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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS  
FOR  
VILLAGES OF WESTPLACE**

*lv*

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

*175*  
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**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 (SEE SECTION 7.03), (iii) UNDER ARTICLE XI DECLARANT RETAINS SUBSTANTIAL RIGHTS DURING THE DEVELOPMENT PERIOD, INCLUDING THE UNILATERAL RIGHT TO AMENDED THIS DOCUMENT AND ANY OTHER "GOVERNING DOCUMENTS", AND (iv) 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.**

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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
VILLAGES OF WESTPLACE**

A RESIDENTIAL SUBDIVISION IN HARRIS COUNTY, TEXAS

**T A B L E O F C O N T E N T S**

<u>ARTICLE</u>	<u>PAGE</u>
ARTICLE I: PROPERTY SUBJECT TO THIS DECLARATION . . . . .	1
Section 1.01: Property Subject To Declaration . . . . .	1
Section 1.02: Annexation of Other Property . . . . .	1
Section 1.03: Notice; Effective Date and Effect of Annexation . . . . .	2
ARTICLE II: DEFINITIONS . . . . .	2
Section 2.01: Architectural Control Committee or ACC . . . . .	2
Section 2.02: Architectural Guidelines . . . . .	2
Section 2.03: Association . . . . .	2
Section 2.04: Board or Board of Directors . . . . .	2
Section 2.05: Building Site . . . . .	2
Section 2.06: Bylaws . . . . .	2
Section 2.07: City . . . . .	2
Section 2.08: Community Properties . . . . .	3
Section 2.09: Declarant . . . . .	3
Section 2.10: Declaration . . . . .	3
Section 2.11: Development Period . . . . .	3
Section 2.12: Emergency . . . . .	3
Section 2.13: Governing Documents . . . . .	4
Section 2.14: Lot . . . . .	4
Section 2.15: Member . . . . .	4
Section 2.16: Owner . . . . .	4
Section 2.17: Person . . . . .	4
Section 2.18: Plat; Initial Plat . . . . .	4
Section 2.19: Prevailing Community Standards . . . . .	4
Section 2.20: Regulated Modification . . . . .	5
Section 2.21: Related Parties . . . . .	6
2.21.1: Owners and Tenants . . . . .	6
2.21.2: Association, ACC and Declarant . . . . .	6
Section 2.22: Rules and Regulations . . . . .	6
Section 2.23: Subdivision . . . . .	6

Section 2.24:	Subdivision Facilities . . . . .	6
ARTICLE III:	VILLAGES OF WESTPLACE COMMUNITY ASSOCIATION, INC. . . . .	7
Section 3.01:	Organization . . . . .	7
Section 3.02:	Board of Directors . . . . .	7
Section 3.03:	Membership . . . . .	7
3.03.1:	Owners as Members . . . . .	7
3.03.2:	When Member Required to Designate Representative; Effect . . . . .	8
Section 3.04:	Voting Rights of Members . . . . .	8
3.04.1:	Development Period . . . . .	8
(a):	Class A . . . . .	8
(b):	Class B . . . . .	8
3.04.2:	Post-Development Period . . . . .	8
3.04.3:	Multiple Owners . . . . .	8
3.04.4:	Cumulative Voting Prohibited . . . . .	8
3.04.5:	Suspension of Voting Rights . . . . .	9
Section 3.05:	Inspection by Members of Books and Records . . . . .	9
Section 3.06:	Limitation of Liability; Indemnification . . . . .	9
3.06.1:	General . . . . .	9
3.06.2:	Security Services . . . . .	9
3.06.3:	Liability Arising from Conduct of Owners . . . . .	11
3.06.4:	Subsequent Statutory Authority . . . . .	11
3.06.5:	No Impairment . . . . .	11
ARTICLE IV:	ARCHITECTURAL CONTROL COMMITTEE . . . . .	11
Section 4.01:	Organization; Compensation . . . . .	11
4.01.1:	General . . . . .	11
4.01.2:	ACC Executive Committee . . . . .	11
4.01.3:	Compensation . . . . .	11
Section 4.02:	Function and Powers . . . . .	12
4.02.1:	Submission of Plans Required . . . . .	12
4.02.2:	Architectural Guidelines . . . . .	12
4.02.3:	Manner and Effect of Adoption of Architectural Guidelines . . . . .	13
4.02.4:	Variances . . . . .	13
Section 4.03:	Architectural Review Criteria . . . . .	14
Section 4.04:	Submission and Response; Failure of ACC to Act; ACC Decisions . . . . .	14
4.04.1:	Submission and Response . . . . .	14
4.04.2:	ACC Decisions . . . . .	14
Section 4.05:	Implied Conditions of Approval . . . . .	14
4.05.1:	Applicability . . . . .	14
4.05.2:	Commencement and Completion of Work . . . . .	15
4.05.3:	Equipment and Materials . . . . .	15

4.05.4:	New Construction Materials Required . . . . .	15
4.05.5:	Drainage . . . . .	15
4.05.6:	Compliance With Plans . . . . .	15
4.05.7:	Permit Requirements . . . . .	15
4.05.8:	Compliance With Laws and Governing Documents . . . . .	15
Section 4.06:	Inspection Rights . . . . .	16
Section 4.07:	Records of Architectural Control Committee . . . . .	16
Section 4.08:	Liability of Architectural Control Committee . . . . .	16
ARTICLE V:	MAINTENANCE FUND . . . . .	16
Section 5.01:	Obligation for Payments to Maintenance Fund . . . . .	16
5.01.1:	Establishment of Maintenance Fund . . . . .	16
5.01.2:	Types and Obligation for Payment of Assessments . . . . .	16
5.01.3:	Purpose of Maintenance Fund . . . . .	17
5.01.4:	Personal Obligation; Transferees . . . . .	17
5.01.5:	Statement of Assessments . . . . .	17
Section 5.02:	Administration of Maintenance Fund . . . . .	17
5.02.1:	Assessment and Payment of Regular Assessments . . . . .	17
5.02.2:	Uniform Rates for Regular and Special Assessments . . . . .	18
5.02.3:	Declarant and Builder Rates . . . . .	18
5.02.4:	Application of Payments . . . . .	18
Section 5.03:	Base Rate and Subsequent Computation of	
	Regular Assessments . . . . .	18
5.03.1:	Initial Base Rate of Regular Assessments . . . . .	18
5.03.2:	Subsequent Computation of Regular Assessments . . . . .	19
Section 5.04:	No Waiver or Release . . . . .	20
Section 5.05:	Special Assessments . . . . .	20
Section 5.06:	Specific Assessments . . . . .	20
5.06.1:	Types . . . . .	20
(a):	Interest . . . . .	20
(b):	Late Charges . . . . .	20
(c):	Compliance Costs . . . . .	20
(d):	Foreclosure of Assessment Lien . . . . .	21
(e):	Other Obligations (Including Fines, and Transfer and ACC Fees) . . . . .	21
5.06.2:	Payment; Waiver . . . . .	21
Section 5.07:	Lien for Assessments . . . . .	22
5.07.1:	Establishment of Lien . . . . .	22
5.07.2:	Perfection of Lien . . . . .	22
5.07.3:	Priority of Lien . . . . .	22
5.07.4:	Other Liens . . . . .	23
Section 5.08:	Effect of Nonpayment of Assessments . . . . .	23
5.08.1:	Delinquency Date . . . . .	23
5.08.2:	Automatic Remedies . . . . .	23
5.08.3:	Elective Remedies After Notice . . . . .	23

(a):	Acceleration of Assessments . . . . .	23
(b):	Suspension of Services . . . . .	23
(c):	Impoundment of Rents . . . . .	23
5.08.4:	Action for Debt; Foreclosure . . . . .	24
5.08.5:	Extinguishment of Inferior Liens . . . . .	24
Section 5.09:	Foreclosure; Bankruptcy . . . . .	25
5.09.1:	Effect of Foreclosure or Bankruptcy . . . . .	25
5.09.2:	Revival of Assessment Lien; No Merger . . . . .	25
Section 5.10:	Assessments as Independent Covenant . . . . .	25
 ARTICLE VI:	 MAINTENANCE, INSURANCE, CASUALTY LOSSES AND CONDEMNATION . . . . .	  26
Section 6.01:	Association Maintenance Responsibilities . . . . .	26
6.01.1:	Community Properties . . . . .	26
6.01.2:	Owner's Liability for Payment of Association Costs . . . . .	26
Section 6.02:	Owner Maintenance Responsibilities . . . . .	26
6.02.1:	General; Interior Maintenance . . . . .	26
6.02.2:	Residences and Other Improvements . . . . .	26
6.02.3:	Utilities . . . . .	28
6.02.4:	Landscaping . . . . .	28
6.02.5:	Disturbance of Community Properties . . . . .	28
6.02.6:	Adjacent or Adjoining Owners; Common Fences . . . . .	28
Section 6.03:	Dispute Resolution Among Owners . . . . .	28
Section 6.04:	Casualty Losses- Association Responsibilities . . . . .	29
Section 6.05:	Casualty Losses - Owner Responsibilities . . . . .	29
6.05.1:	Required Repair or Replacement . . . . .	29
6.05.2:	Other Casualty Losses . . . . .	29
6.05.3:	ACC Approval Required . . . . .	30
Section 6.06:	Owner Insurance . . . . .	30
6.06.1:	General . . . . .	30
6.06.2:	Required Coverage . . . . .	30
6.06.3:	Coverage Periods, Notice; Policy Provisions . . . . .	30
6.06.4:	Proof of Coverage; Default . . . . .	31
Section 6.07:	Association Insurance . . . . .	31
6.07.1:	Coverage . . . . .	31
6.07.2:	Administration of Claims . . . . .	31
6.07.3:	Deductibles; Claims . . . . .	31
6.07.4:	Unavailable Coverage; Additional Rules and Regulations . . . . .	32
Section 6.8:	Condemnation . . . . .	32
 ARTICLE VII:	 USE RESTRICTIONS . . . . .	 32
Section 7.01:	Residential Use; Group Homes; Treatment Facilities . . . . .	32
7.01.1:	General . . . . .	32

