

HARPER'S PRESERVE

FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HARPER'S PRESERVE

A RESIDENTIAL SUBDIVISION IN
MONTGOMERY COUNTY, TEXAS

NOTICE: THIS DOCUMENT SUBSTANTIALLY AFFECTS 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 COMMUNITY 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 ARTICLES I AND XI, DECLARANT RETAINS SUBSTANTIAL RIGHTS DURING THE DEVELOPMENT PERIOD, INCLUDING THE UNILATERAL RIGHT TO SET RATES FOR REGULAR ASSESSMENTS AND IMPOSE SPECIAL ASSESSMENTS, AND, WITHOUT NOTICE TO OR CONSENT OF ANY OWNER, TO ANNEX ADDITIONAL PROPERTIES INTO THE SUBDIVISION, TO AMEND ANY PLAT AND TO AMEND THIS DOCUMENT AND ANY OTHER "GOVERNING DOCUMENTS", (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 ONE YEAR STATUTE OF LIMITATIONS, AND (v) UNDER ARTICLE VI THERE ARE DISCLAIMERS BY THE ASSOCIATION AND DECLARANT CONCERNING DISCLOSURES, NOTICES, PROPERTY AND CONDEMNATION.

YOUR RIGHTS TO ASSERT A "DISPUTE" MAY BE LOST
IF YOU FAIL TO COMPLY WITH SECTION 11.12

AFTER RECORDING RETURN TO:

HOOVER SLOVACEK LLP
5847 San Felipe, Suite 2200
Houston, Texas 77057
Attn: Mark K. Knop



FIRST AMENDED AND RESTATED DECLARATION OF
COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
HARPER'S PRESERVE

A RESIDENTIAL SUBDIVISION IN MONTGOMERY COUNTY,
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FIRST AMENDED AND RESTATED DECLARATION OF
COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

HARPER'S PRESERVE

A RESIDENTIAL SUBDIVISION IN MONTGOMERY COUNTY,
TEXAS

STATE OF TEXAS

§
§
§

KNOW ALL BY THESE PRESENTS THAT:

COUNTY OF MONTGOMERY

WHEREAS, that certain Declaration of Covenants, Conditions, Restrictions and Easements for Wood Lake Village (as supplemented and amended, the "Declaration") dated November 4, 2003, was recorded in the Office of the County Clerk of Montgomery County, Texas, under Clerk's File No. 2003-146583 on December 2, 2003, and subjects real property known as Wood Lake Village, Section One (1), now partially known as Harper's Preserve, Section One (1), a subdivision in Montgomery County, Texas, to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration; and

WHEREAS, that certain Correction Amendment of Declaration of Covenants, Conditions, Restrictions and Easements dated December 15, 2003, was recorded in the Office of the County Clerk of Montgomery County, Texas, under Clerk's File Number 2004-002722 on January 8, 2004; and

WHEREAS, that certain Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Wood Lake Village was recorded in the Office of the County Clerk of Montgomery County, Texas, under Clerk's File Number 201010729 on November 30, 2010; and

WHEREAS, that certain Third Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Wood Lake Village Concerning Annexation and De-Annexation was recorded in the Office of the County Clerk of Montgomery County, Texas, under Clerk's File Number 2011007006 on January 25, 2011; and

WHEREAS, Article XI, Section 11.10.1 of the Declaration provides that during the Development Period (as defined in the Declaration and herein so called), the "Declarant" reserves the sole and exclusive right, without joinder and consent of, and without notice of any kind, to any owner or other person, to amend this Declaration; and

WHEREAS, Article XII, Section 12.02.2 of the Declaration provides that the owners of two-thirds (2/3rds) of the total number of lots in the Subdivision ("Lots") have the power and authority to amend the Declaration, in whole or in part, at any time, and from time to time; provided, during the Development Period (as defined in the Declaration and herein called "Development Period"), no amendment is effective unless and until approved in writing by the "Declarant"; and

WHEREAS, Article XII, Section 12.02.3(a) of the Declaration provides that notice of any proposed amendment must be given to owners of all Lots at least ten (10) days before circulation of the amending instrument; and

WHEREAS, Article XII, Section 12.02.3(b) of the Declaration provides that the owner's approval of any amendment of the Declaration may be obtained by execution of the amending instrument or a consent thereto by any owner of each Lot so approving; and

WHEREAS, notice of the proposed Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Harper's Preserve has been given to owners of all Lots at least ten (10) days before circulation of this instrument pursuant to Article XII, Section 12.02.3(a) of the Declaration; and

WHEREAS, the undersigned are owners of more than two-thirds (2/3rd) of the total number of the Lots and such owners desire to amend and restate the Declaration as set forth below; and

WHEREAS, 242, LLC, a Texas limited liability company (the "Declarant") is the current "Declarant" under the Declaration pursuant to that certain Assignment of Declarant Interests dated as of September 15, 2006, and recorded in the office of the County Clerk of Montgomery County, Texas, under Clerk's File Number 2008-058953 on June 12, 2008; and

WHEREAS, that certain First Amendment to Assignment of Declarant Interests was recorded in the Office of the County Clerk of Montgomery County, Texas, under Clerk's File Number 2011004068 on January 14, 2011; and

WHEREAS, by the execution of this document, the Declarant hereby adopts, agrees, approves and consents to the amended and restated Declaration as set forth below.

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 Montgomery County, Texas, more particularly described as follows, to wit:

All of WOOD LAKE VILLAGE, SECTION ONE (1), an addition in Montgomery County, Texas according to the map or plat thereof filed under Clerk's File No. 2003-146526, Official Public Records of Real Property of Montgomery County, Texas, and thereof recorded in Cabinet V, Sheet 95, Map Records of Montgomery County, Texas; including but not limited to the portion of WOOD LAKE VILLAGE, SECTION ONE (1) which has been partially replatted as HARPER'S PRESERVE, SECTION ONE (1), an addition in Montgomery County, Texas, according to the map or plat thereof filed under Clerk's File No. 2010114167 of the Official Public Records of Real Property of Montgomery County, Texas, and thereof recorded in Cabinet Z, Sheets 1921-1925, of the Map Records of Montgomery County, Texas, SAVE AND EXCEPT RESERVES "B" AND "C" WHICH ARE EXPRESSLY EXCLUDED FROM THIS DECLARATION.

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

SECTION 1.03 Notice; Effective Date of Annexation. Any annexation under Section 1.02 must be evidenced by filing in the Official Public Records of Real Property of Montgomery County, Texas, of articles of annexation describing the real property to be annexed. Any such annexation is effective from the date of filing of the applicable articles of annexation, as aforesaid, or such later date as may be stated in the articles of annexation. From and after the effective date of any annexation, the real property covered thereby will be included within the Subdivision, and thereafter is fully covered by and subject to all terms and provisions of the 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 "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 principles), 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 conversion of the Class B membership to Class A membership or after expiration or termination of the Development Period.

SECTION 2.02 "Architectural Control Committee" or "ACC" means the committee established pursuant to Article IV of this Declaration.

SECTION 2.03 "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 2.04 "Architectural Review Fee" means any fees or charges reasonably anticipated to cover administrative costs, fees for architectural, engineering, construction, legal or other expert advice or consultation, application fees and all other costs and expenses in connection with review and evaluation of an application.

SECTION 2.05 "Association" means HARPER'S PRESERVE COMMUNITY ASSOCIATION, INC., a Texas non-profit corporation, fka WOOD LAKE VILLAGE COMMUNITY ASSOCIATION, INC., to be incorporated for the purposes contemplated by this Declaration, and its successors (by merger, consolidation or otherwise) and assigns.

SECTION 2.06 "Board" or "Board of Director" means the Board of Directors of the Association.

SECTION 2.07 "Builder" means an Owner other than Declarant who acquires any Lot for purposes of "Completion of the Initial Sale" of the Lot. Notwithstanding the foregoing, during the Development Period, "Builder" means an Owner that is actively engaged in the homebuilding business and has an active building program and who is designated by the Board as a "Builder" hereunder. During the Development Period, unless such Owner has been designated as a "Builder" hereunder by the Board, such Owner will be regarded as an Owner hereunder and not a Builder.

SECTION 2.08 "Bylaws" means the Bylaws of the Association, as from time

to time amended in accordance with applicable provisions of the Bylaws.

SECTION 2.09 "City" means the City of Conroe, 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 2.10 "Community Properties" means:

2.10.1 all common areas so designated by easement, deed or Plat intended for the common use of Owners, and as determined by the Board;

2.10.2 all Required Private Subdivision Improvements, including all private streets within the Subdivision unless and until, and as to any part of, any private street which is dedicated to the public;

2.10.3 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;

2.10.4 all Subdivision Facilities; and

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

SECTION 2.11 "Completion of the Initial Sale" means and occurs upon substantial completion of the construction of a single family residence and related improvements upon the Lot and the sale of the Lot to a Person other than Declarant or a Builder for use and occupancy of the Lot for a single family residence.

SECTION 2.12 "Declarant" means 242, LLC, a Texas limited liability company, and its successors and assigns if such successors or assigns:

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

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

SECTION 2.13 "Declaration" means this First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for HARPER'S PRESERVE, and all lawful amendments thereto.

SECTION 2.14 "Development Period" means the period of time beginning

on the date of recordation of the Declaration in the Official Public Records of Real Property of Montgomery County, Texas, and ending on the happening of any of the following events, whichever occurs later:

2.14.1 December 1, 2030; or

2.14.2 one hundred eighty (180) days after Completion of the Initial Sale of all Lots within the Subdivision.

2.14.3 In addition, the Development Period shall end when Declarant elects in writing to terminate the Development Period, in whole or in part, and, in the case of partial termination, Declarant may file of record 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; provided.

2.14.4 If prior to December 1, 2030, additional Lots are added to and made a part of the Subdivision by annexation pursuant to this Declaration after termination of the Development Period, the Development Period shall be immediately reinstated and resume, and shall continue until the subsequent occurrence of one of the above events.

SECTION 2.15 "Dispute" or "Disputes" and "Disputing Parties" are defined in Section 11.12.1.

SECTION 2.16 "Emergency" means (i) any condition which may or does cause an imminent risk of infestation by termites, rats or other vermin, and any other health, fire or safety hazard, (ii) any condition which may or does cause waste of water or water infiltration to another Lot, Community Properties and any improvements located thereon, and (iii) any other thing, condition or exigent circumstances which may or does present an imminent risk of harm or damage to a Lot, Community Properties or any improvements thereon or to any Owners or occupants thereof. The determination of the Board, the ACC or their Related Parties that an emergency exists is final.

SECTION 2.17 "Front Yard" shall mean and refer to (a) as to interior Lots, the front yard area of the residence between the street (on the one hand) and the dwelling exterior and fence (on the other hand) and (b) as to corner Lots, the front yard area of the residence between the street (on the one hand) and the dwelling exterior and fence (on the other hand), and that portion of the side yard area exposed to the street, between the street (on the one hand) and the dwelling exterior and fence (on the other hand), but excluding patios, courtyards and fenced areas, unless otherwise defined by the Board.

SECTION 2.18 "Front Yard Maintenance" shall mean and refer to normal and routine maintenance of Front Yards by the Association, as determined from time to time by the Board, in its sole discretion, which may include but not be limited to (a)

mowing and edging Front Yards, (b) trimming Front Yards with lawn maintenance equipment, and (c) fertilizing, and applying insect control chemicals to Front Yards. The term "Front Yard Maintenance" shall not, in any event, include the trimming of trees, planting of shrubbery, grass, trees or other landscaping, installing or maintaining irrigation systems, or any other maintenance or service determined by the Board not to be within normal and routine maintenance of Front Yards. Front Yard Maintenance by the Association is at the sole discretion of the Board, and such Front Yard Maintenance, if any, is subject to the payment of a specific assessment by the Owner hereunder .

SECTION 2.19 "Governing Documents" means all documents and applicable provisions thereof regarding the use, maintenance, repair, replacement, modification or appearance of any properties within the Subdivision, including each Lot, or any rights, responsibilities or obligations of any Owners pertaining thereto or to the Association, ACC or Declarant, including without limitation this Declaration, the Bylaws and Articles of Incorporation of the Association, Rules and Regulations, Architectural Guidelines, all written decisions and resolutions of the ACC and Board, and all lawful amendments to any of the foregoing.

SECTION 2.20 "Hedge" means a row of bushes, shrubs and similar plants, any and all of which must be an evergreen variety, 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.

SECTION 2.21 "Lot" means any of the numbered plots of land shown upon any Plat upon which a single family residence is, or may be, built. The term "Lot" does not include Community Properties, and does not include reserves so designated by a Plat, if any.

SECTION 2.22 "Lot Line Fencing" means any and all fences and freestanding fence type walls, gateposts, hedges and planters, whenever and wherever located on any Lot.

SECTION 2.23 "Managing Agent" means any one or more Persons hired or employed by the Association 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.

SECTION 2.24 "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 2.25 "Owner" means, whether one or more Persons:

2.25.1 the owner according to the Official Public Records of Real Property of Montgomery County, Texas, whether one or more Persons, of the fee simple title to a

Lot, including any mortgagee or other lienholder 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

2.25.2 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 Montgomery County, Texas).

SECTION 2.26 "Pending Replat" means a replat of all or a portion of the Subdivision as submitted by the Declarant to the City of Conroe, Montgomery County, or both, pursuant to the Declarant's rights as set forth in Section 11.

SECTION 2.27 "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other entity.

SECTION 2.28 "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 Montgomery County, Texas, and all lawful modifications, amendments and/or replats of any of the foregoing.

