must be maintained, repaired and replaced by all of the Owners of the multiple Lots served, pro rata, or in such other proportions as determined by the Board upon written request when the circumstances clearly demonstrate that a different manner of allocation is required.

6.02.4 Landscaping. All grass, shrubbery, trees, flower beds, vegetation and all other landscaping, either natural or artificial, on each Lot which is not maintained by the Association must be maintained at all times in accordance with the seasons as reasonably necessary to obtain and maintain on a consistent and continuing basis Prevailing Community Standards, including as reasonably necessary to maintain on a consistent and continuing basis a sanitary, healthful and attractive condition and appearance and to eliminate any condition which may create any unsanitary condition or become a harborage for rodents, vermin or other pests. In any case where a Lot abuts a Street but the Lot line does not extend to the Street curb, the Owner shall maintain all landscaping

between the Owner's Lot line and the Street curb unless the Association is otherwise required hereby or otherwise elects to maintain said area.

6.02.5 Common Fences. All maintenance, repair or replacement of Lot Line Fencing as may be approved in accordance with **Section 8.09** which separates adjoining Lots, or which is otherwise shared in common by two adjoining Lots, is the joint responsibility of, and the costs thereof shall be shared equally by, the adjoining Owners.

6.02.6 Adjacent or Adjoining Owners. No Owner or their tenant will allow any condition to exist or fail or neglect to provide any maintenance which materially and adversely affects any adjoining or adjacent Lot, any Community Properties, or any improvements on any such Lot or the Community Properties.

6.02.7 Disturbance of Community Properties. In the event the performance of any Owner's maintenance responsibilities requires that any portion of the Community Properties be modified, removed or disturbed, then such Owner must first obtain the written consent of the ACC as to same. All such work must be performed, at the option of the Association, either under the supervision of the Association in accordance with plans and specifications approved by the ACC, or by the Association at the reasonable expense of the Owner. If the Association performs the work at the expense of the Owner, the ACC may require a security deposit or advance payment of all of the estimated expenses which the Owner must pay upon demand. Such indebtedness will be added to and become a part of the specific assessment to which such Owner and the Owner's Lot are subject, and is secured by the continuing lien hereby established against such Owner's Lot.

6.02.8 Dispute Resolution Among Owners.

(a) Any disputes among Owners regarding any rights or responsibilities pursuant to this Article may be submitted in writing to the Board. The Board also has full authority to direct submission of any dispute to the Board in writing. After notice and opportunity to be heard, the Board has full authority to resolve all such disputes, and its decisions as to same are final. The Board's authority includes without limitation the right and authority (i) to direct the completion of any maintenance, repair or replacement and to allocate costs thereof among the disputing Owners, (ii) to authorize one of the disputing Owners or a third party to control the completion of the maintenance, repair or replacement, (iii) to order the disputing Owners to mediation or arbitration through a county dispute resolution center or similar organization or under the Rules of the American Arbitration Association, and (iv) to allocate among the disputing Owners all costs of the maintenance, repair or replacement and all costs (including attorney's fees) incurred in the dispute resolution process.

(b) Each disputing Owner must pay their allocated share of compliance costs (including attorney's fees) within thirty days after receipt of a statement for payment thereof. A final costs statement may be submitted by the Board or may be submitted by disputing Owners to the Board for resolution as above provided. If any Owner fails to pay their allocated costs as aforesaid, all such costs shall automatically be assessed as a specific assessment against the defaulting Owner as provided in **Section 5.06**. If one Owner has prepaid allocated costs of another and the prepaid sum is later collected by the Association, that sum (without interest if any) will be

reimbursed to the Owner who prepaid same. All rights and remedies under this Section are cumulative.

**SECTION 6.03      Right of Entry and Inspection; Owner's Default.** In the event the Board or ACC determines that **(i)** an Owner may have or has failed or refused to discharge properly the Owner's maintenance obligations as provided in this Article, or **(ii)** the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder may have or has been caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective Related Parties, then the Association may conduct inspections of any affected Lot, the exterior of the residence and all other buildings thereon, and all other structures and improvements thereon (a "Compliance Inspection") and/or perform the repair, replacement or maintenance (the "Required Work") in accordance with the following:

6.03.1 If the Board or ACC determines that a violation of this Article may exist, the Board, ACC and their Related Parties may enter a Lot, and all other buildings, structures and other improvements thereon, to inspect same and any and all exterior portions of the single family residence, garage and any other buildings located on the Lot and to conduct a Compliance Inspection, including such investigative work as may be reasonably required to confirm that a violation does or does not exist. Except in the event of an Emergency, the Association must give written notice of the Association's intent to conduct a Compliance Inspection. The notice must state generally the nature of the suspected violations. The notice must also state the name, address and telephone number of a contact with whom to schedule a date and time for the inspection within ten days of the date of the notice (or such longer time as may be stated in the notice), and must state if a date and time is not so scheduled the Compliance Inspection may be conducted at any time within a specified period of time thereafter (which period of time may not exceed a ten day period within thirty days after expiration of the scheduling period).

6.03.2 Except in the event of an Emergency, the Association must give written notice of the Association's intent to provide Required Work. The notice must set forth the Required Work with reasonable particularity. The Owner of the Lot to which the notice of Required Work pertains will have ten days within which to complete the Required Work as set forth in this notice, or, in the event the Required Work is not capable of completion within a ten day period, to commence the Required Work within ten days and to complete same within a reasonable time not to exceed thirty days unless otherwise specifically approved by the Board or ACC. The affected Owner must give written notice of the intent to commence the work and of the completion of Required Work stating in detail the Required Work intended to be commenced and the Required Work which has been completed. The Board or ACC, through their Related Parties, may also conduct a Compliance Inspection to confirm completion of all Required Work.

6.03.3 If any Owner fails to schedule an inspection pursuant to a Compliance Inspection notice, the Association has the right (but not the obligation), through its Related Parties, to enter a Lot and thereupon to conduct the inspection as provided in **Section 6.03.1**. If any Owner fails fully to comply with a notice as to Required Work, the Association has the right (but not the obligation), through its Related Parties, to enter upon the Lot and to do all things upon the Lot, to the exterior of the residence and all buildings, and as to any structures and other improvements located thereon to commence and complete the Required Work.

6.03.4 In case of Emergency the Association has the right (but not the obligation), through its Related Parties, to immediate entry upon a Lot, and the single family residence, garage and all other buildings, structures and other improvements thereon, and to otherwise immediately exercise all rights and remedies authorized by this Section as is reasonably necessary in the sole opinion of the Board or ACC to abate the Emergency, without prior notice. Upon abatement of the Emergency applicable provisions of this Section will then again apply.

6.03.5 The good faith determination by the Board or ACC as to the need for a Compliance Inspection and as to all aspects of Required Work is final and conclusive, and extends to any thing or condition as to such Lot or which adversely affects any other Lot or Community Properties. Neither the Association nor any of its Related Parties may be held liable for trespass or any other tort or claim for damages in connection with any actions or failure to act pursuant to this Section. The provisions hereof are cumulative of the provisions of **Section 3.06**.

6.03.6 All reasonable costs and expenses as to conducting of a Compliance Inspection if a violation is confirmed and in all events as to all aspects of Required Work which is performed by the Association pursuant to this Section, as determined in the sole opinion of the Board or ACC, will be added to and become a part of the specific assessment to which such Owner and the Owner's Lot is subject, and is secured by the continuing lien hereby established against such Owner's Lot.

6.03.7 The provisions of this Section also apply to any other violations of the Governing Documents as provided in **Section 10.02**.

**SECTION 6.04**      Casualty Losses - Association Responsibilities. Except as hereafter provided, in the event of damage by fire or other casualty to the Community Properties or regarding any other matters as to which the Association has an obligation to maintain pursuant to this Declaration or other Governing Documents, or if any governmental authority requires any repair, reconstruction or replacement as to same, the Association must perform all repairs, reconstruction or replacement necessitated thereby (the "Casualty Work"). The Casualty Work must be such as will substantially restore the Community Properties to its condition prior to the casualty or as required by the governmental authority. Any insurance proceeds payable as to the Casualty Work must be paid to the Association. Except for Casualty Work which is required by any governmental authority, the Owners may agree not to perform any Casualty Work. Any decision not to perform Casualty Work must be submitted to the Owners at a special meeting of Members called for that purpose, and must be approved by affirmative vote of the Owners of not less than a majority of all Lots then contained in the Subdivision.

**SECTION 6.05**      Casualty Losses - Owner Responsibilities. In the event of a casualty loss to all or any portion of any residence, garage, building, structure or any other improvement (the "Damaged Improvements", the affected Owner shall within ninety (90) days after the occurrence of the casualty loss, either (i) repair all portions of such Damaged Improvements and restore same to the condition which existed immediately prior to such damage or destruction, or to such other condition approved by the ACC, or (ii) demolish and remove all Damaged Improvements leaving a graded and landscaped and/or seeded area as approved by the ACC. In the event of any such

casualty loss or destruction, each Owner shall as soon as possible, and in any event within the aforesaid ninety-day period, repair any common utility lines located upon the Owner's Lot which service another Lot or any Community Properties. The ACC may, upon written request for good cause, grant one or more extensions to the aforesaid ninety-day period. ALL WORK TO BE PERFORMED PURSUANT TO THIS SECTION MUST BE APPROVED BY THE ACC IN ACCORDANCE WITH APPLICABLE PROVISIONS OF **ARTICLE IV**.

## SECTION 6.06

### Owner Insurance.

6.06.1 General. The Owner of each Lot must maintain personal liability insurance and all-risk property and casualty insurance as required by this Section, and of such types and forms, in such amounts and with such deductibles, limits and other terms as from time to time established by applicable Rules and Regulations. The Board is also specifically authorized by applicable Rules and Regulations to alter, amend, repeal or revise any provisions of this Section (including all subparts). NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISIONS OF THIS SECTION, THIS DECLARATION OR ANY OTHER GOVERNING DOCUMENTS **(I)** OBTAINING OF LIABILITY AND PROPERTY INSURANCE REGARDING AND FOR EACH LOT AND ALL IMPROVEMENTS THEREON (INCLUDING RESIDENCES AND APPURTENANT STRUCTURES AND THE CONTENTS THEREOF) IS THE SOLE RESPONSIBILITY OF THE OWNER THEREOF, **(II)** DECLARANT, THE ASSOCIATION, THE BOARD AND THEIR RELATED PARTIES MAKE NO REPRESENTATION WHATSOEVER THAT THE LIMITS OR FORMS OF INSURANCE REQUIRED BY THIS SECTION OR THAT COMPLIANCE IN ANY OTHER RESPECT WITH THE PROVISIONS HEREOF WILL BE ADEQUATE FOR ANY PURPOSE, AND **(III)** DECLARANT, THE ASSOCIATION, THE BOARD AND THEIR RELATED PARTIES HAVE NO OBLIGATION WHATSOEVER TO CONFIRM COMPLIANCE BY ANY OWNER WITH ANY PROVISIONS OF THIS SECTION, OR TO ACT ON BEHALF OF ANY OWNER AS TO OBTAINING OF ANY INSURANCE OR OTHERWISE COMPLYING WITH ANY PROVISIONS OF THIS SECTION OR TO OTHERWISE ASSUME ANY RESPONSIBILITY REGARDING THE FOREGOING.

6.06.2 Required Coverage. At a minimum, the Owner of each Lot must obtain property insurance to insure the residential dwelling thereon, and all fixtures, equipment and other improvements pertaining thereto. Said dwelling coverage must be on a current replacement cost basis in an amount of not less than ninety percent (90%) of the insurable value against risks of loss or damage by fire and other hazards as are covered by standard extended all-risk coverage, with demolition endorsement (or equivalent), and must include coverage against **(i)** fire and lightning, **(ii)** smoke, **(iii)** windstorm, hurricane and hail, **(iv)** explosion, **(v)** aircraft and vehicles, **(vi)** vandalism, malicious mischief and theft, **(vii)** riot and civil commotion, **(viii)** collapse of building in whole or in part, **(ix)** accidental discharge, leakage or overflow of water or steam from within a plumbing, heating or air conditioning system or household appliance, **(x)** falling objects, **(xi)** freezing and **(xii)** flood insurance, if applicable.

6.06.3 Coverage Periods, Policy Provisions. Dwelling coverage as required by this Section must be obtained effective as of the date of acquisition of ownership by an Owner, and must remain continuously in effect through the date of acquisition of ownership by each succeeding Owner. Each policy must to the extent obtainable **(i)** waive any rights of the insurer to subrogation

against Declarant, the Association and their Related Parties, (ii) provide primary coverage in the event of any other coverage under other insurance carried by Declarant, the Association or their Related Parties, and (iii) upon written request by the Association, provide that the insurer may not cancel or refuse to renew the policy until at least thirty days written notice is given to the Association.

6.06.4 Proof of Coverage; Default. At the time of acquisition of any and all coverage required by this Section or applicable Rules and Regulations and at the time of each renewal, a policy declaration signed by the insurer and setting forth the types of coverage, endorsements, deductibles and limits must be mailed to the Association. In addition, at any other time the Board deems appropriate and upon not less than five days written notice, the Board may require any Owner to provide to the Association proof of insurance as required by this Section and any applicable Rules and Regulations in such manner and form as the Board may require. If in the sole opinion of the Board satisfactory proof of insurance is not provided, the Association may obtain (but has no obligation whatsoever to obtain) the required coverage on behalf of the Owner and assess as a specific assessment all premiums and all other costs and expenses related thereto to the defaulting Owner.

## SECTION 6.07 Association Insurance.

6.07.1 Coverage. To the extent reasonably available the Association shall maintain the following insurance coverage:

(a) property insurance on all insurable Community Properties insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least eighty percent of the replacement cost or actual cash value of the insured property as of the effective date and at each renewal date of the policy (exclusive of land, foundations or slabs, excavations and such other items usually excluded from insurance coverage);

(b) comprehensive liability insurance, including medical payments insurance, libel, slander, false arrest and invasion of privacy coverage, and errors and omissions coverage, in amounts determined by the Board and covering all occurrences commonly insured against for death, bodily injury, and property damage;

(c) worker's compensation to the extent required by law; and

(d) such other insurance as the Board deems appropriate.

6.07.2 Administration of Claims. Fire and casualty policies shall be purchased in the name of the Association, the Owners and their mortgagees, as their interests may appear. A claim for any loss covered by any policy must be submitted by the Association and adjusted with the Association. The insurance proceeds for that loss shall be payable to an insurance trustee designated by the Board for that purpose if the designation of an insurance trustee is considered by the Board to be necessary or desirable, or otherwise to the Association, and not to any Owner or lienholder. The insurance trustee or the Association shall hold insurance proceeds in trust for the Owners and lienholders as their interests may appear. All repairs, replacements or reconstruction will be substantially similar to original construction.

6.07.3 Deductibles; Claims. The Board shall determine appropriate deductibles for all insurance policies. The Board may in its sole discretion determine whether or not any particular claim is to be made taking into account (without limitation) such factors as adverse effects of claims made as to future coverage or costs thereof. Each Owner shall as a condition to the validity of any claim provide all information and documentation which is reasonably necessary to fully evaluate each claim. Each Owner shall be fully responsible for payment in full of each claim which does not exceed the then applicable deductible. Determinations by the Board as to the validity of any claim as to amount or otherwise, and as to any other matters pertaining to this Section are final and conclusive.

6.07.4 Unavailable Coverage; Additional Rules and Regulations. Neither the Association nor its Related Parties are liable for failure to obtain any insurance coverage or to otherwise comply with any other provisions of this Article VI regarding same if such failure is due to unavailability or to excessive costs as determined in the sole good faith opinion of the Board, or for any other reason beyond the reasonable control of the Board. The Board is specifically authorized from time to time to adopt and amend policies, procedures and any other Rules and Regulations to more fully effectuate the purposes and intent of the provisions of this **Section 6.07.**

SECTION 6.08 Condemnation. If at any time all or any part of the Community Properties is taken (or conveyed in lieu of and under threat of condemnation by the Association acting on the approval of the Owners of a majority of Lots then contained within the Subdivision) by any authority having the power of condemnation or eminent domain, any award compensation or damages must be paid to the Association as trustee for all Owners. The board has the exclusive right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation issues affecting such Community Properties. The Association shall give timely notice of the existence of such proceedings to all Owners and their mortgagees, if any. The expense of participation in such proceedings shall be common expenses payable from the Maintenance Fund. The Owners may, by vote of the Owners of seventy-five per cent or more of all Lots, agree to distribute the proceeds of any condemnation or taking by eminent domain, to each Owner and their mortgagee, if any, as their interest may appear. In the event the Owners do not so agree, such proceeds must be added to the funds of the Association, and the Association shall decide on whether or not to replace or restore, as far as possible, the Community Properties so taken or damaged. If condemnation proceeds are insufficient to replace or restore any loss or damage, the Association may levy a special assessment as provided for in **Section 5.05** of this Declaration.

## **Article VII**

### **Use Restrictions**

#### SECTION 7.01 Residential Use; Group Homes; Treatment Facilities.

7.01.1 General. Each and every Lot is hereby restricted to single family residential use only. No residence may be occupied by more than one single family.

7.01.2 No Business, Professional, Commercial or Manufacturing Use. No business, professional, commercial or manufacturing use may be made of any Lot or any improvement located thereon, even though such business, professional, commercial or manufacturing use be subordinate

or incident to use of the premises as a residence, and regardless of whether or not done for profit or remuneration. Notwithstanding the foregoing, a single family residence may be used for maintenance of a personal professional library, keeping of personal or professional records or accounts, or handling personal business or professional telephone calls, or for maintenance of one home office, but if and only if such business activity (i) does not involve use of any part of the applicable Lot, or residence or other building or improvement thereon, by any Person other than the Owner or the Owner's tenant (but not both), no on-site employees are otherwise permitted, and the public is not invited, permitted or allowed to enter the Lot to conduct any business thereon, (ii) is not detectable by sight, sound or smell from outside the residence, and there is no other external evidence thereof (including signs, advertising, or contacts in person at the residence with clients or customers), (iii) does not involve the storage of any equipment, materials or devices other than as consistent with operation of a small home office, and in all events which are not hazardous and do not constitute any type of threat to health or safety or other nuisance, (iv) complies with all applicable City ordinances (including zoning ordinances), and with any other governmental laws, rules, regulations and permitting or licensing requirements applicable to same, (v) is consistent with the residential character of the Subdivision, and (vi) does not cause any annoyance or unreasonable inconvenience to Owners or occupants of area Lots or any Community Properties.

7.01.3 Residential Use Only. Without limitation of the foregoing, as used in this Declaration the term "residential use" shall be construed to prohibit the use of any Lot or the residence thereon for apartment houses or other type of dwelling designed for multi-family dwelling, or use for or operation of a boarding or rooming house or residence for transients, or the use of any permitted outbuilding as an apartment or residential living quarters.

7.01.4 Single Family Defined. As used in this Declaration the term "single family" means either: (i) husband and wife, their children, and their dependent parents, grandparents, grandchildren, brothers and sisters who are maintaining a common household and who are members of a single family related by blood, marriage or adoption; or (ii) one or more natural persons not so related but who are maintaining a permanent common household in a single family residence on a nonprofit, noncommercial basis with a common kitchen and dining area; and (iii) the bona fide domestic servants of either. "Dependent parents, grandparents, grandchildren, brothers and sisters" means such relatives having insufficient health, skills or resources to maintain, and who do not in fact maintain, a separate residence. Without limitation of the foregoing, "single family" does not include temporary household groups such as persons living together during completion of an educational program (such as college), lodgers or boarders, or any other similar temporary or transient living arrangement.