7.01.2:	No Business, Professional, Commercial or Manufacturing Use . . . . .	32
7.01.3:	Residential Use Only . . . . .	33
7.01.4:	Single Family Defined . . . . .	33
7.01.5:	Maximum Occupancy . . . . .	33
7.01.6:	Group Homes; Day-Care Center; Treatment Facilities . . . . .	33
Section 7.02:	Pets, Animals and Livestock . . . . .	34
7.02.1:	Permitted Pets; Leashing Required . . . . .	34
7.02.2:	Removal . . . . .	34
Section 7.03:	Vehicles; Parking . . . . .	34
7.03.1:	Prohibited Vehicles . . . . .	34
7.03.2:	Prohibited Parking - General . . . . .	35
7.03.3:	Occupant Vehicles . . . . .	35
7.03.4:	Repair of Vehicles . . . . .	35
7.03.5:	Vehicle Defined . . . . .	35
7.03.6:	Presumptive Violations . . . . .	35
7.03.7:	Towing . . . . .	35
7.03.8:	Limitation of Liability . . . . .	36
Section 7.04:	Nuisance; Unsightly or Unkempt Conditions . . . . .	36
7.04.1:	General . . . . .	36
7.04.2:	Nuisance or Annoyance . . . . .	36
7.04.3:	Pollutants; Hazardous Materials . . . . .	36
7.04.4:	Authority to Cure . . . . .	37
Section 7.05:	Septic Tanks . . . . .	37
Section 7.06:	Disposal of Trash . . . . .	37
Section 7.07:	Permitted Hours for Construction Activity . . . . .	37
Section 7.08:	Building Materials . . . . .	37
Section 7.09:	Outdoor Cooking . . . . .	38
Section 7.10:	Firearms and Fireworks Prohibited . . . . .	38
Section 7.11:	Basketball Goals . . . . .	38
Section 7.12:	Clotheslines . . . . .	38
Section 7.13:	Timesharing Prohibited . . . . .	38
Section 7.14:	Electronic Signal Devices . . . . .	38
Section 7.15:	Leases . . . . .	38
7.15.1:	Restrictions . . . . .	38
7.15.2:	Default . . . . .	39
7.15.3:	Joint and Several Liabilities . . . . .	39
7.15.4:	Surrender of Use of Community Properties by Lessor(s) . . . . .	39
Section 7.16:	Unoccupied Residences . . . . .	39
Section 7.17:	Undeveloped Building Sites . . . . .	39
Section 7.18:	Garage Usage . . . . .	39
Section 7.19:	Mineral Production . . . . .	40
Section 7.20:	Rules and Regulations . . . . .	40
ARTICLE VIII:	ARCHITECTURAL RESTRICTIONS . . . . .	40
Section 8.01:	Type of Residence . . . . .	40

8.01.1:	Single Family Residence . . . . .	40
8.01.2:	Garages and Garage Doors . . . . .	40
8.01.3:	New Construction and Continued Maintenance Required . . . . .	41
8.01.4:	Tents, Mobile Homes and Temporary Structures . . . . .	41
Section 8.02:	Living Area Requirements . . . . .	41
Section 8.03:	Location of Residence . . . . .	41
Section 8.04:	Construction Standards . . . . .	41
8.04.1:	Applicability . . . . .	41
8.04.2:	Maximum Period for Completion of Construction . . . . .	42
8.04.3:	New Construction Materials Required . . . . .	42
8.04.4:	Storage of Materials; Clean-Up . . . . .	42
8.04.5:	Landscaping . . . . .	42
8.04.6:	Driveways . . . . .	42
8.04.7:	Exterior Materials . . . . .	42
8.04.8:	Drainage . . . . .	42
(a):	Drainage Devices . . . . .	42
(b):	Owner Obligations . . . . .	43
8.04.9:	Garage Height . . . . .	43
8.04.10:	Painting of Frame Construction . . . . .	43
8.04.11:	Roof Materials . . . . .	43
8.04.12:	Gutters and Downspouts . . . . .	43
8.04.13:	Pre-Fabricated Homes Prohibited . . . . .	44
8.04.14:	Compliance With Laws . . . . .	44
Section 8.05:	Metal Buildings or Structures Prohibited . . . . .	44
Section 8.06:	Temporary Structures; Sales Office . . . . .	44
Section 8.07:	Building Site Resubdivision or Combination . . . . .	44
Section 8.08:	Window and Door Glass Covers . . . . .	44
Section 8.09:	Building Site Line Fences, Walls and Hedges . . . . .	44
8.09.1:	ACC Approval Required; General Requirements . . . . .	44
8.09.2:	Ownership and Maintenance . . . . .	45
Section 8.10:	Antennas and Satellite Dish Systems . . . . .	45
8.10.1:	Permitted Antenna . . . . .	45
8.10.2:	Limitations on Permitted Antenna . . . . .	45
8.10.3:	ACC Approval and Notice as to Permitted Antenna . . . . .	46
8.10.4:	Maintenance; Owner Responsibility and Indemnity . . . . .	46
8.10.5:	ACC Forms and Required Information . . . . .	47
8.10.6:	Prohibited Antenna . . . . .	47
Section 8.11:	Signs . . . . .	47
8.11.1:	General . . . . .	47
8.11.2:	Prohibited Signs . . . . .	47
8.11.3:	Permitted Signs . . . . .	48
Section 8.12:	Tree Removal . . . . .	48
Section 8.13:	Traffic Sight Line Areas . . . . .	48
Section 8.14:	Utility, Lighting and Energy Facilities . . . . .	48
8.14.1:	Maintenance of Utilities Required . . . . .	48

8.14.2:	Private Utility Lines . . . . .	48
8.14.3:	Air Conditioners . . . . .	48
8.14.4:	Disposal Units . . . . .	49
8.14.5:	Exterior Lighting . . . . .	49
8.14.6:	Solar and Other Energy Devices . . . . .	49
Section 8.15:	Pools . . . . .	49
Section 8.16:	Artificial Vegetation, Exterior Sculpture, and Similar Items . . . . .	49
Section 8.17:	Irrigation . . . . .	49
Section 8.18:	Excavation . . . . .	49
ARTICLE IX:	EASEMENTS . . . . .	50
Section 9.01:	Incorporation of Easements . . . . .	50
Section 9.02:	Owner's Easements for Use and Enjoyment . . . . .	50
9.02.1:	Usage Control . . . . .	50
9.02.2:	Suspension of Usage Rights . . . . .	50
Section 9.03:	Easements for Encroachment and Overhang . . . . .	50
Section 9.04:	Egress/Regress to Public Way Required . . . . .	51
Section 9.05:	Association and ACC Blanket Access Easement . . . . .	51
Section 9.06:	Governmental Functions; Utilities and Other Services . . . . .	51
9.06.1:	Governmental Functions; Removal of Obstructions . . . . .	51
9.06.2:	Mail Box Banks . . . . .	51
9.06.3:	Utilities . . . . .	51
9.06.4:	Changes and Additions . . . . .	52
Section 9.07:	Title to Easements and Appurtenances Not Conveyed . . . . .	52
Section 9.8:	Easements Perpetual . . . . .	52
ARTICLE X:	ENFORCEMENT . . . . .	52
Section 10.01:	Strict Compliance Required . . . . .	52
Section 10.02:	Enforcement . . . . .	52
10.02.1:	General . . . . .	52
10.02.2:	Verification of Defaults . . . . .	53
10.02.3:	No Estoppel, Waiver or Liability . . . . .	53
10.02.4:	Cumulative Rights and Remedies . . . . .	53
Section 10.03:	Liability for Conduct of Others ("Related Parties") . . . . .	53
Section 10.04:	Obligation for Payment of Costs and Expenses	
	Resulting from Violations . . . . .	53
Section 10.05:	Notice and Opportunity to be Heard . . . . .	54
10.05.1:	Notice of Violation . . . . .	54
10.05.2:	Time to Cure; Response . . . . .	54
10.05.3:	Hearing . . . . .	54
10.05.4:	Appeal . . . . .	54
10.05.5:	Limited Abatement of Enforcement . . . . .	54