SECTION 2.29 "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 2.30 "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:

2.30.1 any building, garage, porch, shed, greenhouse, bathhouse, coup, cage, recreational equipment, including but not limited to basketball goals, swing sets and play forts, 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;

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

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

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

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

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

2.30.7 any erosion control system or devices permitted or required

as to any Lot or any other portion of the Subdivision; and

2.30.8 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 2.31 "Related Parties" means and applies as follows:

2.31.1 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.

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

SECTION 2.32 "Required Private Subdivision Improvements" means the Subdivision improvements which are required under the applicable regulations of the City of Conroe, Texas, as described in Section 6.01.2 of this Declaration.

SECTION 2.33 "Rules and Regulations" means the policies and procedures from time to time adopted by the Board of Directors regulating the maintenance, operation, use or occupancy of the Subdivision, including the Lots and Community Properties, in accordance with Article VII hereof, regardless of nomenclature or manner of designation, and may include Architectural Guidelines.

SECTION 2.34 "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 2.35 "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:

2.35.1 all Subdivision entry and other identification monuments, if any and any fences designated as Subdivision Facilities by the Board;

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

2.35.3 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

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

Article III

Harper's Preserve Community Association, Inc.

SECTION 3.01 Organization.

3.01.1 The Association has been organized and formed as a non-profit corporation under the laws of the State of Texas.

3.01.2 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.

3.02.1 The Association acts through the Board of Directors which manages the affairs of the Association as specified in this Declaration, the Bylaws and other applicable Governing Documents. Until termination of the Development Period, Declarant will appoint all members of the Board of Directors, and is entitled to remove and replace any of same, and in all other respects to exercise all rights and authority of the Association as set forth in this Declaration and all other governing documents.

3.02.2 Unless otherwise expressly required by law or other applicable provision of the Governing Documents, the Board of Direction 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 Montgomery County, Texas in determining such status as an Owner, and may require submission to the Board of appropriate certified copies of such records as a condition precedent to recognition of status as an Owner. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate any Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Memberships shall be appurtenant to and may not be separated from ownership of any Lot, and shall automatically pass with the title to the Lot.

3.03.2 When Member Required to Designate Representative; Effect. Each Member which is not a natural person is required to designate one natural person to act on such Member's behalf in accordance with applicable provisions of the Bylaws and as otherwise determined in the sole opinion of the Board. A designation as aforesaid fully authorizes the designated representative to bind the designating party as to all matters. Any such representative may serve as a Director in accordance with the Bylaws.

SECTION 3.04 Voting Rights of Members.

3.04.1 Classes. The Association shall have two classes of voting membership:

(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. The "Class B Member" shall be Declarant. During the Development Period Declarant shall have one vote for each Lot owned and shall additionally have one "at large" vote. The Class B Membership shall cease and convert to Class A Membership on the happening of any of the following events, whichever occurs later:

- (i) December 1, 2030; or
- (ii) one hundred eighty (180) days after Completion of the

Initial Sale of all Lots contained in the Subdivision.

In addition, Class B membership shall cease and convert to Class A membership when Declarant elects to convert its Class B membership to Class A membership which said election may be made upon not less than thirty (30) days written notice to the Board (whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association in accordance with Section 11.04 of this Declaration).

3.04.2 Reinstatement of Class B Membership. If prior to December 1, 2030, additional Lots are added to and made a part of the Subdivision by annexation pursuant to this Declaration after the Class B membership has ceased under Section 3.04.1 (ii) above but prior to election of a Board by Class A Members, then the Class B membership and concomitant voting rights shall be immediately reinstated and resumed, and shall continue until the subsequent occurrence of one of the above.

3.04.3 Multiple Owners. When more than one Person holds an ownership interest in a Lot, all such Persons are Members, but in no event will they be entitled to more than one vote with respect to each particular Lot owned. The single vote, approval, 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 5.08.3(b).

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 Business Organizations Code

(including Section 8 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 Safety Enhancement. The Association may from time to time (but is in no way required or obligated to) engage in activities or provide Subdivision Facilities, including activities, devices or services intended to or which may have the effect of enhancing safety, including activities, devices or services limiting or controlling Subdivision access including but not limited to, mechanical system(s) that limit vehicular access to the streets in the Subdivision from public streets (the "Gate System") 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, "*Safety Enhancement*"). Without limitation of Section 3.06.1, each Owner and their tenants covenant and agree with respect to any and all Safety Enhancement provided directly or indirectly by the Association as follows:

(a) THE BOARD WILL HAVE THE SOLE AUTHORITY, IN THE BOARD'S SOLE AND EXCLUSIVE DISCRETION, TO DETERMINE WHEN THE GATE SYSTEM WILL BE OPERATIONAL, INCLUDING BUT NOT LIMITED TO HOURS OF OPERATION AND PERIODS WHEN THE GATE SYSTEM WILL REMAIN OPEN. ALL OWNERS ARE ADVISED THAT THE GATE SYSTEM MAY REMAIN OPEN DURING ALL OR A SUBSTANTIAL PORTION OF THE DEVELOPMENT PERIOD AND/OR BUILDOUT OF THE SUBDIVISION.

(b) NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE RESPONSIBLE FOR PROVIDING SECURITY TO THE OWNERS OR THEIR FAMILY MEMBERS, GUESTS, INVITEES OR THEIR PROPERTY. THE PURPOSE OF THE GATE SYSTEM SHALL BE TO PROVIDE SOME DEGREE OF CONTROLLED RESTRICTION OF VEHICULAR ACCESS ON THE STREETS LOCATED WITHIN THE SUBDIVISION. NEITHER THE DECLARANT, THE ASSOCIATION NOR ANY OWNER GUARANTEES OR ASSURES ANY OTHER OWNER NOR ANY OTHER PARTY WHOMSOEVER THAT THE GATE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER, SUCH OWNER'S PERSONAL POSSESSIONS OR MEMBERS, RESIDENTS, GUESTS OR INVITEES, OR TO ANY OTHER PERSON,

AND EACH OWNER, BY THE ACCEPTANCE OF ITS DEED, SHALL BE DEEMED TO HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR THE ASSOCIATION FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE SUBDIVISION ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE GATE SYSTEM OR OTHERWISE.

(c) THE LOCAL POLICE DEPARTMENT AND FIRE DEPARTMENT SHALL HAVE ACCESS TO THE SUBDIVISION FOR LAW ENFORCEMENT AND FIRE PROTECTION PURPOSES. EACH OWNER SHALL LOOK SOLELY TO THE LOCAL POLICE DEPARTMENT AND FIRE DEPARTMENT FOR THE PROVISIONS OF LAW ENFORCEMENT, POLICE AND FIRE PROTECTION.

(d) THE GATE SYSTEM IS NOT INTENDED TO REPLACE OR TO SERVE IN LIEU OF INDIVIDUAL ALARM SYSTEMS OR OTHER MEASURES TO PROVIDE SECURITY AT A RESIDENCE OR WITHIN ANY LOT OR LOTS. EACH OWNER IS ENCOURAGED TO INSTALL PERSONAL SECURITY DEVICES UPON AND WITHIN SUCH OWNER'S LOT TO THE SAME EXTENT THAT WOULD BE PRUDENT IF THE GATE SYSTEM DID NOT EXIST.

(e) THE GATE SYSTEM WILL BE INSTALLED BASED UPON THE REPRESENTATION AND/OR RECOMMENDATIONS OF VENDORS REGARDING THE OPERATION AND PERFORMANCE CAPABILITIES OF THE COMPONENTS OF THE GATE SYSTEM. THE DECLARANT AND/OR ASSOCIATION DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED AND THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSE FOR WHICH IT WAS DESIGNED. THE DECLARANT AND/OR ASSOCIATION DOES NOT EXPRESSLY OR IMPLIEDLY GUARANTEE THAT THE GATE SYSTEM WILL AVERT OR PREVENT OCCURRENCES OR CONSEQUENCES WHICH THE GATE SYSTEM IS DESIGNED TO AVERT OR PREVENT.

(f) THE GATE SYSTEM SHALL BE OWNED, OPERATED, AND MAINTAINED BY THE ASSOCIATION AS ITS SOLE COST AND EXPENSE. THE ASSOCIATION MAY HIRE INDEPENDENT THIRD PARTY CONTRACTORS TO ASSIST THE ASSOCIATION WITH OPERATION, ENFORCEMENT, MAINTENANCE AND REGULATION OF THE GATE SYSTEM. THE DECLARANT SHALL NOT BE REQUIRED TO OPERATE OR MAINTAIN THE GATE SYSTEM IN ANY MANNER WHATSOEVER.

(g) EACH RESIDENCE CONSTRUCTED UPON A LOT MUST BE CONNECTED INTO THE GATE SYSTEM, AND EACH OWNER SHALL BE RESPONSIBLE FOR USING THE GATE SYSTEM IN THE PROPER MANNER AND WITHIN THE RULES AND REGULATIONS RELATING THERETO AS MAY BE

ADOPTED FROM TIME TO TIME BY THE BOARD, INCLUDING BUT NOT LIMITED TO AN OBLIGATION THAT EACH OWNER MUST TIMELY PROVIDE ALL INFORMATION TO THE ASSOCIATION OR THE ASSOCIATION'S MANAGING AGENT NECESSARY TO PROVIDE FOR ACCESS TO AND FROM THE GATE SYSTEM FOR OWNERS AND OWNER RELATED PARTIES. NEITHER DECLARANT NOR THE ASSOCIATION ASSUME ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO ANY OWNER VEHICLE OR OWNER RELATED PARTIES WHICH MAY BE CAUSED BY A MALFUNCTION, OR OTHERWISE, OF THE GATE SYSTEM.

(h) 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 Safety Enhancement, in whole or in part.

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

(j) Providing of any Safety Enhancement 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 Safety Enhancement will be continued, or (iii) a representation, guarantee or warranty that the presence of any Safety Enhancement 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.

(k) 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 Safety Enhancement.

(l) DECLARANT, THE ASSOCIATION AND THEIR RELATED

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

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

3.06.4 Subsequent Statutory Authority. If the Texas Business Organizations Code, 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 is 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(s) is appointed by the Board of Directors to act as the ACC as permitted by the next Section. The act of a majority of the members of the ACC constitutes an act of the ACC; provided, THE ACC MAY FROM TIME TO TIME DESIGNATE ANY ONE OF ITS MEMBERS 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. The executive committees which may be appointed by the Board are as follows:

- a. New Construction Committee ("NCC") shall have the obligation to review, approve, conditionally approve or deny all applications related to the construction of single family homes (whether original or re-built) on the Lots.
- b. Residential Modifications Committee ("RMC") shall have the obligation to review, approve, conditionally approve or deny additions, and subsequent exterior construction for all items installed or constructed following the construction of the residence on the Lot.

4.01.3 Compensation. 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 mileage, overhead costs and reasonable expenses in such manner and in such reasonable amounts as may be approved by the Board of Directors.

SECTION 4.02 Function and Powers.

(a) 4.02.1 Submission of Plans Required. No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Lot or within any part of the Subdivision unless and until complete plans and specifications covering all aspects of the Regulated Modification have been submitted to and approved in writing by the ACC as to compliance with applicable Architectural Review Criteria as set forth in Section 4.03. One complete set of plans and specifications must be submitted with each request for approval. Any plans and specifications to be submitted must specify any and all 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, in its sole discretion, may from time to time, adopt, modify, amend and delete such reasonable Architectural Guidelines applicable to the Subdivision, including Lots and Community Properties, as it deems appropriate to maintain or reasonably enhance Prevailing Community Standards of the Subdivision at the time of adoption. Notwithstanding anything contained herein to the contrary, the Architectural Guidelines shall be of equal dignity as this Declaration and may set standards higher or in excess of this Declaration. In the event of a conflict between the Architectural Guidelines and this Declaration, the provision(s) in the Architectural Guidelines shall control. Such authority includes, but is not limited to, the right to specify:

(a) specific procedural guidelines;

(b) the amount and manner of payment of any Architectural Review Fees;

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

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

4.02.3 Manner and Effect of Adoption of Architectural Guidelines.

(a) No prior notice of any kind to any Owner or any other Person need be given as to adoption or amendment of Architectural Guidelines. The ACC shall provide or make available 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 Montgomery 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 consent of a majority of the full 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 due to circumstances which are reasonably beyond the control of the applicant to reasonably 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 or other reasons, in the sole judgment of the ACC. The 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.

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, mailing or sending by email 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, when deposited in the United States mail, with postage prepaid and properly addressed to the applicant or sent to the Owner's email address. If the ACC fails to respond to a proper application or a proper request for variance within thirty days after receipt, then the application or request, as the case may be, 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; (iii) failure to include any information, plans or specifications required by applicable Governing Documents, or as may be reasonably requested by the ACC or; (iv) failing to comply with the prevailing Community Standards as determined by the ACC, in its sole discretion. The ACC shall notify the applicant of its decisions in writing. Except for compliance with this Article, no action or omission of the ACC shall otherwise constitute a waiver as to any other provisions of this Declaration or preclude by estoppel or otherwise full enforcement thereof.

SECTION 4.05 Implied Conditions of Approval.

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

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

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

4.05.4 New Construction Materials Required. Only new construction materials may be used in construction of any Regulated 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 8.04.8 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 Requirement. Applicants shall be solely responsible for full compliance with all permitting requirements of the City, if applicable, and all other governmental agencies having jurisdiction, and shall apply for and diligently pursue obtaining of all required permits promptly after ACC approval or conditional approval is received. The ACC is expressly authorized to deny approval pending, or condition approval upon, prior compliance with applicable permitting requirements or upon receipt of certification satisfactory to the ACC that no such permitting requirements exist.