7.01.5 Maximum Occupancy. In addition to the limitations above set forth, in no event may a single family residence be occupied by more persons than the product of the total number of bona fide bedrooms contained in the single family residence multiplied by two. The number of bona fide bedrooms is based on the single family residence as originally constructed, plus any additional bedroom(s) which may thereafter be added which have been specifically approved by the ACC for such use, if any.

7.01.6 Group Homes; Day-Care Center; Treatment Facilities. To the fullest extent allowed by law, no Lot or any part of the single family residence thereon may be used for the operation of a group home, half-way house, day-care center, rehabilitation center, treatment facility,

or incident to use of the premises as a residence, and regardless of whether or not done for profit or remuneration. Notwithstanding the foregoing, a single family residence may be used for maintenance of a personal professional library, keeping of personal or professional records or accounts, or handling personal business or professional telephone calls, or for maintenance of one home office, but if and only if such business activity **(i)** does not involve use of any part of the applicable Lot, or residence or other building or improvement thereon, by any Person other than the Owner or the Owner's tenant (but not both), no on-site employees are otherwise permitted, and the public is not invited, permitted or allowed to enter the Lot to conduct any business thereon, **(ii)** is not detectable by sight, sound or smell from outside the residence, and there is no other external evidence thereof (including signs, advertising, or contacts in person at the residence with clients or customers), **(iii)** does not involve the storage of any equipment, materials or devices other than as consistent with operation of a small home office, and in all events which are not hazardous and do not constitute any type of threat to health or safety or other nuisance, **(iv)** complies with all applicable City ordinances (including zoning ordinances), and with any other governmental laws, rules, regulations and permitting or licensing requirements applicable to same, **(v)** is consistent with the residential character of the Subdivision, and **(vi)** does not cause any annoyance or unreasonable inconvenience to Owners or occupants of area Lots or any Community Properties.

7.01.3 Residential Use Only. Without limitation of the foregoing, as used in this Declaration the term "residential use" shall be construed to prohibit the use of any Lot or the residence thereon for apartment houses or other type of dwelling designed for multi-family dwelling, or use for or operation of a boarding or rooming house or residence for transients, or the use of any permitted outbuilding as an apartment or residential living quarters.

7.01.4 Single Family Defined. As used in this Declaration the term "single family" means either: **(i)** husband and wife, their children, and their dependent parents, grandparents, grandchildren, brothers and sisters who are maintaining a common household and who are members of a single family related by blood, marriage or adoption; or **(ii)** one or more natural persons not so related but who are maintaining a permanent common household in a single family residence on a nonprofit, noncommercial basis with a common kitchen and dining area; and **(iii)** the bona fide domestic servants of either. "Dependent parents, grandparents, grandchildren, brothers and sisters" means such relatives having insufficient health, skills or resources to maintain, and who do not in fact maintain, a separate residence. Without limitation of the foregoing, "single family" does not include temporary household groups such as persons living together during completion of an educational program (such as college), lodgers or boarders, or any other similar temporary or transient living arrangement.

7.01.5 Maximum Occupancy. In addition to the limitations above set forth, in no event may a single family residence be occupied by more persons than the product of the total number of bona fide bedrooms contained in the single family residence multiplied by two. The number of bona fide bedrooms is based on the single family residence as originally constructed, plus any additional bedroom(s) which may thereafter be added which have been specifically approved by the ACC for such use, if any.

7.01.6 Group Homes; Day-Care Center; Treatment Facilities. To the fullest extent allowed by law, no Lot or any part of the single family residence thereon may be used for the operation of a group home, half-way house, day-care center, rehabilitation center, treatment facility,

or residence of unrelated individuals who are engaging in, undertaking, or participating in any group living, rehabilitation, treatment, therapy, or training with respect to previous or continuing criminal activities or convictions, alleged criminal activities, alcohol or drug dependency, physical or mental handicaps or illness, or other similar matters. The foregoing does not include a "community home" established and maintained pursuant to and in strict compliance with Chapter 123 of the Texas Health and Safety Code, and all applicable governmental licensing requirements, rules and regulations.

7.01.7 Garage and Other Sales Prohibited. Unless and otherwise permitted by applicable Rules and Regulations, and otherwise without limitation of any other provisions hereof, garage sales, rummage sales, antique sales, estate sales and any similar sales activities at any location within the Subdivision, including upon any Lot, are strictly prohibited.

## SECTION 7.02 Pets, Animals and Livestock.

### 7.02.1 Permitted Pets; Leashing Required.

(a) No animals, hogs, horses, livestock, reptiles, fish or poultry of any kind may be raised, bred, kept or maintained on any Lot at any time except "Permitted Pets" which are dogs, cats and other usual and customary household pets. Not more than two Permitted Pets are allowed per Lot unless authorized in writing by the Board or applicable Rules and Regulations, and no Permitted Pets may be raised, bred, kept or maintained for commercial purposes. Subject to **Section 7.04**, the foregoing limitation on the number of Permitted Pets does not apply to hamsters, small birds, fish or other similar usual and customary household animals, birds or fish which are continuously kept completely within a residence, nor shall it apply to require the removal of any litter born to a Permitted Pet prior to the time that the animals in such litter are three months old. Notwithstanding the foregoing, the following are hereby excluded as Permitted Pets and shall not be allowed within any residence, upon any Lot or at any other place within the Subdivision: (i) any dog whose breed is known for its viciousness or ill temper, in particular, the American Staffordshire Terrier, known as a "Pit Bull Terrier", and any dog which in fact exhibits viciousness or ill temper, and (ii) any animal of any kind that has venom or poisonous or capture mechanisms, or if let loose would constitute vermin.

(b) All Permitted Pets must be kept on a leash or carried, and must otherwise be maintained under the control of their owner when outside the owner's residence or when not maintained in an enclosed yard from which the Permitted Pet cannot escape.

(c) Owners of a Permitted Pet must immediately remove and depose of, in a sanitary manner, feces and any other excretions left by any Permitted Pet at any location in the Subdivision outside of the Owner's Lot. Owners of a Permitted Pet must periodically remove and depose of, in a sanitary manner, feces and any other excretions left by any Permitted Pet at any location upon the Owner's Lot and/or within the Owner's residence as necessary to prevent any unsafe, unsanitary or odorous conditions. No Permitted Pet shall be allowed to cause or create any nuisance, annoyance, or unreasonable disturbance or noise. Owners must also fully comply with all applicable laws, statutes and ordinances of the City and other governmental agencies regarding each and all of each Owner's Permitted Pets, including without limitation all licensing and vaccination requirements.

(d) The Board may adopt Rules and Regulations to further regulate Permitted Pets, including without limitation a mandatory program for registration of all Permitted Pets with the Association, regulations to further specify types of usual and customary household pets to be included or excluded as Permitted Pets, regulations as to maximum permitted size or weight of any Permitted Pet, regulations as to number or type of animals, birds or fish which may be kept within a residence and/or other conditions or limitations as to same, and regulations as to areas outside a residence where Permitted Pets are permitted or from which they are excluded. NO PETS OF ANY KIND ARE PERMITTED UPON ANY COMMUNITY PROPERTIES EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PERMITTED BY APPLICABLE RULES AND REGULATIONS AND THEN ONLY IN STRICT COMPLIANCE THEREWITH, AND EXCEPT AS TO LEGITIMATE SEEING-EYE DOGS.

7.02.2 Removal. As to any animals or livestock not permitted by this Section, and as to any Permitted Pet which is allowed to roam free, or which in the sole opinion of the Board endanger health or safety, make objectionable noise, or constitute a nuisance, annoyance or inconvenience to the Owners or occupants of other Lots, the Community Properties or any property located adjacent to or in the vicinity of the Subdivision, or which is otherwise raised, bred, kept or maintained in violation of this Declaration or applicable Rules and Regulations, the Board may cause any such animal, livestock or Permitted Pet to be removed from the Subdivision and may prohibit the return of any such Permitted Pet to the Subdivision. Removal as aforesaid will be at the sole expense of the responsible Owner or Owner's tenant and without liability of any kind whatsoever to the Association, including the ACC, their Related Parties, or any Person which the Board may direct to remove any such animal, livestock or Permitted Pet.

### SECTION 7.03      Vehicles; Parking.

7.03.1 Prohibited Vehicles; Covers Prohibited. No boat, mobile home, trailer, boat rigging, truck larger than a three-quarter ton pick-up, recreational vehicle, bus, unused vehicle, inoperable vehicle of any kind (including any vehicle requiring same which does not have both a current and valid license plate and current and valid state inspection sticker), and no unsightly vehicle as determined in the sole opinion of the Board, may be parked, stored or kept at anytime at any location within the Subdivision, including without limitation upon any Street or upon any private driveway or other part of any Lot, unless such vehicle is stored completely within a garage. Use of vehicle covers of any kind (except for vehicles parked completely in a garage) is prohibited.

7.03.2 Prohibited Parking - General. No vehicle of any kind may be parked, stored or otherwise permitted to remain at any time (i) on grass or any other similar portion of any Lot or any other place within the Subdivision not intended customarily for use for parking of vehicles, or (ii) in a slanted or diagonal manner across any driveway or other designated parking space, or in any other manner other than as is customary for the type of parking space being used, or (iii) in such manner as to obstruct or impede sidewalk, driveway or street access or usage, or in such manner that any part of the vehicle extends in to any part of any street or common drive. No Owner or resident is permitted to park or store any vehicle on the Lot of another Owner or resident.

### 7.03.3 PARKING.

(a) OCCUPANT VEHICLES. IN THIS SECTION (AND THIS DECLARATION), "OCCUPANT VEHICLES" MEANS ANY PERMITTED VEHICLES AS TO EACH LOT WHICH ARE OWNED AND/OR OPERATED BY (I) ANY SINGLE FAMILY MEMBER OF THE RESIDENTS OF EACH LOT, AND (II) ANY OTHER PERSON VISITING OR STAYING AT THE LOT WHO PARKS THE VEHICLE WITHIN THE SUBDIVISION AT ANY TIME MORE THAN THREE DAYS IN ANY WEEK OR MORE THAN FIVE DAYS IN ANY CONSECUTIVE THIRTY DAY PERIOD. AT LEAST ONE OCCUPANT VEHICLE MUST BE PARKED IN THE GARAGE OF THE APPLICABLE LOT BEFORE ANY OTHER OCCUPANT VEHICLE IS PARKED ON THE DRIVEWAY OF THAT LOT. AT LEAST THREE OCCUPANT VEHICLES MUST BE PARKED IN THE GARAGE AND THE DRIVEWAY OF THE APPLICABLE LOT BEFORE ANY OTHER OCCUPANT VEHICLE AS TO THAT LOT IN PARKED IN THE STREET.

(b) GUEST PARKING. GUEST VEHICLES MUST BE PARKED IN THE DRIVEWAY OF THE LOT BEING VISITED IF PARKING THEREIN IS AVAILABLE. OTHERWISE GUEST VEHICLES MAY BE PARKED IN THE STREET AS NEXT PROVIDED.

(c) STREET PARKING. WHEN PARKING OF OCCUPANT OR GUEST VEHICLES IS ALLOWED IN THE STREET AS ABOVE PROVIDED, THE VEHICLES MUST BE PARKED ALONG THE SIDE OF THE STREET IN FRONT OF, AND ON THE SAME SIDE OF THE STREET OF, THE LOT AT WHICH THE OPERATOR OF THE OCCUPANT VEHICLE RESIDES OR WHICH THE GUEST IS VISITING, OR AS CLOSE THERETO AS CIRCUMSTANCES PERMIT.

(d) OTHER RULES AND REGULATIONS. WITHOUT LIMITATION OF THE BOARD'S AUTHORITY TO OTHERWISE ENACT RULES AND REGULATIONS, THE BOARD IS HEREBY SPECIFICALLY AUTHORIZED TO DESIGNATE AREAS AS FIRE ZONES, NO PARKING ZONES, AND GUEST PARKING, ONLY ZONES TO THE EXTENT ANY AREAS ARE AVAILABLE FOR SUCH GUEST PARKING AND TO OTHERWISE ADOPT REASONABLE PARKING AND TRAFFIC REGULATIONS. NO SPECIFIC GUEST PARKING AREAS ARE PLANNED INITIALLY BY DECLARANT, BUT DECLARANT RESERVES THE RIGHT TO THE ESTABLISH SAME AND TO OTHERWISE DESIGNATE ZONES AND REGULATE PARKING AND TRAFFIC AS AFORESAID.

(e) RESPONSIBILITIES OF OWNERS AND TENANTS. OWNERS AND THEIR TENANTS MUST OBTAIN FULL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION (INCLUDING RULES AND REGULATIONS ADOPTED PURSUANT TO THIS DECLARATION) BY THEIR RESPECTIVE RELATED PARTIES, AND EACH IS JOINTLY AND SEVERALLY LIABLE FOR ALL VIOLATIONS BY THEIR RESPECTIVE RELATED PARTIES.

7.03.4 Repair of Vehicles. No work on any vehicle within the Subdivision, including on any street, or on any Community Properties, or on any Lot, may be performed at any time other than temporary emergency repairs or other work required in order to promptly remove an inoperable or disabled vehicle from the Subdivision or to and completely within a garage.

7.03.5 Vehicle Defined. As used in this Section, "vehicle" means a device in, on, or by which a person or property may be transported, including an operable or inoperable automobile, truck, motorcycle, recreational vehicle, trailer, and such other devices as from time to time specified by applicable Rules and Regulations.

7.03.6 Presumptive Violations. Repairs or other work extending over a period exceeding eight hours is conclusively presumed not to be "temporary". Any vehicle is conclusively presumed to be "unused" or "inoperable" if the vehicle has not been operated outside the Subdivision for seven or more consecutive days or the vehicle has not been operated outside the Subdivision more than twice in any fourteen day period. The provisions hereof do not prejudice the right of the Association to otherwise establish a violation. The foregoing provisions do not apply to any vehicle completely stored within a garage.

7.03.7 Towing. The Board or its designated representative may cause any vehicle which is parked, stored or maintained in violation of this Declaration or other Governing Documents, or in violation of any ordinance, statute or other governmental regulation, to be removed from the Subdivision to any vehicle storage facility within Harris County, Texas at the sole cost and expense of the Person owning such vehicle (whether or not such Person is an Owner) and/or the Owner as to whom such Person is a tenant, visitor, guest, invitee or other Related Party. Any such removal may be in accordance with any applicable statute or ordinance, including Chapter 684 of the Texas Transportation Code, as amended.

7.03.8 LIMITATION OF LIABILITY. DECLARANT, THE ASSOCIATION, THEIR RELATED PARTIES, AND ANY PERSON REMOVING ANY VEHICLE AS HEREIN PROVIDED (THE "INDEMNITEES") HAVE NO LIABILITY WHATSOEVER IN CONSEQUENCE OF REMOVAL OF ANY VEHICLE AS HEREIN PROVIDED. THE PERSON OWNING EACH TOWED VEHICLE (WHETHER OR NOT SUCH PERSON IS AN OWNER) AND THE OWNER AND OWNER'S TENANT AS TO WHOM SUCH PERSON IS A VISITOR, GUEST, INVITEE, OR OTHER RELATED PARTY, SHALL HOLD ALL SUCH INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LIABILITIES OR DAMAGES ARISING, DIRECTLY OR INDIRECTLY, AS RESULT OF SUCH REMOVAL. THE PROVISIONS HEREOF ARE CUMULATIVE OF THE PROVISIONS OF **SECTION 3.06.**

#### SECTION 7.04      Nuisance; Unsightly or Unkempt Conditions.

7.04.1 General. It is the continuing responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No Lot may be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition, or that will be obnoxious to the eye. No hobbies or activities which will cause disorderly, unsightly, or unkempt conditions, including without limitation the assembly or disassembly of or repair work on motor vehicles or other mechanical devices, may be performed within the Subdivision. There may not be maintained any plants, animals, devices, thing, use or activities of any sort which in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the residents of the Subdivision.

7.04.2 Nuisance or Annoyance. No substance, thing, or material may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive trade or activity may be carried on upon any Lot, nor may anything be done thereon tending to cause embarrassment, discomfort, annoyance, or a nuisance to any residents of the Subdivision or to any Person using any property adjacent to the Lot. No spirituous, vinous, malt, medicated bitters, alcohol, drugs or other intoxicants may be sold or offered for sale on any part of any Lot or any other place within the Subdivision. No Lot or any part thereof may be used for any immoral or illegal purposes.

7.04.3 Pollutants; Hazardous Materials. Without limitation of any other provisions of this Section, no Owner or tenant, and Related Parties of either, shall dump grass clippings, leaves or other debris, detergents, petroleum products, fertilizers, or other pollutants or potentially hazardous or toxic substances, in any sewer system, water system, drainage ditch, stream, pond or lake within the Subdivision, or do any thing or maintain or permit any condition in violation of applicable environmental, toxic or hazardous waste or similar laws, rules or regulations. Storage of gasoline, heating or other fuels, or of any hazardous or toxic materials upon any Lot is strictly prohibited (except that up to five gallons of fuel may be stored upon a Lot for emergency purposes and operation of lawn mowers and similar tools or equipment if properly kept and stored in a safe and non-hazardous manner). THE FOREGOING DOES NOT PLACE UPON DECLARATION, THE ASSOCIATION, THE ACC OR ANY OF THEIR RELATED PARTIES ANY OBLIGATION FOR ENFORCEMENT OF ANY APPLICABLE ENVIRONMENTAL, TOXIC OR HAZARDOUS WASTE OR SIMILAR LAWS, RULES OR REGULATIONS.

7.04.4 Sound Devices; Excessive Noise. No exterior speaker, horn, whistle, bell or other sound device shall be located, placed or used upon any Lot or improvement thereon. The foregoing shall not apply to fire or security devices used exclusively for such purpose; provided, such devices must be installed such as not to be visible from any street and otherwise in as inconspicuous a manner as possible. No stereo, television, speaker, horn, whistle, bell or other sound device shall be operated within, and no other sound emitting activity (such as practice of a band, excessively loud social gatherings and similar activities) shall be conducted within a residence, garage or other structure which is audible outside the Lot lines of the applicable residence, garage or other structure, or which is otherwise an annoyance or nuisance to any other residents as determined in the sole opinion of the Board.

7.04.5 Firearms and Fireworks Prohibited. The use of firearms in the Subdivision is strictly prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and small or large firearms of all types. Fireworks of any type are strictly prohibited at any place within the Subdivision.

7.04.6 Authority to Cure. Upon the good faith determination of the Board that a violation of this Section exists, the Board may after written notice, take such actions as it deems necessary to abate the violation at the sole cost and expense of the violating Owner and, if applicable, their tenant and without liability for trespass or otherwise.

SECTION 7.05 Septic Tanks. No septic tank, private water well or similar private sewage or water system is permitted upon any Lot.

SECTION 7.06      Disposal of Trash. No trash, rubbish, garbage, manure, debris or offensive material of any kind may be kept or allowed to remain on any Lot, nor may any Lot be used or maintained as a dumping ground for such materials. No incinerator may be maintained on any portion of the Subdivision, and disposal of any materials by incineration within the Subdivision is strictly prohibited. All trash and similar matter to be disposed of must be placed in cans or similar receptacles with tight fitting lids or plastic bags tied or otherwise tightly secured, and must be placed in an area adequately screened by planting or fencing from public view or within a garage except when placed for regular pickup as herein provided. Equipment used for the temporary storage and/or disposal of such material prior to removal must be kept in a clean and sanitary condition, and must comply with all applicable federal, state, county, municipal or other governmental laws and regulations. All such prohibited matter must be removed from each Lot at regular intervals if not removed or removable by a regular garbage and sanitation service. Trash and garbage for pickup by a regular service must be placed in such area or areas as the Board may from time to time direct, or as the applicable garbage and sanitation service or provider may require; provided trash and garbage may not be placed for pickup earlier than eight (8) hours prior to a scheduled pickup day, and all receptacles therefor and any remaining trash and garbage must be removed from the pickup site by midnight of the pickup day. Any of the foregoing provisions may be modified, added to or deleted by applicable Rules and Regulations.