10.05.6:	Fines . . . . .	55
Section 10.06:	Filing of Notices of Non-Compliance . . . . .	55
ARTICLE XI:	DEVELOPMENT PERIOD . . . . .	55
Section 11.01:	Application . . . . .	55
Section 11.02:	Appointment of Board and ACC; Authority of Association; Declarant as Member . . . . .	55
Section 11.03:	Architectural Control; Builder Approval . . . . .	55
11.03.1:	ACC Approval Not Required . . . . .	55
11.03.2:	Declarant's ACC Authority as to Initial Development of Building Sites . . . . .	55
11.03.3:	Approval of Builder by Declarant Required . . . . .	56
11.03.4:	"Completion of the Initial Sale" and "Builder" Defined . . . . .	56
Section 11.04:	First Meeting of Class A Members; Transfer of Declarant Control . . . . .	56
11.04.1:	First Meeting of Class A Members . . . . .	56
11.04.2:	Termination of Development Period; Effect . . . . .	56
11.04.3:	Costs of First Meeting; Turnover of Association Funds, Books and Records . . . . .	57
11.04.4:	Effect of Failure of Class A Members to Elect Board . . . . .	57
Section 11.05:	Community Properties . . . . .	58
11.05.1:	Designation or Change as to Community Properties and/or Subdivision Facilities . . . . .	58
11.05.2:	Construction and Maintenance of Community Properties . . . . .	58
11.05.3:	Conveyance of Community Properties . . . . .	58
11.05.4:	Use and Maintenance of Community Properties . . . . .	59
Section 11.06:	Easements . . . . .	59
Section 11.07:	Sales Activities . . . . .	60
Section 11.08:	Assessments . . . . .	60
11.08.1:	Right of Declarant to Set Rate . . . . .	60
11.08.2:	Payment of Assessments by Declarant During Development Period . . . . .	60
Section 11.09:	Notices to Declarant . . . . .	61
Section 11.10:	Amendment of Governing Documents or Plat; Annexation . . . . .	61
11.10.1:	Declarant's Reserved Rights . . . . .	61
11.10.2:	No Impairment of Declarant's Rights . . . . .	61
Section 11.11:	Limitation of Liability . . . . .	61
11.11.1:	General . . . . .	61
11.11.2:	Developmental Activities . . . . .	62
11.11.3:	No Representations or Warranties; Indemnification . . . . .	62
Section 11.12:	Mandatory Dispute Resolution Procedures; Limitations . . . . .	63
11.12.1:	"Dispute" or "Disputes" and "Disputing Parties" Defined; Scope . . . . .	63
11.12.2:	Presentment of Dispute Required . . . . .	64
11.12.3:	Settlement by Agreement . . . . .	64
11.12.4:	Mediation . . . . .	64

11.12.5:	Binding Arbitration . . . . .	65
11.12.6:	Declarant's Right of Inspection . . . . .	66
11.12.7:	Members' and Owners' Irrevocable Power of Attorney . . . . .	66
11.12.8:	When Dispute Notice Must Be Given; Compliance as Condition Precedent . . . . .	66
11.12.9:	Remedial Measures . . . . .	66
11.12.10:	Two Year Maximum Limitations Period . . . . .	67
<b>ARTICLE XII:</b>	<b>GENERAL PROVISIONS . . . . .</b>	<b>67</b>
Section 12.01:	Term . . . . .	67
Section 12.02:	Amendment . . . . .	67
12.02.1:	By Owners . . . . .	67
12.02.2:	By Association . . . . .	67
12.02.3:	Method for Approval of Amendment by Owners . . . . .	68
12.02.4:	Effective Date . . . . .	68
12.02.5:	No Impairment of Declarant's Rights . . . . .	68
Section 12.03:	Notices to Association, ACC, Owners and Tenants . . . . .	68
12.03.1:	Notices to Association or ACC . . . . .	69
12.03.2:	Notice to Owners and Tenants . . . . .	69
12.03.3:	Owner's Notice of Address Other Than Building Site Address Required . . . . .	69
12.03.4:	Change of Ownership . . . . .	69
12.03.5:	Leasing . . . . .	70
12.03.6:	Notice of Liens, Status and Foreclosure; Notice of Default . . . . .	70
12.03.7:	Other Information or Documentation . . . . .	70
12.03.8:	Other Governing Documents . . . . .	70
Section 12.04:	Managing Agent . . . . .	71
Section 12.05:	Conflicts in Governing Documents . . . . .	71
Section 12.06:	Interpretation . . . . .	71
Section 12.07:	Severability . . . . .	71

**EXECUTION**  
**ACKNOWLEDGMENT**  
**CONSENT OF MORTGAGEE**

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**VILLAGES OF WESTPLACE**

A RESIDENTIAL SUBDIVISION IN HARRIS COUNTY, TEXAS

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

KNOW ALL BY THESE PRESENTS THAT:

WHEREAS, **W&W ASSET MANAGEMENT COMPANY, INC.**, a Texas corporation (hereinafter referred to as the "Declarant"), and the other parties joining herein are the owners of all that certain real property located in Harris County, Texas, as more particularly described in **Section 1.01** hereof; and Declarant and said parties desire 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:

VILLAGES OF WESTPLACE, an addition in Harris County, Texas according to the map or plat thereof recorded under Clerk's Film Code No. 436073, 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 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 the procedural, aesthetic, environmental and architectural 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 VILLAGES OF WESTPLACE 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**      "Building Site" means a building site described by metes and bounds description and/or by reference to a Plat upon which one single family residence is or may be constructed. The term "Building Site" does not include Community Properties, and does not include commercial or other reserves so designated by a Plat, if any.

**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      "Community Properties" means:

2.08.1 all common areas so designated herein or by a Plat intended for the common use of Owners, including Reserves "A", "B" and "C" as so designated on the Initial Plat of the Subdivision;

2.08.2 all mail box areas so designated by Declarant or the Board as permitted by **Section 9.06**, including entry, access and exit areas regarding same;

2.08.3 all Subdivision Facilities; and

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

SECTION 2.09      "Declarant" means W&W ASSET MANAGEMENT COMPANY, 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 Building Sites 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 Villages of Westplace, 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 years after the date of recordation of this Declaration in the Official Public Records of Real Property of Harris County, Texas; or

2.11.2 as provided in **Section 11.04** regarding the first meeting of Class A Members; provided that at any time prior to such termination 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 Building Site, 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 Building Site, 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 Building Site, 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 lots shown on a Plat.

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 Building Site, 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, or grades or topography 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 residence, structure or improvements, 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, coup 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 Building Site, 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 Building Site, 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 Building Site;

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 Building Site 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 Building Site or any other portion of the Subdivision;

2.20.6 any change in the grade of any Building Site 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 Building Site 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 Building Sites and Community Properties, in accordance with **Article VII** hereof, regardless of nomenclature or manner of designation, and may include Architectural Guidelines.

SECTION 2.23        "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 2.24        "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:

2.24.1. all Subdivision entry and other identification monuments, if any;

2.24.2 any patrol or security 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;

2.24.3 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

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

### Article III

#### Villages of Westplace 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.

#### 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 Building Site. Memberships shall be appurtenant to and may not be separated from ownership of any Building Site, and shall automatically pass with the title to the Building Site.

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.

#### SECTION 3.04 Voting Rights of Members.

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 BUILDING SITE 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 Building Site, 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 Building Site, all such Persons are Members, but in no event will they be entitled to more than one vote with respect to each particular Building Site 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.

**SECTION 3.06** Limitation of Liability; Indemnification.

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, judgments, 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 BUILDING SITE 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 Building Sites 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 Building Site, and every Owner, tenant and occupant of a Building Site 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 Building Site 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 its 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 ACC MAY FROM TIME TO TIME DESIGNATE ANY ONE OF ITS MEMBERS 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 Building Site 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**. Two complete sets of plans and specifications must be submitted with each request for approval. 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 Building Site 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 Building Sites 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 Building Site or anywhere within the Subdivision, as well as specific types of Regulated Modifications which will not be permitted upon any Building Site 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. Within a reasonable time after adoption or amendment of Architectural Guidelines, notice thereof must be given to all then Owners. The ACC shall provide applicable Architectural Guidelines to Owners upon request. Architectural Guidelines may also be (but are not required to be) filed in the Official Public Records of Real Property of Harris County, Texas.

(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 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 that the variance is necessary due to unusual circumstances which are reasonably beyond the control of the applicant to mitigate or rectify,

and 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. The good faith determination of the ACC that the conditions for granting of a variance have or have not been met 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 within thirty days after receipt of a proper 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, 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 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 Building Site 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 Building Site.

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 Building Site 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 Building Site, and so far as practical must be stored in locations not visible from any street, Building Site 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 Building Site 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 Building Site.

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 8.04.10** 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 Building Site 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 Building Site 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 Building Site, 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 or annual 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 Building Site charged therewith at the time liability for the assessment accrued notwithstanding any subsequent transfer of ownership. Except as provided in **Sections 5.01.5 and 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, 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 Building Site transferred be subject to a lien for, any unpaid assessments against the Building Site accruing prior to the date of the written request.

## SECTION 5.02      Administration of Maintenance Fund.

5.02.1 Assessment and Payment of Regular Assessments. Regular assessments accrue (are assessed) on a monthly basis, but are payable as next provided. EXCEPT AS OTHERWISE DETERMINED BY THE BOARD, REGULAR ASSESSMENTS ARE DUE AND PAYABLE ANNUALLY, IN ADVANCE, ON OR BEFORE THE FIRST DAY OF JANUARY OF EACH CALENDAR YEAR. The Board may elect to collect regular assessments on a semi-annual, quarterly or monthly basis in which case such assessments shall be due and payable, in advance, on or before the first day of the applicable period.