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

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

SECTION 4.07 Records of Architectural Control Committee. The ACC is not required to maintain records of its meetings.

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 judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Architectural Guidelines may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship or suitability for any purpose of the Regulated Modification. The provisions hereof are cumulative of the provisions of Section 3.06.

Article V Maintenance Fund

SECTION 5.01 Obligation for Payments to Maintenance Fund.

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

5.01.2 Types and Obligation for Payment of Assessments. Each Owner of a Lot, by acquisition of any rights, title or interest therein or acceptance of an executory contract of conveyance, or a deed or other instrument of conveyance therefore, whether or not so expressed therein, covenants and agrees to pay to the Association regular 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 maintenance of all Required Private Subdivision Improvements, installation, maintenance, repair and replacement of Subdivision Facilities and any other 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, for installation, construction and maintenance of Subdivisions Facilities, 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 judgment of the Board the Subdivision will benefit thereby. The judgment of the Board in establishing any assessments and in the collection, management and expenditure of the Maintenance Fund is final and conclusive.

5.01.4 Personal Obligation; Transferees. In addition to the assessment lien herein established, each assessment is the personal obligation of each Owner of the Lot charged therewith at the time liability for the assessment accrued notwithstanding any subsequent transfer of ownership. Except as 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 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.

5.01.6 Duty of Board; Authority of City. It shall be the duty of the Board of Directors to assess and collect the assessments established by this Article and to utilize such funds for the installation, maintenance, repairs and upkeep of the Subdivision Facilities and the maintenance and upkeep of the Community Properties and as otherwise specified in herein. If, for any reason, the Board of Directors shall fail to provide for the assessment and collection of the assessments, or for the proper maintenance and upkeep of the privately dedicated subdivision improvements, then, the City Council of the City of Conroe, Texas, shall be authorized but not required, to exercise such power in the place of the Board of Directors. In the event the City of Conroe, Texas, shall advance its own funds to defray expenses of maintenance of the privately dedicated subdivision improvements, the City shall be entitled to reimburse from the Maintenance Fund and may increase the maintenance assessment as necessary to insure repayment. The maintenance charges and assessments imposed hereby will remain effective for the full term (and extended term, if any) of this Declaration.

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. 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. The Board shall have the right, but not the obligation, 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.

5.02.2 Uniform Rates and Regular and Special Assessments. Except as provided in Section 5.02.3, regular and special assessments on all Lots must be fixed at a uniform rate, and must be determined on a per Lot basis. The number of Lots upon which the regular or special assessments are based upon shall be the number of Lots in the Subdivision as shown on the then recorded and effective Plat. However, and notwithstanding the foregoing, in the event there exists a Pending Replat, the total number of Lots as set forth in the Pending Replat plus the total number of Lots shown on the then effective Plat which are not the subject of the Pending Replat may (in the Board's sole discretion be used in determining the total number of Lots upon which the regular or special assessment are based upon. In the event that the Pending Replat may (in the Board's sole discretion) be used in determining the total number of Lots upon which the regular or special assessment are based upon. In the event that the Pending Replat is not approved by the City of Conroe or Montgomery County, Texas, or both, on or before the later of (i) ten (10) months after being submitted to the City of Conroe, or (ii) ten (10) months after being submitted to Montgomery County, Texas (all as may be required to make the Pending Replat, effective otherwise such condition shall not apply), then the number of Lots as shown on the then recorded and effective Plat at the time the regular or special assessment was fixed and determine shall apply to such regular or special assessment and the Owners may be entitled to a refund or the Owners may be obligated for additional assessments, as the case may be.

5.02.3 Declarant, Builder, and Owner Rates. Declarant is obligated to pay assessments only as provided in Section 11.08. Owners (including Builders) shall pay the full rate of assessments.

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 (regardless as to the Owner's intended, requested or noted application of a payment) (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 Assessment.

5.03.1 Initial Base Rate of Regular Assessments. The initial full base rate of the regular annual assessment for 2011 per Lot (and continuing during 2011 and thereafter unless and until modified as herein provided) is NINE HUNDRED SEVENTY-FIVE DOLLARS (\$975.00) per Lot per year.

5.03.2 Subsequent Computation of Regular Assessments. The annual

rate of regular assessment per Lot as specified by Section 5.03.1 may be adjusted from time to time by the Board. 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. Increases in the regular annual assessment shall be as follows:

- (a) Without Owner Approval. Beginning with the regular annual assessment for calendar year 2012, the maximum regular annual assessment may be increased once a year by the Board by an amount not to exceed ten percent (10%) over the prior year's regular annual assessment.
- (b) With Owner Approval. The regular annual assessment may be increased above that allowed by Section 5.03.2(a) if the increase is approved by Owner's of one-third (1/3) of the Lots then contained in the Subdivision.

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 Capital Assessments and Special Assessments.

5.05.1 Capital Assessments. In addition to the regular annual assessments authorized herein, upon the acquisition of record title to a Lot with a new residence by the first Owner thereof from a Builder or Owner (other than Declarant, its successors and/or assigns) and upon each reconveyance of such Lot and residence thereafter, a payment shall be made by or on behalf of the purchaser of the Lot to the Association in an amount equal to fifty percent (50%) of the regular annual assessment of such Lot for the year of the conveyance or such lesser amount as may be determined by the Board from time to time. This amount shall be in addition to, not in lieu of, the regular annual assessments. Funds so received by the Association may be used to defray operating costs, capital improvement costs, and other expenses of the Association, including but not limited to Subdivision Facilities as determined by the Board in its sole discretion.

5.05.2 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 LOT

DOES NOT EXCEED FIFTY PERCENT (50%) 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 THIRTY DAYS WRITTEN NOTICE MUST BE GIVEN TO THE OWNERS OF ALL LOTS OF ANY SUCH SPECIAL ASSESSMENT. Special assessments allocable to each Lot exceeding the foregoing limitation will be effective only if approved by Owners of one-third (1/3) of the Lots 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 5.02.03.

SECTION 5.06 Specific Assessments.

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

(a) Front Yard Maintenance. In the event Front Yards are maintained by the Association, as determined by the Board on an annual basis, in its sole discretion, each Owner must tender to the Association the cost to the Association of the Front Yard Maintenance within fifteen (15) days of receipt of a statement from the Board requesting payment therefore. The Board may require payment for Front Yard Maintenance in advance. Each Owner shall be obligated to immediately advise the Board from time to time in writing of any adverse condition or problem affecting or relating to the Front Yard Maintenance conducted for such Owner as a condition precedent to any obligation of the Association to correct such adverse condition or problem. In the event that the Board shall at any time determine, in its sole discretion, that the correction of any adverse condition or problem relating to any Front Yard Maintenance was caused by the Owner of the Lot, then the costs of such maintenance and correction, if requested by such Owner and carried out by the Board, shall be charged to such Owner by the Board and shall be payable by such Owner within fifteen (15) days after receipt of a statement from the Board requesting payment therefore. Under no circumstance shall any director or any officer or agent of the Association be liable to any Owner for any action or inaction of the Board with respect to any Front Yard Maintenance, and each Owner hereby releases and relinquishes forever any claims, demands or actions which such Owner may at any time have or be deemed to have against the Board, and director or the Association with regard to Front Yard Maintenance, whether arising out of the alleged negligence, misfeasance, malfeasance (but not gross negligence or willful misconduct) of any agent of the Association, any officer of the Association or any director. FURTHER, EACH OWNER HEREBY RELEASES DECLARANT AND THE ASSOCIATION FROM, AND EACH OWNER MUST HEREAFTER INDEMNIFY, PROTECT, DEFEND, SAVE AND HOLD HARMLESS DECLARANT AND THE ASSOCIATION, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS AND AGENTS FROM AND AGAINST, ANY AND ALL DEBTS, DUTIES, OBLIGATIONS,

LIABILITIES, SUITS, CLAIMS, DEMANDS, CAUSES OF ACTION, INJURY, DEATH, 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 THE FRONT YARD MAINTENANCE.

(b) 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.

(c) Late Charges. A late charge in the amount of FIFTY DOLLARS (\$50.00) or twenty-percent (20%) of the amount due, whichever is greater, 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.

(d) 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.

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

(f) 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 Lots 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 except for changes in ownership from Declarant to Builder, in which case there will be no transfer fees;

- 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 Lot pursuant to this Declaration, whether by regular, special or specific assessment as provided herein, are secured by a continuing lien on such Lot in favor of the Association.

5.07.2 Perfection of Lien. The recordation of this Declaration constitutes record notice and perfection of the Association's continuing lien, effective from the date of recordation of this Declaration. No further recordation of a claim of lien or other notice of any type or kind whatsoever is required to establish or perfect such lien. To further evidence such lien, the Association may, but is not required to, prepare and file in the Official Public Records of Real Property of Montgomery County, Texas, written notice of default in payment of assessments in such form as the Board may direct.

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

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

(b) a lien securing payment of one or more loans made, in whole or part, to the Declarant, Declarant's successor(s), assign(s) and/or designee(s);

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

(d) 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;

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

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

5.07.4 Other Liens. Except as provided in Section 5.07.3 or as otherwise expressly provided herein, all other Persons acquiring liens or encumbrances on any

Lot are deemed to consent that such liens or encumbrances are inferior to the Association's lien for assessments, as provided herein, whether or not consent is specifically set forth in, and notwithstanding any contrary provisions in, any instruments creating such liens or encumbrances.

SECTION 5.08 Effect of Nonpayment of Assessments.

5.08.1 Delinquency Date. Any assessments, regular, special or specific, which are not paid by the due date are delinquent as of midnight on 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 and other monetary obligations or charges assessed by the Association 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.

5.08.4 Action for Debt; Foreclosure.

(a) Each Owner, by acquisition of any Lot within the Subdivision or any right, title or interest therein, expressly grants to and vests in the Association (i) the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt; (ii) the right and power to foreclose the Association's continuing lien for assessments by all methods available for the

enforcement of a mortgage, deed of trust or any other contractual lien, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale; and (iii) a continuing power of sale in connection with the non-judicial foreclosure of the Association's continuing lien for assessments as herein provided.

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

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

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

maintainable by the purchaser.

(e) Each Owner, by acquisition of any Lot within the Subdivision or right, title or interest therein, specifically covenants and stipulates as to each and every Trustee's foreclosure sale that the recitals in any appointment or designation of Trustee, any conveyance by the Trustee and any affidavit of the Trustee or the Association related thereto shall be full proof and evidence of the matters therein stated, 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 Lot(s) sold and their heirs, executors and administrators, successors and assigns, and any Persons whatsoever claiming or to claim thereunder.

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

SECTION 5.09 Foreclosure; Bankruptcy.

5.09.1 Effect of Foreclosure or Bankruptcy. The effect of judicial or non-judicial foreclosure of a lien which is superior to the Association's continuing assessment lien under this Declaration, or acceptance of a deed in lieu thereof, and the effect of the discharge of an Owner in bankruptcy is determined as of the 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 Lot within two years after the Discharge Date (as defined in the immediately preceding Section) to the same effect as if none of the events causing the Discharge Date to occur had occurred. The Association's assessment lien is not, by merger or otherwise, extinguished or otherwise effected by acquisition of ownership of a Lot at any time and in any manner by the Association.

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

Article VI

Maintenance, Insurance, Casualty Losses, Condemnation and Notices

SECTION 6.01 Association Maintenance Responsibilities.

6.01.1 Community Properties; Governmental Agreements, and Requirements.

(a) The Association will maintain, repair and replace the Community Properties, including installation, maintenance, repair and replacement of 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.

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

(c) The Association, at its sole option and sole discretion, as determined by the Board, may perform the Front Yard Maintenance.

6.01.2 City Required Subdivision Improvements.

(a) Private Dedication. Certain Subdivision improvements which are required by the subdivision regulations of the City of Conroe, Texas have been privately dedicated for the use and benefit of property owners within the Subdivision. The improvements described in this Section 6.01.2 are Required Private Subdivision Improvements which are dedicated for the private use and benefit of Lot Owner's within the Subdivision. The Association shall be responsible for the maintenance and unkeep of these Required Private Subdivision Improvements and shall be authorized to assess and collect a maintenance fee and assessments against the Subdivision Lots and to expend funds so collected for such purposes.

(b) Private Streets. Streets which have been noted on the Subdivision Plat as "Private" are dedicated for the private use and benefit of Lot Owners within the Subdivision and are maintained by the Association. Notwithstanding this private dedication, the dedication includes an easement covering the street area which permits the installation, operation and maintenance of water, sewer, gas, electric, telephone, cable television or other such utilities by the City and other utilities lawfully entitled to provide service to the abutting property. The dedication also includes a right of access to public agencies engaged in both routine and emergency public services, including law enforcement, fire protection, medical response, inspection and code enforcement. The maintenance entity may make an offer of public dedication of private streets if such dedication is authorized by the affirmative vote of the Owners of a majority of the Lots within the Subdivision. To be effective, an offered public dedication must be accepted by a formal vote of the governing body of the public entity which has jurisdiction over the streets. Until formally accepted, private streets which are offered for public dedication remain the responsibility of the Association.

(c) Street Lights. The Association shall be responsible for the operation and maintenance of street lighting within the Subdivision unless and until such responsibility is assumed by a public entity.

(d) Storm Water Detention Facilities. Storm water detention facilities have been located within the Subdivision to contain the storm water runoff associated with the development. The Association shall be responsible for the operation and maintenance of these facilities.