SECTION 7.07      Permitted Hours for Construction Activity. Except in the case of an Emergency, outside construction work or noisy interior construction work is not permitted on any legal holiday or Sunday, and otherwise only between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturdays. The foregoing does not apply to any construction or any other development activities conducted by Declarant or an approved Builder either during or after the Development Period.

SECTION 7.08      Building Materials. No Lot shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Lot may be placed upon such Lot as provided in **Section 4.07**. Under no circumstances shall building materials be placed or stored on any street or walkway or upon any Community Properties except as expressly authorized in writing by the Board.

SECTION 7.09      Outdoor Cooking. Outdoor cooking shall be permitted on any Lot only in equipment especially constructed for same, and only in such manner as not to create a hazard of fire or injury to persons or property. The use of outdoor cooking equipment within a garage, residence or other outbuilding is prohibited. Outdoor cooking is prohibited upon Community Properties unless authorized by the Board. All outdoor cooking equipment shall be properly maintained, and shall be stored in an area screened from public view when not in use. The Board may enact Rules and Regulations specifically prohibiting outdoor cooking any place within the Subdivision or upon any Lot, or otherwise restricting or regulating outdoor cooking.

SECTION 7.10      Children and Other Dependents.

7.10.1 Supervision; Compliance. All Owners and tenants shall insure that their children and other dependents, and the children and other dependents of any of their Related Parties, are properly supervised at all times, and shall not permit their children or other dependents to engage

in any activity or conduct in violation of this Declaration or other Governing Documents. Owners and tenants are liable for all consequences of any lack of supervision or violations.

7.10.2 Notice of Limited Play Area. No play area or equipment intended for children are expected to be constructed, installed or otherwise provided in the Subdivision, and as provided in **Section 7.17** no persons, including children, are permitted to play, loiter or congregate, or roam about in or on any Streets. ACCORDINGLY, NO PLAY AREA OUTSIDE OF THE LOT WHERE A CHILD RESIDES MAY EVER BE AVAILABLE WITHIN THE SUBDIVISION AS A RECREATIONAL OR PLAY AREA, AND IN ANY EVENT THE AVAILABILITY OF ANY SUCH RECREATIONAL OR PLAY AREA WITHIN THE SUBDIVISION WILL BE EXTREMELY LIMITED.

SECTION 7.11 Basketball Goals. No basketball goals or backboards may be mounted on a garage or on a pole, or otherwise erected or maintained upon any Lot, without the prior written approval of the ACC.

SECTION 7.12 Clotheslines. No outside clotheslines shall be constructed or maintained on any Lot or Community Properties, nor shall any other outside drying of clothes be permitted.

SECTION 7.13 Timesharing Prohibited. No Lot may be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot or the single family residence thereon rotates among members of the program on a fixed, floating or other time schedule.

SECTION 7.14 Electronic Signal Devices. The Board may require registration of the frequencies of any electronic signal devices such as garage door openers, fence openers, remote controls for lights or other electronic devices with the Board. If so required and in the event a similar frequency is already registered with the Board, the Board has the right to require the later registering user to change their proposed frequency. The Board will attempt to coordinate such frequencies so that one user's electronic devices will not interfere with the devices of other users.

SECTION 7.15 Leases.

7.15.1 Restrictions. No Lot may be leased other than for use as a single family residence as herein provided and defined. No Owner may lease a Lot and attendant use of the residence and improvements thereon for transient or hotel purposes. No Owner may lease less than an entire Lot and attendant use of the residence and improvements thereon. All leases: (i) must be in writing; and (ii) are specifically subject in all respects to all provisions of this Declaration and all other Governing Documents (whether or not expressly stated in the lease), and any failure by lessee to comply with this Declaration or any other Governing Documents will be a default under the lease.

7.15.2 Default. In the event of default under any lease due to violation of this Declaration or any other Governing Documents, the Board may (but has no obligation to) initiate any proceedings, actions or litigation under the lease to enforce compliance or to terminate the lease and/or for eviction. With regard to the foregoing, each Owner hereby irrevocably appoints the Board or its designated representative as their attorney-in-fact, agrees to indemnification in regard

thereto to the fullest extent herein provided (including as set forth in **Section 3.06**) and agrees to be solely responsible for all costs thereof (including as provided in **Section 5.06**). NO PROCEEDINGS, ACTION OR LITIGATION UNDER THIS SECTION OR ANY OTHER PROVISIONS OF THIS DECLARATION OR ANY OTHER GOVERNING DOCUMENTS SHALL EVER BE CONSTRUED AS AN ASSUMPTION BY THE ASSOCIATION OR ITS RELATED PARTIES OF ANY OBLIGATION WHATSOEVER UNDER ANY LEASE OR REGARDING ANY LEASEHOLD INTEREST, INCLUDING WITHOUT LIMITATION, ANY OBLIGATION REGARDING SECURITY DEPOSITS, MAINTENANCE AND ANY OTHER OBLIGATIONS PURSUANT TO TITLE 8 OF THE TEXAS PROPERTY CODE, ALL SUCH OBLIGATIONS BEING HEREBY EXPRESSLY DISCLAIMED.

7.15.3 Joint and Several Liabilities. Lessor(s) and lessee(s) are jointly and severally liable for the observance and performance of all of the terms and provisions of this Declaration and all other Governing Documents, including without limitation joint and several liability for all damages, costs and expenses resulting from any violation, by either, or by their respective Related Parties, all fines and assessments imposed hereby and with respect to all other rights and remedies regarding enforcement of this Declaration and all other Governing Documents.

7.15.4 Surrender of Use of Community Properties by Lessor(s). During all periods of time during which a Lot is occupied by lessee(s), lessor(s) automatically surrender all of lessors' rights as an Owner to the use of all of the Community Properties unto such lessee(s), including without limitation all rights of use of recreational facilities. The provisions of this Section do not impair the voting rights of the lessor(s), the right to inspect the leased premises or the exercise of any other rights or remedies customarily reserved for the protection of lessor(s).

#### SECTION 7.16      Unoccupied or Undeveloped Property.

7.16.1 Unoccupied Residences. The Owner of a Lot with an unoccupied residence, including any mortgagee in possession and any mortgagee obtaining title to a Lot by foreclosure or by any deed or other arrangement in lieu of foreclosure, is liable for full observance and performance of all terms and conditions of this Declaration and all other Governing Documents, including in particular but without limitation: (i) proper maintenance of the Lot and all improvements thereon; (ii) securing of the unoccupied residence, including fastening of windows and locking of all entry and garage doors, and maintenance of appropriate curtains or other permitted window covers in order to prevent unauthorized entry or use; and (iii) such other maintenance as required to avoid an appearance of abandonment or other unsightly or unkept appearance.

7.16.2 Undeveloped Lots. The Owner of any Lot upon which a single family residence has not been constructed must maintain such Lot in a neat, sanitary and attractive condition, and in accordance with other applicable provisions of this Declaration and other Governing Documents, including without limitation, periodic and regular removal of trash and debris therefrom and mowing of grass and other vegetation thereon as necessary to prevent growth to more than eight inches (8") in height.

SECTION 7.17      Use of Streets. All Streets in the Subdivision, whether public or private, including in particular but without limitation any Street designated in **Section 2.08**, are restricted to use for vehicular ingress, egress and regress, parking of vehicles to the extent otherwise

permitted by this Declaration, and incidental pedestrian ingress, egress and regress. Without limitation of the foregoing, no Street may be used as a play area or for any other recreational use, and no persons are permitted to play, loiter or congregate, or roam about in or on any Street. ALL OWNERS AND TENANTS, AND THEIR RELATED PARTIES, ASSUME SOLE RESPONSIBILITY FOR ALL CONSEQUENCES OF ANY VIOLATIONS OF THE FOREGOING, INCLUDING AS TO ALL DAMAGES FOR PERSONAL INJURY OR OTHERWISE, AND MUST INDEMNIFY AND HOLD DECLARANT, THE ASSOCIATION AND THEIR RELATED PARTIES HARMLESS AS TO ANY AND ALL SUCH CONSEQUENCES.

SECTION 7.18      Garage Usage. No portion of any garage may be diverted to any use other than the parking of vehicles and other generally accepted and customary usage of a garage. In particular but not in limitation of the foregoing, no portion of any garage may be used as a residence or a game room, or for any similar use as living quarters or as a recreational area. Garage doors must be kept in a closed position when the garage area is not being actively used for customary garage usage purposes.

SECTION 7.19      Mineral Production. No drilling, development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

SECTION 7.20      Rules and Regulations. The Board is hereby specifically authorized to promulgate, amend, modify and delete such reasonable Rules and Regulations applicable to the operation, use and occupancy of the Subdivision, including all Lots and Community Properties, as the Board may from time to time deem beneficial to the Subdivision. Such authority includes but is not limited to: (i) the right to limit, in addition to the provisions of **Section 7.03**, the type and size of vehicles permitted within the Subdivision, traffic and parking regulations, speed limits (other than on public streets otherwise regulated by the City or other governmental authority), and other traffic control procedures, and the maximum permissible noise levels of vehicles within the Subdivision; (ii) procedures and reasonable restrictions and limitations on the right to use Community Properties; and (iii) all procedural and substantive aspects for the establishment, levy, collection and payment of fines for any violations of the Governing Documents. Rules and Regulations are of equal dignity with and may be enforceable in the same manner as the provisions of this Declaration; provided:

7.20.1 Rules and Regulations may not be enacted retroactively (except that if any activity is subsequently covered by Rules and Regulations and such activity ceases after enactment of the Rules and Regulations covering same, then the Rules and Regulations will apply to the activity thereafter);

7.20.2 Rules and Regulations may not be incompatible with the provisions of this Declaration; and

7.20.3 Except as otherwise herein provided, Rules and Regulations will not become effective until thirty days after notice thereof is given to all Owners or such later date as stated in the notice (certification by the Association that proper notice was given in accordance with this Section to be conclusive absent proof of fraud).

**Article VIII**  
**Architectural Restrictions**

**SECTION 8.01      Type of Residence.**

8.01.1 Single Family Residence. No building other than one single family residence not to exceed three stories which is to be occupied as a residence by one single family, an appurtenant garage and such outbuildings if and as may be approved in writing by the ACC may be constructed, placed or permitted to remain on each Lot. Without limitation of the foregoing, the term "single family residence" shall be construed to prohibit duplex houses, garage apartments, apartment houses, and any other multi-family dwelling.

8.01.2 Garages and Garage Doors; Notice of Size Limitation.

(a) General. All single family residences must have an enclosed attached or detached minimum one car parking garage (subject to **Section 8.04.6** regarding driveway width). The garage must be architecturally similar and compatible to the appurtenant residence, including as to roof line and appearance. Except for porte-cocheres, carports on Lots are prohibited. All garages must be enclosed with permanent walls and their fronts enclosed with standard type overhead doors customarily used in the building industry which garage doors must be maintained in good working order at all times. ANY REPLACEMENT GARAGE DOOR MUST BE OF EQUAL OR BETTER QUALITY AND SUBSTANTIALLY THE SAME DESIGN AS THE GARAGE DOOR FOR THE GARAGE AS ORIGINALLY CONSTRUCTED, AND MUST BE PAINTED TO MATCH THE COLOR SCHEME OF THE RESIDENCE AS ORIGINALLY CONSTRUCTED OR A SUBSEQUENT COLOR SCHEME WHICH HAS BEEN APPROVED IN WRITING BY THE ACC. Except for interior modifications of a garage wholly consistent with its use as a garage and which do not alter the use or exterior appearance of the garage as originally constructed, no modification of the interior or exterior of any garage as originally constructed is permitted without prior written approval of the ACC. GARAGE DOORS MUST BE KEPT CLOSED AT ALL TIMES EXCEPT FOR ENTRY AND EXIT OF VEHICLES OR DURING BRIEF PERIODS WHEN THE GARAGE IS BEING ACTIVELY USED FOR CUSTOMARY PURPOSES.

(b) NOTICE OF SIZE LIMITATION; NO LIABILITY. GARAGES MAY NOT BE OF SUFFICIENT SIZE TO PERMIT PARKING THEREIN OF THE SAME NUMBER OF LARGE VEHICLES AS THE CUSTOMARY DESCRIPTION OF THE GARAGE. FOR EXAMPLE, A "TWO-CAR GARAGE" MAY NOT BE LARGE ENOUGH TO PERMIT PARKING THEREIN OF TWO LARGE SEDANS, TWO SUV'S OR TWO OTHER LARGE VEHICLES. THIS SIZE LIMITATION IS NOT A BASIS FOR NON-COMPLIANCE WITH APPLICABLE PROVISIONS OF THIS DECLARATION OR OTHER GOVERNING DOCUMENTS (INCLUDING APPLICABLE RULES AND REGULATIONS), AND SHALL NOT BE A BASIS FOR ANY CLAIM WHATSOEVER AGAINST DECLARANT OR THE ASSOCIATION, OR THEIR RELATED PARTIES.

8.01.3 New Construction and Continued Maintenance Required. All residences, buildings and structures must be of new construction, and no residence, building or structure may

be moved from another location to any Lot without prior written approval of the ACC. All residences, buildings and structures must be kept in good repair, must be painted (as applicable) when necessary to preserve their attractiveness and must otherwise be maintained in such manner as to obtain and maintain Prevailing Community Standards.

8.01.4 Tents, Mobile Homes and Temporary Structures. No tent, shack, mobile home, or other structure of a temporary nature shall be placed upon any Lot or elsewhere in the Subdivision. The foregoing prohibition does not apply to restrict the construction or installation of a single utility or similar outbuilding to be permanently located on a Lot, provided it receives the prior approval of the ACC. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the ACC.

SECTION 8.02 Living Area Requirements. All single family residences, exclusive of porches and garages, must contain not less than one thousand (1,000) square feet.

SECTION 8.03 Location of Residence; Zero Lot Line Option.

8.03.1 Location-General. No single family residence may be located upon any Lot except in accordance with building setback lines shown on any applicable Plat, or as established by this Declaration or applicable requirements of the City. Subject to the foregoing, no part of any residence, or garage shall be located nearer than three feet to any other residence or garage. For the purposes of this Section, eaves, roof overhangs, steps, fireplaces, chimneys, bay windows, unroofed terraces and similar architectural detail which is a part of a permitted residence or garage shall not be considered as part of a residence or garage. Unless otherwise approved in writing by the ACC, each main residence must face the front building line.

8.03.2 Zero Lot Line Option. Subject to **Section 8.03.1**, Declarant and only Declarant may locate or approve location of one wall of a single family residence or garage on or within one foot of an interior side Lot line of an adjacent Lot.

8.03.3 Zero Lot Line Walls. A "Zero Lot Line Wall" means any outer wall of a single family residence or garage which is located three feet or less from the outer wall of an adjacent residence. No windows with a sill height below six feet above the floor may be placed in a Zero Lot Line Wall except for opaque glass and glass bricks as may be approved by the ACC. No other openings of any kind, and no exterior objects, including without limitation, electrical panels, vents and plumbing cleanouts, may be placed in or attached to a Zero Lot Line Wall; provided, one exterior water hose type faucet may be placed therein.

SECTION 8.04 Construction Standards.

8.04.1 Applicability. Except as may be otherwise authorized in writing by the ACC and in addition to all other applicable requirements of this Declaration and other Governing Documents, initial construction of all single family residences and appurtenant structures must be in accordance with, and such residences and appurtenant structures must thereafter be maintained to the extent applicable in accordance with, the provisions of this **Section 8.04**.

8.04.2 Maximum Period for Completion of Construction. Upon commencement of construction of a single family residence, the work thereon must be prosecuted diligently to the end that the same will not remain in a partly finished condition any longer than reasonably necessary for completion thereof. In any event construction must be substantially completed within six months after pouring of the slab for a single family residence. The foregoing period will be extended in the event of and only for the duration of delays due to strikes, war, acts of God or other good causes beyond the reasonable control of a Builder or Owner as determined in the sole opinion of the ACC.

8.04.3 New Construction Materials Required. Only new construction materials (except for used brick if approved by the ACC) may be used.

8.04.4 Storage of Materials; Clean-Up. No building materials of any kind or character shall be placed or stored upon any Lot more than thirty days before construction is commenced. Except as otherwise permitted by the ACC, all materials permitted to be placed on a Lot shall be placed within the boundaries of the Lot. Upon completion of construction, any unused materials shall be promptly removed from the Lot and the Subdivision and in any event not later than thirty days after construction is completed.

8.04.5 Landscaping. All initial landscaping installed on any Lot must be in accordance with plans and specifications approved by the ACC.

8.04.6 Driveways. Each Lot must contain a driveway or other means of ingress and egress for vehicles from the garage to the abutting drive or street. All driveways must be a minimum sixteen feet (16') in width regardless of whether the residence has a one car or larger parking garage. All driveways must be constructed of concrete or concrete pavers, or as otherwise approved by the ACC. All driveways which cross any drainage ditch or other drainage device must be constructed to keep the drainage ditch or other drainage device clear of obstructions to operation and maintenance, and in accordance with applicable provisions of **Section 8.04.8** regarding drainage and requirements of the City. The provisions of **Section 9.03** regarding encroachments applies to driveway approaches and inturns. DRIVEWAY APPROACHES AND INTURNS AS TO EACH LOT MAY (AND PROBABLY WILL) ENCROACH AS TO THE ADJOINING LOT.

8.04.7 Exterior Materials. The exterior wall areas of each residence must be covered such that all exterior wall areas of the residence, excluding gables, windows and door openings, are brick, stone, stucco, composite cement siding or equivalent, except as otherwise approved by the ACC.

#### 8.04.8 Drainage.

(a) Drainage Devices. During the Development Period Declarant is hereby specifically authorized to excavate as necessary for and to establish, construct and maintain drainage swales, erosion control systems and such other things and devices (herein referred to as "Drainage Devices") upon, over, across or under any part of the Subdivision, including any Lot, as Declarant deems appropriate to properly maintain and control water drainage and erosion. Declarant may also authorize any Builder of the initial single family residence on any Lot to establish, construct and maintain Drainage Devices as aforesaid. Declarant hereby reserves for itself and authorized builders a blanket easement upon, over, under and across the Subdivision, including each

Lot, for purposes of establishment, construction and maintenance of Drainage Devices as aforesaid; provided, such easement may not be exercised and no Drainage Device may be established, constructed or maintained in any manner as to encroach upon the foundation or any other part of any single family residence or its appurtenant garage. Declarant may designate any Drainage Devices as part of the Subdivision Facilities in which case same shall be maintained by the Association. Otherwise, all Drainage Devices shall be maintained by the Owners as hereafter provided. THE FOREGOING SHALL NOT BE CONSTRUED TO OBLIGATE DECLARANT OR ANY AUTHORIZED BUILDER TO ESTABLISH, CONSTRUCT OR MAINTAIN ANY DRAINAGE DEVICES OF ANY TYPE OR KIND WHATSOEVER, AND ANY REPRESENTATION, WARRANTY OR IMPLICATION AS TO SAME IS HEREBY SPECIFICALLY DISCLAIMED.