5.02.2 Uniform Rates for Regular and Special Assessments. Except as provided in **Section 5.02.3**, regular and special assessments on all Building Sites must be fixed at a uniform rate, and must be determined on a per Building Site basis.

5.02.3 Declarant and Builder Rates.

(a) Until the first day of the month following expiration or termination of the Development Period, Declarant is obligated to pay assessments only as provided in **Section 11.08**. Thereafter Declarant will pay regular and special assessments at the rate of one-half of the full rate of assessment otherwise applicable as to any Building Site then owned or thereafter owned by Declarant.

(b) Each "Builder" (as defined in **Section 11.03**) 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 Building Site 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 Building Site. The "Construction Period Rate" is zero during the first six months, or part thereof, of the Construction Period and one-half of the full rate of regular and/or special assessment rate otherwise applicable during the last six months of the Construction Period, or part thereof. Upon termination of the Construction Period, the Owner (whether or not a Builder) shall thereafter pay the full rate of assessments. If assessments have been paid in advance upon termination of the Construction Period, the Owner (whether or not a 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 all specific assessments owed to the Association with application to be made in inverse order of the 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. The initial full base rate of the regular annual assessment for 2000 per Building Site (and continuing during 2000 and thereafter unless and until modified as herein provided) is ONE HUNDRED DOLLARS (\$100.00) per Building

Site 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.** The annual rate of regular assessment per Building Site 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 Building Sites 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 Building Sites then contained in the Subdivision and the vote to disapprove of the Owners of at least two-thirds of the Building Sites 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 Building Sites 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 Building Sites 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.

SECTION 5.04      No Waiver or Release. Notwithstanding anything to the contrary herein, the omission or failure for any reason of the Board to 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 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 the 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. SO LONG AS THE TOTAL AMOUNT OF SPECIAL ASSESSMENTS ALLOCABLE TO EACH BUILDING SITE DOES NOT EXCEED SIXTY PERCENT (60%) OF THE AMOUNT OF THE REGULAR ANNUAL ASSESSMENT THEN IN EFFECT IN ANY ONE FISCAL YEAR, 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 BUILDING SITES 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 Building Site exceeding the foregoing limitation will be effective only if approved by the Owners of a majority of the Building Sites then contained within the Subdivision. 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. SPECIAL ASSESSMENTS ARE PAYABLE BASED ON APPLICATION OF THE RATE CLASSIFICATIONS AS SET FORTH IN SECTION 5.03.1.

SECTION 5.06      Specific Assessments.

5.06.1 Types. Specific assessments must be assessed against individual Building Sites and the Owner(s) thereafter 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.

(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 Building Site 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). 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 Building Sites must be assessed against the applicable Owner(s). Such charges may include without limitation reasonable charges for:

- (i) providing a statement of assessments or indebtedness;
- (ii) providing of a resale certificate;
- (iii) transfer fees to reflect changes of ownership, tenancy or occupancy on the records of the Association;
- (iv) fines for any violation of any provisions of this Declaration or other Governing Documents;
- (v) charges for processing of applications for architectural approval, including as provided in **Section 4.02.2(b)**;
- (vi) admission or usage fees applicable to Community Properties; and
- (vii) 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 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 for statements of assessments or indebtedness and transfer fees as aforesaid 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. The Board may adopt, amend, revise and repeal any charges authorized hereby from time to time by resolution and without notice except as to fines and admission or usage fees which must be by adoption of appropriate Rules and Regulations.

**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 Building Site pursuant to this Declaration, whether by regular, special or specific assessment as provided herein, are secured by a continuing lien on such Building Site 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 Building Site except:

(a) a lien for real property taxes and other governmental assessments or charges on a Building Site (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 lien securing payment of purchase money for a Building Site or work and materials used in constructing improvements on a Building Site (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 Building Site 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 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.

(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 utility specific assessments and accelerated assessments, if any) 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) Impoundment of Rents. The Association may impound all rental income of the defaulting Owner as to the Building Site as to which assessments are delinquent. 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 in full it will notify the affected Owner and their tenant of such payment in full 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 Building Site 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) By written resolution, the Board may appoint, from time to time, an officer, agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of the Association, including without limitation to deliver and file the notices required by Section 51.002 of the Texas Property Code (as amended), to conduct the sale and to otherwise comply with said statute. By written resolution the Board 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 Building Site at any foreclosure sale, and to acquire, hold, lease, mortgage, or convey the same.

(c) 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, the former Owner(s) will be mere tenants at sufferance of the purchaser(s), and the purchaser(s) may obtain immediate possession either pursuant to a judgment for foreclosure or by forcible detainer or eviction to be maintainable by the purchaser(s).

(d) Each owner, by acquisition of any Building Site 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, all prerequisites of the foreclosure sale shall be presumed to have been performed, and the foreclosure sale made under the powers herein granted shall be a perpetual bar against the Owner(s) of the Building Site(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 Building Site. 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 first day of the month following 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 a Building Site 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 Building Site at any time and in any manner 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 Building Site, (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. 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.

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 (i) could or does increase the Association's costs of insurance or result in cancellation or diminution in insurance coverage, (ii) could or does cause damage to or increase costs of maintenance, repair, replacement, obligations regarding the Community Properties, or any other areas maintained by the Association, or (iii) could or does increase costs of management or operation of any Community Properties (including Subdivision Facilities) or discharge of any other obligations of the Association pursuant to this Declaration or other Governing Documents. Regardless of availability of insurance coverage, the Association may charge to each responsible Owner, as a specific assessment, all increased costs of insurance and all costs of maintenance, repair, replacement, management or operation 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.

#### SECTION 6.02      Owner Maintenance Responsibilities.

6.02.1 General; Interior Maintenance. All maintenance of each Building Site and all improvements thereon is the sole responsibility of the Owner thereof. Each Owner must maintain their Building Site 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 Building Site, 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 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 exterior appearance of the roof is maintained.

(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 Building Site, including sidewalks and driveway, 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 Building Site 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 decay beyond normal weathering. PAINTING OR STAINING OF WOODEN FENCES IS PROHIBITED UNLESS APPROVED IN WRITING BY THE ACC.

(i) Any swimming pool, which may be installed if and only if approved by the Architectural Control Committee, must be properly maintained to prevent algae buildup, deterioration of surfaces and decking and any other unkept or unsanitary condition, and in accordance with applicable laws, ordinances and codes.

(j) 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 Building Site must maintain 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 Building Site (the "Owner Utilities"), regardless of the location of the Owner Utilities, save and except to the extent maintenance of any Owner Utilities is provided and actually performed by any governmental entity or utility company.

6.02.4 Landscaping. All grass, shrubbery, trees, flower beds, vegetation and all other landscaping, either natural or artificial, on each Building Site 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.

6.02.5 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 Building Site are subject, and is secured by the continuing lien hereby established against such Owner's Building Site.

6.02.6 Adjacent or Adjoining Owners; Common Fences. No Owner or their tenant will allow any condition to exist or fail or neglect to provide any maintenance which adversely affects any adjoining or adjacent Building Site, any Community Properties, or any improvements on any such Building Site or the Community Properties. All maintenance, repair or replacement of Building Site Line Fencing as may be approved in accordance with **Section 8.09** which separates adjoining Building Sites, or which is otherwise shared in common by two adjoining Building Sites, is the joint responsibility of, and the costs thereof shall be shared equally by, the adjoining Owners.

## SECTION 6.03 Dispute Resolution Among Owners.

6.03.1 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 (i) the right 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.

6.03.2 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 6.04**      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 Building Sites then contained in the Subdivision.

**SECTION 6.05**      Casualty Losses - Owner Responsibilities.

6.05.1 Required Repair or Replacement. Whether or not insured, and unless completely razed or removed as permitted by the next subsection, all damage or destruction by fire or other casualty to all or any portion of any improvements on a Building Site, including the residence and/or any appurtenant garage as originally constructed on a Building Site, must be repaired or replaced by the Owner thereof within seventy-five days after such damage or destruction; or, where repairs or replacements cannot be completed within seventy-five days, they must be commenced within such period and completed within a reasonable time thereafter as determined by the ACC. For good cause shown, the ACC may extend the foregoing periods.

6.05.2 Other Casualty Losses. Whether or not insured, any building, structure, improvement and any other type of Regulated Modification which is damaged or destroyed and which is not repaired or replaced as provided by the above subsection must either be razed or removed in

its entirety from the affected Building Site and the Subdivision within sixty days after such damage or destruction. This includes removal of any foundation as to any razed or removed building, structure or other improvement and such other restoration required such that after razing or removal Prevailing Community Standards are maintained. For good cause shown, the ACC may extend the foregoing periods.

6.05.3 ACC Approval Required. The provisions of **Article IV** apply to all work and any other activities pursuant to the requirements of this Section.

#### SECTION 6.06 Owner Insurance.

6.06.1 General. The Owner of each Building Site 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 DECLARATION OR ANY OTHER GOVERNING DOCUMENTS (i) OBTAINING OF LIABILITY AND PROPERTY INSURANCE REGARDING AND FOR EACH BUILDING SITE AND ALL IMPROVEMENTS THEREON (INCLUDING RESIDENCES AND APPURTENANT STRUCTURES AND THE CONTENTS THEREOF) IS THE SOLE RESPONSIBILITY OF THE OWNER THEREOF, AND (ii) 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 Building Site 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, Notice, 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. At the time of acquisition of any and all coverage required by the 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.