(e) Open Spaces and Common Area. The Association shall be responsible for open spaces and common area within the Subdivision. These facilities are dedicated for the use and benefit of Lot Owners within the Subdivision only.

(f) Amendment of Section. The provision of this Section 6.01.2

may not be amended without the express written consent of the Planning Commission of the City of Conroe, Texas.

(g) Exercise of Maintenance and Assessment Powers by City.

In the event the Association shall fail or refuse to adequately maintain the privately dedicated subdivision improvements described by this Section 6.01.2, the City shall be authorized, but not obligated, to exercise the assessment and maintenance powers in place of the Association. The City may utilize the proceeds of the maintenance funds to reimburse funds advanced by the City for maintenance of improvements covered by this Section 6.01.2.

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

6.02.2 Residences and Other Improvements. Each Owner shall maintain the Lot, the exterior of each Owner's residence, garage, and all other buildings, structures, fences, walls, recreational equipment and improvements and landscaping located upon each Owner's Lot, in an attractive, sound and well maintained condition, including proper maintenance and repair as needed of paint, bricks, siding, roofs, rain

gutters, downspouts, exterior walls, driveways, parking areas and all other exterior portions of the Owner's residence and garage (the term "residence" includes garage, sidewalks and related "flatwork" as applicable):

6.02.3 Utilities. The Owner of each Lot must maintain all sanitary sewer lines and facilities, drainage or storm water lines and facilities, storm water pollution prevention devices, water pipelines, water sprinkler system, water meters and related water lines and facilities, electrical and gas lines, meters and facilities, telephone and any other telecommunication lines, devices or facilities, and all other facilities, utilities and services which service each Lot (the "Owner Utilities"), regardless of the location of the Owner Utilities, whether on or adjacent to the Lot, 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, shrub, trees, flower beds, vegetation and all other landscaping, (all of which must be natural; artificial landscaping is not allowed) on each Lot which is not maintained by the Association must be maintained at all times in accordance with the seasons as reasonably necessary to obtain and maintain on a consistent and continuing basis Prevailing Community Standards, including as reasonably necessary to maintain on a consistent and continuing basis a sanitary, healthful and attractive condition and appearance and to eliminate any condition which may create any unsanitary condition or become a harborage for rodents, vermin or other pests. In the event the Board decides, in its sole discretion, that the Association will perform the Front Yard Maintenance, and notwithstanding such Front Yard Maintenance, Owners are responsible for all maintenance of the Front Yard not performed by the Association and understand and agree that Front Yard Maintenance, if any, may not cover all items in need of routine maintenance in the Front Yard and that the Owner of the Lot is responsible for such maintenance.

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

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 Lot, any Community Properties, or any improvements on any such Lot or the Community Properties. All maintenance,

repair or replacement of Lot Line Fencing as may be approved in accordance with Section 8.08 which separates adjoining Lots, or which is otherwise shared in common by two adjoining Lots, is the joint responsibility of, and the costs thereof shall be shared equally by, the adjoining Owners.

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

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

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

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

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

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

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

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

SECTION 6.04 Casualty Losses - Association Responsibilities. Except as hereafter provided, in the event of damage by fire or other casualty to the Community Properties or regarding any other matters as to which the Association has an obligation to maintain pursuant to this Declaration or other Governing Documents, or if any governmental authority requires any repair, reconstruction or replacement as to same, the Association must perform all repairs, reconstruction or replacement necessitated thereby (the "Casualty Work"). The Casualty Work must be such as will substantially restore the Community Properties to its condition prior to the casualty or as required by the governmental authority. Any insurance proceeds payable as to the Casualty Work must be paid to the Association. Except for Casualty Work which is required by any governmental authority, the Owners may agree not to perform any Casualty Work. Any

decision not to perform Casualty Work must be submitted to the Owners at a special meeting of Members called for that purpose, and must be approved by affirmative vote of the Owners of not less than a majority of all Lots then contained in the Subdivision.

SECTION 6.05 Casualty Losses - Owner Responsibilities.

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 Lot, including the residence and/or any appurtenant garage as originally constructed on a Lot, 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 Lot 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 Lot must maintain personal liability insurance and all-risk property and casualty insurance as required by this Section, and of such types and form, 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 LOT 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 Lot must obtain property insurance to insure the residential dwelling thereon, and all fixtures, equipment and other improvements pertaining thereto; which policy must include personal liability insurance coverage and name the Association as an additional insured on such personal liability coverage.

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. Each policy must to the extent reasonably 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.

SECTION 6.07 Association Insurance.

6.07.1 Coverage. To the extent reasonably available, the Association shall maintain, if available, and as an expense of all Owners payable from the regular annual assessment, casualty insurance for all insurable improvements on the Community Properties for the full replacement cost thereof and general liability insurance covering the Community Properties. The Board may, but shall not be obligated to, also obtain (i) workers compensation insurance, and the Board shall obtain such insurance if and to

the extent required by law, (ii) directors' and officers' liability coverage, and (iii) a fidelity bond or fidelity insurance on directors' and officers' liability coverage, and (iii) a fidelity bond or fidelity insurance on directors, officers, employees, and other persons handling or responsible for the Association's funds.

6.07.2 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 are taken (or conveyed in lieu of and under threat of condemnation by the Association by any authority having the power of condemnation or eminent domain, any award, compensation or damages must be paid to the Association). The Board has the exclusive right to act on behalf of the Association with respect to the negotiation, litigation and settlement of the taking or condemnation issues affecting such Community Properties. 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. The Declarant and the Association have no duty or obligation to notify Owners of pending or threatened condemnation or eminent domain proceedings. 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.

SECTION 6.09 Acknowledgment of Location and No Duty to Notify. Some of the Lots are or may be adjacent to or near some of following:

DRAINAGE CHANNEL, RAILROAD TRACK, COMMUNITY CENTER, SUBDIVISION FACILITIES, STORM WATER DETENTION FACILITY, ELEVATED WATER STORAGE TOWER, SCHOOL FACILITY, SCHOOL SITE, SPORTS FACILITY OR BALL FIELD, COMMUNITY POND, PARK AND/OR RECREATION FACILITY, WATER PLANT/SEWER PLANT, LIFT STATION, DRILL SITE, PIPELINE EASEMENT, A TRANSPORTATION ARTERIAL AND/OR VACANT PROPERTY. THIS SECTION 6.09 CONSTITUTES PUBLIC NOTICE OF POTENTIAL IMPACTS THAT MAY OCCUR TO THE LOTS (AND OCCUPANTS AND OWNERS THEREOF) BASED ON THE LOCATION OF EACH LOT AND OF THE CONDITIONS OR POTENTIAL CONDITIONS ASSOCIATED WITH SUCH SPECIAL USE OR FACILITY (INCLUDING BUT NOT LIMITED TO THOSE DESCRIBED BELOW):

a. Lots adjacent to the drainage channel will have a view of such channel and varying levels of water will be carried through such channel based upon rainfall conditions.

b. Lots in the vicinity of the elevated water storage tower may have a view of such tower.

c. Lots near a railroad track, including but not limited to the railroad track known as the Missouri Pacific Railroad, are impacted by increased noise, vibration and lighting and conditions caused by the passage of trains from time to time.

d. Lots near the Subdivision Facilities are impacted by increased noise, outdoor lighting, increased vehicle and pedestrian traffic and other conditions caused by use of the facilities by community residents, visitors and guests.

e. Lots near the storm water detention facility, parks, sports facility or ball fields are impacted by increased noise, future outdoor lighting, increased traffic and the fact that intermittent storms will result in water being held for varying periods of time in detention or drainage areas.

f. Lots near school facilities are impacted by increased noise, outdoor lighting, increased traffic and other conditions caused by daily operations of the facility while in session or use. Attendance zones for specific schools are regulated by the applicable school district and are subject to change by the school district.

g. Lots near community ponds, parks and/or recreation facilities are impacted by increased noise, outdoor lighting, increased traffic and other conditions caused by use of such facilities by residents, visitors and guests.

h. Lots near sewer/water plants or lift stations will have a view of such facilities and may be impacted by increased noise, odor, outdoor lighting, and traffic associated with access to such facilities by operator personnel. The operator is an independent contractor of the District.

i. Lots near pipeline easements will have a view of the easement. Transportation companies using the easement have rights of access for maintenance and other purposes and are responsible for pipeline safety and maintenance.

j. Lots near a drill site will have a view of such property and any oil and gas exploration or production facilities that may be located thereon from time to time and may be impacted by increased noise and traffic.

k. Lots near a transportation arterial including but not limited to a street, major thoroughfare, county road, state highway (including but not limited to S. H. 242) and/or transit system, will have a view of such facilities, may be impacted by increased noise, vibration, outdoor lighting, increased traffic, and the operation, maintenance and/or expansion (through the exercise of a power of eminent domain or otherwise) of such transportation arterials.

l. **Lots near vacant property** will have a view of such property and may be impacted by the undeveloped state (including wildlife and insects) or increased noise, odor, outdoor lighting, traffic, operation, construction and maintenance associated with existing and future condition of such vacant property and any future improvements constructed thereon or use thereof.

m. **Lots located within a developing subdivision** will have a view of such development, homebuilding and other building activities and may be impacted by the construction thereof and/or increased noise, odor, dust, outdoor lighting, traffic, operation, construction and maintenance associated with existing and future condition of property and any future improvements constructed thereon.

The Association, the Board and the Declarant (its successors and assigns) and/or their Related Parties hereby disclaims any duty and/or any obligation to notify any Owner, Owner Related Parties or any third party of plans (whether preliminary, proposed or final), intentions, discussions, activities of any other owner of or proposed owner of property (including but not limited to a those of a governmental entity) concerning property within the Subdivision, property proposed to be annexed into the Subdivision or property located outside of the Subdivision. Should any information be provided, such information is expressly given without any representation or any warranty (express or implied) of any kind whatsoever and should not be relied upon for any reason by the recipient thereof for any purpose.

Article VII

Use Restrictions

SECTION 7.01 Residential Use; Group Homes; Treatment Facilities.

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

7.01.2 No Business, Professional, Commercial or Manufacturing Use. No business, professional, commercial or manufacturing use may be made of any Lot or any improvement located thereon, even though such business, professional, commercial or manufacturing use be subordinate or incident to use of the premises as a residence, and regardless of whether or not done for profit or remuneration. Notwithstanding the foregoing, a single family residence may be used for maintenance of a personal professional library, keeping of personal or professional records or accounts, or handling personal business or professional telephone calls, or for maintenance of one business office, but if and only if such business activity (i) does not involve use of any part of the applicable Lot, or residence or other building or improvement thereon, by any Person other than the Owner or the Owner's tenant (but not both), no on-site employees are otherwise permitted, and the public is not invited, permitted or allowed to enter the Lot to conduct any business thereon, (ii) is not detectable by sight, sound or smell from outside the residence and there is no other external evidence thereof (including signs, advertising, or contacts in person at the

residence with clients or customers), (iii) does not involve the storage of any equipment, materials or devices other than as consistent with the 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 Lots or any Community Properties.

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

7.01.4 Single Family Defined. As used in this Declaration the term "single family" means either: (i) husband and wife, their 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 Group Homes; Day-Care Center; Treatment Facilities. To the fullest extent allowed by law, no Lot or any part of the single family residence thereon may be used for the operation of a group home, half-way house, day-care center, rehabilitation center, treatment facility, or residence of unrelated individuals who are engaging in, undertaking, or participating in any group living, rehabilitation, treatment, therapy, or training with respect to previous or continuing criminal activities or convictions, alleged criminal activities, alcohol or drug dependency, physical or mental handicaps or illness, or other similar matters. The foregoing does not include a "community home" established and maintained pursuant to and in strict compliance with Chapter 123 of the Texas Health and Safety Code, and all applicable governmental licensing requirements, rules and regulations.

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 Lot at any time except "Permitted Pets" which are dogs, cats or other usual household pets. Not more than two Permitted Pets are allowed per Lot unless authorized in writing by

the Board or applicable Rules and Regulations, and no Permitted Pets may be raised, bred, kept or maintained for commercial purposes. Subject to Section 7.04, the foregoing limitation on the number of Permitted Pets does not apply to hamsters, small birds, fish or other 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. Caged animals, such as birds, that are kept outside must not cause a nuisance, as determined by the Board, in its sole discretion, to other Lots or Owners, including but not limited to a noise or odor nuisance. Lots on which animals are kept or housed outside must be cleaned on a regular basis so as to be clean and sanitary so as to not cause an odor nuisance, as determined by the Board, in its sole discretion, to other Lots. 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 QUALIFIED OR OTHER SERVICE DOGS COMPLIANCE THEREWITH, AND EXCEPT AS TO LEGITIMATE SEEING-EYE DOGS.

7.02.2 Removal. As to any animal 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 endangers health or safety, make objectionable noise, or constitutes a nuisance, annoyance or inconvenience to the Owners or occupants of other Lots, the Community Properties or any property located adjacent to or in the vicinity of the Subdivision, or which is otherwise raised, bred, kept or maintained in violation of this Declaration or applicable Rules and Regulations, the Board may cause any such animal, livestock or Permitted Pet to be removed from the Subdivision and may prohibit the return of any such Permitted Pet to the Subdivision. Removal as aforesaid will be at the sole expense of the responsible Owner or Owner's tenant and without liability of any kind whatsoever to the Association, including the ACC, their Related Parties, or any Person which the Board may direct to remove any such animal, livestock or Permitted Pet.

SECTION 7.03 Vehicles; Parking.