(b) Owner Obligations. Once established and for so long as continued maintenance thereof is reasonably necessary, all Drainage Devices shall remain unobstructed, and shall be properly maintained by each Owner of each Lot to which same pertains. In the event any Drainage Device serves more than one Lot (such as a common drainage line between two Lots), then Owners of all Lots served shall share all costs of maintenance, pro rate, or in such other proportions as determined by the Board upon written request by any such Owner pursuant to **Section 6.02.8** when the circumstances clearly demonstrate that a different manner of allocation is required. Each Owner must refrain from permitting any construction, grading and any other work, act or activity upon such Owner's Lot which would obstruct, alter, divert, impede or impair the proper functioning of any Drainage Device. In addition, each Owner must perform such work, act or activities and install and maintain such Drainage Devices (i) as is reasonably necessary to prevent so far as practical drainage from the Owner's Lot to any other Lot, other than drainage along established swales and along drainage patterns as established by Declarant during the Development Period or the ACC thereafter, and (ii) as needed to maintain so far as practical positive drainage away from the foundation of the residence located upon the Owner's Lot. Without limitation of the foregoing, no Owner may place or permit placement of any flower bed or other landscaping, or any other structure or thing along or near any Lot line which would obstruct, alter, divert, impede, or impair drainage along any Lot line within any swale or otherwise within drainage patterns as established by Declarant during the Development Period or by the ACC thereafter. To obtain and maintain proper drainage, including as required by this Section, and/or as changing circumstances may require, the Architectural Control Committee is hereby specifically authorized to require any Owner to construct, install and maintain such gutters and/or downspouts, drains, drainage lines and any other Drainage Devices as the ACC determines, and/or to remove any obstruction, thing or device or cease any activity, either upon initial construction of any residence or other improvement, or at any time thereafter that circumstances reasonably require.

8.04.9 Garage Height. No garage may exceed in height the dwelling to which it is appurtenant.

8.04.10 Painting of Frame Construction. No structure of any kind or character which incorporates frame construction on the exterior may be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is redwood or cedar material.

8.04.11 Roof Materials. Roofs of all residences must be constructed so that the exposed material is slate, tile, or dimensional/architectural type composition shingles, or such other material which is compatible in quality and appearance to the foregoing as may be approved by the ACC. Wood shingles of any type are prohibited on any residence, building or structure.

8.04.12 Gutters and Downspouts. Adequate guttering must be installed around roof lines and downspouts must be installed to promote drainage in accordance with **Section 8.04.8**.

8.04.13 Pre-Fabricated Homes Prohibited. No mobile homes, modular homes, manufactured home or similar pre-fabricated residential structures of any kind is permitted upon any Lot:

8.04.14 Mailboxes. To the extent mail service is provided in mailbox banks as permitted by **Section 9.06.2** of the Declaration, Owners must exclusively use their assigned mailbox therein and shall strictly comply with all applicable rules and regulations of the United States Postal Service and the Association. Otherwise, one mailbox must be maintained at all times upon each Lot, and the mailbox must be properly maintained at all times to accommodate regular reception of mail in accordance with applicable rules and regulations of the United States Postal Service and the Association. Installation and any subsequent modification of a mailbox and post or other housing for same on each Lot must be approved by the ACC. All mailboxes must be either mounted on a black metal post with a black painted finish (or as otherwise approved), or installed in a mailbox type housing constructed of brick which matches the applicable residence, as approved by the ACC. All mailboxes, and the mounting post or housing for same, must be properly maintained at all times, including maintenance as needed to avoid any leaning or listing, periodic cleaning and painting, and, as needed, repair or replacement of damaged or deteriorated mailboxes, posts and/or housing.

8.04.15 Compliance With Laws. All construction of any single family residence must be in compliance with applicable governmental laws, ordinances and regulations, including applicable building codes or permit or licensing requirements.

SECTION 8.05 Metal Buildings or Structures Prohibited. Subject to **Sections 8.06 and 11.07**, no metal buildings of any kind are permitted anywhere within the Subdivision. The foregoing shall not prohibit incorporation of metal components in permitted buildings (such as stairs and studs) as approved by the ACC.

SECTION 8.06 Temporary Structures; Sales Office. Temporary buildings or structures shall not be permitted on any Lot; provided, the Board may permit (and shall not unreasonably withhold or delay approval for) temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences at such locations as the Board may direct, and may authorize usage of garages as sales offices during the Development Period. During all times when a garage is used as a sales office, as aforesaid, there must be posted a conspicuous sign in such garage advising prospective purchasers that the area must be reconverted to and thereafter maintained as a garage upon the sale of the Lot. At the time of the sale of a residence, any garage appurtenant to any residence used for sales purposes must have been reconverted to a garage.

SECTION 8.07      Lot Resubdivision or Combination. Unless approved by Declarant in writing, no Lot as originally conveyed by Declarant to any Person, including a Builder, may thereafter be subdivided or combined with any other Lot, or the boundaries thereof otherwise changed.

SECTION 8.08      Window and Door Glass Covers. Glass in windows, doors and other similar openings must be maintained as installed during original construction except as otherwise permitted in writing by the ACC. Glass film and similar tinting, and aluminum foil and similar reflective materials, are in all events prohibited for use as a cover for any window or door; provided, factory tinted glass may be approved by the ACC. Only blinds, curtains or drapes which are white or off-white are permitted unless prior written approval of the ACC is obtained.

SECTION 8.09      Lot Line Fences, Walls and Hedges.

8.09.1 Definitions. As used in this Section (i) "Lot Line Fencing" means any and all fences and freestanding fence type walls, gateposts, hedges and planters, whenever and wherever located on any Lot, excluding, however, any perimeter fencing which is included in the Subdivision Facilities, and (ii) "hedge" means a row of bushes, shrubs and similar plants which, at natural maturity, will exceed three feet (3') in height and have sufficiently dense foliage as to present a visual and physical barrier substantially similar to a fence.

8.09.2 ACC Approval Required: No Lot Line Fencing may be constructed, placed or maintained on any Lot without prior written approval of the ACC.

8.09.3 General Requirements: Unless a written variance is obtained from the ACC, all Lot Line Fencing must comply with the following:

(a) No Lot Line Fencing may be more than seven feet (7') in height; provided that perimeter fencing which encloses the Subdivision may be eight feet (8') in height if installed during the Development Period by Declarant or as otherwise approved by the ACC.

(b) All Lot Line Fencing (other than hedges) must be constructed of redwood or cedar, ornamental iron, brick or masonry, or combinations thereof, as approved by the ACC.

(c) NO CHAIN LINK TYPE FENCING OF ANY TYPE IS PERMITTED ON ANY LOT.

(d) NO LOT LINE FENCING SHALL BE ERECTED OR MAINTAINED NEARER TO THE FRONT BUILDING SETBACK LINE THAN THE PLANE OF THE FRONT EXTERIOR WALL OF THE RESIDENTIAL STRUCTURE ON SUCH LOT WHICH IS FURTHERMOST FROM THE FRONT BUILDING SETBACK LINE.

8.09.4 Ownership and Maintenance. Ownership of all Lot Line Fencing passes with title to the Lot. All Lot Line Fencing must be continuously maintained in a neat and attractive condition, in good repair and otherwise as to obtain and maintain Prevailing Community Standards. The obligation for and cost of maintenance and repair shall be the joint responsibility of adjoining

Owners in the case of shared fencing as provided in **Section 6.02**, and otherwise the responsibility of the Owner upon whose Lot the fencing is located.

## SECTION 8.10      Antennas and Satellite Dish Systems.

8.10.1 General Rule. Except as otherwise expressly approved by the ACC in writing, or as otherwise expressly permitted by applicable architectural guidelines or by law, no antenna or satellite dish system of any kind is permitted upon any Lot, or the residence or other improvement thereon, except one dish antenna, one meter or less in diameter or diagonal measurement which is designed to receive direct broadcast satellite or to receive or transmit "fixed wireless signals" (as defined by the Federal Communications Commission), and one television antenna to the extent necessary for reception of local television broadcasts, either or both of which must be installed so as not to be visible from any street. The initial antenna and satellite dish system guidelines will be adopted by the initial Board of Directors at its organizational meeting (or pursuant to a unanimous consent signed in lieu thereof).

8.10.2 Prohibited Antenna. In no event shall any antenna, "dish" or other device be used for transmitting electronic signals of any kind except as to fixed wireless signal transmission as above provided. Antenna and similar devices of any type used for citizen band ("CB") radio, amateur ("HAM") radio, AM/FM radio, or Digital Audio Radio Service ("DARS"), are prohibited and shall not be erected, placed or permitted to remain on any Lot, on any improvement located on any Lot, or elsewhere in the Subdivision. Without limitation as to the authority of the Board to grant variances, the Board is specifically authorized to (but shall not in any event be required to) grant variances as to prohibited antenna, and the Board may condition granting of any such variance upon placement of the applicable antenna in the attic of a residence.

## SECTION 8.11      Signs.

8.11.1 General. No signs, billboards, posters, banners, pennants or advertising devices of any kind, including without limitation business, professional, promotional or institutional signs, are permitted on any Lot, or upon any residence, or within any residence if visible from the exterior of the residence, or within the Subdivision without the prior written consent of the ACC except as otherwise provided in this Section. The Board or ACC may remove or cause to be removed any sign, billboard, poster, banner, pennant or advertising device of any kind which is not approved as aforesaid or is otherwise prohibited under this Declaration or other Governing Documents and may dispose of same as debris without liability for trespass, conversion or otherwise.

8.11.2 Prohibited Signs. No sign is permitted which contains language, graphics or any display that is vulgar, obscene or otherwise offensive to the ordinary person. Permitted signs must be professionally printed and prepared, and must be properly installed and maintained, to avoid unsightly appearance. The good faith determination of the Board or ACC as to any of the foregoing is final. No sign is permitted to be larger than four square feet. No sign may be illuminated. No sign may be placed on any Lot closer than ten feet from any street or any side or back Lot line, or within any traffic sight line area as defined in **Section 8.14**. No Owner, Owner's tenant or their Related Parties, is permitted to place any sign on another Owner's Lot or upon any Community Properties. Distressed, foreclosures and bankruptcy references are specifically prohibited.

8.11.3 Permitted Signs. Subject to applicable provisions of **Section 8.11.2**, each Owner is permitted to place upon (and only upon) such Owner's Lot (i) one sign advertising the particular Lot on which the sign is located for sale or for rent, but only during periods of time when the Lot is in fact for sale or for rent, and (ii) security service signs, not to exceed eighteen inches by twelve inches in size, as provided by a professional security service company; provided that for rent signs of any kind (including in combination with a for sale sign) upon any Lot or structure thereon, or on or within any residence, garage or other building thereon if visible from the outside thereof, are prohibited during the Development Period.

8.11.4 Political Signs. Notwithstanding any other provisions hereof, political signs advertising a political candidate or ballot item for an election (a "Political Sign") are permitted, subject to the following:

(a) No Political Sign is permitted earlier than the 90<sup>th</sup> day before the date of the election to which the sign relates, and each Political Sign must be removed in its entirety by the 10<sup>th</sup> day after the election date.

(b) No more than one Political Sign for each candidate or ballot item may be displayed per Lot.

(c) Each Political Sign must be ground-mounted.

(d) No Political Sign may (i) contain roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component; (ii) be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object; (iii) include the painting of architectural surfaces; (iv) threaten the public health or safety; (v) be larger than four feet by six feet; (vi) violate a law; (vii) contain language, graphics, or any display that would be offensive to the ordinary person; or (viii) be accompanied by music or other sounds or by streamers or be otherwise distracting to motorists.

(e) The Association may remove any Political Sign displayed in violation of this Section, and may dispose of same as debris without liability for trespass, conversion or otherwise.

(f) The Board is specifically authorized to amend this Section to the extent permitted or required to conform this Section to the provisions of Section 202.009 of the Texas Property Code, as amended and/or as subsequently construed or applied by a court of competent jurisdiction, any such amendment to be effective from and after the date of filing of same in the Official Public Records of Real Property of Harris County, Texas.

**SECTION 8.12**      Tree Removal. No living tree with a trunk diameter of six inches or greater shall be cut down or removed from any Lot without the prior written approval of the ACC except for trees within the footprint of a single family residence to be constructed on the Lot or within

five feet thereof. Dead or damaged trees which may create a hazard to property or persons within the Subdivision must be promptly removed or repaired at the Owner's expense.

SECTION 8.13      Traffic Sight Line Areas. No fence, wall, hedge, tree, shrub planting or any other thing or device which obstructs sight lines at elevations between two and eight feet (2' & 8') above a street shall be permitted on any corner Lot within the triangular area formed by the two (2) boundary lines thereof abutting the street and a line connecting them at points twenty-five feet (25') from their intersection, or within the triangular area formed by the boundary line abutting a street, the edge line of any driveway pavement and a line connecting them at points ten feet (10') from their intersection.

SECTION 8.14      Utility, Lighting and Energy Facilities.

8.14.1 Maintenance Of Utilities Required. All utility services intended to be provided to each single family residence as originally constructed, including without limitation water, sewage, electric and gas services, must be maintained by the Owner at all times when a residence is occupied.

8.14.2 Private Utility Lines. All electrical, telephone and other utility lines and facilities which are located on a Lot and which are not owned and maintained by a governmental entity or a utility company must be installed underground unless otherwise approved in writing by the ACC, and must be maintained at all times by the Owner of the Lot upon which same is located.

8.14.3 Air Conditioners. Except as approved by the ACC, no window, wall or exterior roof mounted type air conditioners or heating units, or any part thereof, and no air conditioners or heating units, or any part thereof, which is visible from any public Street will be permitted.

8.14.4 Disposal Units. Each kitchen in a single family residence must be equipped with a garbage disposal unit, and same must at all times be kept in good working order and serviceable condition.

8.14.5 Exterior Lighting. Excepting customary Christmas lighting, any exterior lighting of a residence or Lot must be approved by the ACC in accordance with **Article IV**. No exterior lighting (including Christmas lighting) may be directed outside property lines of the Lot upon which same is located. All lighting fixtures (except Christmas lighting) must be compatible in style and design to the residence where located. Christmas lighting and related decorations and ornamentation may be displayed between November 15 and January 10, and the ACC may in particular instances or through Architectural Guidelines permit other holiday lighting, decorations and ornamentation (all of which for purposes of this Section are referred to as "Christmas lighting"); provided, the ACC is authorized to fully regulate all Christmas lighting in particular instances or by Architectural Guidelines to avoid any annoyance, nuisance, safety hazard or unsightly condition or appearance as determined in the sole opinion of the ACC.

8.14.6 Solar and Other Energy Devices. No solar energy collector panels or attendant hardware or other similar equipment is permitted upon any portion of the Subdivision, including any Lot and/or residence located thereon, without the prior written consent of the ACC. Any such

installation shall be in harmony with the design of the residence, and such that the device is not visible from any street. Windmills, wind generators and other apparatus for generating power from the wind are prohibited.

SECTION 8.15      Pools. Above-ground pools of every kind are prohibited upon any Lot. In-ground pools may not be installed except with the prior written consent and approval of the ACC obtained as provided in **Article IV**.

SECTION 8.16      Artificial Vegetation, Exterior Sculpture, and Similar Items. Artificial vegetation, exterior sculpture, fountains, flags and temporary flagpoles (excepting state and United States flags maintained and exhibited in accordance with applicable Architectural Guidelines), birdhouses, birdbaths and other decorative embellishments or similar items are prohibited at any location upon a Lot which is visible from any street or at ground level from another Lot except with the prior written approval of the ACC obtained as provided in **Article IV**.

SECTION 8.17      Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals or other ground or surface waters shall be installed, constructed or operated upon any Lot or elsewhere in the Subdivision. Private irrigation wells are prohibited upon any Lot. Sprinkler and irrigation systems installed as Subdivision Facilities will be maintained by the Association. No other sprinkler or irrigation system may be installed upon any Lot or elsewhere in the Subdivision except with the prior written consent and approval of the ACC obtained as provided in **Article IV**.

SECTION 8.18      Excavation. The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except upon written approval of the ACC as may be necessary in conjunction with the landscaping of or construction on such Lot.

## **Article IX** **Easements**

SECTION 9.01      Incorporation of Easements. All easements, dedications, limitations, restrictions and reservations shown on any Plat and all validly existing grants and dedications of easements and related rights heretofore made or hereafter established as herein provided affecting the Subdivision or any Lots and filed in the Official Public Records of Real Property of Harris County, Texas, 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 any Person covering any portion of the Subdivision, including any Lot. In the event of any conflict between any of the foregoing filed after the date of filing of this Declaration and any provisions of this Declaration, the provisions of this Declaration control. The foregoing shall not be construed as in any manner giving effect to any instrument of record other than in accordance with the instrument and applicable law.

SECTION 9.02      Owner's Easements for Use and Enjoyment. Every Owner of a Lot has a right and easement of ingress and egress, use and enjoyment in and to the Community Properties which is appurtenant to and passes with the title to the Lot, subject to the following provisions:

9.02.1 Usage Control. The Board has a continuing right to: (i) establish, install, maintain, operate and regulate a limited access gate or gates and such other security oriented systems, devices, and procedures as it may determine; (ii) issue, charge for, and require as a condition of entry to the Subdivision and/or Community Properties such identification cards, passes, keys, or similar devices as the Board may from time to time determine; (iii) limit the number of guests of Lot Owners and their tenants who may use the Community Properties; (iv) provide for the exclusive use and enjoyment of specific portions of the Community Properties at certain designated times by an Owner, his family, and the Owner's tenant, and the guests or invitees of either; and (v) charge reasonable admission and other fees for the use of any portion of the Community Properties, including any Subdivision Facilities.

9.02.2 Suspension of Usage Rights. The Board has a continuing right, upon notice and opportunity to be heard, to suspend the right of an Owner, and the Owner's tenant, and the Related Parties of either, to use all or any part of the Community Properties and/or Subdivision Facilities for any breach, violation or infraction of this Declaration or other Governing Documents until all such breaches, violations and infractions are cured. The provisions of this Section may not be construed to permit any limitation of ingress or egress to or from any Lot.

SECTION 9.03 Easements for Encroachment and Overhang. In the event of encroachment by any building, structure or other improvement, including without limitation, any portion of any roadway, walkway, parking area, driveway, water line, sewer line, utility line, sprinkler system, building steps, fences, fireplaces, chimneys, bay windows and similar architectural details, paving, driveway approaches and inturns, decking, footings, piers, piles, grade beams and similar improvements, which encroachment originates during original construction or results at any time from settling or shifting, on or into any adjoining Lot or on or into the Community Properties, not more than thirty inches (30") from any point on the common lot line ("Encroachment"), it shall be deemed that the Owner of the Lot encroached upon (or into) or the Association (as the case may be) has granted a perpetual easement for continuing maintenance and use of such encroaching improvements, and for maintenance, repair or replacement thereof if performed in substantial compliance with the original construction, over, above, under, and upon the adjoining, encroached upon Lot (or Community Property) for a distance co-existent with the Encroachment. An "Encroachment" as aforesaid includes, without limitation, overhead encroachments and overhangs of walls, roofs or other part of any building or structure, and encroachments which are completely underground. In addition, any such Encroachment is permitted to extend over any otherwise applicable setback line up to thirty inches (30") when the Encroachment originates during original construction or results at any time from settling or shifting as aforesaid. The term "original construction" as used in this Section means construction, placement or modification of improvements which occurs through "completion of the initial sale" of a Lot as that phrase is defined in **Section 11.03**.

SECTION 9.04 Owners' Access Easement.