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) 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. Upon written request each Owner must 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 (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 ninety 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 the 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 Building Sites 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 Building Sites, 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 Building Site 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 Building Site 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

business office, but if and only if such business activity (i) does not involve use of any part of the applicable Building Site, 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 Building Site 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 business 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 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 Building Sites 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 Building Site 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 dependent 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 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 children" and "dependent parents, grandparents, grandchildren, brothers and sisters" means such relatives who do not maintain a separate residence and are not able to maintain a separate residence.

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 Building Site 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.

## SECTION 7.02 Pets, Animals and Livestock.

7.02.1 Permitted Pets; Leashing Required. No animals, hogs, horses, livestock or poultry of any kind may be raised, bred, kept or maintained on any Building Site at any time except "Permitted Pets" which are dogs, cats or other usual household pets. Not more than five Permitted Pets are allowed per Building Site 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 constantly caged animals 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. All Permitted Pets must be kept on a leash or otherwise maintained under the control of their owner when not maintained in an enclosed yard from which the Permitted Pet cannot escape. The Board may adopt Rules and Regulations to further regulate Permitted Pets, including without limitation to further specify types of usual household pets to be included or excluded as Permitted Pets, regulations as to number or otherwise applicable to caged animals and areas outside a residence and/or an enclosed yard in the Subdivision 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 Building Sites, 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. 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 within the Subdivision, or on any driveway or upon any Building Site unless such vehicle is stored completely within a garage.

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 Building Site 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 otherwise than as is customary for the type of parking space being used, or (iii) in such manner as to obstruct or impeded 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 Building Site of another Owner or resident.

7.03.3 OCCUPANT VEHICLES. THE PROVISIONS OF THIS SECTION APPLY TO PERMITTED VEHICLES AS TO EACH BUILDING SITE WHICH ARE OWNED AND/OR OPERATED BY (i) ANY SINGLE FAMILY MEMBER OF THE RESIDENTS OF EACH BUILDING SITE, AND (ii) ANY OTHER PERSON VISITING OR STAYING AT THE BUILDING SITE 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 ("OCCUPANT VEHICLES"). OCCUPANT VEHICLES MAY BE PARKED ONLY IN THE GARAGE OF THE RESIDENCE AT WHICH THE OPERATOR THEREOF RESIDES, OR UPON THE DRIVEWAY FOR SAID RESIDENCE. AT LEAST ONE OCCUPANT VEHICLE MUST BE PARKED IN THE APPLICABLE GARAGE BEFORE ANOTHER OCCUPANT VEHICLE IS PARKED UPON THE APPLICABLE DRIVEWAY. PARKING OF OCCUPANT VEHICLES AT ANY TIME AT ANY LOCATION IN THE SUBDIVISION EXCEPT IN ACCORDANCE WITH THE FOREGOING, INCLUDING PARKING OF OCCUPANT VEHICLES UPON ANY STREET WITHIN THE SUBDIVISION, IS STRICTLY PROHIBITED.

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 Building Site, 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 extended 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. The Board may grant reasonable exceptions to the foregoing upon receipt of written request from an Owner or their tenant.

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

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, THE BOARD, 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 Building Site. No Building Site may be used, in whole or in part, for the storage of any property or thing that will cause such Building Site 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 Building Site 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 Building Site, 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 Building Site. No spirituous, vinous, malt, medicated bitters, alcohol, drugs or other intoxicants may be sold or offered for sale on any part of any Building Site or any other place within the Subdivision. No Building Site 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 Building Site is strictly prohibited (except that up to five gallons of fuel may be stored upon a Building Site 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 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 Building Site.

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 Building Site, nor may any Building Site 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 Building Site 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 as is reasonably necessary for initial construction of a residence on a Building Site, or in the case of an Emergency, outside construction work or noisy interior construction work is permitted only as follows: (i) as to initial construction of a residence upon a Building Site, only between the hours of 6 a.m. to 8 p.m., Monday through Friday, 7 a.m. to 6 p.m. on Saturday and 10 a.m. to 6 p.m. on Sunday, and (ii) in all other cases, not 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.

SECTION 7.08 Building Materials. No Building Site shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Building Site may be placed upon such Building Site 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 Building Site 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. 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 Building Site, or otherwise restricting or regulating outdoor cooking.

SECTION 7.10      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.

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 Building Site, without the prior written approval of the ACC.

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

SECTION 7.13      Timesharing Prohibited. No Building Site may be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Building Site 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 Building Site may be leased other than for use as a single family residence as herein provided and defined. No Owner may lease a Building Site and attendant use of the residence and improvements thereon for transient or hotel purposes. No Owner may lease less than an entire Building Site 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**).

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 Building Site 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 Residences. The Owner of a Building Site with an unoccupied residence, including any mortgagee in possession and any mortgagee obtaining title to a Building Site 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 Building Site 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.

SECTION 7.17 Undeveloped Building Sites. The Owner of any Building Site upon which a single family residence has not been constructed must maintain such Building Site 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 7.18 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. Garage doors must be kept in a closed position when the garage area is not being actively used.

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

**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 Building Sites 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 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 Building Site.

8.01.2 Garages and Garage Doors. All single family residences must have an enclosed attached or detached minimum two car parking garage. Each such garage must contain a minimum of three hundred fifty (350) square feet of interior floor space. 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 Building Sites 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.

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 Building Site 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 Building Site 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 Building Site, 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 two hundred (1,200) square feet.

SECTION 8.03 Location of Residence. No single family residence (excluding any roof overhang, fireplace, chimney, bay window, steps or similar architectural detail which is part of a single family residence) may be located upon any Building Site except in accordance with building setback lines shown on any applicable Plat, or as established by this Declaration or applicable requirements of the City.

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 or 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 the builder or Owner as determined in 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 Building Site more than thirty days before construction is commenced. Except as otherwise permitted by the ACC, all materials permitted to be placed on a Building Site shall be placed within the boundaries of the Building Site. Upon completion of construction, any unused materials shall be promptly removed from the Building Site 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 Building Site must be in accordance with the plans and specifications therefor approved by the ACC.

8.04.6 Driveways. Each Building Site 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 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** and requirements of the City and any other applicable governmental authority.

8.04.7 Exterior Materials. Either (i) not less than fifty-one percent (51%) of the exterior wall areas of all residences or (ii) all of the first floor front and side exterior wall areas of all residences, excluding gables, windows and door openings, must be brick, stone, stucco, hardi-plank or equivalent. The remainder of the exterior wall areas of residences may be constructed of wood or composite siding. The ACC is expressly authorized to permit use of other materials or otherwise modify the foregoing requirements from time to time by Architectural Guidelines or as otherwise expressly approved.

#### 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 Building Site, 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 Building Site 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 Building Site, 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. 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 Building Site to which same pertains. Each Owner must refrain from permitting any construction, grading and any other work, act or activity upon such Owner's Building Site 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 Building Site to any other Building Site, and (ii) as needed to maintain so far as practical positive drainage away from the foundation of the residence located upon the Owner's Building Site. To obtain and maintain proper drainage, including as required by this Section, 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, 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 Building Site 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 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 Building Site.

8.04.14 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 Building Site; 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 Building Site. 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 Building Site Resubdivision or Combination. Unless approved by Declarant in writing, no Building Site as originally conveyed by Declarant to any Person, including a builder, may thereafter be subdivided or combined with any other Building Site, 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; 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 Building Site Line Fences, Walls and Hedges. All fences and freestanding fence type walls, gateposts, hedges and planters (sometime herein referred to as "Building Site Line Fencing"), whenever and wherever located on any Building Site, must comply with the following:

8.09.1 ACC Approval Required; General Requirements. No Building Site Line Fencing may be constructed, placed or maintained on any Building Site without prior written approval of the ACC. No Building Site Line Fencing may be more than six feet (6') in height. All Building Site 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. NO CHAIN LINK TYPE FENCING

OF ANY TYPE IS PERMITTED ON ANY BUILDING SITE. For the purposes of this Section, "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 Ownership and Maintenance. Ownership of all Building Site Line Fencing passes with title to the Building Site. All Building Site 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 Building Site the fencing is located.

#### SECTION 8.10 Antennas and Satellite Dish Systems.

8.10.1 Permitted Antenna. To the extent required by the federal Telecommunications Act of 1996 or other applicable statutes, and subject to other applicable provisions of this Section and applicable Architectural Guidelines as may from time to time be hereafter adopted, the following types of antenna (including mast, cabling, supports, conduit, wiring, fasteners and other accessories necessary for proper installation, maintenance and use) are permitted per Building Site ("Permitted Antenna"):

- (a) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter; or
- (b) an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement; or
- (c) an antenna that is designed to receive television broadcast signals,

8.10.2 Limitations on Permitted Antenna. The following limitations apply to installation and maintenance of Permitted Antenna except to the extent compliance would cause acceptable quality signals not to be received or would cause unreasonable delay or increase costs of installation in which case compliance shall be as near as reasonably possible in order to receive acceptable quality signals and avoid delay or increased cost in installation:

- (a) Permitted Antenna must be located so as not to be visible from any frontage or side street, and to the extent feasible so as not to be visible from any other street.
- (b) Permitted Antenna must be installed in such manner as to minimize the visibility and visual impact of same from adjoining Building Sites and Community Properties.
- (c) If feasible, Permitted Antenna must be installed inside the applicable residence. Otherwise and if feasible, Permitted Antenna must be attached to the single family residence located upon the Building Site upon which the antenna is installed, and not mounted freestanding or

on any mast. If mast mounting is required, the mast may not be higher than is absolutely necessary for reception of an acceptable quality signal.