7.03.1 Prohibited Vehicle. Unless otherwise approved by the Board no boat, mobile home, trailer, boat rigging, truck larger than a three-quarter ton pick-up, recreational vehicle, motor bikes, golf carts and other non-street legal vehicles, 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 Lot 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 Lot or any other place within the Subdivision not intended customarily for use for parking of vehicles, or (ii) in a slanted or diagonal manner across any driveway or otherwise than as is customary for the type of parking space being used, or (iii) in such manner as to obstruct or impede sidewalk, driveway or street access or usage, or in such manner that any part of the vehicle extends into any part of any street or common drive. No Owner or resident is permitted to park or store any vehicle on the Lot of another Owner or resident.

7.03.3 OCCUPANT VEHICLES. THE PROVISIONS OF THIS SECTION APPLY TO PERMITTED VEHICLES AS TO EACH LOT WHICH ARE OWNED AND/OR OPERATED BY (i) ANY SINGLE FAMILY MEMBER OF THE RESIDENTS OF THE LOT, AND (ii) ANY OTHER PERSON VISITING OR STAYING AT THE LOT WHO PARKS THE VEHICLE WITHIN THE SUBDIVISION AT ANY TIME MORE THAN THREE DAYS IN ANY WEEK OR MORE THAN FIVE DAYS IN ANY CONSECUTIVE THIRTY DAY PERIOD ("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 Lot, may be performed at any time other than temporary emergency repairs or other work required in order to promptly remove an inoperable or disabled vehicle from the Subdivision or to and completely within a garage.

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

7.03.6 Presumptive Violations. Repairs or other work 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 Montgomery 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 INDEMNITIES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LIABILITIES OR DAMAGES ARISING, DIRECTLY OR INDIRECTLY, AS RESULT OF SUCH REMOVAL. THE PROVISIONS HEREOF ARE CUMULATIVE OF THE PROVISIONS OF SECTION 3.06.

SECTION 7.04 Nuisance; Unsightly or Unkempt Conditions.

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

7.04.2 Nuisance or Annoyance. No substance, thing, or material may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive trade or activity may be carried on upon any Lot, nor may anything be done thereon tending to cause embarrassment, discomfort, annoyance, or a nuisance to any residents of the Subdivision or to any Person using any property adjacent to the Lot. No spirituous,

vinous, malt, medicated bitters, alcohol, drugs or other intoxicants may be sold or offered for sale or manufactured on any part of any Lot or any other place within the Subdivision. No Lot or any part thereof may be used for any immoral or illegal purposes.

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

SECTION 7.06 Disposal of Trash. No trash, rubbish, garbage, manure, debris or offensive material of any kind may be kept or allowed to remain on any Lot, nor may any Lot be used or maintained as a dumping ground for such materials. No incinerator may be maintained on any portion of the Subdivision, and disposal of any materials by incineration within the Subdivision is strictly prohibited. All trash and similar matter to be disposed of must be placed in cans or similar receptacles with tight fitting lids or plastic bags tied or otherwise tightly secured, and must be placed in an area adequately screened by planting or fencing from public view or within a garage except when placed for regular pickup as herein provided. Containers used for trash storage should be stored out of street view except when placed out as provided herein for street pick-up. Equipment used for the temporary storage and/or disposal of such material prior to removal must be kept in a clean and sanitary condition, and must comply with all applicable federal, state, county, municipal or other governmental laws and regulations. All such prohibited matter must be removed from each Lot at regular intervals if not removed or removable by a regular garbage and sanitation service. Trash and garbage for pickup by a regular service must be placed in such area or areas as the Board may from time to time direct, or as the applicable garbage and sanitation service or provider

may require; provided trash and garbage may not be placed for pickup earlier than eight (8) hours prior to a scheduled pickup day, and all receptacles therefor and any remaining trash and garbage must be removed from the pickup site by midnight of the pickup day. Any of the foregoing provisions may be modified, added to or deleted by applicable Rules and Regulations.

SECTION 7.07 Permitted Hours for Construction Activity. Except as is reasonably necessary for initial construction of a residence on a Lot, or in the case of an Emergency, or as approved by the Board, outside construction work or noisy interior construction work is permitted only between the hours of 7 a.m. to 7 p.m.

SECTION 7.08 Building Materials. No Lot shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Lot may be placed upon such Lot as provided in Section 4.05.3. 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 Basketball Goals. No basketball goals or backboards may be mounted on a garage or on a pole, or otherwise erected or maintained upon any Lot, or placed in any street, without the prior written approval of the ACC.

SECTION 7.10 Clotheslines. No outside clotheslines shall be constructed or maintained on any Lot or Community Properties, nor shall any other outside drying of clothes be permitted.

SECTION 7.11 Timesharing Prohibited. No Lot may be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot or the single family residence thereon rotates among members of the program on a fixed, floating or other time schedule.

SECTION 7.12 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 7.13 Leases.

7.13.1 Leasing. Leasing, as used in this Declaration, means regular, exclusive occupancy of a residential structure by any person other than the Owner and the members of the Owner's household or the Owner's roommate, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Residential structures may be leased only in their entirety. No

fraction or portion may be leased. No structure on a Lot other than the primary residential structure shall be leased or otherwise occupied for residential purposes, except that any Lot comprised of more than one acre of land may make residential use of such a structure for an ancillary use such as in-law suite or nanny suite, but not for independent leasing. There shall be no subleasing of residential structure or assignment of leases unless prior written approval is obtained from the Board or such activity expressly complies with additional Rules and Restrictions, if any, regulating subleasing or assignments. All leases shall be in writing. No transient tenants are allowed. Residential structures may not may be leased more than four times over any 365-day period. If an existing lease is extended or renewed and the related occupancy does not change, that extension or renewal shall not count as a new lease for purposes of the foregoing restriction on the number of times a residential structure may be leased.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten days of execution of the lease. All leases must expressly provide that the tenants, their guests and invitees must at all time comply with the Governing Documents. The Owner must make available to the lessee copies of the Governing Documents prior to permitting occupancy under the lease. The Board may adopt reasonable Rules and Regulations regulating leasing and subleasing.

7.13.2 Alienation; leasing. No Rule and Regulation shall prohibit the leasing or transferring of any Lot, or require consent of the Association or Board for leasing or transferring of any Lot; provided, the Association or the Board may require an initial lease term of at least 90 days. The Association may require that Owners use lease forms approved by the Association, and may impose fees on the lease or transfer of a Lot that are reasonably based on the costs of the Association to administer that lease or transfer. All leases must expressly provide that the tenants, their guests and invitees must at all times comply with the Governing Documents. The right to enter into a lease agreement for a residential structure is also subject to any restrictions contained in the Rules and Regulations.

7.13.3 Additional Restrictions on ID Badges Issued to Renters. A tenant who is occupying the residential structure under a rental agreement may receive and use an ID Badge subject to the following additional requirements.

a. The right to use an ID Badge must not have been suspended as a result of the Lot Owner failing to pay assessments or otherwise or be in violation of the Governing Documents and the renter must not be the subject of any disciplinary action suspending privileges.

b. A signed copy of a valid lease agreement that complies with the requirements for leases under the Governing Documents must be delivered to the Association's administrative office along with payment of the then current fee charged for transferring ID Badge rights to a renter (currently \$50.00 per badge) and a security deposit (currently \$50.00 per badge). The deposit will be held in the renter's file until the lease has expired and the ID Badges are returned to the Association. If badges are

not returned, the deposit will be forfeited. If the renter is issued one of the complimentary ID Badges for the Lot, the ID Badge shall be designated to expire at the end of the lease term. If the lease is extended, the renter must turn in an executed copy of a valid lease extension and pay the related ID Badge renewal fee (currently \$20.00) to renew the ID Badge(s).

c. Renters and other non-Member occupants presenting valid ID Badges have all privileges associated with membership except the right to vote in Association affairs, to serve on any Association governance committee, or to be elected to the Board.

7.13.4 Restrictions. NO ADVERTISING, SIGNAGE OR OTHER DISPLAY IS ALLOWED IN THE SUBDIVISION OR UPON ANY LOT CONCERNING PROPERTY BEING "FOR LEASE" OR "FOR RENT". VIOLATIONS ARE SUBJECT TO DAILY FINES AS SET FORTH HEREIN. No Lot may be leased other than for use as a single family residence as herein provided and defined. No Owner may lease a Lot and attendant use of the residence and improvements thereon for transient or hotel purposes. No Owner may lease less than an entire Lot and attendant use of the residence and improvements thereon. All leases: (i) must be in writing; and (ii) are specifically subject in all respects to all provisions of this Declaration and all other Governing Documents (whether or not expressly stated in the lease), and any failure by lessee to comply with this Declaration or any other Governing Documents will be a default under the lease. The Owner must notify the Association in writing when the Lot is leased and provide the Association with the Owner's new address.

7.13.5 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.

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

SECTION 7.14 Unoccupied Residences. The Owner of a Lot with an unoccupied residence, including any mortgagee in possession and any mortgagee obtaining title to a Lot by foreclosure or by any deed or other arrangement in lieu of foreclosure, is liable for full observance and performance of all terms and conditions of this Declaration and all other Governing Documents, including in particular but without

limitation: (i) proper maintenance of the Lot and all improvements thereon; (ii) securing of the unoccupied residence, including fastening of windows and locking of all entry and garage doors, and maintenance of appropriate curtains or other permitted window covers in order to prevent unauthorized entry or use; and (iii) such other maintenance as required to avoid an appearance of abandonment or other unsightly or unkept appearance.

SECTION 7.15 Undeveloped Lots. With the exception of Declarant, the Owner of any Lot upon which a single family residence has not been constructed must maintain such Lot in a neat, sanitary and attractive condition and in accordance with other applicable provisions of this Declaration and other Governing Documents, including without limitation, periodic and regular removal of trash and debris therefrom, maintenance of the grade of the Lot so that it is mowable and mowing of grass and other vegetation thereon as necessary to prevent growth to more than eight inches (8") in height.

SECTION 7.16 Mineral Production. No drilling, development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

SECTION 7.17 Rules and Regulations. The Board is hereby specifically authorized to promulgate, amend, modify and delete such Rules and Regulations applicable to the operation, use and occupancy of the Subdivision, including all Lots and Community Properties, as the Board may from time to time deem beneficial to the Subdivision. Such authority includes but is not limited to: (i) the right to limit, in addition to the provisions of Section 7.03, the type and size of vehicles permitted within the Subdivision, traffic and parking regulations, speed limits (other than on public streets otherwise regulated by the City or other governmental authority), towing, fines, signage, traffic enforcement and other traffic control procedures, (including, but not limited to speed limits) and the maximum permissible noise levels of vehicles within the Subdivision; (ii) procedures and 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:

7.17.1 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); and

7.17.2 Rules and Regulations may not be incompatible with the provisions of this Declaration.

Article VIII
Architectural Restrictions

SECTION 8.01 Type of Residence.

8.01.1 Single Family Residence. No building other than one single family residence which is to be occupied as a residence by one single family, an appurtenant garage and such outbuildings if and as may be approved in writing by the ACC may be constructed, placed or permitted to remain on each Lot.

8.01.2 Garages and Garage Doors. 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. All single family residences must have an enclosed attached or detached minimum two car parking garage. The garage must be architecturally similar and compatible to the appurtenant residence, including as to roof line and appearance. Except for porte-cocheres, carports on Lots are prohibited. All garages must be enclosed with permanent walls and their fronts enclosed with standard type overhead doors customarily used in the building industry which garage doors must be maintained in good working order at all times. ANY REPLACEMENT GARAGE DOOR MUST BE OF EQUAL OR BETTER QUALITY AND SUBSTANTIALLY THE SAME DESIGN AS THE GARAGE DOOR FOR THE GARAGE AS ORIGINALLY CONSTRUCTED, AND MUST BE PAINTED TO MATCH THE COLOR SCHEME OF THE RESIDENCE AS ORIGINALLY CONSTRUCTED OR A SUBSEQUENT COLOR SCHEME WHICH HAS BEEN APPROVED IN WRITING BY THE ACC. Except for interior modifications of a garage wholly consistent with its use as a garage and which do not alter the use or exterior appearance of the garage as originally constructed, no modification of the interior or exterior of any garage as originally constructed is permitted without prior written approval of the ACC. GARAGE DOORS MUST BE KEPT CLOSED AT ALL TIMES EXCEPT FOR ENTRY AND EXIT OF VEHICLES OR DURING BRIEF PERIODS WHEN THE GARAGE IS BEING ACTIVELY USED FOR CUSTOMARY PURPOSES. No garage may exceed in height the dwelling to which it is appurtenant. Garages temporarily converted to sales offices for use in Model Homes may be granted a temporary exemption by the ACC during the period that the home is used as a model home provided that such is converted to a garage with a driveway upon the sale of the former model home to a homeowner.

8.01.3 New Construction and Continued Maintenance Required. All residences, buildings and structures must be of new construction, and no residence, building or structure may be moved from another location to any Lot without prior written approval of the ACC. All residences, buildings and structures must be kept in good repair, must be painted (as applicable) when necessary to preserve their attractiveness and must otherwise be maintained in such manner as to obtain and maintain Prevailing Community Standards.