9.04.1 Defined. Each Lot and the Community Properties are subject to a non-exclusive access easement for the construction, maintenance, repair and replacement of improvements located upon any adjacent Lot (the "Accessing Lot") for usage by an Accessing Lot Owner or occupant, or their agents or employees. The Lot or Community Properties being accessed

is herein referred to as the "Easement Lot". This access easement area on the Easement Lot (the "Access Area") consists of a strip of land abutting the nearest boundary line of the Accessing Lot of not less than three feet nor more than six feet, as may be reasonably required, and to such additional area as may be approved in writing by the Board upon written request stating a reasonable necessity for same, provided that the Access Area shall not in any event extend past the exterior wall of any residence or garage, or the foundation of either. THIS ACCESS EASEMENT AREA MAY BE UTILIZED ONLY WHEN AND TO THE EXTENT SAID CONSTRUCTION, MAINTENANCE, REPAIR OR REPLACEMENT CANNOT BE REASONABLY CONDUCTED WITHIN THE BOUNDARIES OF THE ACCESSING LOT. Except in the case of an Emergency, in no event will such easement extend to any part of the single family residence garage, or other building located on the Easement Lot.

9.04.2 Notice; Duration. Prior to use of the Access Area, the Owner or occupant of the Accessing Lot must give written notice of intent to utilize the Access Area stating therein the nature of intended use and the duration of such usage. Such notice must be delivered to the Owner or occupant of the Easement Lot by regular or certified mail or personal delivery, or by attaching same to the front door of the residence located upon the Easement Lot. If by mail, such notice must be given at least ten business days prior to use of the Access Area; and if by personal delivery or affixing to the front door, such notice must be given at least five business days prior to use of the Access Area. In case of Emergency the Accessing Lot Owner or occupant may commence and continue usage of the Access Area without giving the foregoing notice for so long as is reasonably necessary to control the Emergency and complete work necessitated thereby, but must proceed with giving of the required notice as soon as practical after commencement of usage. If made by an Owner or occupant, the determination that an Emergency exists is the sole responsibility of such Owner or occupant who are solely liable as to same.

9.04.3 Usage. Usage of the Access Area is limited to the minimum reasonable amount of time and area required to complete necessary work to preserve, protect, construct, maintain, repair, and replace the residence or other structures and improvements located on the Accessing Lot. Work during the usage period must be conducted in such manner as to minimize so far as reasonably possible inconveniences and disruptions to the Easement Lot and its occupants. Except in case of emergency or unless otherwise authorized by the Owner or occupant of the Easement Lot, work during the usage period may not be conducted during legal holidays or any Sunday and must otherwise be confined to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturdays.

9.04.4 ACC Approval of Access Area Improvements. No structure or improvements other than grass, and customary, non-exotic flower and shrubbery beds, may be placed within the Access Area at any time without the prior written approval of the ACC. The ACC may not approve any such structures or improvements which would substantially interfere with, or be unduly burdensome to, or which would cause excessive expense to any potential Accessing Lot if access becomes necessary as herein provided.

9.04.5 Restoration. Promptly after completion of usage of an Access Area, the Accessing Lot Owner or occupant must thoroughly clean the Access Area and repair and restore same to substantially the same condition that existed at the time of commencement of usage; provided,

such obligation for restoration does not apply to any structures or improvements which have been placed in the Access Area without written ACC approval. At the time of receipt of notice, the Easement Lot Owner or occupant must promptly notify the Accessing Lot Owner or occupant as provided in **Section 9.04.2** of any structures or improvements within the Access Area which have been approved by the ACC.

**SECTION 9.05**      Association and ACC Blanket Access Easement. The Board and the ACC, and their Related Parties, have a continuing non-exclusive easement upon, over, under and across each Lot, and as to the exterior of the residence and garage thereon, and as to the exterior and interior of any other improvement thereon, to the extent reasonably necessary for the performance of any of the functions or duties of the Association or ACC or exercise of any of their rights under this Declaration. Prior to exercise of such easement rights written notice must be given to the Owner or occupant of the affected Lot stating the expected date of commencement of usage, the nature of the intended use and anticipated duration of such usage. The notice may be given either as permitted in **Article XII** hereof, or by affixing the notice to the front door of the residence on the applicable Lot. The notice must be given at least ten days before the expected date of commencement of usage. In case of an emergency the right of entry and usage shall be immediate without notice, but in such case notice as aforesaid shall be given as reasonable soon as practicable.

**SECTION 9.06**      Governmental Functions, Utilities and Other Services.

9.06.1 Governmental Functions; Removal of Obstructions. Blanket non-exclusive easements and rights-of-way are hereby granted to the City and other governmental authorities, to all police, fire protection, ambulance and other emergency vehicles, to garbage and trash collection vehicles and other service vehicles, to the United States Post Office and similar services, and to the respective agents and employees of all of the foregoing, for access, ingress and egress upon, over and across any portion of each Lot and throughout the Subdivision for purposes of the performance of any official business without liability of any kind. THE CITY AND OTHER GOVERNMENTAL AUTHORITIES AS AFORESAID ARE ALSO SPECIFICALLY AUTHORIZED TO REMOVE OBSTRUCTIONS IF NECESSARY FOR EMERGENCY AND SERVICE VEHICLE ACCESS, AND TO ASSESS THE COST OF REMOVAL TO THE OWNER OF AND/OR ANY OWNER OR OTHER PERSON WHO CREATED THE OBSTRUCTION.

9.06.2 Certain Subdivision Facilities. During the Development Period, Declarant may establish within the Subdivision (including upon any Lot) such easements as Declarant may determine for the placement and maintenance of (i) mail box banks, and/or water meters, water meter banks, master water meters or water meter vaults, and/or electrical meters or electrical meter banks, and any other similar utility facilities or devices designed to serve two or more single family residences, including entry, access and exit areas as to same, (ii) Subdivision entry and/or other identification signs and/or monuments, and (iii) patrol or security access limiting type structures or devices obtained for maintenance by the Association for such purposes, including without limitation controlled access gates, guardhouses and related structures or devices. PERMANENT EASEMENTS SHALL BE DEEMED TO HAVE BEEN ESTABLISHED BY DECLARANT AS TO ANY SUCH SUBDIVISION FACILITIES PLACED OR CONSTRUCTED UPON ANY LOT OR COMMUNITY PROPERTIES BY DECLARANT DURING THE DEVELOPMENT PERIOD. AS TO EACH SUCH SUBDIVISION FACILITY, THE AFORESAID EASEMENT SHALL EXTEND

TO THE AREA OF LAND COVERED BY THE SUBDIVISION FACILITIES, TOGETHER WITH REASONABLE WORKING SPACE AND NECESSARY RIGHTS OF INGRESS, EGRESS AND REGRESS FOR PURPOSES OF THE INSTALLATION, MAINTENANCE, OPERATION, REPAIR AND REPLACEMENT OF THE FACILITY. Declarant may, but is not required to, file a formal easement or easements covering any such Subdivision Facilities in the Official Public Records of Real Property of Harris County, Texas either during or after termination of the Development Period, and the Board may do so at any time after termination of the Development Period.

#### 9.06.3 Utilities.

(a) Easements as shown on an applicable recorded Plat and rights of entry to them for installation, maintenance and operation of utilities and drainage facilities are reserved. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or operation of utilities. The easement areas of each Lot and all improvements therein or thereon shall be maintained by the Owner of the Lot, except those improvements of a public authority or utility which shall be maintained by such authority or utility. The title to a Lot shall not include title to any utility facilities located within easements or streets. No public utility, shall be liable for damage to any plants, structure or buildings located in or on such easements or streets because of the installation or maintenance of the utility facilities.

(b) In addition to all other applicable easements as established herein or by any Plat, a private non-exclusive easement is hereby granted under any private street located within the Subdivision for purposes of erecting, installing, operating, maintaining, replacing, inspecting and removing any electrical, water, sewer, gas, cable television and any other utilities as determined by the Board, together with rights of ingress and egress to or from any such easement. This easement shall not include by implication or otherwise any appurtenant aerial easement.

(c) No pipe, conduit, cable, or line for water, gas, sewage, drainage, steam, electricity or any other energy or service shall be installed or maintained (outside of any building) above the surface of the ground upon any Lot or at any other place within the Subdivision unless otherwise approved in writing by Declarant during the Development Period or the Board thereafter.

9.06.4 A/C Condensing Units. Declarant may approve placement of air conditioner condensing units and related pads, wiring, conduits and devices (an "A/C Unit") along the Zero Lot Line of a residence in such manner that the A/C Unit encroaches on an adjoining Lot, adjoining non-commercial reserve subject to Association control or adjoining Community Properties to a distance of not more than forty-eight inches (48"). In such case, it shall be deemed that the Owner of the encroached upon property, including the Association, has granted a perpetual easement for continuing maintenance of the A/C Unit(s) thereon, and for maintenance, repair and replacement of the A/C Unit(s) in substantial compliance with the original installation of the A/C Unit(s). The A/C Unit(s) may also be enclosed by property line fencing around the part(s) of the A/C Unit(s) which extend over the Lot line in such manner as may be approved by Declarant or the ACC. Declarant or the ACC may also prohibit fencing along the common boundary line along which one or more A/C Units encroach, and/or limit fencing to enclosure at the front and back of the residence sharing the common boundary line (with gates).

9.06.5 Changes and Additions. At the sole election of Declarant during the Development Period and the Board thereafter, the Association shall have the right to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public, quasi-public or private utility purposes, including, without limitation, gas, electricity, telephone, sanitary or storm, cable television and similar services, along, over, above, across and under the Subdivision and any Lot; provided, such additional easements shall not be located in such manner as to encroach upon the footprint or foundation of any then existing building (including any residence) or any swimming pool. Any such easement shall not be effective unless and until notice thereof is filed in the Official Public Records of Real Property of Harris County, Texas.

SECTION 9.07 Egress/Regress to Public Way Required. All single family residences shall be constructed, and thereafter same and related improvements shall be maintained, such that a continuous and unobstructed means of ingress, egress and regress to a common public way is maintained in accordance with applicable building codes and ordinances of the City.

SECTION 9.08 Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by contract, deed or other conveyance may not be held or construed in any event to include the title to any easement established by this **Article IX**, including but not limited to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way or any pipes, lines, poles, or conduits on or in any utility facility, service equipment or appurtenances thereto.

SECTION 9.09 Easements Perpetual. Easement rights established by or obtained pursuant to this **Article IX** may not, once established or obtained, be adversely effected by any amendment of this Declaration. The foregoing does not limit subsequent abandonment or other modification of easement rights in accordance with applicable instruments covering any easement, by consent or agreement of the affected parties, or as otherwise provided by law.

## **Article X**

### **Enforcement**

SECTION 10.01 Strict Compliance Required. Each Owner and each Owner's tenants, by acquisition of any right, title or interest in any Lot, covenant and agree to be bound by and to strictly comply with all restrictions, covenants, conditions and easements set forth in this Declaration and all other Governing Documents as same may from time to time or at any time be hereafter amended.

SECTION 10.02 Enforcement.

10.02.1 General. The Association, its successors and assigns, and any Owner have the right to enforce observance and performance of all restrictions, covenants, conditions and easements set forth in this Declaration and in other Governing Documents, and in order to prevent a breach thereof or to enforce the observance or performance thereof have the right, in addition to all legal remedies, to an injunction either prohibitive or mandatory.

10.02.2 Confidentiality. In order to encourage open communications between the Association and its Related Parties and any Owner, their Related Parties and other affected parties, and in an effort to minimize confrontations among neighbors and other affected parties, the identity of all Persons who provide or from whom any violation report is obtained shall so far as practical be kept confidential except as otherwise required by law; and all documentation and other communications relating to any such violation reports shall likewise be kept confidential. In the event a hearing is requested as hereafter provided, any party permitted to participate therein may request a summary of the substance of any violation reports. The foregoing shall not preclude the Association from disclosing any of the foregoing information when in the opinion of the Board the best interests of the Association requires such disclosure, and all Owners hereby consent to such disclosure.

10.02.3 Verification of Defaults. Without notice of any kind, the Declarant, the Board, the ACC, or any of their Related Parties, may photograph any violations or suspected violation at any time and otherwise obtain evidence to confirm the existence or non-existence of any suspected violation in any reasonable manner without liability in trespass or otherwise.

10.02.4 No Estoppel, Waiver or Liability. Failure of the Association or any Owner to enforce any of the provisions of this Declaration or any other Governing Documents will in no event be deemed a waiver of the right to do so thereafter (including without limitation as to the same or similar violation whether occurring prior or subsequent thereto). No liability may attach to the Association, or its officer, Directors, agents, employees or committee members, for failure to enforce any provisions of this Declaration or any other Governing Documents.

10.02.5 Cumulative Rights and Remedies. Each right and remedy set forth in this Declaration and any other Governing Documents is separate, distinct and non-exclusive, and all are cumulative. The pursuit of any right or remedy so provided for or by law shall be without prejudice to the pursuit of any other right or remedy, and the failure to exercise any particular right or remedy shall not constitute a waiver of such right or remedy or any other right or remedy.

SECTION 10.03      Liability for Conduct of Others ("Related Parties"). Each Owner and the tenant of each Owner must ensure that their respective Related Parties strictly comply with all applicable provisions of this Declaration and all other Governing Documents. Each Owner is liable for all consequences of any such violation by the Owner's tenant and by Related Parties of the Owner, and each Owner and the Owner's tenant are jointly and severally liable for all consequences of any such violation by Related Parties of the tenant. To the same extent as aforesaid each Owner and each tenant must indemnify and hold harmless the Association and its Related Parties from any and all claims, liabilities, damages, loss, costs, expenses, suits and judgments of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, made or asserted by Related Parties of the Owner or the Owner's tenants attributable directly or indirectly, to any such violation, said indemnification to be secured and paid as provided in **Section 10.04**.

SECTION 10.04      Obligation for Payment of Costs and Expenses Resulting from Violations. Each Owner and tenant of an Owner found to have committed, or who is responsible for, a violation or violations of any of the provisions of this Declaration or any other Governing

Documents, irrespectively of any negligence or other fault (or lack thereof), is jointly, severally and strictly liable for payment to the Association for, and to indemnify and to hold and save harmless the Association and its Related Parties from, any and all claims, liabilities, damages, loss, costs, expenses, suits and judgments of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, incurred or attributable to any such violation(s), and must pay over to the Association all sums of money which the Association or its representatives may pay or become liable to pay as a consequence, directly or indirectly, of such violation(s). All such sums are assessed as a specific assessment, and are secured by the continuing lien established by **Article V** hereof. All such sums are due and payable upon demand by the Association or its representative without the necessity of any other or further notice of any act, fact or information concerning the Association's rights or such Owner's or their tenant's liabilities under this Section; provided, in the case of indemnification the demand shall contain a statement setting forth the Association's payment or liability to pay the claim with sufficient detail to identify the basis for the payment or liability to pay.

SECTION 10.05      Notice and Opportunity to be Heard. Whenever this Declaration or other Governing Documents require "notice and opportunity to be heard," the procedures set forth in Sections 209.006, 209.007 and 209.008 of the Texas Property Code, as applicable, must be observed.

SECTION 10.06      Fines. After notice and opportunity to be heard fines may be imposed as specific assessments by the Board or ACC for any violation of this Declaration or other Governing Documents except non-payment of assessments. Except as otherwise provided by applicable Rules and Regulations, the Board or ACC shall fix the amount of a fine for each violation on a case by case basis not to exceed twenty-five dollars (\$25.00) per violation per day.

SECTION 10.07      Filing of Notices of Non-Compliance. At any time the Board determines there exists any noncompliance with any provisions of this Declaration or other Governing Documents, the Board may at its option direct that a Notice of Noncompliance be filed in the Official Public Records of Real Property of Harris County, Texas covering the affected Lot or Lots and the Owner(s) thereof at the sole cost and expense of such Owner(s). All such costs and expenses are due and payable upon demand, are deemed a specific assessment applicable to the affected Lot(s) and are secured by the Association's continuing assessment lien.

## **Article XI**

### **Development Period**

SECTION 11.01      Application. Notwithstanding any other provisions of this Declaration or any other Governing Documents to the contrary, the provisions of this **Article XI** apply during the Development Period (and thereafter as herein provided).

SECTION 11.02      Appointment of Board and ACC; Authority of Association; Declarant as Member. During the Development Period, Declarant will appoint all members of the Board of Directors and ACC (including any designated representative of the ACC) and is entitled to remove and replace any of same, and in all other respects to exercise all rights and authority of the Association and ACC as set forth in this Declaration and all other Governing Documents. Any

provisions hereof or of the Bylaws or any other Governing Documents regarding qualifications for members of the Board or ACC are hereby specifically declared inapplicable to Developer appointees during the Development Period. Without limitation of the foregoing, Declarant is specifically authorized during the Development Period to exercise all authority of the Board and/or ACC, including without limitation, the authority to contract for, on behalf of, or in the name of the Association and to grant variances pursuant to **Section 4.02.4**. Declarant is deemed to be a Member of the Association for all purposes during the Development Period whether or not Declarant continues to own any Lot.

SECTION 11.03      Architectural Control; Builder Approval.

11.03.1 ACC Approval Not Required. Declarant is not required to obtain ACC approval or otherwise comply with any provisions of **Article IV** hereof until completion of the initial sale of each Lot, whether or not the initial sale occurs during or after the Development Period.

11.03.2 Declarant's ACC Authority As To Initial Development of Lots. NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, DECLARANT HEREBY RESERVES AND RETAINS FULL AND EXCLUSIVE AUTHORITY OF THE ACC AS TO EACH LOT, AND THE RIGHT TO ENGAGE IN ANY AND ALL DEVELOPMENT AND SALES ACTIVITIES REGARDING EACH LOT AS PROVIDED IN **SECTION 11.07**, UNTIL COMPLETION OF THE INITIAL SALE OF EACH LOT, WHETHER OR NOT COMPLETION OF THE INITIAL SALE OCCURS DURING OR AFTER THE DEVELOPMENT PERIOD. DECLARANT'S AUTHORITY INCLUDES WITHOUT LIMITATION THE RIGHT TO ASSESS AND RECEIVE PAYMENT OF ARCHITECTURAL REVIEW FEES AS AUTHORIZED BY **SECTION 4.02.2**.

11.03.3 Approval of Builder By Declarant Required. During the Development Period no Builders are permitted to construct any residence or appurtenant improvements upon any Lot or otherwise conduct any developmental and sales activities within the Subdivision other than those Builders (if any, and whether one or more) which have been approved in advance by Declarant. Declarant's approval of any Builder may not be assigned. Declarant's right to approve (or disapprove) any Builder during the Development Period may be assigned only to another "Declarant" as so designated in accordance with applicable provisions of this Declaration.

11.03.4 "Completion of the Initial Sale" of Lot Defined. As used in this Declaration and as to each Lot, "completion of the initial sale" means and occurs upon substantial completion of the construction of a single family residence and related improvements upon the Lot and the sale of the Lot to a Person other than Declarant or a Builder for use and occupancy of the Lot for a single family residence.

SECTION 11.04      First Meeting of Class A Members; Transfer of Control.

11.04.1 First Meeting of Class A Members. Declarant may call, notice and conduct the first meeting of Class A Members at any time during the Development Period. Declarant must call, notice and conduct the first meeting of Class A Members within a reasonable period of time after the date of termination of the Development Period. Subject to the foregoing, the first meeting will

be held on such date and at such place and time as determined by Declarant. The sole purpose of the first meeting is to conduct the election of Directors by Class A Members ("Owner Directors") unless Declarant designates one or more other purposes in the notice of the meeting. No business other than as stated in the notice of the meeting may be conducted at the meeting. Declarant shall appoint a Chairperson and Secretary for the first meeting who need not be officers, directors or Members of the Association. Notwithstanding any other provisions hereof or of any other Governing Documents and regardless of whether or not the Development Period has previously been terminated, at the first Meeting of Owners the Owner of each Lot, including Declarant, is entitled to cast one vote for each Lot owned. Declarant is additionally entitled to (but is not obligated to) cast its one "at large" vote, but only for the purpose of breaking a tie vote.