(d) Permitted Antenna shall not encroach upon any other owner's property or Building Site, upon any Community Properties. Permitted Antenna may serve only the residence located on the Building Site upon which the Permitted Antenna is located. No more than one Permitted Antenna may be located on a Building Site outside of the residence.

(e) The Permitted Antenna, including base and any mast, must be securely attached to withstand the effects of high wind, heavy rain and similar adverse weather conditions.

(f) No advertising slogans, logos, banners, signs or any other printing or illustration whatsoever, other than that provided by the original manufacturer, shall be permitted upon or be attached to the antenna or mast. The foregoing does not prohibit an inconspicuous manufacturer's logo placed on an antenna as part of the original manufacturing of the antenna.

(g) No Permitted Antenna shall ever be used for the transmission of any signal whatsoever other than limited transmission capability designed for the viewer to select or use video programming provided it meets FCC standards for radio frequency emission. Permitted Antenna shall be for the purpose of receiving only normal signals through airwaves for television viewing purposes only.

(h) No Permitted Antenna shall be permitted to cause any distortion or interference whatsoever with respect to any other electronic device in the Subdivision.

(i) The Permitted Antenna shall be a solid color consisting of whichever one of the following colors best conforms with the color of the house located on the Building Site: white or black or shades of either brown, gray, or tan.

(j) Permitted Antenna may be installed by a tenant only with the prior written consent of the Owner.

**8.10.3 ACC Approval and Notice as to Permitted Antenna.** Any Owner who intends to install a Permitted Antenna which will conform with all provisions of **Sections 8.10.2(a) through 8.10.2(j)** (a "Conforming Antenna") must complete a notification form and submit it to the ACC. In such case installation of the Permitted Antenna may begin immediately. No other Permitted Antenna ("Non-Conforming Antenna") may be installed without the prior written approval of the ACC obtained in accordance with **Article IV**.

**8.10.4 Maintenance; Owner Responsibility and Indemnity.** Permitted Antenna must be properly maintained at all times in a safe and attractive manner, including repainting or other repair or replacement if the exterior surface of the antenna deteriorates. Each Owner is wholly and solely responsible for all costs associated with Permitted Antenna, including installation, maintenance, use and repair, and all damages, including medical expenses and costs of repair, resulting from such installation, maintenance, use or repair. The Owner of a Building Site upon which any Permitted Antenna is located, the Owner's tenants and their Related Parties, must unconditionally indemnify and



hold Declarant, the Association, the ACC and their Related Parties harmless from any and all claims, suits, actions, expenses and damages, including attorneys' fees, which they may at any time suffer or incur or become liable to pay by reason of any accidents, damages or injuries to Persons or to property, or both, in any matter arising from any work performed in connection with, and the installation, maintenance, repair or use of, any Permitted Antenna. The foregoing is in addition to, and not a limitation of, the provisions of **Section 3.06**.

**8.10.5 ACC Forms and Required Information.** The ACC may from time to time promulgate forms to be used to notify the Association as to installation of Conforming Antenna and/or to request permission for installation of Non-Conforming Antenna, and may require use of such forms in lieu of any other. At a minimum, a notification of intent to install a Conforming Antenna must describe the size, type and color of the Conforming Antenna, described in detail the location and manner of installation, identify the installer by name and telephone number and certify that the Permitted Antenna is in fact a Conforming Antenna as defined in **Section 8.10.3**. An application for approval to install a Non-Conforming Antenna must provide the same information as aforesaid except for certification, and additionally must state each requirement for a Conforming Antenna which will not be met and describe in detail as to each requirement that will not be met the reasons for non-compliance. Each notification or application submitted must be signed by the Owner and, if applicable, by the Owner's tenants.

**8.10.6 Prohibited Antenna.** In no event shall any antenna or other device be used for transmitting electronic signals of any kind; except as provided in **Section 8.10.2(g)**. No electronic antenna or device of any type, citizen band, "HAM", "CB" or similar radio antenna or other television antenna or accessories, except as above provided, shall be erected or permitted to remain on any Building Site or elsewhere in the Subdivision, or on any residence or other building, without prior written approval of the ACC (and the ACC may condition approval of any such antenna upon placement of same 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 Building Site, 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 is vulgar, obscene or otherwise patently offensive to persons of ordinary sensibilities. 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 Building Site closer than ten feet from any street or any side or back Building Site 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 Building Site or upon any Community Properties. Distressed, foreclosures and bankruptcy references are specifically prohibited.

**8.11.3 Permitted Signs.** To the extent required by law or in any event upon prior approval of the ACC, but subject to applicable provisions of **Section 8.11.2**, each Owner is permitted to place upon (and only upon) such Owner's Building Site (i) one sign advertising the particular Building Site on which the sign is located for sale or for rent, but only during periods of time when the Building Site is in fact for sale or for rent, and (ii) "political signs" whereby such Owner is promoting a political candidate, party or issue. Except as otherwise approved by the ACC, no more than two political signs are permitted per Building Site, and political signs regarding any election or vote may not be placed on any Building Site more than forty-five days before the election or vote and must be removed within five days after the election or vote. The ACC may also reasonably regulate the period(s) of time political signs which do not pertain to an election or vote may be permitted. Declarant or the ACC may (but are not obligated to) allow builders within the Subdivision to construct and maintain such signs, billboards, banners, pennants, and advertising devices as are customary in connection with the sale of newly constructed residential dwellings.

**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 Building Site without the prior written approval of the ACC except for trees within the footprint of a single family residence to be constructed on the Building Site 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 Building Site 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 Building Site 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 Building Site 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 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 Christmas lighting, any exterior lighting of a residence or Building Site 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 Building Site 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 Building Site 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 Building Site. 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 Building Site which is visible from any street or at ground level from another Building Site 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 Building Site or elsewhere in the Subdivision. Private irrigation wells are prohibited upon any Building Site. 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 Building Site 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 Building Site is expressly prohibited except upon written approval of the ACC as may be necessary in conjunction with the landscaping of or construction on such Building Site.

**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 Building Sites 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 Building Site. 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 Building Site 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 Building Site, 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 Building Site 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 Building Site.

SECTION 9.03      Easements for Encroachment and Overhang. In the event that any portion of any roadway, walkway, parking area, driveway, water line, sewer line, utility line, sprinkler system, building or any other structure or improvement, including without limitation any building steps, fences, paving, decking, footings, piers, piles, grade beams or similar improvements, or any overhang of walls or roofs of any such building or structure as originally constructed, encroaches on any Building Site or the Community Properties due to the unintentional placement or setting or shifting of any of the foregoing to a distance of not more than thirty inches (30"), as measured from any point on the common boundary between each Building Site and the adjacent portion of the Community

Properties or as between adjacent Building Sites, as the case may be, along a line perpendicular to such boundary at such point, it shall be deemed that the Owner of such Building Site or the Association has granted a perpetual easement for continuing maintenance and use of such encroaching improvements and for maintenance, repair or replacement of any of the foregoing if performed in substantial compliance with the original construction. The foregoing also applies to any overhead encroachment and to any encroachment which is completely underground for any distance which does not substantially and adversely effect the Building Site or Community Properties being encroached.

SECTION 9.04      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 egress and regress to a common public way is maintained in accordance with applicable building codes and ordinances of the City.

SECTION 9.05      Association and ACC Blanket Access Easement. The Association and ACC have a continuing non-exclusive easement upon, over, under and across each Building Site 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 Building Site 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 Building Site. 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 Building Site and throughout the Subdivision for purposes of the performance of any official business without liability of any kind. **THE CITY IS ALSO SPECIFICALLY AUTHORIZED TO REMOVE OBSTRUCTIONS IF NECESSARY FOR EMERGENCY VEHICLE ACCESS, INCLUDING AS PERMITTED BY SECTION 9.06.2, AND TO ASSESS THE COST OF REMOVAL TO THE OWNER OF THE OBSTRUCTION.**

9.06.2 Mail Box Banks. Declarant or the Board may establish exclusive and perpetual easements for the placement and maintenance of mail box banks designed to service two or more single family residences upon any Building Site or elsewhere within the Subdivision, including entry, access and exit areas as to same; provided, no such mail box banks may be located in such manner as to encroach upon the footprint of any existing building (including any residence).

9.06.3 Utilities. 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.

9.06.4 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 Building Site; 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 Title to Easements and Appurtenances Not Conveyed. Title to any Building Site 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 9.08 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 Building Site, 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. The foregoing provisions apply regardless of whether or not any such Governing Documents are filed in the Official Public Records of Real Property of Harris County, Texas or any other public records except as otherwise expressly required by this Declaration or by law.

### 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 Verification of Defaults. Without notice of any kind, the Association 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.

10.02.3 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.

10.02.4 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, is jointly and severally 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 this Section must be observed.

**10.05.1** Notice of Violation. The party proposing to take the action (such as the Board, a committee, the Managing Agent, etc.) must give written notice of violation to the Owners and, if applicable, to the Owner's tenants according to the records of the Association (the "Affected Parties"). The notice must include (i) a general description of the matters complained of, (ii) all curative action requested and a time period within which curative action must be completed, and (iii) a statement advising that the Affected Parties are entitled to a hearing upon delivery of a written request in accordance with **Section 10.05.2** of this Declaration.