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

SECTION 8.02 Living Area Requirements. Unless otherwise approved or required by the ACC, all single family residences, exclusive of porches and garages, must contain not less than one thousand two hundred (1,200) square feet; provided however that the ACC may designate minimum and/or maximum square footage requirements in the Architectural Guidelines based on Lot size, width or other criteria outlined therein. In the event the ACC has designated such square footage requirements in the Architectural Guidelines (as may be amended), the Architectural Guidelines shall control. **BE ADVISED TO CONSULT THE MOST RECENT APPROVED ARCHITECTURAL GUIDELINES FOR COMPLIANCE WITH THE LIVING AREA REQUIREMENTS.**

SECTION 8.03 Location of Residence. No single family residence may be located nearer to the building setback lines shown on any applicable Plat, or as established by this Declaration or applicable requirements of the City. Subject to the foregoing, and unless otherwise approved by the ACC, no part of any residence, building or garage shall be located nearer than five feet to an interior side Lot line or ten feet to any exterior Lot line on a corner Lot, except that a garage or other permitted accessory building located sixty feet or more from the front Lot line may be a minimum distance of three feet from an interior Lot line. For the purposes of this Section, eaves, roof overhangs, steps, fireplaces, chimneys, bay windows, unroofed terraces and similar architectural detail which is a part of a permitted residence or garage shall not be considered as part of a residence or garage; provided, however, that this shall not be construed to permit any portion of the residence or garage on any Lot to encroach upon another Lot. Unless otherwise approved in writing by the ACC, each main residence must face the front building line.

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 or other material if approved by the ACC) may be used.

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

8.04.5 Landscaping. All landscaping on any Lot must be in accordance with the plans and specifications therefor approved by the ACC. No living tree with a trunk diameter of six inches or greater shall be cut down or removed from any Lot without the prior written approval of the ACC except for trees within the footprint of a single family residence to be constructed on the Lot or within five feet thereof. Dead or damaged trees which may create a hazard to property or persons within the Subdivision must be promptly removed or repaired at the Owner's expense.

8.04.6 Driveways. Each Lot must contain a driveway or other means of ingress and egress for vehicles from the garage to the abutting drive or street. All driveways must be 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. The exterior materials of the main residential structure shall be set forth in the Architectural Guidelines unless otherwise approved in writing by the ACC or prohibited by building code. Further, as to Lots which adjoin entry-ways into the Subdivision and/or which adjoin main streets and/or boulevards in the front of the Subdivision, the entire exterior walls of the main residential structure which are visible from such entry-ways or street intersections may be required to meet higher standards as set forth in the Architectural Guidelines. The ACC is expressly authorized to permit use of other materials or otherwise modify the foregoing requirements from time to time by Architectural Guidelines (and amendments thereto) or as otherwise expressly approved.

8.04.8 Drainage.

(a) Drainage Devices. During the Development Period, Declarant and/or the Association is hereby specifically authorized to excavate as necessary for and to establish, construct and maintain drainage swales, erosion control systems and such other things and devices (herein referred to as "Drainage Devices") upon, over, across or under any part of the Subdivision, including any Lot, as Declarant and/or the Association deems appropriate to properly maintain and control water drainage and erosion. Declarant and/or the Association may also authorize any Builder of the initial single family residence on any Lot to establish, construct and maintain Drainage Devices as aforesaid. Declarant and/or the Association hereby reserves for itself and authorized builders a blanket easement upon, over, under and across the Subdivision, including each Lot, for purposes of establishment, construction and maintenance of Drainage Devices as aforesaid; provided, such easement may not be exercised and no Drainage Device may be established, constructed or maintained in any manner as to encroach upon the foundation or any other part of any single family residence or its appurtenant garage. THE FOREGOING SHALL NOT BE CONSTRUED TO OBLIGATE DECLARANT AND/OR THE ASSOCIATION OR ANY AUTHORIZED BUILDER TO ESTABLISH, CONSTRUCT OR MAINTAIN ANY DRAINAGE DEVICES OF ANY TYPE OR KIND WHATSOEVER, AND ANY REPRESENTATION, WARRANTY OR IMPLICATION AS TO SAME IS HEREBY SPECIFICALLY DISCLAIMED.

(b) Owner Obligations. Once established and for so long as continued maintenance thereof is reasonably necessary, all Drainage Devices shall remain unobstructed, and shall be properly maintained by each Owner of each Lot to which same pertains. Each Owner must refrain from permitting any construction, grading and any other work, act or activity upon such Owner's Lot which would obstruct, alter, divert, impede or impair the proper functioning of any Drainage Device. In addition, each Owner must perform such work, act or activities and install and maintain such Drainage Devices (i) as is reasonably necessary to prevent so far as practical drainage from the Owner's Lot to any other Lot, and (ii) as needed to maintain so far as practical positive drainage away from the foundation of the residence located upon the Owner's Lot. 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 Painting of Frame Construction. No structure of any kind or character which incorporates frame construction on the exterior may be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is redwood or cedar or other approved material.

8.04.10 Roof Materials. Roofs of all residences must be constructed so that the exposed material is 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.

8.04.11 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.

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

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

SECTION 8.06 Lot Resubdivision or Combination. Unless approved by Declarant in writing, no Lot as originally conveyed by Declarant to any Person, including a Builder, may thereafter be subdivided or combined with any other Lot, or the boundaries thereof otherwise changed.

SECTION 8.07 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. Aluminum foil and similar reflective materials, are in all events prohibited. Unless otherwise approved in writing by the ACC, windows coverings that are visible from the street must be neutral or solid in appearance and may not be bright in color, stripped or printed.

SECTION 8.08 Lot Line Fences, Walls and Hedges.

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

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

a. NO CHAIN LINK TYPE OR SIMILAR WIRE FENCING OF ANY TYPE IS PERMITTED ON ANY LOT.

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

c. NO LOT LINE FENCING ON A CORNER LOT MAY BE PLACED CLOSER TO THE APPLICABLE SIDE STREET THAN PERMITTED BY THE ACC.

d. Dog runs and child proof swimming pool enclosures which are inside of a solid wood fence and/or not visible from outside the Lot are acceptable subject to written approval of the ACC.

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

SECTION 8.09 Antenna and Satellite Dish System.

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

8.09.2 Prohibited Antenna. In no event shall any antenna, "dish" or other device be used for transmitting electronic signals of any kind except as to fixed wireless signal transmission as above provided. Antenna and similar devices of any type used for citizen band ("CB") radio, amateur ("HAM") radio, AM/FM radio, or Digital Audio Radio Service ("DARS"), are prohibited and shall not be erected, placed or

permitted to remain on any Lot, on any improvement located on any Lot, or elsewhere in the Subdivision. Without limitation as to the authority of the Board to grant variances, the Board is specifically authorized to (but shall not in any event be required to) grant variances as to prohibited antenna, and the Board may condition granting of any such variance upon placement of the applicable antenna in the attic of a residence.

SECTION 8.10 Signs.

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

8.10.2 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 Lot closer than ten feet from any street or any side or back Lot line, or within any traffic sight line area as determined by the Board, in its sole discretion. No Owner, Owner's tenant or their Related Parties, is permitted to place any sign on another Owner's Lot or upon any Community Properties. Distressed, foreclosures and bankruptcy references are specifically prohibited. **"FOR LEASE", "FOR RENT" OR SIMILAR SIGNS ARE PROHIBITED AND SUBJECT TO FINES OF NOT LESS THAN \$100 PER DAY.**

8.10.3 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 8.10.2, each Owner is permitted to place upon (and only upon) such Owner's Lot (i) one sign approved in writing by the ACC advertising the particular Lot on which the sign is located for sale, but only during periods of time when the Lot is in fact for sale, and (ii) "political signs" whereby such Owner is promoting a political candidate, party or issue. Any other permitted signs may be specified in the Architectural Guidelines "For Sale" signs may be regulated in size, type, material, design, color and otherwise by the ACC except as otherwise approved by the ACC, no more than two political signs are permitted per Lot, and political signs regarding any election or vote may not be placed on any Lot 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, flags and flagpoles, pennants, and advertising devices as are customary in connection with the sale of newly constructed residential dwellings.

8.10.4 Address Numerals. All residences must at a minimum have cast stone address numerals incorporated into the brick on the front facade of the home. No curb painted address numerals will be permitted on Harper's Way. Additional address marker requirements may be set forth by the ACC in the Architectural Guidelines. No other painted address numerals will be permitted without the prior written approval of the ACC. Any landscaping near the cast stone address numerals must be kept maintained so as not to block the address from street view.

SECTION 8.11 Utility, Lighting and Energy Facilities.

8.11.1 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.

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

8.11.3 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.

8.11.4 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.

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

8.11.6 Solar and Other Energy Devices. No solar energy collector panels or attendant hardware or other similar equipment or any other energy generating device is permitted upon any portion of the Subdivision, including any Lot and/or residence located thereon, without the prior written consent of the ACC. Any such installation shall be in harmony with the design of the residence, and such that the device is not visible from any street. Windmills, wind generators and other apparatus for generating power from the wind are prohibited.

SECTION 8.12 Pools. Above-ground pools of every kind are prohibited upon any Lot. In-ground pools may not be installed except with the prior written consent and approval of the ACC obtained as provided in Article IV.

SECTION 8.13 Artificial Vegetation, Exterior Sculpture, and Similar Items. Artificial vegetation, exterior sculptures, fountains, flags and temporary flagpoles (excepting state and United States flags maintained and exhibited in accordance with applicable Architectural Guidelines), swings, and other decorative embellishments or similar items are prohibited at any location upon a Lot which is visible from any street or at ground level from another Lot except with the prior written approval of the ACC obtained as provided in Article IV.

SECTION 8.14 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 (other than water supplied by a governmental entity) shall be installed, constructed or operated upon any Lot. Private water or irrigation wells are prohibited upon any Lot. Front Yards must have an underground sprinkler or irrigation system for the purpose of providing sufficient water to the Front Yard. Sprinkler systems in the Front Yard will be maintained in good working order by the Owner of such Lot and will be used on a regular basis so as to keep the grass and other landscaping in the Front Yard in a healthy condition. Owners will take reasonable actions to prevent the overspray of water onto adjacent Lots, Common Area and private streets. Sprinkler and irrigation systems installed as Subdivision Facilities will be maintained by the Association. No other sprinkler or irrigation system may be installed upon any Lot or elsewhere in the Subdivision except with the prior written consent and approval of the ACC obtained as provided in Article IV.

SECTION 8.15 Excavation. The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except upon written approval of the ACC as may be necessary in conjunction with the landscaping of or construction on such Lot.

Article IX
Easements

SECTION 9.01 Incorporation of Easements. All easements, dedications, limitations, restrictions and reservations shown on any Plat and all validly existing grants and dedications of easements and related rights heretofore made or hereafter established as herein provided affecting the Subdivision or any Lots and filed in the Official Public Records of Real Property of Montgomery County, Texas, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by any Person covering any portion of the Subdivision, including any Lot. In the event of any conflict between any of the foregoing filed after the date of filing of this Declaration and any provisions of this Declaration, the provisions of this Declaration control. The foregoing shall not be construed as in any manner giving effect to any instrument of record other than in accordance with the instrument and applicable law.

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

9.02.1 Usage Control. The Board has a continuing right to: (i) accept establish, install, maintain, operate and regulate a limited access gate or gates and such other safety oriented systems, devices, and procedures as it may determine; (ii) issue, charge for, and require as a condition of entry to the Subdivision and/or Community Properties such identification cards, passes, keys, or similar devices as the Board may from time to time determine; (iii) limit the number of guests of Lot Owners and their tenants who may use the Community Properties; (iv) provide for the exclusive use and enjoyment of specific portions of the Community Properties at certain designated times by an Owner, his family, and the Owner's tenant, and the guests or invitees of either, and (v) charge reasonable admission and other fees for the use of any portion of the Community Properties, including any Subdivision Facilities (including but not limited to usage and other fees in connection with easement agreements between the Association and government entities).

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

9.02.3 Consent Required to Mortgage or Convey Certain Community Properties. No part of the Community Properties described in Sections

2.10.1 and 2.10.2 ("the Common Areas") may be mortgaged or conveyed without the consent of the Owners of at least a majority of the Lots then contained in the Subdivision. If ingress or egress to any residence is through any part of the Common Areas so mortgaged or conveyed, any such mortgage or conveyance is subject to the Owner's easement.

SECTION 9.03 Association and ACC Blanket Access Easement. The Association and ACC have a continuing non-exclusive easement upon, over, under and across each Lot 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, including but not limited to the Association's right, but not the obligation, to perform the Front Yard Maintenance.

SECTION 9.04 Governmental Functions; Utilities and Other Services.

9.04.1 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, inspection and code enforcement, ambulance and other emergency vehicles, to garbage and trash collection vehicles and other service vehicles, to the United States Post Office and similar services, and to the respective agents and employees of all of the foregoing, for access, ingress and egress upon, over and across any portion of each Lot and throughout the Subdivision for purposes of the performance of any official business without liability of any kind. Such easements may be modified, limited, amended and terminated, in whole or in part, in writing by the Board. THE CITY IS ALSO SPECIFICALLY AUTHORIZED TO REMOVE OBSTRUCTIONS IF NECESSARY FOR EMERGENCY VEHICLE ACCESS, INCLUDING AS PERMITTED BY SECTION 9.04.1, AND TO ASSESS THE COST OF REMOVAL TO THE OWNER OF THE OBSTRUCTION.

9.04.2 Mail Box, Water and Electrical Meter Banks. Declarant and/or the Association may establish exclusive and perpetual easements for the placement and maintenance of mail box banks, water meter banks, phones and/or electrical meter banks designed to service two or more single family residences upon any Lot or elsewhere within the Subdivision.

9.04.3 Utilities.

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

structure or buildings located in or on such easements or streets because of the installation or maintenance of the utility facilities.