#### 11.04.2 Effect of Failure of Class A Members to Elect Board.

(a) Declarant may elect any Owner Directors who are not elected by Class A Members at the first meeting of Class A Members as is needed to fill all directorship positions, either at the first meeting or at any time thereafter unless and until an Alternate First Meeting as hereafter provided is duly called and notice thereof is properly given. If one or more but less than all Owner Directors are elected as aforesaid, then the Owner Directors who have been elected, through less than a quorum, may elect as many Owner Directors as needed to fill all remaining directorship positions.

(b) If at least one Owner Director is not elected at the first meeting of Class A Members by the members or by Declarant, then at any time thereafter Declarant may give written notice to the Owners of all Lots requesting that within sixty days after the date of the notice (i) the Class A Members call, notice and conduct an "Alternate First Meeting" of Class A Members for and in fact elect thereat at least one Owner Director as hereafter provided, and (ii) provide Declarant with written notice and verification of the election (and all other notices and documents as hereafter required), including the name, mailing address and home and work telephone numbers of all Owner Directors so elected. If one or more but less than all directorship positions are filled at the Alternate First Meeting, then the Owner Directors so elected, through less than a quorum, may elect as many Owner Directors as needed to fill all remaining directorship positions.

(c) If Declarant does not call an Alternate First Meeting within ninety days after the first meeting of Class A Members, or if Class A Members fail to elect at least one Owner Director at the Alternate First Meeting called by Declarant, at any time thereafter any three Owners may, as a committee, call, notice and conduct the meeting. Declarant must be given notice as provided by this **Article XI** of the formation of, and the names, addresses, and home and work telephone numbers of all members of, any committee formed as aforesaid. Only one committee may be created. In the event of conflict, the committee designated in the first written notice received by Declarant will be the sole committee with power to act pursuant to this subsection. Any vacancy for any reason on the committee shall be filled by vote of the remaining member or members. All notices and other documents given to Members regarding any meeting called, noticed or conducted by the committee, including the Alternate First Meeting, must also be given to Declarant at or prior to the time same are given to any Members; and, additionally, Declarant must be given copies of minutes and all other books and records pertaining to the committee and/or any meeting thereof or of Members. The committee calling the meeting shall appoint from its members a Chairperson and

Secretary for the Alternate First Meeting. Voting rights shall be as above stated for the first meeting as called by Declarant.

(d) THE CLASS A MEMBERS FAIL TO ELECT IF AT LEAST ONE OWNER DIRECTOR NOT LATER THAN ONE YEAR AFTER CONDUCTING OF THE FIRST MEETING OF CLASS A MEMBERS, THEN (i) ALL FUNDS REMAINING IN THE MAINTENANCE FUND, IF ANY, WILL BE DEEMED ABANDONED AND EXCLUSIVE OWNERSHIP THEREOF SHALL BE AUTOMATICALLY TRANSFERRED TO DECLARANT, AND (ii) ANY BOOKS AND RECORDS OF THE ASSOCIATION IN THE POSSESSION OR CONTROL OF DECLARANT OR DECLARANT'S RELATED PARTIES MAY BE DESTROYED.

(e) For the first meeting of Class A Members and any Alternate First Meeting only, the presence, in person or by proxy, and whether or not is good standing, of Class A Members representing not less than one-twentieth of all Lots then contained in the subdivision constitutes a quorum for the purpose of election of Owner Directors. If Owner Directors are not elected to a specific directorship position as described in the Bylaws, then the Owner Directors shall themselves determine their respective Directorship Positions (and corresponding terms of office) prior to the annual meeting next following their election, and the determination shall be reflected in the corporate records.

(f) Notwithstanding any other provisions hereof, any notices permitted or required to be given to Owners or Members under this **Section 11.04** may be mailed by regular mail to the street address for each Lot and may be addressed to "Association Member" or similar generic name. There is no duty by any Person giving any such notice to confirm ownership or any other mailing address.

(g) Until expiration of one year following the date of transfer of Declarant control as hereafter provided, Declarant must be given written notice of the name, mailing address, and home and work telephone number of each Director (including each Owner Director) who is elected by Class A Members within thirty days after any applicable election; and at any time during said two year period, upon written request of Declarant to the Association or any officer or director thereof, Declarant must be provided with a complete list of the names, addresses, and home and work telephone numbers of all of the Officers and Directors of the Association as of the dates of the request and the response. The response must be delivered to Declarant within ten days after the date of the request for the list of officers and Directors (or such longer period as may be stated in the request).

#### 11.04.3 Transfer of Declarant Control; Effect.

(a) THE DATE OF TRANSFER OF DECLARANT CONTROL IS THE DATE OF OCCURRENCE OF THE EARLIER OF (1) ELECTION BY CLASS A MEMBERS OR BY DECLARANT OF AT LEAST ONE OWNER DIRECTOR, OR (2) THE DATE OF EXPIRATION OF THE SIXTY DAY PERIOD FOR MEMBERS TO ELECT AT LEAST ONE OWNER DIRECTOR AS PROVIDED IN SECTION 11.04.2.

(b) ON THE DATE OF TRANSFER OF DECLARANT CONTROL (1) ALL DIRECTORS AND OFFICERS THERETOFORE APPOINTED OR ELECTED BY DECLARANT (OTHER THAN OWNER DIRECTORS) ARE AUTOMATICALLY REMOVED FROM OFFICE AND FULLY RELIEVED THEREAFTER FROM ANY FURTHER RIGHTS, DUTIES, LIABILITIES AND RESPONSIBILITIES REGARDING THE ASSOCIATION OR THE SUBDIVISION, AND (2) THE ASSOCIATION AND ITS MEMBERS BECOME WHOLLY AND SOLELY RESPONSIBLE FOR THE MANAGEMENT, MAINTENANCE AND OPERATION OF THE ASSOCIATION AND OF THE SUBDIVISION, INCLUDING WITHOUT LIMITATION FULL AND SOLE ASSUMPTION BY THE ASSOCIATION OF ALL MAINTENANCE RESPONSIBILITIES OF THE ASSOCIATION.

11.04.4 Costs of First Meeting; Turnover of Association Funds, Books and Records.

All costs, including attorney's fees, to notice, call and conduct the first meeting of Class A Members, or to maintain any funds, books, records or any other property of the Association pending election of Owner Directors, transfer of Declarant control, or transfer of Association funds, books or records, whether incurred before or after the first meeting of Class A Members or the Alternate First Meeting, are a common expense of the Association which shall be paid from the Maintenance Fund. If and when at least one Owner Director is elected by Class A Members or Declarant as above provided, all funds, and all books and records of the Association (if not previously abandoned or destroyed as provided or permitted by this **Section 11.04**) must be transferred to the possession or control of any Owner Director, or to the then Managing Agent of the Association, if any, within a reasonable period of time after election of the Owner Director(s) (and receipt by Declarant of notice thereof as applicable). Notwithstanding the foregoing, Declarant may maintain possession or control of the Maintenance Fund to the extent Declarant determines is necessary for payment of any unpaid expenses of, or as security against other asserted or outstanding obligations or liabilities of, the Association until such expenses have been paid and/or such obligations and liabilities finally resolved.

SECTION 11.05 Community Properties.

11.05.1 Designation or Change as to Community Properties and/or Subdivision Facilities. REGARDLESS OF DESIGNATION BY ANY PLAT OR OTHERWISE, DURING THE DEVELOPMENT PERIOD DECLARANT MAY AT ANY TIME AND FROM TIME TO TIME (i) DESIGNATE, CONSTRUCT, OR EXPAND COMMUNITY PROPERTIES AND/OR SUBDIVISION FACILITIES, AND (ii) MODIFY, DISCONTINUE, REDESIGNATE OR IN ANY OTHER MANNER CHANGE THE COMMUNITY PROPERTIES AND/OR SUBDIVISION FACILITIES. WITHOUT LIMITATION OF THE FOREGOING, DECLARANT SPECIFICALLY RESERVES THE RIGHT AT ANY TIME DURING THE DEVELOPMENT PERIOD TO SELL OR OTHERWISE DISPOSE OF ANY "RESERVES" AND ANY OTHER SIMILAR AREAS, REGARDLESS OF DESIGNATION OF ANY SUCH AREA BY ANY PLAT OR OTHERWISE AS "RESTRICTED", "UNRESTRICTED", OR OTHER DESIGNATION. NEITHER THE FOREGOING NOR ANY OTHER PROVISIONS HEREOF SHALL BE CONSTRUED AS IN ANY MANNER CONSTITUTING ANY REPRESENTATION, WARRANTY OR IMPLICATION WHATSOEVER THAT DECLARANT OR ANY BUILDER WILL UNDERTAKE ANY SUCH DESIGNATION, CONSTRUCTION, MAINTENANCE, EXPANSION, IMPROVEMENT OR REPAIR, OR THAT IF AT ANY TIME OR FROM TIME TO TIME UNDERTAKEN, ANY SUCH

ACTIVITIES WILL CONTINUE, AND ANY SUCH REPRESENTATION, WARRANTY OR IMPLICATION IS HEREBY SPECIFICALLY DISCLAIMED.

#### 11.05.2 Construction and Maintenance of Community Properties.

(a) General. During the Development Period Declarant may provide and construct such Community Properties as Declarant may desire at Declarant's sole cost and expense or in conjunction with and as part of the cost of construction of single family residences. ONCE PROVIDED OR CONSTRUCTED, ALL COSTS AND EXPENSES OF THE OPERATION, MANAGEMENT, MAINTENANCE, REPAIR AND REPLACEMENT OF COMMUNITY PROPERTIES, INCLUDING ALL COSTS AND EXPENSES OF INSURANCE THEREON AND ALL AD VALOREM TAXES AND OTHER ASSESSMENTS IN THE NATURE OF PROPERTY TAXES COVERING OR FAIRLY ALLOCABLE THERETO, WILL BE PAID BY THE ASSOCIATION FROM THE MAINTENANCE FUND (EITHER DIRECTLY OR BY REIMBURSEMENT TO DECLARANT) REGARDLESS OF WHETHER OR NOT TITLE HAS BEEN TRANSFERRED OR CONVEYED TO THE ASSOCIATION AND REGARDLESS OF WHETHER OR NOT ANY APPLICABLE CONTRACT, AGREEMENT OR OTHER ARRANGEMENT FOR OPERATION, MANAGEMENT, MAINTENANCE, REPAIR OR REPLACEMENT IS IN THE NAME OF, IS PROCURED THROUGH OR HAS BEEN TRANSFERRED OR ASSIGNED TO THE ASSOCIATION. The Association will also pay as aforesaid all costs and expenses, regardless of type and including procurement, as to service type Subdivision Facilities such as any patrol, or any garbage or recycling services.

(b) Landscaping: No Assurances. WITHOUT LIMITATION OF THE FOREGOING, IT IS EXPRESSLY STIPULATED AND AGREED REGARDING ANY AND ALL LANDSCAPING PLACED OR PLANTED WITHIN OR UPON ANY LOT OR COMMUNITY PROPERTIES THAT (I) DECLARANT DOES NOT REPRESENT, GUARANTEE OR WARRANT THE VIABILITY, VITALITY OR CONTINUATION OF ANY LANDSCAPING, OR THAT ANY PARTICULAR TYPE, QUALITY OR QUANTITY OF LANDSCAPING WILL BE MAINTAINED EVEN IF FROM TIME TO TIME PROVIDED (SUCH AS FOR EXAMPLE SEASONAL PLANTING AT ENTRY AREAS OR AROUND MODEL HOMES), AND (II) IF PROVIDED, AND FROM AND AFTER THE TIME ANY TYPE OF LANDSCAPING IS PROVIDED, ALL COSTS AND EXPENSES OF MAINTENANCE OR REPLACEMENT THEREOF, AND ALL RISK OF LOSS THEREOF, SHALL BE THE SOLE RESPONSIBILITY OF THE ASSOCIATION IN THE CASE OF COMMUNITY PROPERTIES, AND OTHERWISE THE SOLE RESPONSIBILITY OF THE OWNER OF THE LOT UPON WHICH ANY SUCH LANDSCAPING IS LOCATED.

#### 11.05.3 Conveyance of Community Properties.

(a) Declarant may convey, transfer or assign any or all Community Properties to the Association during the Development Period, and must do so within a reasonable time after termination of the Development Period. THE ASSOCIATION IS OBLIGATED TO ACCEPT ANY CONVEYANCE AND ANY OTHER TRANSFER OF OWNERSHIP OF ANY COMMUNITY PROPERTIES (AS SO DESIGNATED BY DECLARANT DURING THE DEVELOPMENT PERIOD), REGARDLESS OF WHETHER THE CONVEYANCE OR OTHER

TRANSFER OCCURS DURING OR AFTER THE DEVELOPMENT PERIOD. THE ASSOCIATION'S ACCEPTANCE AS AFORESAID IS CONCLUSIVELY ESTABLISHED UPON FILING OF THE APPLICABLE INSTRUMENT OF CONVEYANCE OR OTHER TRANSFER IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS, OR AS OF THE DATE OF DELIVERY OF SAID INSTRUMENT TO THE ASSOCIATION.

(b) ANY RIGHT, TITLE OR INTEREST TO ALL COMMUNITY PROPERTIES WILL BE TRANSFERRED, CONVEYED OR ASSIGNED TO THE ASSOCIATION ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, AND, EXCEPT FOR SPECIAL WARRANTY OF TITLE BY, THROUGH OR UNDER DECLARANT, WITHOUT ANY COVENANT, WARRANTY, GUARANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO: (I) ANY IMPLIED COVENANTS UNDER SECTION 5.23 OF THE TEXAS PROPERTY CODE AND ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR OR INTENDED PURPOSE; (II) THE NATURE AND CONDITION OF THE PROPERTY OR OTHER ITEMS TRANSFERRED, ASSIGNED OR CONVEYED, INCLUDING, WITHOUT LIMITATION, PHYSICAL OR ECONOMIC CHARACTERISTICS OF THE PROPERTY, THE WATER, SOIL AND GEOLOGY, THE SUITABILITY THEREOF AND OF THE PROPERTY OR OTHER ITEMS FOR ANY AND ALL ACTIVITIES AND USES, THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING BUT NOT LIMITED TO THE PRESENCE OF ANY HAZARDOUS MATERIALS, SUBSTANCES OR CONTAMINANTS OF ANY KIND) OR COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS; (III) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHERWISE; (IV) THE COMPLIANCE OF THE PROPERTY OR OTHER ITEMS TRANSFERRED, ASSIGNED OR CONVEYED, INCLUDING AS TO ITS OPERATION OR USE, WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL ENTITY OR BODY AND (V) THE NATURE, TYPE OR VIABILITY OF ANY LANDSCAPING, OR THAT ANY TYPE, QUANTITY OR LOCATION OF LANDSCAPING WILL BE MAINTAINED OR CONTINUED AT ANY TIME. ALL SUCH COVENANTS, GUARANTIES, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OR BY OPERATION OF LAW, ARE HEREBY EXPRESSLY DISCLAIMED. THE PROVISIONS OF SECTIONS 3.06 AND 11.11 FULLY APPLY AS TO SAME, AND THE PROVISIONS HEREOF SHALL APPLY WHETHER OR NOT STATED IN ANY DEED, CONVEYANCE OR OTHER TRANSFER AS TO THE AFFECTED COMMUNITY PROPERTIES. IN ADDITION, NO TITLE INSURANCE OF ANY TYPE WILL BE PROVIDED REGARDING THE TRANSFER OR CONVEYANCE OF ANY COMMUNITY PROPERTIES.

11.05.4 Declarant's Use of Community Properties. So long as Declarant owns any Lot within the Subdivision, Declarant and any Builder as so designated by Declarant (i) have a non-exclusive easement upon, over, under and across any and all Community Properties, and a non-exclusive right to use in any manner any part or all of the Community Properties as is reasonably necessary in Declarant's sole opinion for the development of the Subdivision and the development and sale of Lots therein.

SECTION 11.06 Easements. Declarant and any Builder as so designated by Declarant, and their agents or employees (including any contractor or subcontractor) are entitled during the Development Period to use and exercise all easements set forth in this Declaration for, and Declarant may grant or exercise such additional easements for ingress, egress and usage as is reasonably necessary for, construction of single family residences, providing and development of utilities, Community Properties and/or Subdivision Facilities and any and all other "Developmental Activities" as defined in **Section 11.11**. Any part of a single family residence as originally constructed may be located or encroach upon any easement established by this Declaration so long as any such location or encroachment does not interfere with any actual usage as permitted by any applicable easement actually existing at the time of establishment of such location or encroachment.

SECTION 11.07 Development and Sales Activities. Declarant, and any Builder so authorized by Declarant, have the right to transact any business and conduct any activities reasonably necessary for all construction within, and all development of, the Subdivision, and for the sale or rental of Lots and single family residences and any other improvements to be constructed within the Subdivision (all such construction, development, sales and all related business and activities herein referred to as "Development Activities"), including without limitation as follows:

11.07.1 Until completion of the initial sale (as provided in **Section 11.03**) of all Lots owned by Declarant or a Builder, whether or not the initial sale of all Lots occurs during or after the Development Period, Declarant (and any authorized Builder), have the right to maintain models, to have, place and maintain sales and promotional signs, flags, banners and similar promotional devices within the Subdivision, to conduct from time to time an "open house" and similar events for realtors and other persons which may include without limitation leaving limited access gates (if any) open as hereafter provided, and to use for development, sales and/or promotional purposes all or any part of any Lot, or residence or other improvements located thereon, which is owned by Declarant or a Builder.

11.07.2 UNTIL COMPLETION OF THE INITIAL SALE (AS DEFINED IN **SECTION 11.03**) OF ALL LOTS, DECLARANT MAY LEAVE LIMITED ACCESS GATES, IF ANY, OPEN FOR ANY PERIODS OF TIME (OR AT ALL TIMES) AND OTHERWISE PROVIDE FOR OR PERMIT ACCESS TO THE SUBDIVISION BY ANY PERSONNEL INVOLVED IN ANY DEVELOPMENT ACTIVITIES, TO PROSPECTIVE PURCHASERS, TO REALTORS AND TO OTHER PERSONS AS DECLARANT REASONABLY DETERMINES IS NECESSARY OR CONVENIENT TO ACCOMMODATE ANY DEVELOPMENT ACTIVITIES.

11.07.3 Declarant (and any authorized Builder) may or will be required during the Development Period to, and are hereby specifically authorized to, engage in construction activities upon multiple Lots or Community Properties, to store equipment or materials on multiple Lots or Community Properties, to create accumulations of trash and debris, and to otherwise engage in activities and create conditions related to its development of the Subdivision, including the construction and sale of residences and any other improvements in the Subdivision.

11.07.4 During the Development Period, Declarant (and any authorized Builder) may use for any Development Activities, without charge, any Community Properties (including Subdivision facilities).

11.07.5 Declarant (and any authorized Builder) may permit temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences at such locations as Declarant may direct. Declarant may also authorize usage of garages as sales offices during the Development Period. During all times when a garage is used as a sales office, there must be posted a conspicuous sign in such garage advising prospective purchasers that the area must be reconverted to and thereafter maintained as a garage upon the sale of the Lot. At the time of the sale of a residence, any garage appurtenant to any residence used for sales purposes must have been reconverted to a garage.

11.07.6 Declarant may establish any reasonable regulations as to Owners and tenants, as to the Association and ACC, as to any Related Parties of any of the foregoing, and as to any other Person, which Declarant deems appropriate to avoid hindrance or interference with any Development Activities, including limiting or denying access to areas of the Subdivision, designating temporary dumping sites, maintenance of metal buildings or structures and use of Community Properties and/or Subdivision Facilities in connection with its Developmental Activities.

11.07.7 ABSENT INTENTIONAL AND WILLFUL MISCONDUCT, DECLARANT (AND ANY AUTHORIZED BUILDER) IS NOT LIABLE TO ANY OWNER OR TENANT, OR TO THE ASSOCIATION OR ACC, OR TO ANY RELATED PARTIES OF ANY OF THE FOREGOING, OR TO ANY OTHER PERSON FOR ANY CONSEQUENCES OF THE REASONABLE CONDUCTING OF ANY DEVELOPMENT ACTIVITIES.

#### SECTION 11.08      Assessments.

11.08.1 Right of Declarant to Set Rates and Impose Special Assessments. During the Development Period Declarant is entitled to established all Association budgets and to change the annual rate of regular assessment as set forth in **Section 5.03** and/or to impose special assessments as set forth in **Section 5.05** without the joinder, vote or consent of any Owner and without further formality than giving of notice thereof as provided in **Section 5.03.2** or **Section 5.05**, as applicable. Without limitation of the foregoing, the provisions of **Section 5.03.2** regarding disapproval of an annual rate of regular assessments or special assessment is specifically declared inapplicable when the rate is set by, or the special assessment imposed by, Declarant under this Section.

#### 11.08.2 Payment of Assessments by Declarant; Reimbursement.

(a) Notwithstanding anything to the contrary contained herein or in any other Governing Documents, Declarant is exempt from payment of all assessments (regular, special or specific) until the first day of January following the year in which the Development Period is terminated. From and after the first day of January following termination of the Development Period, Declarant shall pay regular assessments equal to one-half the rate that would otherwise be applicable until, as to each Lot owned by Declarant, the first day of the month following completion of the initial sale of the Lot (as defined in **Section 11.03**). In the event of re-acquisition of ownership of any Lot by Declarant, the rate of assessment then applicable to Declarant shall again apply in accordance with this Section. The foregoing Declarant exemption from payment of assessments shall also apply to any Lot used by Declarant for a model residence, or for any other development, marketing or sales purposes regardless of whether record title remains in Declarant (such as, for

example but without limitation, in the case of the sale of a resident to an Owner and lease back to Declarant for use as a model). In such cases, completion of the initial sale as provided in **Section 11.03** shall not be deemed to have occurred until the first day of the month following termination of any such use of the Lot by Declarant.

(b) In lieu of payment of assessments as aforesaid, Declarant will contribute to the Maintenance Fund during the Development Period an amount, if any, equal to the Actual Operating Expenses of the Association less all funds available to the Association regardless of source and regardless of any principles of accrual or other accounting which might otherwise be applicable; provided, DECLARANT SHALL NEVER BE REQUIRED TO CONTRIBUTE MORE THAN AN AMOUNT EQUAL TO THE FULL ANNUALIZED RATE OF REGULAR ANNUAL ASSESSMENTS WHICH WOULD OTHERWISE BE PAYABLE BY DECLARANT AS A CLASS A OWNER OF ONE OR MORE LOTS. "Funds available to the Association" shall include, without limitation, all assessments (regular, utility, special and specific) received from all other Owners subject to payment of assessments plus all other income received by the Association from any source (such as, for example, interest income). "Actual Operating Expenses" means those expenses reasonably necessary during the Development Period for the discharge of the Association's functions and duties under this Declaration, but does not include capital expenditures (determined in accordance with generally accepted accounting principals), or any amounts paid or to be paid to capital, contingency or other reserves, or any prepaid items, inventory or similar expenses attributable to periods after expiration or termination of the Development Period. The determination of Actual Operating Expenses by Declarant is final and conclusive. Declarant will contribute to the Maintenance Fund as aforesaid from time to time as Declarant may determine.

(c) FROM TIME TO TIME UP TO THE DATE OF EXPIRATION OR TERMINATION OF THE DEVELOPMENT PERIOD, DECLARANT MAY OFFSET ANY SURPLUS FUNDS OF THE ASSOCIATION (BEING ALL FUNDS REMAINING AFTER PAYMENT OF "ACTUAL OPERATING EXPENSES" AS HEREIN DEFINED) AGAINST ALL DECLARANT CONTRIBUTIONS MADE BY DECLARANT DURING THE DEVELOPMENT PERIOD. "DECLARANT CONTRIBUTIONS" MEANS ALL DEFICIT FUNDING BY DECLARANT AS PROVIDED IN THE PRECEDING SUBSECTION, AND ANY OTHER MONIES PAID BY DECLARANT ON BEHALF OF OR FOR THE BENEFIT OF THE ASSOCIATION AND/OR SUBDIVISION, INCLUDING WITHOUT LIMITATION ALL AD VALOREM TAXES AND OTHER ASSESSMENTS IN THE NATURE OF PROPERTY TAXES PAID FOR OR FAIRLY ALLOCABLE TO ANY COMMUNITY PROPERTIES. DECLARANT MAY DEMAND AND RECEIVE REPAYMENT FROM SUCH SURPLUS FUNDS UP TO THE FULL AMOUNT OF DECLARANT CONTRIBUTIONS, WITHOUT INTEREST, AT ANY TIME EITHER DURING OR AFTER THE DEVELOPMENT PERIOD.

(d) DECLARANT'S GOOD FAITH DETERMINATION OF ACTUAL OPERATING EXPENSES, SURPLUS FUNDS, DECLARANT CONTRIBUTIONS AND ANY OTHER MATTERS PERTAINING TO THE PROVISIONS OF THIS SECTION ARE FINAL.

**SECTION 11.09**     Notices to Declarant. All notices or other communications to Declarant, as required or permitted by this Declaration, any other Governing Documents or otherwise, must be given to Declarant's registered agent at its registered office, by personal delivery acknowledged in writing or by certified or registered mail, return receipt requested, or as otherwise

directed by written notice of Declarant filed in the Official Public Records of Real Property of Harris County, Texas. Notices or other communications to Declarant are deemed given only upon actual receipt. The foregoing applies both during and after the Development Period.

SECTION 11.10      Amendment of Governing Documents or Plat; Annexation.

11.10.1 Declarant's Reserved Rights. During the Development Period Declarant reserves the sole and exclusive right, without joinder or consent of, and without notice of any kind to, any Owner or other Person, to (i) amend, modify, revise or repeal, from time to time and at any time, this Declaration and any other Governing Documents, (ii) prepare, amend, modify, revise or repeal any Plat covering or to cover the Subdivision and (iii) annex and subject any other property to the scheme of this Declaration provided any such annexation is not inconsistent with the scheme of development contemplated hereby. During the Development Period, no other properties may be annexed or subjected to the scheme of this Declaration without the written consent of Declarant. Any such amendment, modification, revision, repeal or annexation shall be effective from and after filing of notice thereof in the Official Public Records of Real Property of Harris County, Texas except to the extent expressly otherwise provided in the notice.

11.10.2 NO IMPAIRMENT OF DECLARANT'S RIGHTS. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS DECLARATION TO THE CONTRARY, NO PROVISIONS OF THIS ARTICLE XI MAY BE AMENDED, MODIFIED, CHANGED OR TERMINATED EITHER DURING OR AFTER TERMINATION OF THE DEVELOPMENT PERIOD WITHOUT THE PRIOR WRITTEN CONSENT OF DECLARANT.

SECTION 11.11      Limitation of Liability.

11.11.1 GENERAL. WITHOUT LIMITATION OF **SECTION 3.06** HEREOF, THE DECISIONS OF DECLARANT REGARDING ALL DEVELOPMENT AND SALES ACTIVITIES, INCLUDING WITHOUT LIMITATION AS PERMITTED BY **SECTION 11.07**, MANAGEMENT AND OPERATION OF THE ASSOCIATION AND ALL OTHER ACTIVITIES UNDERTAKEN BY DECLARANT PURSUANT HERETO ARE FINAL AND CONCLUSIVE; PROVIDED, DECLARANT WILL CONDUCT ALL SUCH ACTIVITIES IN A REASONABLE MANNER CONSISTENT WITH THE GENERAL SCHEME OF DEVELOPMENT HEREBY ESTABLISHED.

11.11.2 NO REPRESENTATIONS OR WARRANTIES; INDEMNIFICATION.

(a) NO COVENANTS, REPRESENTATIONS, GUARANTIES OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR BY OPERATION OF LAW, AND INCLUDING EXCLUSION OF ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY AND FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE, SHALL BE DEEMED TO BE GIVEN OR MADE BY DECLARANT, OR DECLARANT'S OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES, BY ANY PROVISIONS OF THIS DECLARATION OR ANY OTHER GOVERNING DOCUMENTS REGARDING ANY DEVELOPMENT ACTIVITIES OR OTHERWISE. WITHOUT LIMITATION OF THE FOREGOING DECLARANT EXPRESSLY DISCLAIMS ALL COVENANTS, REPRESENTATIONS, GUARANTIES AND WARRANTIES,

EXPRESS AND IMPLIED, AND BY OPERATION OF LAW (I) AS TO ANY FUTURE DEVELOPMENT, (II) FOR MANAGEMENT OR SUPERVISION OF BUILDING, CONSTRUCTION AND ALL OTHER WORK BY ANY BUILDER, VENDOR OR SUPPLIER NOT DIRECTLY EMPLOYED BY DECLARANT, INCLUDING ANY DUTY TO ENFORCE ANY PROVISIONS OF THE GOVERNING DOCUMENTS AS TO ANY SUCH PARTY, (III) THE NATURE, CONDITION, APPEARANCE, USE AND ALL OTHER MATTERS PERTAINING TO ANY PROPERTIES ADJACENT TO OR IN THE AREA OF THE SUBDIVISION, OR WHICH ARE NOT OTHERWISE SUBJECT TO THE GOVERNING DOCUMENTS, INCLUDING WITHOUT LIMITATION ANY OBLIGATION NOW OR IN THE FUTURE TO INCLUDE IN THE SUBDIVISION OR IN ANY MANNER TO OTHERWISE SUBJECT ANY SUCH PROPERTIES TO ANY PROVISIONS OF THE GOVERNING DOCUMENTS, (IV) THE MANAGEMENT OR OPERATION OF THE ASSOCIATION, (V) AS TO ENFORCEMENT OF ANY PROVISIONS OF THE GOVERNING DOCUMENTS AS TO ANY OWNER, TENANT OR ANY OTHER PERSON, AND (VI) AS TO ANY ENVIRONMENTAL HAZARDS OR CONDITIONS AFFECTING THE SUBDIVISION, INCLUDING ALL LOTS, COMMUNITY PROPERTIES AND RESERVES, OR AFFECTING ANY AREA OR ADJACENT PROPERTIES. IT BEING EXPRESSLY STIPULATED AND AGREED THAT SUCH ENFORCEMENT IS AT ALL TIMES THE SOLE RESPONSIBILITY OF THE ASSOCIATION AND/OR ANY AFFECTED OWNER.

(b) IN ADDITION TO AND WITHOUT LIMITATION OF SECTION 3.06, THE ASSOCIATION AND EACH OWNER HEREBY RELEASES DECLARANT FROM, AND THE ASSOCIATION AND EACH OWNER MUST HEREAFTER INDEMNIFY, PROTECT, DEFEND, SAVE AND HOLD HARMLESS DECLARANT, AND DECLARANT'S EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS AND AGENTS FROM AND AGAINST, ANY AND ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES AND COURT COSTS) IN ANY WAY RELATING TO, CONNECTED WITH OR ARISING OUT OF ANY OF THE MATTERS SET FORTH IN SECTION 11.05 AND IN THIS SECTION, INCLUDING WITHOUT LIMITATION THE COST OF ANY REMOVAL OF HAZARDOUS SUBSTANCES OR CONTAMINANTS OF ANY KIND FROM THE PROPERTY AND ANY OTHER REMEDIAL COSTS REGARDING ANY ENVIRONMENTAL HAZARD OR CONDITION, OR THE OWNERSHIP, LEASING, USE, CONDITION, OPERATION, MAINTENANCE OR MANAGEMENT OF THE PROPERTY, REGARDLESS OF WHETHER THE SAME ARISES OR ACCRUES DURING OR AFTER TERMINATION OF THE DEVELOPMENT PERIOD. THE PROVISIONS OF THIS SECTION (INCLUDING ITS INCORPORATION AS TO SECTIONS 3.06 AND 11.05) CONSTITUTE A COVENANT OF RELEASE AND INDEMNIFICATION RUNNING WITH THE LAND (INCLUDING EACH LOT AND ALL COMMUNITY PROPERTIES), AND IS BINDING UPON EACH OWNER AND THEIR TENANT, AND THEIR RESPECTIVE FAMILY OR OTHER HOUSEHOLD MEMBERS, SUCCESSORS IN TITLE OR INTEREST, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.

11.12.1 "Dispute" or "Disputes" and "Disputing Parties" Defined; Scope. "Dispute" or "Disputes" means any claim, demand, action or cause of action, and all rights or remedies regarding same, whether in contract or tort, statutory or common law, or legal or equitable, claimed or asserted by the Association, by the ACC, by any Member or Owner, or by their respective Related Parties (the "Disputing Party"), against or adverse to Declarant or to any Related Parties of Declarant regarding any aspect of (i) the design, construction, development, operation, maintenance, repair or management of the Subdivision, including any "Developmental Activities" as defined in **Section 11.11**, including all Community Properties, and including any matters pertaining to drainage within or from the Subdivision, (ii) the design, construction, sale, maintenance or repair of each Lot, including the residence thereon and all appurtenances thereto, (iii) the establishment, operation or management of, and any acts or omissions of, the Association or the ACC, (iv) the construction, operation, application or enforcement of any provisions of, or otherwise arising out of or relating to, the Declaration and any other Governing Documents, or the breach thereof, and (v) all other matters relating directly or indirectly to any of the foregoing. Such terms do not include any matters covered by any written warranties of any Owner regarding the Owner's residence such as, for example, the limited warranty program sponsored by American Construction & Education Services, Inc. ("ACES"), Residential Warranty Corporation programs ("RWC") or substantial equivalent; provided, such terms shall include any disagreement, controversy or claim to the extent necessary to determine that a matter is covered by any such written warranty and/or any potential obligation or liability of Declarant or its Related Parties regarding same.

11.12.2 Presentment of Dispute Required. The Disputing Party must submit written notice to Declarant, in the manner required by the Declaration for giving of notice to Declarant and within the time as hereafter set forth, setting forth all Disputes, if any, claimed or asserted against or adverse to Declarant or any of its Related Parties (herein referred to as the "Dispute Notice"). The Dispute Notice must set forth each claim, demand, action and cause of action to be included in the Dispute, a reasonably detailed factual description thereof and all remedial action deemed necessary to remedy all Disputes, and a reasonably detailed description of the nature and extent of all claims for damages, if any. Upon request of Declarant, Declarant must also be provided with any evidence that depicts the nature and cause of the Dispute, the nature and extent of all remedial action deemed necessary to remedy the Dispute, and the nature and extent of all claims for damages, including expert reports, photographs and videotapes to the fullest extent the evidence would be discoverable under the Texas Rules of Civil Procedure. ALL DISPUTES NOT SET FORTH IN THE DISPUTE NOTICE, IF ANY, ARE WAIVED.

11.12.3 Settlement by Agreement. Declarant and the Disputing Party agree to use reasonable efforts to resolve all Disputes set forth in the Dispute Notice, in writing, within sixty days after Declarant's receipt of the Dispute Notice. To that end Declarant may by written request require the Disputing Party to attend and participate in (i) one or more meetings at Declarant's office during the sixty day period in an effort to resolve all Disputes and/or (ii) an administrative conference between Declarant, the Disputing Party and a representative of the American Construction & Education Services, Inc. ("ACES"), Residential Warranty Corporation ("RWC") or the American Arbitration Association ("AAA"). In the case of an administrative conference, each party must submit a written proposal for resolution of all matters set forth in the Dispute Notice to the

conference representative at least five days before the conference or as otherwise directed by the conference representative. The written proposals for resolution must be kept confidential by the representative.

11.12.4 Mediation. If all matters set forth in the Dispute Notice have not been settled by written agreement within the sixty-day period as provided in the immediately preceding Subsection, then Declarant by written request may require that all unresolved matters be submitted to non-binding mediation to be conducted, as Declarant elects, through the Harris County Dispute Resolution Center ("DRC"), ACES, RWC or AAA. The mediator will be appointed by the DRC, ACES, RWC or AAA, as the case may be, in accordance with applicable rules of the designated organization. The mediator must meet the requirement of Section 154.052 of the Texas Civil Practice and Remedies Code, and must have at least three years experience as a mediator, including construction/real estate development mediation experience. The mediation must be conducted within thirty days after appointment of the mediator. The mediation must be attended by a person or persons with authority and discretion to negotiate and settle all Disputes. The mediator shall determine the format and rules for the mediation; provided, the provisions of Sections 154.053, 154.071 and 154.073 of the Texas Civil Practice and Remedies Code regarding conduct of the mediator, effect of a written settlement agreement and confidentiality shall apply. Fees and expenses of the mediator shall be borne by the parties equally.

11.12.5 Binding Arbitration.

(a) If all Disputes have not been resolved by agreement of the parties or through mediation as above provided within one hundred twenty days after Declarant's receipt of the Dispute Notice, then Declarant may by written request, whether made before or after the institution of any legal action, require that all unresolved matters as set forth in the Dispute Notice be submitted to binding arbitration conducted in accordance with the Construction Industry Arbitration Rules (or substantial equivalent) of the American Arbitration Association ("AAA"). SUCH ARBITRATION WILL BE BINDING AND FINAL TO THE EXTENT ALLOWED BY LAW, AND THE ASSOCIATION, EACH MEMBER AND OWNER AND THEIR RESPECTIVE RELATED PARTIES HEREBY WAIVE THE RIGHT TO PURSUE ANY OTHER RESOLUTION OF A DISPUTE, INCLUDING A PROCEEDING IN ANY JUDICIAL FORUM.

(b) If necessary Declarant may compel submission of Disputes to binding arbitration and/or participation in such arbitration by an action in any court having jurisdiction. Judgment on any award or decision rendered by the arbitrator may be entered in and otherwise enforced by any court having jurisdiction.

(c) An arbitrator must be appointed who at a minimum meets the requirements for a mediator as above set forth (or substantial equivalent). An arbitrator will be appointed by agreement of the parties from a list of arbitrators qualified as aforesaid to be provided by AAA; or if the parties cannot agree within ten days after receipt of the list, then an arbitrator will be appointed by AAA in accordance with its rules for appointment from a roster.

(d) The arbitration proceedings must be conducted in Harris County, Texas. In rendering its award, the arbitrator must determine the rights and obligations of the parties

according to the substantive and procedural laws of the State of Texas, and in accordance with applicable provisions of the Declaration and other Governing Documents and applicable AAA rules.

(e) Any provisional remedy that would be available from a court, including injunctive relief to maintain the status quo, shall be available from the arbitrator pending final determination of all Disputes.

(f) Declarant may make written request that arbitration proceedings under the Declaration be consolidated with arbitration proceedings pending between Declarant and other parties if the arbitration proceedings arise from the same transaction or relate to the same subject matter. Consolidation will be by an order of the arbitrator in any of the pending cases or, if the arbitrator fails to make such an order, Declarant may apply to any court of competent jurisdiction for such an order.