**10.05.2** Time to Cure; Response. A notice of violation must allow at least ten days from the date of the notice within which to complete the curative action thereby required and to request a hearing. The ten-day period to cure may be shortened in the case of an Emergency. The Affected Parties may request a hearing only in writing and only by also stating in the request each claim or other matter which is disputed or contested and a general description of the basis for the dispute or contest. If no hearing is requested in writing as aforesaid it is presumed the Affected Parties do not dispute any matters set forth in the notice of violation.

**10.05.3** Hearing. If a hearing is requested in writing as above set forth, all Affected Parties so requesting the hearing must be given written notice of the date, time and place for the hearing. At the hearing, the Affected Parties have the right, personally or by a representative, to give testimony orally, in writing or both, and to present such other relevant evidence as they may choose, subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. The hearing will be held in closed executive session, but the minutes of the meeting (or other written record) shall reflect the results of the hearing. The Affected Parties must be notified of decisions made in consequence of the hearing in the same manner in which notice of the hearing was given.

**10.05.4** Appeal. Any decision made pursuant to **Section 10.05.3** by a party other than the Board may be appealed to the Board by filing a written notice of appeal with the Board within ten days after the Affected Parties are given notice of the decision. The Board shall then conduct a hearing within a reasonable time after the Board receives the notice of appeal, giving the same notice and observing the same procedures as were required for the initial hearing.

**10.05.5** Limited Abatement of Enforcement. Except in the case of an Emergency or other exigent circumstances as determined in the sole opinion of the Board, enforcement proceedings are abated until after expiration of the curative period stated in the notice of violation, or if a hearing is requested or an appeal properly made until ten days after notice of decisions made in consequence of the hearing or appeal is given.



10.05.6 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. Before any fine is imposed the Affected Parties must be given written notice allowing not less than ten days to cure the violation(s); provided, any fine may be imposed at the time of giving notice if written notice has been given to any of the Affected Parties of a similar violation within the preceding twelve month period.

SECTION 10.06 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 Building Site or Building Sites 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 Building Site(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 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 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 Building Site.

### 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 Building Site, 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 Building Sites. DECLARANT HEREBY RESERVES AND RETAINS FULL AND EXCLUSIVE AUTHORITY OF THE ACC AS TO EACH BUILDING SITE UNTIL COMPLETION OF THE INITIAL SALE

OF EACH BUILDING SITE, 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 Builder is permitted to construct any residence or appurtenant improvements upon a Building Site or otherwise conduct any developmental activities within the Subdivision other than those approved in advance by Declarant.

11.03.4 "Completion of the Initial Sale" and "Builder" Defined. As used in this Declaration and as to each Building Site (i) "completion of the initial sale" means and occurs upon substantial completion of the construction of a single family residence and related improvements upon the Building Site and the sale of the Building Site to a Person other than Declarant or a Builder for use and occupancy of the Building Site for a single family residence, and (ii) "Builder" means an Owner other than Declarant who acquires any Building Site for purposes of completion of the initial sale of the Building Site.

#### SECTION 11.04 First Meeting of Class A Members; Transfer of Declarant 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 and in any event must call, notice and conduct the first meeting of Class A Members by the effective 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 the election of a Board by Class A Members 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 the Owner of each Building Site, whether one or more and including Declarant, is entitled to cast one vote for each Building Site owned, and Declarant is additionally entitled to (but not obligated to) cast its "at large" vote but only for the purpose of breaking a tie vote. If for any reason Owners fail to elect a Board at the first meeting, including in the event of lack of a quorum, the Chairperson may either continue the meeting as provided by the Association's bylaws when a quorum is not present at a meeting, or the Chairperson may at such meeting or any continuation thereof announce Declarant's intent to proceed with termination of the Development Period as provided in the next Section. If the meeting is not continued and the Chairperson does not announce Declarant's intent to terminate the Development Period, then Declarant may thereafter again notice, call and conduct the meeting as heretofore provided until a Board is elected by Class A Members or Declarant's intent to terminate the Development Period is announced.

11.04.2 Termination of Development Period; Effect. If Members elect a Board at the first meeting of Class A Members or any continuation thereof as provided in the previous Section, the Development Period will automatically terminate at midnight following the first meeting, and all

officers and directors theretofore appointed or elected by Declarant shall thereby be automatically deemed removed from office. Declarant will confirm such termination by filing of its statement of termination. If the Members fail for any reason to elect a Board at the first meeting of Class A Members or any continuation thereof and the Chairperson announces Declarant's intent to nonetheless terminate the Development Period, then Declarant will promptly thereafter file its statement of termination of the Development Period. In the latter case the Development Period will terminate on the date of filing of the statement of termination of the Development Period. Thereafter any officers or directors appointed by Declarant may resign at any time, or Declarant may at any time unilaterally remove any and all such officers and directors. UPON TERMINATION OF THE DEVELOPMENT PERIOD AND IN ADDITION TO ANY OTHER APPLICABLE PROVISIONS OF THIS DECLARATION AND ALL OTHER GOVERNING DOCUMENTS (I) DECLARANT'S ONE "AT LARGE" VOTE WILL TERMINATE AND ANY REMAINING CLASS B MEMBERSHIP WILL AUTOMATICALLY CONVERT TO CLASS A MEMBERSHIP, AND (II) THEREAFTER THE ASSOCIATION AND EACH OWNER IS WHOLLY AND SOLELY RESPONSIBLE FOR THE MANAGEMENT, MAINTENANCE AND OPERATION OF THE ASSOCIATION AND SUBDIVISION AS PROVIDED IN THE GOVERNING DOCUMENTS.

#### 11.04.3 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 and to accomplish transfer of Declarant control are a common expense of the Association which shall be paid from the Maintenance Fund. When a Board is elected by Class A Members, all funds, books and records of the Association must be transferred to the possession or control of the Board, or to any individual director, or to the then Managing Agent of the Association, if any, either at the time the Board is elected or within a reasonable period of time thereafter. 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 or as security against any other asserted or outstanding obligations or liabilities of the Association until such expenses have been paid and/or such obligations and liabilities finally resolved. If a Board is not elected at the first meeting, Declarant has no duty to transfer any funds, books or records of the Association unless and until Declarant is given written notice of election of a Board by Class A Members and proper documentation for verification thereof.

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

(a) If Class A Members have failed to elect a Board by the time of termination of the Development Period, then any three Owners may, as a committee, thereafter call, notice and conduct the first meeting of Class A Members in the same manner as Declarant could have otherwise called, noticed and conducted the first meeting of Members; provided, no meeting may be called, noticed or conducted as aforesaid at any time during which Declarant has called or noticed a first meeting unless and until the first meeting called by Declarant, and all continuations thereof, if any, has been conducted and Members nonetheless failed to elect a Board. Declarant must be given notice as provided by this Declaration of the formation of, and the names, addresses and telephone numbers of, any committee formed as aforesaid, and additionally must be given notice of any such meeting and provided copies of minutes and all other books and records pertaining to same. Without limitation of the foregoing, all notices and other documents given to Members regarding any such meeting must also be given to Declarant at or prior to the time same are given to any Members.

(b) If Class A Members fail to elect a Board within thirty days after termination of the Development Period, at any time thereafter Declarant may give written notice to the Owners of all Building Sites requesting that within sixty days after the date of the notice (i) the Class A Members call, notice and conduct the first meeting of Class A Members for and in fact elect a Board as provided in the previous subsection, and (ii) provide Declarant with written notice and verification of the election (and all other notices and documents as required by the immediately preceding subsection). Declarant's notice may be mailed by regular mail to the street address for each Building Site and may be addressed to "Association Member" or similar generic name. Declarant has no duty to confirm ownership or any other mailing address. IF THE OWNERS FAIL TO PROPERLY ELECT A BOARD AND NOTIFY DECLARANT AS AFORESAID, THEN WITHOUT FURTHER NOTICE (I) ALL FUNDS REMAINING IN THE MAINTENANCE FUND WILL BE FORFEITED AND THEREAFTER BELONG EXCLUSIVELY TO DECLARANT, (II) ALL ASSOCIATION BOOKS AND RECORDS MAY BE DESTROYED, AND (III) ALL "DISPUTES" (AS THAT TERM IS DEFINED IN SECTION 11.12) AS TO THE ASSOCIATION, THE ACC AND THEIR RELATED PARTIES ARE WAIVED.

#### 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 DESIGNATE COMMUNITY PROPERTIES AND/OR SUBDIVISION FACILITIES, AND AT ANY TIME DURING THE DEVELOPMENT PERIOD MODIFY, DISCONTINUE, REDESIGNATE OR IN ANY OTHER MANNER CHANGE THE COMMUNITY PROPERTIES AND/OR SUBDIVISION FACILITIES.

11.05.2 Construction and Maintenance of Community Properties. 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, 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 garbage or recycling services.