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

9.04.4 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 Lot; provided, such additional easements shall not be located in such manner as to encroach upon the footprint or foundation of any then existing building (including any residence) or any swimming pool. Any such easement shall not be effective unless and until notice thereof is filed in the Official Public Records of Real Property of Montgomery County, Texas.

SECTION 9.05 Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by contract, deed or other conveyance may not be held or construed in any event to include the title to any easement established by this Article IX, including but not limited to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way or any pipes, lines, poles, or conduits on or in any utility facility, service equipment or appurtenances thereto.

SECTION 9.06 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.

SECTION 9.07 Association Easement for Lots Fronting on Harper's Way. The Association reserves for itself a non-exclusive three foot (3') wide easement running parallel to and abutting the Harper's Way street right-of-way only within Lots that share a common boundary with the Harper's Way street right of way which include (but are not necessarily limited to): Lot 1 in Block One (1), Lots One through Six (1-6) inclusive of Block Four (4) and Lots One through Twelve (1-12) inclusive of Block Five (5) of Harper's Preserve Section 1 according to the map or plat recorded in Cabinet Z, Sheets 1921-1925 of Montgomery County, Texas Map Records. This easement is for the use of the Association and its assigns for purposes of access, landscaping,

irrigation, maintenance, utilities, trails, address markers, fencing, lighting and/or the installation, repair and maintenance of landscaping and hardscape elements for the benefit of the Subdivision. Each Lot Owner shall have a right of ingress and egress over the portion of the easement on the Owner's respective Lot via a driveway and/or pedestrian access way in a location approved by the ACC.

Article X Enforcement

SECTION 10.01 Strict Compliance Required. Each Owner and each Owner's tenants, by acquisition of any right, title or interest in any Lot, covenant and agree to be bound by and to strictly comply with all restrictions, covenants, conditions and easements set forth in this Declaration and all other Governing Documents as same may from time to time or at any time be hereafter amended. The foregoing provisions apply regardless of whether or not any such Governing Documents are filed in the Official Public Records of Real Property of Montgomery 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 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 officers, Directors, agents, employees or committee members, for failure to enforce any provisions of this Declaration or any other Governing Documents.

10.02.3 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 or, 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 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. Before any fine is imposed, the Owner 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 the Owner of a similar violation within the preceding twelve month period.

Article XI Development Period

SECTION 11.01 Application. Notwithstanding any other provision 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 Declarant appointees during the Development Period. Declarant is deemed to be a Member of the Association for all purposes during the Development Period whether or not Declarant continues to own any Lot.

SECTION 11.03 Architectural Control; Builder Approval.

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

11.03.2 Declarant's ACC Authority as to Initial Development of Lots. DECLARANT HEREBY RESERVES AND RETAINS FULL AND EXCLUSIVE AUTHORITY OF THE ACC AS TO EACH LOT UNTIL COMPLETION OF THE INITIAL SALE OF EACH LOT, WHETHER OR NOT COMPLETION OF THE INITIAL SALE OCCURS DURING OR AFTER THE DEVELOPMENT PERIOD. DECLARANT'S AUTHORITY INCLUDES WITHOUT LIMITATION THE RIGHT TO ASSESS 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 Lot or otherwise conduct any developmental activities within the Subdivision other than those approved in advance by Declarant.

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

11.04.1 First Meeting of Class A Members. Declarant may call, notice and conduct the first meeting of Class A Members at any time during the Development Period. Declarant must call, notice and conduct the first meeting of Class A Members within a reasonable period of time after the date of termination of the Development Period. Subject to the foregoing, the first meeting will be held on such date and at such place and time as determined by Declarant. The sole purpose of the first meeting is to conduct the election of Directors by Class A Members ("Owner Directors") unless Declarant designates one or more other purposes in the notice of the meeting. No business other than as stated in the notice of the meeting may be conducted at the meeting. Declarant shall appoint a Chairperson and Secretary for the first meeting who need not be officers, directors or Members of the Association. Notwithstanding any other provisions hereof or of any other Governing Documents and regardless of whether

or not the Development Period has previously been terminated, at the first meeting, the Owner of each Lot, including Declarant, is entitled to cast one vote for each Lot owned. Declarant is additionally entitled to (but is not obligated to) cast its one "at large" vote, but only for the purpose of breaking a tie vote.

For the first meeting of Class A Members and any Alternate First Meeting only, the presence, in person or by proxy, and whether or not in good standing, of Class A Members representing not less than one-twentieth of all Lots then contained in the Subdivision constitutes a quorum for the purpose of election of Owner Directors.

11.04.2 Transfer of Declarant Control; Effect.

(a) THE DATE OF TRANSFER OF DECLARANT CONTROL IS THE DATE OF OCCURRENCE OF THE ELECTION BY CLASS A MEMBERS OF AT LEAST ONE OWNER DIRECTOR.

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

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

liabilities finally resolved.

SECTION 11.05 Community Properties.

11.05.1 Designation or Change as to Community Properties and/or Subdivision Facilities. SUBJECT TO SECTIONS 9.02.3 AND 11.10.1, BUT OTHERWISE REGARDLESS OF DESIGNATION BY ANY PLAT OR OTHERWISE, DURING THE DEVELOPMENT PERIOD, DECLARANT MAY AT ANY TIME AND FROM TIME TO TIME (i) DESIGNATE COMMUNITY PROPERTIES AND/OR SUBDIVISION FACILITIES, AND (ii) MODIFY, DISCONTINUE, REDESIGNATE OR IN ANY OTHER MANNER CHANGE THE COMMUNITY PROPERTIES AND/OR SUBDIVISION FACILITIES. WITHOUT LIMITATION OF THE FOREGOING, DECLARANT SPECIFICALLY RESERVES THE RIGHT AT ANY TIME DURING THE DEVELOPMENT PERIOD TO SELL OR OTHERWISE DISPOSE OF ANY "RESERVES" AND ANY OTHER SIMILAR AREAS, REGARDLESS OF DESIGNATION OF ANY SUCH AREA BY ANY PLAT OR OTHERWISE AS "RESTRICTED," "UNRESTRICTED," OR OTHER DESIGNATION.

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.

(a) Declarant may convey, transfer or assign any or all Community Properties to the Association during the Development Period. THE ASSOCIATION IS OBLIGATED TO ACCEPT ANY CONVEYANCE AND ANY OTHER TRANSFER OF OWNERSHIP OF ANY COMMUNITY PROPERTIES (AS SO DESIGNATED BY DECLARANT DURING THE DEVELOPMENT PERIOD), REGARDLESS OF WHETHER THE CONVEYANCE OR OTHER TRANSFER OCCURS DURING OR AFTER THE DEVELOPMENT PERIOD. THE ASSOCIATION'S ACCEPTANCE AS AFORESAID IS CONCLUSIVELY ESTABLISHED UPON FILING OF THE APPLICABLE INSTRUMENT OF CONVEYANCE OR OTHER TRANSFER IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF MONTGOMERY COUNTY, TEXAS, OR AS OF THE DATE OF DELIVERY OF SAID INSTRUMENT TO

THE ASSOCIATION.

(b) ANY RIGHT, TITLE OR INTEREST TO ALL COMMUNITY PROPERTIES WILL BE TRANSFERRED, CONVEYED OR ASSIGNED TO THE ASSOCIATION ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, AND, EXCEPT FOR SPECIAL WARRANTY OF TITLE BY, THROUGH OR UNDER DECLARANT, WITHOUT ANY COVENANT, WARRANTY, GUARANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO: (I) ANY IMPLIED COVENANTS UNDER SECTION 5.23 OF THE TEXAS PROPERTY CODE AND ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR OR INTENDED PURPOSE; (II) THE NATURE AND CONDITION OF THE PROPERTY OR OTHER ITEMS TRANSFERRED, ASSIGNED OR CONVEYED, INCLUDING, WITHOUT LIMITATION, PHYSICAL OR ECONOMIC CHARACTERISTICS OF THE PROPERTY, THE WATER, SOIL AND GEOLOGY, THE SUITABILITY THEREOF AND OF THE PROPERTY OR OTHER ITEMS FOR ANY AND ALL ACTIVITIES AND USES, THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING BUT NOT LIMITED TO THE PRESENCE OF ANY HAZARDOUS MATERIALS, SUBSTANCES OR CONTAMINANTS OF ANY KIND) OR COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS; (III) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHERWISE; AND (IV) THE COMPLIANCE OF THE PROPERTY OR OTHER ITEMS TRANSFERRED, ASSIGNED OR CONVEYED, INCLUDING AS TO ITS OPERATION OR USE, WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL ENTITY OR BODY. ALL SUCH COVENANTS, GUARANTIES, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OR BY OPERATION OF LAW, ARE HEREBY EXPRESSLY DISCLAIMED. THE PROVISIONS OF SECTIONS 3.06 AND 11.11.3 FULLY APPLY AS TO SAME, AND THE PROVISIONS HEREOF SHALL APPLY WHETHER OR NOT STATED IN ANY DEED, CONVEYANCE OR OTHER TRANSFER AS TO THE AFFECTED COMMUNITY PROPERTIES. IN ADDITION, NO TITLE INSURANCE OF ANY TYPE WILL BE PROVIDED REGARDING THE TRANSFER OR CONVEYANCE OF ANY COMMUNITY PROPERTIES.

11.05.4 Use and Maintenance of Community Properties. So long as Declarant owns any Lot within the Subdivision, Declarant and any Builder as so designated by Declarant (i) have a nonexclusive 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 Lots therein, and (ii) may construct, maintain, expand, improve and repair any Community Properties, including without limitation any such matters regarding anything or device relating to drainage within or which may otherwise affect the Subdivision, or any Lot 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 any Builder as so designated by Declarant, and their agents or employees (including any contractor or subcontractor) are entitled during the Development Period to use and exercise all easements set forth in this Declaration for, and Declarant may grant or exercise such additional easements for, ingress, egress and usage as is reasonably necessary for, construction of single family residences, providing and development of utilities, Community Properties and/or Subdivision Facilities and any and all other "Developmental Activities" as defined in Section 11.11. Any part of a single family residence as originally constructed may be located or encroach upon any easement established by this Declaration so long as any such location or encroachment does not interfere with any actual usage as permitted by any applicable easement actually existing at the time of establishment of such location or encroachment.

SECTION 11.07 SALES ACTIVITIES. DECLARANT, AND ANY BUILDER SO AUTHORIZED BY DECLARANT, HAVE THE RIGHT TO TRANSACT ANY BUSINESS AND CONDUCT ANY ACTIVITIES REASONABLY NECESSARY FOR THE DEVELOPMENT OF THE SUBDIVISION (INCLUDING ALL "DEVELOPMENTAL ACTIVITIES" AS DEFINED IN SECTION 11.11), AND FOR THE SALE OR RENTAL OF LOTS AND SINGLE FAMILY RESIDENCES TO BE CONSTRUCTED WITHIN THE SUBDIVISION. UNTIL COMPLETION OF THE INITIAL SALE (AS PROVIDED IN SECTION 11.03) OF ALL LOTS OWNED BY DECLARANT OR A BUILDER, WHETHER OR NOT THE INITIAL SALE OF ALL LOTS OCCURS DURING OR AFTER THE DEVELOPMENT PERIOD, THE RIGHTS OF DECLARANT (AND ANY AUTHORIZED BUILDER) AS AFORESAID SHALL INCLUDE, WITHOUT LIMITATION OF THE FOREGOING, THE RIGHT TO MAINTAIN MODELS, TO HAVE, PLACE AND MAINTAIN SALES AND PROMOTIONAL SIGNS, FLAGS, BANNERS AND SIMILAR PROMOTIONAL DEVICES WITHIN THE SUBDIVISION, TO CONDUCT FROM TIME TO TIME AN "OPEN HOUSE" AND SIMILAR EVENTS FOR REALTORS AND OTHER PERSONS WHICH MAY INCLUDE WITHOUT LIMITATION LEAVING LIMITED ACCESS GATES (IF ANY) OPEN FOR PERIODS OF TIME OR OTHERWISE PROVIDING FOR OR PERMITTING ACCESS TO THE SUBDIVISION BY PROSPECTIVE PURCHASERS, REALTORS AND OTHER PERSONS AS DETERMINED BY DECLARANT, AND TO USE FOR DEVELOPMENT, SALES AND/OR PROMOTIONAL PURPOSES, ALL OR ANY PART OF ANY LOT, OR RESIDENCE OR OTHER IMPROVEMENTS LOCATED THEREON, WHICH IS OWNED BY DECLARANT OR A BUILDER. DURING THE DEVELOPMENT PERIOD ONLY, DECLARANT MAY ALSO USE FOR DEVELOPMENT, SALES AND/OR PROMOTIONAL PURPOSES, AND WITHOUT CHARGE, ANY COMMUNITY

PROPERTIES (INCLUDING SUBDIVISION FACILITIES). NOTWITHSTANDING ANYTHING CONTAINED HEREIN, DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES OR ENDORSEMENTS OF ANY KIND OF ANY BUILDER OR SUCH BUILDER'S WORK PRODUCT OR OTHERWISE.

SECTION 11.08 Assessments.

11.08.1 Right of Declarant to Set Rate. Until conversion of the Class B membership to Class A membership, 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.

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 Lots owned by Declarant are exempt from payment of all assessments (regular, special or specific).

(b) In lieu of payment of assessments as aforesaid, Declarant may, but is not required to, contribute to the Maintenance Fund until conversion of the Class B membership to Class A membership 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 ASSESSMENTS WHICH WOULD OTHERWISE BE PAYABLE BY DECLARANT AS A CLASS A OWNER OF ONE OR MORE LOTS. 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. From time to time until turnover of Association funds as provided in Section 11.04, Declarant may reimburse itself for any and all contributions made to the Association as aforesaid. Thereafter, any such claim for reimbursement must be made to the Board of Directors at least thirty days before the deadline for submission of disputes by the Association to Declarant as provided in Section 11.12. The Association must either pay the submitted claim for reimbursement or properly dispute same within thirty days after Declarant gives notice of the claim to the Association. Declarant is not entitled to payment of interest on any contributions unless payment for same is wrongfully withheld by the Association in which case Declarant is entitled to interest at the highest rate allowed by law.

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 Montgomery County, Texas. Notices or other communications to Declarant are deemed given only upon actual receipt with evidence thereof. 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 all or a portion of 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. Owner agrees that any notice requirements in connection with Declarant exercising any of its rights as reserved herein is not required and agrees to cooperate with Declarant and sign such documents and consents as may be requested by Declarant from time to time in connection with Declarant exercising its rights as reserved herein, provided only that the consenting Owners Lot boundary is not being changed by such Declarant's right, with respect to Section 11.10.1 (ii) hereof. 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 Montgomery 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. Actions and decisions of the Board, even during the Development Period, are independent of the Declarant and the Declarant is not liable for such actions and decisions in any manner whatsoever.

11.11.2 Developmental Activities. Declarant may or will be required during the Development Period to engage in construction activities upon multiple Lots or

Community Properties, to store equipment or materials on multiple Lots or Community Properties, to create accumulations of trash and debris and to otherwise engage in activities and create conditions related to its development of the Subdivision, including the construction and sale of residences and any other improvements in the Subdivision (the "Developmental Activities"). 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, DUTIES, 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, DUTIES GUARANTIES AND WARRANTIES, EXPRESS AND IMPLIED, AND BY OPERATION OF LAW (I) AS TO ANY FUTURE DEVELOPMENT, (II) FOR MANAGEMENT OR SUPERVISION OF BUILDING, CONSTRUCTION AND ALL OTHER WORK BY ANY BUILDER, VENDOR OR SUPPLIER NOT DIRECTLY EMPLOYED BY DECLARANT, INCLUDING ANY DUTY TO ENFORCE ANY PROVISIONS OF THE GOVERNING DOCUMENTS AS TO ANY SUCH PARTY, (III) THE NATURE, CONDITION, APPEARANCE, USE AND ALL OTHER MATTERS PERTAINING TO ANY PROPERTIES ADJACENT TO OR IN THE AREA OF THE SUBDIVISION, OR WHICH ARE NOT OTHERWISE SUBJECT TO THE GOVERNING DOCUMENTS, INCLUDING WITHOUT LIMITATION ANY OBLIGATION NOW OR IN THE FUTURE TO INCLUDE IN THE SUBDIVISION OR IN ANY MANNER TO OTHERWISE SUBJECT ANY SUCH PROPERTIES TO ANY PROVISIONS OF THE GOVERNING DOCUMENTS, (IV) THE MANAGEMENT OR OPERATION OF THE ASSOCIATION, (V) AS TO ENFORCEMENT OF ANY PROVISIONS OF THE GOVERNING DOCUMENTS AS TO ANY OWNER, TENANT OR ANY OTHER PERSON, AND (VI) AS TO ANY ENVIRONMENTAL HAZARDS OR CONDITIONS AFFECTING THE SUBDIVISION, INCLUDING ALL LOTS, COMMUNITY PROPERTIES AND RESERVES OR AFFECTING ANY AREA OR ADJACENT PROPERTIES. IT BEING EXPRESSLY SATISFIED 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, INJURY, DEATH, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES AND COURT COSTS) IN ANYWAY RELATING TO, CONNECTED WITH OR ARISING OUT OF ANY OF THE MATTERS SET FORTH IN SECTION 11.05 AND IN THIS SECTION OR WHICH MAY ARISE DURING THE USE OF THE COMMUNITY PROPERTIES, INCLUDING WITHOUT LIMITATION THE COST OF ANY REMOVAL OF HAZARDOUS SUBSTANCES OR CONTAMINANTS OF ANY KIND FROM THE PROPERTY AND ANY OTHER REMEDIAL COSTS REGARDING ANY ENVIRONMENTAL HAZARD OR CONDITION, OR THE OWNERSHIP, LEASING, USE, CONDITION, OPERATION, MAINTENANCE OR MANAGEMENT OF THE PROPERTY, REGARDLESS OF WHETHER THE SAME ARISES OR ACCRUES DURING OR AFTER TERMINATION OF THE DEVELOPMENT PERIOD. THE PROVISIONS OF THIS SECTION (INCLUDING ITS INCORPORATION AS TO SECTIONS 3.06 AND 11.05 CONSTITUTE A COVENANT OF RELEASE AND INDEMNIFICATION RUNNING WITH THE LAND (INCLUDING EACH LOT AND ALL COMMUNITY PROPERTIES), AND IS BINDING UPON EACH OWNER AND THEIR TENANT, AND THEIR RESPECTIVE FAMILY OR OTHER HOUSEHOLD MEMBERS, SUCCESSORS IN TITLE OR INTEREST, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.

(C) EACH OWNER HEREBY RELEASES DECLARANT AND THE ASSOCIATION FROM, AND EACH OWNER MUST HEREAFTER INDEMNIFY, PROTECT, DEFEND, SAVE AND HOLD HARMLESS DECLARANT AND THE ASSOCIATION, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS AND AGENTS FROM AND AGAINST, ANY AND ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, CAUSES OF ACTION, INJURY, DEATH, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES AND COURT COSTS) IN ANYWAY RELATING TO, CONNECTED WITH OR ARISING OUT OF THE GATE SYSTEM OR THE SUBDIVISION FACILITIES, RESTRICTION OR REGULATION OF ACCESS, LEAVING THE GATE SYSTEM IN THE OPEN POSITION, MALFUNCTION IN THE GATE SYSTEM, SIGNAGE, OR LACK OF SIGNAGE. THIS RELEASE PROVISION IS INTENDED TO RELEASE DECLARANT AND THE ASSOCIATION AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES AND AGENTS AGAINST THE CONSEQUENCES OF THEIR OWN NEGLIGENCE OR FAULT EVEN WHEN

DECLARANT AND THE ASSOCIATION AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES AND AGENTS ARE SOLEY, JOINTLY, COMPARATIVELY, OR CONCURRENTLY NEGLIGENT.

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 Parties"), 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 11.11.2, including all Community Properties, and including any matters pertaining to drainage within or from the Subdivision, (ii) the design, construction, sale, maintenance or repair of each Lot, including the residence thereon and all appurtenances thereto, (iii) the establishment, operation or management of, and any acts or omissions of, the Association or the ACC, (iv) the construction, operation, application or enforcement of any provisions of, or otherwise arising out of or relating to, the Declaration and any other Governing Documents, or the breach thereof, and (v) all other matters relating directly or indirectly to any of the foregoing. Such terms do not include any matters covered by any written warranties of any Owner regarding the Owner's residence such as, for example, the limited warranty program sponsored by American Construction & Education Services, Inc. ("ACES") 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 Montgomery 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 Montgomery or Harris County, Texas, at discretion of Declarant. 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 FIRST ELECTION OF A BOARD OF DIRECTORS BY CLASS A MEMBERS,.

(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 ONE 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 ONE YEAR 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 Montgomery 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 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.

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

12.02.3 Method for Approval of Amendment by Owners.

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

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

(c) Any joint Owner may nullify the approval of another joint Owner only by filing of a written objection in the Official Public Records of Real Property of Montgomery 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 Montgomery 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 Montgomery 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 Lot located within the Subdivision, or to the most current street address given by an Owner for purposes of notice as provided in Section 12.03.3. All notices or other communications to the tenant of any Owner shall be given to the tenant at the street address of the Lot located within the Subdivision at which the tenant resides, and is deemed given upon personal delivery to the tenant or when deposited in the United States mail, postage prepaid and addressed to the tenant at said address. Where more than one Person is the Owner of (or tenant residing at) a single Lot, the mailing of any notices or other communications as aforesaid to any single Owner (or any single tenant) constitutes notice given to all such Owners (or tenants). Personal delivery may be acknowledged in writing either by the recipient or by a third party courier service. Good faith determination of ownership and mailing address, and good faith effort to comply with any other notice provisions of the Declaration or other governing documents shall be sufficient compliance notwithstanding the failure of any Owner to receive personal notice. Good faith certification by the Association's Secretary or other duly authorized agent that notice has been given to one or more owners in accordance with the Declaration is final and conclusive.

12.03.3 Owner's Notice of Address Other Than Lot Address Required. Any Owner may request any notices required or permitted hereby be mailed to an address other than such Owner's Lot address by giving written and dated notice of the alternate address to the Association. 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 Lot by sale or otherwise must be given to the Association by the new Owner within thirty days after the change. The notice must state the name and current mailing address of the current Owner(s), the date of acquisition of ownership, the names of all persons who will occupy the affected Lot and their relationship and a general statement of the legal basis of the change of ownership (such as sale under deed or executory contract for conveyance).

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

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

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

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

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

12.03.8 Other Governing Documents. Applicable provisions of this

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

SECTION 12.04 Managing Agent. The Board has the authority, from time to time and at any time, to retain, hire, employ or contract with any one or more to Managing Agents. 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.

SECTION 12.05 Conflicts In Governing Documents. Except as set forth in Section 4.02.2, 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 there under 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.

SECTION 12.08 Effective Date. This Declaration is effective from and after the date of filing of same in the Official Public Records of Real Property of Montgomery

County, Texas.

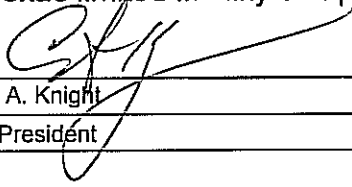
IN WITNESS WHEREOF, the undersigned has executed this Declaration to be effective upon the date of filing of this Declaration in the Official Public Records of Real Property of Montgomery County, Texas.

It is expressly agreed and understood that the individual executing this document on behalf of an Owner or Declarant is acting in his respective representative capacity only and solely as a representative of such entity and any liability resulting hereunder based upon the actions of such individual, including but not limited to, the breach of any warranty, covenant, representation and/or provision contained herein, if any, not that of such individual. The sole purpose of the execution of this document by an Owner or the Declarant hereunder is to duly acknowledge the respective Owners or Declarant's consent to the terms and provisions herein contained.

EXECUTED as of the dates of acknowledgments set forth below.

OWNER:


242, LLC, a Texas limited liability company

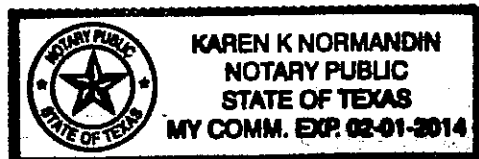
By: 
Name: Craig A. Knight
Title: Vice President

THE STATE OF TEXAS
COUNTY OF Dallas

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This instrument was acknowledged before me on the 3rd day of February, 2011, by Craig A. Knight, Vice President of 242, LLC, a Texas limited liability company, on behalf of said entity.


Notary Public



OWNER:

BEYER CONSTRUCTION LLP

By: [Signature]
Name: Steven E. Krejci
Title: CFO

THE STATE OF TEXAS

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§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on the 7th day of February, 2011, by Steven E. Krejci, Chief Financial Officer of Beyer Construction LLP, on behalf of said entity.

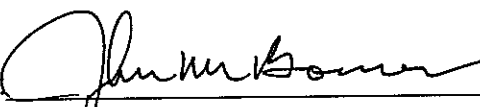


[Signature]
Notary Public

JOINDER OF LIENHOLDER

FIRST CONTINENTAL INVESTMENT CO., LTD., a Texas limited partnership, joins herein for the purpose of granting its approval to the foregoing amendments, for the purpose of confirming that all of the liens it held on property in the Subdivision were subordinated to the covenants, conditions and restrictions imposed by the Declaration, as previously amended and for the purpose of subordinating and/or confirming its subordination of, any and all liens it holds on the property in the Subdivision to the covenants, conditions and restrictions imposed by the Declaration, as previously amended and as amended hereby, with, however, the stipulation that such subordination does not extend to any lien or charge imposed by or provided for in the Declaration.

FIRST CONTINENTAL INVESTMENT CO., LTD., a
Texas limited partnership

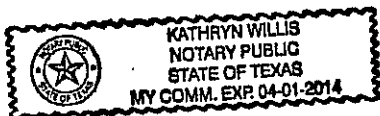
By: 
Name: John M. Bonner
Title: President

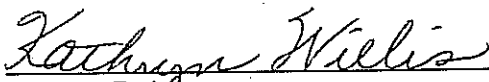
THE STATE OF TEXAS

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COUNTY OF HARRIS

This instrument was acknowledged before me on the 3rd day of February, 2011, by John M. Bonner, President of FIRST CONTINENTAL INVESTMENT CO., LTD., a Texas limited partnership, on behalf of said entity.




Notary Public

AFTER RECORDING RETURN TO:

Mark K. Knop
Hoover Slovacek LLP
5847 San Felipe, Suite 2200
Houston, Texas 77057-3918
713/977-8686
File No: 122147-10

FILED FOR RECORD

02/08/2011 12:28PM

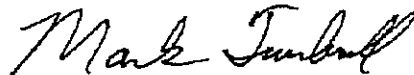


COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY

I hereby certify 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 Montgomery County, Texas.

02/08/2011



County Clerk
Montgomery County, Texas

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.