(g) Each party will bear the expense of its own counsel, experts, witnesses, and preparation and presentment of proofs, unless the arbitrator decides otherwise. The parties will bear the costs of arbitration equally, unless the arbitrator decides otherwise. To the extent permitted by applicable law, the arbitrator has the power to award recovery of all costs, expenses and fees (including pre-award expenses, witness fees, attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party.

11.12.6 Declarant's Right of Inspection. At any time during the existence of any Dispute which has not been finally resolved in writing, whether during or after the Development Period, Declarant and its designated representatives may make such inspections and conduct such surveys, tests and examinations as reasonably necessary to fully determine or confirm to Declarant's satisfaction the nature, extent and possible cause of all Disputes, the nature and extent of repairs and other work involved and any other matters reasonably related to the Disputes.

11.12.7 MEMBERS' AND OWNERS' IRREVOCABLE POWER OF ATTORNEY. EACH MEMBER AND EACH OWNER, FOR THEMSELVES AND THEIR RELATED PARTIES, HEREBY IRREVOCABLY APPOINT THE BOARD OF DIRECTORS OF THE ASSOCIATION AS THEIR ATTORNEY-IN-FACT TO ACT IN THEIR PLACE AND STEAD REGARDING ALL PROVISIONS OF THIS **SECTION 11.12** APPLICABLE TO THE ASSOCIATION, THE ACC AND THEIR RELATED PARTIES, AND ARE BOUND IN ALL RESPECTS AS TO ALL ACTIONS, OMISSIONS, AGREEMENTS AND DECISIONS OF THE BOARD OF DIRECTORS RELATING THERETO AND THE RESULTS OF ANY BINDING ARBITRATION REGARDING SAME.

11.12.8 WHEN DISPUTE NOTICE MUST BE GIVEN; COMPLIANCE AS CONDITION PRECEDENT. ALL DISPUTES MUST BE PRESENTED BY SUBMISSION OF ONE OR MORE DISPUTE NOTICES TO DECLARANT AS ABOVE PROVIDED AS FOLLOWS:

(a) THE ASSOCIATION, THE ACC AND THEIR RELATED PARTIES MUST SUBMIT ALL DISPUTE NOTICES, IF ANY, NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE DATE OF TRANSFER OF DECLARANT CONTROL AS PROVIDED IN SECTION 11.04.

(b) EACH OWNER AND THE OWNER'S RELATED PARTIES MUST SUBMIT ALL DISPUTE NOTICES, IF ANY, NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER ANY APPLICABLE CAUSE OF ACTION ACCRUES, REGARDLESS OF WHETHER THE CAUSE OF ACTION ACCRUES DURING OR AFTER TERMINATION OF THE DEVELOPMENT PERIOD.

(c) THE GIVING OF THE DISPUTE NOTICES AND SUBSTANTIAL COMPLIANCE WITH ALL OTHER APPLICABLE PROVISIONS OF THIS SECTION 11.12 ARE CONDITIONS PRECEDENT TO THE RIGHT TO BRING OR MAINTAIN ANY SUIT AGAINST OR ADVERSE TO DECLARANT OR ANY RELATED PARTIES OF DECLARANT PERTAINING TO ANY DISPUTE.

11.12.9 Remedial Measures. At any time during the existence of any Dispute which has not been finally resolved in writing, whether during or after the Development Period, Declarant may take all actions which in Declarant's sole opinion are necessary or appropriate to address, correct, cure or otherwise deal with the asserted Dispute. For such purposes Declarant may utilize any easements established by the Declaration, or by any Plat or otherwise, without the consent of or compensation of any kind to the Association, or any Owner, or any Related Parties of the foregoing, or any other Person. Except in case of an Emergency, Declarant shall give at least ten days written notice to any party which will be directly affected by activities undertaken by Declarant pursuant to the foregoing setting forth the general nature of activities to be undertaken. NO ACTION OR INACTION BY DECLARANT PURSUANT TO THE FOREGOING SHALL EVER BE DEEMED AN ADMISSION OF LIABILITY, ASSUMPTION OF RESPONSIBILITY OR ACKNOWLEDGMENT OF VALIDITY IN ANY RESPECT AS TO ANY DISPUTE.

11.12.10 TWO YEAR MAXIMUM LIMITATIONS PERIOD. IN ADDITION TO THE PROVISIONS OF SECTION 11.12.8, BUT OTHERWISE NOTWITHSTANDING ANY OTHER PROVISIONS OF THE DECLARATION OR ANY OTHER GOVERNING DOCUMENTS AND REGARDLESS OF WHETHER THE DISPUTE ARISES DURING OR AFTER THE DEVELOPMENT PERIOD, SUIT REGARDING ANY DISPUTE MUST BE FILED IN A COURT OF COMPETENT JURISDICTION NOT LATER THAN TWO YEARS PLUS ONE DAY AFTER THE DAY THE CAUSE OF ACTION ACCRUES.

## **Article XII**

### **General Provisions**

SECTION 12.01 Term. Subject to the provisions of **Sections 11.10 and 12.02**, these covenants, conditions, restrictions, reservations, easements, liens and charges run with the land and are binding upon and inure to the benefit of Declarant, the Association, all Owners, their respective legal representatives, heirs, executors and administrators, predecessors, successors and assigns, and all Persons claiming under them for a period of twenty years from the date this Declaration is filed in the Official Public Records of Real Property of Harris County, Texas, after which time said covenants, conditions, restrictions, reservations, easements, liens and charges will be automatically extended for successive periods of ten years each.

12.02.1 By Owners. Except as otherwise expressly herein provided, the Owners of two-thirds (2/3rds) of the total number of Lots then contained within the Subdivision always have the power and authority to amend this Declaration, in whole or in part, at any time and from time to time; provided, during the Development Period no amendment is effective unless and until approved in writing by Declarant. In this Declaration and all other governing Documents the terms "amend", "amendment" or substantial equivalent mean and refer to any change, modification, revision or termination of any provisions of this Declaration or other Governing Documents.

12.02.2 By Association. The Board of Directors has the right in its sole judgment, from time to time and at any time, to amend this Declaration without joinder of any Owner or any other Person for the following purposes:

(a) to resolve or clarify any ambiguity or conflicts herein, or to correct any inadvertent misstatements, errors or omissions herein; or

(b) to conform this Declaration to the requirements of any lending institution; provided, the Board has no obligation whatsoever to amend this Declaration in accordance with any such lending institution requirements, and the Board may not so amend this Declaration if in the sole opinion of the Board any substantive and substantial rights of Owners would be adversely affected thereby; or

(c) to conform this Declaration to the requirements of any governmental agency, including the Federal Home Loan Mortgage Corporation, Federal National Mortgage Agency, Veterans Administration or Federal Housing Administration, and in this respect the Board shall so amend this Declaration to the extent required by law upon receipt of written notice of such requirements and request for compliance; or

(d) to conform this Declaration to any state or federal constitutional requirements, or to the requirements of any local, state or federal statute, ordinance, rule, ruling or regulation, or to any decisions of the courts regarding same.

12.02.3 Method for Approval of Amendment by Owners.

(a) Notice of any proposed amendment must be given to Owners of all Lots at least ten days before circulation of the amending instrument or conducting of a special meeting as to same. Unless a complete copy of the proposed amending instrument is included with the notice, the notice must set forth a reasonable summary of the proposed amendments and in that event a complete copy of the amending instrument must be mailed or otherwise delivered to any Owner promptly upon receipt by the Association of a written request for same.

(b) The Owner's approval of any amendment of this Declaration may be obtained (i) by execution of the amending instrument or a consent thereto by any Owner of each Lot so approving, (ii) by affirmative vote, in person or by proxy, at a special meeting called for consideration of any such amendment, or (iii) by any combination of the foregoing.

(c) Any joint Owner may nullify the approval of another joint Owner only by filing of a written objection in the Official Public Records of Real Property of Harris County, Texas not later than ninety days after filing of the amending instrument. The certification of the Association's Secretary as to compliance with all prerequisites for amendment set forth herein is final and conclusive from and after the expiration of two years after filing of the applicable amending instrument in the Official Public Records of Real Property of Harris County, Texas.

12.02.4 Effective Date. Any lawful amendment of this Declaration will be effective from and after filing of the amending instrument in the Official Public Records of Real Property of Harris County, Texas, or such later date as may be stated in the amending instrument.

12.02.5 NO IMPAIRMENT OF DECLARANT'S RIGHTS. NO AMENDMENT OF THIS DECLARATION EITHER DURING OR AFTER THE DEVELOPMENT PERIOD MAY REMOVE, REVOKE OR MODIFY ANY RIGHT, PRIVILEGE OR LIMITATION OF LIABILITY OF DECLARANT WITHOUT THE PRIOR WRITTEN CONSENT OF DECLARANT.

SECTION 12.03 Notices to Association, ACC, Owners and Tenants. Unless otherwise expressly provided herein, all notices or other communications permitted or required under this Declaration MUST BE IN WRITING AND MUST BE PROPERLY DATED AND SIGNED, AND ARE DEEMED PROPERLY GIVEN IF BUT ONLY IF GIVEN IN ACCORDANCE WITH THE FOLLOWING:

12.03.1 Notices to Association or ACC. All notices or other communications to the Association or ACC during the Development Period must be given to Declarant as provided in **Section 11.09**. Thereafter, such notices or other communications must be given by (i) personal delivery acknowledged in writing, or (ii) certified or registered mail, return receipt requested, and by deposit in the United States mail, postage prepaid and addressed, to any member of the Board or ACC, to the Association's registered agent, or to the Association's Managing Agent as from time to time designated by the Board. Such notices or other communications are deemed given only upon actual receipt of same. In the event the Association or ACC disputes receipt of any notice or other communication, the original or a copy of the delivery acknowledgment or return receipt must be provided to the Association or ACC failing which the notice or other communication will be conclusively deemed not to have been received.

12.03.2 Notice to Owners and Tenants. All notices or other communications to any Owner are deemed given upon personal delivery to or when deposited in the United States mail, postage prepaid and addressed to, the street address of the Owner's Lot located within the Subdivision, or to the most current street address given by an Owner for purposes of notice as provided in **Section 12.03.3**. All notices or other communications to the tenant of any Owner shall be given to the tenant at the street address of the Lot located within the subdivision at which the tenant resides, and is deemed given upon personal delivery to the tenant or when deposited in the United States mail, postage prepaid and addressed to the tenant at said address. Where more than one Person is the Owner of (or tenant residing at) a single Lot, the mailing of any notices or other communications as aforesaid to any single Owner (or any single tenant) constitutes notice given to all such Owners (or tenants). Personal delivery may be acknowledged in writing either by the

recipient or by a third party courier service. In lieu of the foregoing any notice or other communication may be given to an Owner or tenant by facsimile or electronic mail to the last known facsimile number or e-mail address of the Owner or tenant according to the records of the Association, any such notice or other communication to be deemed received upon confirmation of proper transmission. REFUSAL TO ACCEPT DELIVERY OR TRANSMISSION OF ANY NOTICE OR OTHER COMMUNICATION SHALL BE DEEMED ACTUAL NOTICE AND ACTUAL KNOWLEDGE OF THE MATERIALS REFUSED. Good faith determination of ownership and mailing address, and good faith effort to comply with any other notice provisions of the Declaration or other governing documents shall be sufficient compliance notwithstanding the failure of any Owner to receive personal notice. Good faith certification by the Association's Secretary or other duly authorized agent that notice has been given to one or more owners in accordance with the Declaration is final and conclusive.

12.03.3 Owner's Notice of Address Other Than Lot Address Required. Any Owner may request that any notices required or permitted hereby be mailed to an address other than such Owner's Lot address by giving written and dated notice of the alternate address to the Association. The Owner of each Lot must give written and dated notice to the Association of the Owner's current mailing address within thirty days after any change in the mailing address. In the event of dispute, any such request or notice will be conclusively deemed not to have been received unless the Owner produces the original or copy of the properly signed and dated return receipt request or delivery receipt acknowledgment. In the event of conflict between such requests or notices by a single Owner or multiple Owners, the request or notice last received shall control.

12.03.4 Change of Ownership. Written notice of change of ownership of a Lot by sale or otherwise must be given to the Association within thirty days after the change. The notice must state the name and current mailing address of the current Owner(s), the date of acquisition of ownership, the names of all persons who will occupy the affected Lot and their relationship and a general statement of the legal basis of the change of ownership (such as sale under deed or executory contract for conveyance).

12.03.5 Leasing. Written notice of leasing of or other change in occupancy of a Lot must be given to the Association within thirty days after the change of occupancy. The notice must state name and current mailing address of the Owner(s), the date of change of occupancy, the names of all persons who will occupy the affected Lot and their relationship and a general statement of the legal basis of the change of occupancy (for example under lease for one year term).

12.03.6 Notice of Liens; Status and Foreclosure; Notice of Default.

(a) Upon written request an Owner must provide to the Association a written statement setting forth the name, mailing address and telephone number of each current holder of (i) each mortgage and deed of trust, and any insurer or guarantor of each mortgage and deed of trust, and of all other liens and encumbrances as to their Lot for the purchase thereof, taxes thereon, and work and materials used in constructing improvements thereon, and (ii) any other lien or encumbrance that is (or is claimed or thought to be) superior the Association's continuing assessment lien as established by this Declaration, and as to each of the foregoing the nature of the loan or other encumbrance (such as purchase money loan, home equity loan or tax lien), and the

account or similar identifying number or other designation applicable to the mortgage, deed of trust or other lien or encumbrance.

(b) Upon written request the holder of any mortgage, deed of trust and any other lien or encumbrance pertaining to a Lot must provide to the Association a statement of current status, including account or similar identifying number or other designation applicable to the mortgage, deed of trust or other lien or encumbrance, the nature of any current default and resulting current amounts due, if any, the nature of and current status of any enforcement proceedings, current payoff, and such other relevant information as may be set forth in the written request.

(c) The holder of any mortgage, deed of trust or other lien or encumbrance pertaining to a Lot must give the Association written notice of acquisition of title by foreclosure or deed or other instrument of conveyance in lieu of foreclosure, or of the status of a mortgagee in possession, within thirty days after acquisition of such title or status. The notice must include name and mailing address, account or similar identifying number or other designation (such as REO No.) and such other relevant information as the Association may request in writing.

(d) The Association may (but is not required to) notify any credit bureau, and the holder (or purported or believed holder) of any right, title or interest in and any mortgage, deed of trust and any other lien or encumbrance pertaining to a Lot as to any default under the Governing Documents, including delinquency in payment of assessments and any other monetary amounts due to the Association.

12.03.7 Other Information or Documentation. The Board may from time to time by written request require any Owner or their tenant to verify the information covered by **Section 12.03.3** through **12.03.6** by submission of such documentation and additional information as the Board may reasonably require.

12.03.8 Other Governing Documents. Applicable provisions of this **Section 12.03** also apply to notices or other communications permitted or required by other Governing Documents except as otherwise expressly provided in such other Governing Documents, and provided that notice given in accordance herewith is in all events sufficient regardless of contrary provisions in other Governing Documents.

**SECTION 12.04** Information To and From Mortgagees. At the request of any mortgagee of an Owner, or the insurer or guarantor of a mortgage, the Association may furnish such mortgagee, insurer or guarantor with information about the Subdivision, the Association and such Owner's obligations to the Association. If an Owner is delinquent in payment of assessments (regular, special or specific) to the Association, at the request of the Association a mortgagee, or the insurer or guarantor of a mortgage, may provide the Association with information about such Owner's debt secured by the mortgagee's lien and other relevant information. By acquisition of title to any Lot, or any right, title or interest therein, or acceptance of any executory contract of conveyance, or a deed or other instrument of conveyance. EACH OWNER EXPRESSLY CONSENTS TO THE ASSOCIATION PROVIDING SUCH INFORMATION TO A MORTGAGEE, INSURER OR GUARANTOR, AND TO A MORTGAGEE, INSURER OR GUARANTOR PROVIDING SUCH INFORMATION TO THE ASSOCIATION. AS USED IN THIS SECTION, "MORTGAGEE"

MEANS ANY AND ALL OF THE CREDITORS AS DESCRIBED IN **SECTION 12.03.6**, AND THE FOREGOING CONSENT ALSO APPLIES TO THE PROVISIONS OF SAID SECTION.

**SECTION 12.05**      Managing Agent. The Board has the authority, from time to time and at any time, to retain, hire, employ or contract with any one or more Persons to provide management services to the Association, including discharge of such functions and duties of the Board and/or any officers or committees of the Association, as the Board may specify (any such Person herein referred to as a "Managing Agent"). Any Managing Agent shall be retained, hired, employed or contracted for on such terms and conditions as the Board in its sole good faith judgment may determine; provided, the Board shall retain the right in all cases as to any Managing Agent to remove the Managing Agent, with or without cause, upon not more than sixty days notice.

**SECTION 12.06**      Conflicts In Governing Documents. In the event of any conflict in the Governing Documents which cannot be reasonably reconciled after application of rules of interpretation as provided herein or by law, this Declaration shall control over any other Governing Documents, and all other Governing Documents shall control in the following order of priority: **(i)** Architectural Guidelines; **(ii)** Rules and Regulations; **(iii)** Articles of Incorporation; **(iv)** Bylaws; **(v)** Board and Member resolutions; and **(vi)** all others.

**SECTION 12.07**      Interpretation. The provisions hereof are to be liberally construed to give full effect to their intent and purposes. If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible to more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration and the scheme of development thereunder shall govern. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience, and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. In particular and without limitation, the division of use restrictions under **Article VII** hereof and architectural restrictions under **Article VIII** hereof are for convenience of reference, it being the intent that all such provisions be given full effect in an integrated manner in light of the general purposes and objectives of this Declaration and the scheme of development accomplished thereby. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

**SECTION 12.08**      Severability. Wherever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person, particular circumstance or property shall be prohibited or held invalid, such prohibition or invalidity shall not extend beyond such Person, particular circumstance or property and shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**SECTION 12.09**      Effective Date. This Declaration is effective from and after the date of filing of same in the Official Public Records of Real Property of Harris County, Texas.

IN WITNESS WHEREOF, the undersigned has executed this Declaration to be effective upon the date of filing of this Declaration in the Official Public Records of Real Property of Harris County, Texas.

EXECUTED this 28 day of November, 2005.

TREMONT HOMES, INC.  
a Texas Corporation  
"Declarant"

By: Th P. Thibodeau  
THOMAS P. THIBODEAU, President

### DECLARANT'S ACKNOWLEDGMENT

THE STATE OF TEXAS

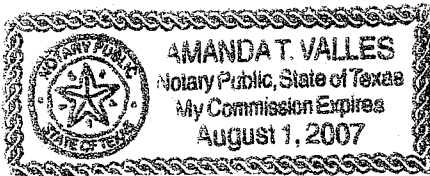
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COUNTY OF HARRIS

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This instrument was acknowledged before me on the 28 day of November, 2005, by THOMAS P. THIBODEAU, as President of TREMONT HOMES, INC., a Texas corporation, for on behalf of said corporation.



Amanda Valles  
Notary Public in and for the State of Texas  
Name: Amanda Valles  
My Commission Expires: 8-1-07

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW THE STATE OF TEXAS

COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED. In the Official Public Records of Real Property of Harris County, Texas on

DEC - 6 2005



Dorely B. Kaufman  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

HARRIS COUNTY CLERK  
HARRIS COUNTY, TEXAS

2005 DEC - 6 AM 8:57

FILED