11.05.3 Conveyance of Community Properties. 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. 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; AND (IV) THE COMPLIANCE OF THE PROPERTY OR OTHER ITEMS TRANSFERRED, ASSIGNED OR CONVEYED OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL ENTITY OR BODY. ALL SUCH COVENANTS, WARRANTIES, GUARANTIES AND REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OR BY OPERATION OF LAW, ARE HEREBY EXPRESSLY DISCLAIMED. THE PROVISIONS OF SECTIONS 3.06 AND 11.11.3 FULLY APPLY AS TO SAME, AND THE PROVISIONS HEREOF SHALL APPLY REGARDLESS OF 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 Use and Maintenance of Community Properties. So long as Declarant owns any Building Site within the Subdivision, Declarant and any builder as so designated by Declarant (i) have a non-exclusive easement appurtenant 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 Building Sites therein, and (ii) may construct, maintain, expand, improve and repair any Community Properties, including without limitation any such matters regarding any thing or device relating to drainage within or which may otherwise affect the Subdivision, or any Building Site therein, or any properties adjacent thereto or in the vicinity thereof. THE FOREGOING SHALL NOT BE CONSTRUED AS IN ANY MANNER CONSTITUTING ANY REPRESENTATION, WARRANTY OR IMPLICATION WHATSOEVER THAT DECLARANT OR ANY BUILDER WILL UNDERTAKE ANY SUCH USAGE OR ANY SUCH CONSTRUCTION, MAINTENANCE, EXPANSION, IMPROVEMENT OR REPAIR, OR THAT IF AT ANY TIME OR FROM TIME TO TIME UNDERTAKEN THAT ANY SUCH ACTIVITIES WILL CONTINUE, AND ANY SUCH REPRESENTATION, WARRANTY OR IMPLICATION IS HEREBY SPECIFICALLY DISCLAIMED.

SECTION 11.06 Easements. Declarant and its agents or employees (including any builder, 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      Sales Activities.** During the Development Period Declarant has the right to transact any business reasonably necessary to development of the Subdivision (including all "Developmental Activities" as defined in **Section 11.11**), and to consummate the sale or rental of Building Sites and single family residences to be constructed thereon, and in connection therewith to maintain models, have signs, use without charge any part of any Building Site or residence located thereon which is not occupied by a resident and use without charge any Community Properties (including Subdivision Facilities).

**SECTION 11.08      Assessments.**

**11.08.1 Right of Declarant to Set Rate.** During the Development Period Declarant is entitled to change the annual rate of regular assessment as set forth in **Section 5.03.1** 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**. Without limitation of the foregoing, the provisions of **Section 5.03.2** regarding disapproval of an annual rate of regular assessments is specifically declared inapplicable when the rate is set by Declarant under this Section.

**11.08.2 Payment of Assessments by Declarant During Development Period.**

(a) Notwithstanding anything to the contrary contained herein, or in the Declaration or in any other Governing Documents, all Building Sites owned by Declarant are exempt from payment of all assessments (regular, special or specific) until the first day of the month following expiration or termination of the Development Period.

(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, including 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); 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 BUILDING SITES. "Actual Operating Expenses" means those expenses reasonably necessary 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. ANNUALLY, AND UPON EXPIRATION OR TERMINATION OF THE DEVELOPMENT PERIOD, DECLARANT MAY OFFSET ANY SURPLUS FUNDS OF THE ASSOCIATION AGAINST ALL CONTRIBUTIONS MADE BY DECLARANT DURING THE DEVELOPMENT PERIOD AND DEMAND AND RECEIVE REPAYMENT FROM SUCH FUNDS UP TO THE FULL AMOUNT OF DECLARANT CONTRIBUTIONS, WITHOUT INTEREST.

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 developmental activities, 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 manner consistent with the general scheme of development hereby established.

11.11.2 Developmental Activities. Declarant may or will be required during the Development Period to engage in construction activities upon multiple Building Sites or Community Properties, to store equipment or materials on multiple Building Sites 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 (the "Developmental Activities"). Declarant will use reasonable efforts to minimize the adverse effects of its Developmental Activities. However, ABSENT INTENTIONAL AND WILLFUL MISCONDUCT, DECLARANT IS NOT LIABLE TO ANY OWNER OR TENANT, OR TO THE ASSOCIATION OR ACC, OR TO ANY RELATED PARTIES OF ANY OF THE FOREGOING, FOR ANY CONSEQUENCES OF THE REASONABLE CONDUCTING OF ITS DEVELOPMENTAL ACTIVITIES. Further, Declarant may establish any reasonable regulations as to Owners and tenants, as to the Association and ACC, and as to any Related Parties of any of the foregoing, which Declarant deems appropriate to avoid hindrance or interference with its Developmental 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.

#### 11.11.3 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 BUILDING SITES, 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 BUILDING SITE 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.

#### SECTION 11.12 Mandatory Dispute Resolution Procedures; Limitations.

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 Building Site, 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") 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") 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 or AAA. The mediator will be appointed by the DRC, ACES 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 FIFTY DAYS AFTER THE EARLIER TO OCCUR OF (i) THE FIRST ELECTION OF A BOARD OF DIRECTORS BY CLASS A MEMBERS, OR (ii) EXPIRATION OF THE SIXTY-DAY PERIOD FROM THE DATE OF THE NOTICE BY DECLARANT REQUESTING THAT OWNERS NOTICE AND CONDUCT THE FIRST MEETING OF CLASS A MEMBERS FOR ELECTION OF A BOARD AS PROVIDED IN SECTION 11.04.4(b), REGARDLESS OF IF OR WHEN THE BOARD IS ELECTED.

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

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 SUIT 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 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.

### SECTION 12.02 Amendment.

12.02.1 By Owners. Except as otherwise expressly herein provided, the Owners of two-thirds (2/3rds) of the total number of Building Sites 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 Building Sites 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 Building Site 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 UNDER THIS SECTION EITHER DURING OR AFTER THE DEVELOPMENT PERIOD MAY REMOVE, REVOKE OR MODIFY ANY RIGHT OR PRIVILEGE 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 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 Building Site 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 Building Site, 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. 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 Building Site Address Required. Any Owner may request any notices required or permitted hereby be mailed to an address other than such Owner's Building Site address by giving written and dated notice of the alternate address to the Association. Any such request 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 by a single Owner or multiple Owners, the request last received shall control.

12.03.4 Change of Ownership. Written notice of change of ownership of a Building Site 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 Building Site 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 Building Site 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 Building Site 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 current holder of all mortgages, deeds of trust and other liens and encumbrances as to their Building Site for the purchase thereof, taxes thereon, and work and materials used in constructing improvements thereon, and as to each the nature of and loan, 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 Building Site 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 Building Site 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 Building Site 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**     Managing Agent. The Board shall have 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 12.05**     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 12.06**     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 12.07**     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.

536-15-1435

EXECUTED this 5<sup>th</sup> day of December, 2000.

W&W ASSET MANAGEMENT  
COMPANY, INC.,  
a Texas corporation

102

By *Tom Walker*  
TOM WALKER, President

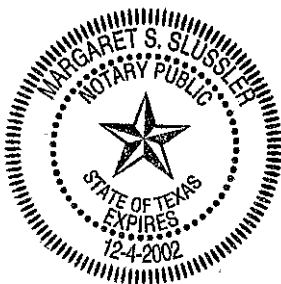
**ACKNOWLEDGMENT**

STATE OF TEXAS

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§

COUNTY OF HARRIS

This instrument was acknowledged before me on the 5<sup>th</sup> day of December, 2000,  
by TOM WALKER, President of W&W ASSET MANAGEMENT, INC., a Texas corporation, on  
behalf of the corporation.



*Margaret S. Slusser*  
Notary Public, State of Texas  
Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

FILED

2000 DEC -6 PM 1:50

*Beverly K. Rayburn*  
COUNTY CLERK  
HARRIS COUNTY TEXAS

CONSENT OF MORTGAGEE

536-15-1436

The undersigned, John M. Bonner, Manager of FCC Management Co., LLC, The sole General Partner of First Continental Investment Co., Ltd., being the owner and holder of an existing mortgage or lien upon and against the land and property described as the Subdivision in the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Villages of Westplace, as such mortgagee and lienholder, does hereby consent to said Declaration as if the same had been recorded prior to the creation of such lien.

This consent will not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof.

Signed and attested by the undersigned this the 5th day of December, 2000.

ATTEST:

First Continental Investment Co., Ltd.  
By: FCC Management Co., LLC, General Partner

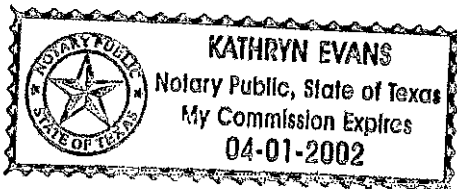
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: John M. Bonner  
Name: John M. Bonner  
Title: Manager

STATE OF TEXAS  
COUNTY OF HARRIS

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§

This instrument was acknowledged before me on the 5th day of December, 2000, by John M. Bonner, Manager of FCC Management Co., LLC, General Partner, of First Continental Investment Co., Ltd., a Texas limited partnership ~~banking~~, on behalf of said limited partnership.



Kathryn Evans  
NOTARY PUBLIC in and for the  
STATE OF TEXAS  
Name: Kathryn Evans  
My Commission Expires: 04/01/2002

F:\WP\LB\BA\GATEWAY\Westplace Declaration.wpd  
(100900) VILLAGES OF WESTPLACE

536-15-1437



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 herein by me; and was duly RECORDED in the Official Public Records of Real Property of Harris  
County, Texas on

DEC - 6 2000



*Dorothy B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS