

DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS

FOSTER'S BRANCH
SCHULENBURG, FAYETTE COUNTY,
TEXAS

*Declarant: ROLAND KALINA AND THERESA KALINA

This Declaration of Covenants, Conditions, and Restrictions may be used only in connection with the residential community known as Foster's Branch in Fayette County, Texas, and the operation of Foster's Branch Homeowner's Association, Inc.

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FOSTER'S BRANCH
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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOSTER'S BRANCH

This Declaration of Covenants, Conditions, and Restrictions (the "Declaration") is made by Roland Kalina and Theresa Kalina.

RECITALS:

A. This Declaration is filed with respect to Lots 1 through 10, Block 1, Lots 1 through 5, Block 2, Foster's Branch Subdivision, Phase 1, a subdivision in Schulenburg, Fayette County, Texas, according to the plat recorded in the Official Public Records of Fayette County, Texas in Volume 2, Slide 204, Plat Records of Fayette County, Texas; said plat is incorporated herein by reference for all purposes (the "Property"). Declarant is the owner of the Property.

B. Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property.

C. By the filing of this Declaration, Declarant serves notice that the Property will be subjected to the terms and provisions of this Declaration.

NOW, THEREFORE, it is hereby declared: (i) that the Property (or any portion thereof) will be held, sold, conveyed, and occupied subject to the following covenants, conditions, and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

ARTICLE 1
DEFINITIONS

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

"Architectural Control Committee" or **"ACC"** means the committee created pursuant to this Declaration to review and approve plans for the construction, placement, modification, alteration, or remodeling of any Improvements on a Lot.

“Assessment” or **“Assessments”** means assessments imposed by the Association under this Declaration.

“Assessment Unit” has the meaning set forth in Section 6.07(b).

“Association” means Foster’s Branch Homeowner’s Association, Inc., a Texas non-profit corporation, which has been or will be created by Declarant to exercise the authority and assume the powers specified in Article 3 and elsewhere in this Declaration.

“Board” means the Board of Directors of the Association.

“Bulk Rate Contract” or **“Bulk Rate Contracts”** means one or more contracts, which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contract may include, without limitation, cable television services, telecommunications services, internet access services, “broadband” services, security services, trash pick up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial.

“Bylaws” mean the Bylaws of the Association as adopted and as amended from time to time.

“Certificate” means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

“Community Manual” means the community manual, which may be initially adopted and recorded by the Declarant as part of the initial project documentation for the benefit of the Association. The Community Manual shall include the Bylaws and may also include rules and regulations and other policies governing the Association.

“Community Systems” means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials and installation and fixtures (including those based on, containing, and serving future technological advances not now known), if installed by Declarant, or the Association, or installed pursuant to any grant of easement or authority by Declarant or the Association within the Property.

“Declarant” shall mean and refer jointly to Roland Kalina and Theresa Kalina their heirs, successors, or assigns.

Declarant enjoys special privileges to help protect its investment in the property. These special rights are described in this Declaration. Many of these rights do not terminate until either Declarant: (i) has sold and settled all Lots, which may be created out of the Property; or (ii) voluntarily terminates these rights by a written instrument recorded in the Official Public Records of Fayette County, Texas.

“Design Guidelines” means the standards for design, construction, landscaping, and exterior items placed on any Lot adopted pursuant to Section 7.02(c) as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. Declarant may adopt the initial Design Guidelines.

“Development and Sale Period” means the period of time beginning on the date when this Declaration has been recorded in the Official Public Records of Fayette County, Texas, and ending at such time as Declarant no longer owns the Property, unless earlier terminated by Declarant. Declarant may terminate the Development and Sale Period by an instrument executed by Declarant and recorded in the Official Public Record of Fayette County, Texas. The Development and Sale Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape, and composition of the Property.

“Homebuilder” means an Owner who acquires a Lot for the construction of a single-family residence for resale to a third party.

“Improvement” means every structure and appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sports courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

“Lot” means any portion of the Property designated by Declarant or as shown as a subdivided Lot on a Plat.

“Manager” has the meaning as set forth in Section 4.05(h).

“Maximum Number of Lots” means the maximum number of Lots that may be created and made subject to the terms and provisions of the Declaration. The Maximum Number of Lots for the purpose of this declaration is fifteen (15).

“Members” means every person or entity that holds membership privileges in the Association.

“Mortgage” or **“Mortgages”** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

“Mortgagee” or **“Mortgagees”** means the holder(s) of any Mortgage(s).

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

“Plat” means a subdivision plat of any portion of the Property recorded in the Official Public Records of Fayette County, Texas, and any amendments thereto.

“Property” means Lots 1 through 10, Block 1, Lots 1 through 5, Block 2, Foster’s Branch Subdivision, Phase 1, a subdivision in Schulenburg, Fayette County, Texas, according to the plat recorded in the Official Public Records of Fayette County, Texas in Volume 2, Slide 204, Plat Records of Fayette County, Texas, subject to such additions thereto and deletions therefrom as may be made pursuant to Article 11 of this Declaration.

“Resident” means an occupant or tenant of a Lot, regardless of whether the person owns the Lot.

“Restrictions” means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, Community Manual, or in any rules and regulations promulgated by the Association, as adopted and amended from time to time. See Table 1 for a summary of Restrictions.

Declaration (recorded in the Official Public Records of Fayette County, Texas)	Creates obligations that are binding upon the Association and all present and future owners of Property.
Certification of Formation (filed with the Secretary of State)	Establishes the Association as a Texas nonprofit corporation.
Bylaws (adopted by the Board of the Association)	Governs the Association’s internal affairs, such as elections, meetings, etc.
Community Manual (adopted by the Board of the Association)	Establishes rules and policies governing the Association.
Design Guidelines (if adopted)	Governs the design and architectural standards for the Construction of Improvements and Modifications thereto.
Board Resolutions (adopted by the Board of the Association)	Establishes rules, policies, and procedures for the Association.

“Single Family Residential Use” means:

- (a) A residence occupied by a single family unit which may consist of the owner of the residence, his or her children and his or her parents; or
- (b) A residence occupied by no more than two unrelated individuals and lineal descendants thereof; or

- (c) A residence occupied by either the owner, the spouse of the owner, the parents of the owner, or the lineal descendant of the owner and their authorized guests, but which is not used by such persons as a rooming or boarding house for unrelated persons.

ARTICLE 2
GENERAL AND USE AND CONSTRUCTION RESTRICTIONS

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

2.01 General.

(a) Conditions and Restrictions. All Lots within the Property will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the restrictions.

(b) Ordinances. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with such ordinances and regulations. Please be advised that the Restrictions do not purport to list or describe each restriction which may be applicable to a Lot located within the Property. Each Owner is advised to review all ordinances, requirements, regulations, and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations, or encumbrances, which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

NOTICE

The Restrictions are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with the Restrictions, as they may change from time to time.

2.02 Conceptual Plans. All master plans, site plans, brochures, illustrations, information, and marketing materials relating to the Property (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and designs reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Homebuilder or other developer of any portion of the Property makes any representation or warranty concerning such land uses and designs, and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property will likely extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

2.03 Single-Family Residential Use. The Lots shall be used solely for private single family residential purposes and there shall not be constructed or maintained thereon more than one (stand alone) single family residence that is not more than two and one-half (2 ½) stories in height.

“Single Family Residential Use” means

- (a) A residence occupied by a single family unit which may consist of the owner of the residence, his or her children and his or her parents; or
- (b) A residence occupied by no more than two unrelated individuals and lineal descendants thereof; or
- (c) A residence occupied by either the owner, the spouse of the owner, the parents of the owner, or the lineal descendant of the owner and their authorized guests, but which is not used by such persons as a rooming or boarding house for unrelated persons.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot, except an Owner or Resident may conduct business activities within a residence so long as: (i) such activity complies with all the applicable zoning ordinances; (ii) the business activity is conducted without the employment of persons other than the Residents of the home constructed in the Lot; (iii) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business on any Lot, sound, or smell from outside the residence; (iv) the business activity does not involve door-to-door solicitation of residents within the Property; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the residence or Lot will be considered open to the public. The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Homebuilder.

Notwithstanding any provision in this Declaration to the contrary, until one year after the expiration or termination of the Development and Sale Period:

Declarant and/or its licensees may construct and maintain upon portions of the Property and any Lot owned by the Declarant such facilities and may conduct such activities which in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices.

2.04 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ACC; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the ACC. All subdividing of a Lot must meet all City of Schulenburg, Texas, ordinances and codes. The cost to subdivide including surveying and replatting are to be borne by the Owner. No such replatted lot shall be narrower than the narrowest lot shown on the Plat of the applicable phase of the subdivision.

2.05 Hazardous Activities. No activities may be conducted on or within the Property and no Improvements constructed on any portion of the Property, which, in the opinion of the ACC, are or might be unsafe or hazardous to any property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Property unless discharged in conjunction with an event approved in advance by the Board. No open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2.06 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Property, or the Improvements located thereon, without the prior written approval of the Board.

2.07 Mining and Drilling. No portion of the surface of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. The Owner may execute an Oil or Gas lease which allows the use of the subsurface for oil or gas exploration. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property by the Declarant. Furthermore, this provision will not be interpreted to prevent the drilling of water wells approved in advance by the ACC, which are required to provide water to all or any

portion of the Property. All water wells must be approved in advance by any applicable regulatory authority.

2.08 Noise. No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents. Exterior televisions and sound systems are permitted in backyards as long as the volume does not exceed the level of a normal human voice. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvements and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.09 Animals – Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Property (as used in this paragraph, the term “domestic household pet” shall not mean or include non-traditional pets such as pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys, or other exotic animals). The board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No owner may keep more than four (4) cats and dogs, in the aggregate, of which two (2) can be dogs, unless otherwise approved by the Board. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner’s residence, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches, or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed, and inoculated as required by law. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property.

2.10 Rubbish and Debris. All Lots shall at all times be kept in a clean, sanitary, and attractive condition. No Lot shall be used or maintained for storage of equipment, materials, nor as a dumping ground for rubbish, trash, garbage, or other waste. All household waste shall be kept only in sanitary containers provided, or approved, by the City of Schulenburg. No garbage cans or refuse containers shall be placed or permitted to remain at the front of a residence either within the street or on the

lot or right-of-way, except upon those days scheduled for garbage and refuse collection by the City or a privately contracted collector.

2.11 Maintenance. The Owner(s) of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean, and attractive condition at all times. The ACC, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this Section 2.11 has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the ACC, in its sole discretion:

- (i) Prompt removal of all litter, trash, refuse, and wastes.
- (ii) Lawn mowing.
- (iii) Tree and shrub pruning.
- (iv) Watering.
- (v) Keeping exterior lighting and mechanical facilities in working order.
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (vii) Keeping planting beds free of turf grass.
- (viii) Keeping sidewalks and driveways in good repair.
- (ix) Complying with all government, health, and police requirements.
- (x) Repainting of improvements.
- (xi) Repair of exterior damage, and wear and tear to Improvements.
- (xii) Maintaining and mowing the landscaping between the boundary of such Owner's Lot and the curb of any adjacent public right-of-way or street.
- (xiii) Repairing broken windows.
- (xiv) Repairing roofs that are missing shingles or roofs that are leaking.

Vacant Lot(s) are to be maintained in the same manner as Lot(s) with Improvements.

2.12 Antennas, Wires, and Lines. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, shall be erected, maintained, or placed on a Lot without the prior written approval of the ACC; provided, however, that:

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- (ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
- (iii) an antenna that is designed to receive television or radio broadcast signals;

(collectively, (i) through (iii) are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the ACC, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

All lines or wires for electricity, telephone, cable television, gas, or otherwise shall be placed underground. No such wires shall be shown on the exterior of any building unless the same shall be in a conduit attached to the building.

2.13 Location of Permitted Antennas. A permitted Antenna shall be in a location on the Lot where least visible from the street and the Property, other than the Lot. In order of preference, the locations of a Permitted Antenna, which will be considered least visible by the ACC, are as follows:

- (i) Attached to the back of the residence constructed on the Lot and the top of the antenna does not extend above the highest point of the roofline of the house.
- (ii) Any location in the back of the house that screens the antenna from view of adjacent Lots and the street.

Satellite dishes one meter or less in diameter, e.g., DirectTV or Dish satellite dishes are permitted, **HOWEVER**, you are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the ACC from time to time. Please contact the ACC for the current rules regarding installation and placement.

2.14 Signs. Unless otherwise prohibited by applicable law, no sign of any kind may be displayed to the public view on any Lot without the prior written approval of the ACC, except for,

- (i) signs which are permitted pursuant to the Design Guidelines or rules adopted by the ACC;
- (ii) signs which are part of Declarant’s overall marketing, sale, or construction plans or activities for the Property; Declarant shall be allowed to construct and maintain a sign at the entry of the Foster’s Branch Subdivision in the public street;
- (iii) one (1) temporary “For Sale” or “For Lease” sign placed on the Lot. The sign will be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade at the spot where the sign is located may not exceed four (4) feet. The sign must be removed within two (2) business days following the sale or lease of the Lot;
- (iv) political signs may be erected provided the sign: (i) is erected no earlier than the 90th day before the date of the election to which the sign relates; (ii) is removed no later than the 10th day after the date of the

election to which the sign relates; and (iii) is ground mounted. The sign will be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade at the spot where the sign is located may not exceed three (3) feet. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited;

(v) permits as may be required by legal proceedings or a governmental entity;

(vi) a “no soliciting” and “security warning” sign near or on the front door to their residence, provided that the sign may not exceed twenty-five (25) square inches.

(vii) “spirit” signs representing school sports teams are permitted. One sign per student residing in the Residence on the Lot is allowed. The sign will be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade at the spot where the sign is located may not exceed three (3) feet.

(viii) no signs shall be erected on the roof of any structure.

2.15 Tanks, HVAC Equipment, and Window Air Conditioners. The ACC must approve any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil, or LPG and including swimming pool filter tanks. No elevated tanks of any kind may be erected, placed, or permitted on any Lot without the advance written approval of the ACC. All permitted tanks must be screened from view in accordance with a screen plan approved in advance by the ACC. This provision will not apply to a tank used to operate a standard residential gas grill. All tanks must comply with City of Schulenburg regulations. All exterior heating, ventilating, and air-conditioning compressor units and equipment shall be located at the rear of the residence or at the side of the Lot screened from view. Window unit air-conditioner units seen from any street are not allowed.

2.16 Temporary Structures, Storage Buildings, and Outdoor Kitchens. No temporary structure, tent, shack, or other temporary building, Improvement, or structure shall be placed upon the Property without the prior written approval of the ACC; provided, however, that temporary structures necessary for storage of tools and equipment and for office space for Homebuilders, architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner will be permitted, without the prior written approval of the ACC, to erect one (1) permanent outbuilding on the Owner’s Lot if: (i) the surface area of the pad on which the outbuilding is placed is less than or equal to one hundred sixty (160) square feet; (ii) the height of the walls of the outbuilding, is less than or equal to ninety-six (96) inches; (iii) the outbuilding is constructed in an area completely enclosed by fence not less than six

(6) feet in height; (iv) the roof of the outbuilding is constructed in a gable-style with the same roof pitch as the residence located on the Lot; (v) the exterior of the outbuilding is constructed of the same or substantially similar materials and color as the exterior of the residence located on the Lot; (vi) the outbuilding is constructed on the rear one-third of the Lot; (vii) the outbuilding is not constructed any closer than six (6) feet to the side and rear fence. No outbuilding may be constructed within any easement areas. No outbuilding shall be permitted to be built on a Lot until construction of a residence has begun. The ACC will be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

2.17 Unsightly Articles, Vehicles, Trailers. No article deemed to be unsightly by the ACC shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, recreational vehicles, all-terrain vehicles and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles, and facilities for hanging, drying, or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse, or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No vehicles may be parked on front lawn areas. No (i) racing vehicles or (ii) other vehicles (including without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag or inspection shall be permitted to remain visible on any Lot or to be parked on any roadway within the Property.

2.18 Mobile Homes, Travel Trailers, and Recreational Vehicles. No mobile homes, travel trailers, or recreational vehicles shall be parked or placed on any Lot or used as a permanent residence or as a temporary residence for a period longer than seventy-two (72) hours. Mobile homes, travel trailers, and recreational vehicles must be stored in the rear of the Lot or inside the garage.

2.19 Basketball Goals - Permanent and Portable. Permanent basketball goals are permitted. Portable basketball goals are permitted but must be stored in the rear of the Lot or inside garage from sundown to sunrise. Basketball goals must be properly maintained and painted, with the net in good repair.

2.20 Compliance with Restrictions. Each owner, his or her family, residents of a Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of the Restrictions and may result in a fine, penalty, assessment, or cost against the Owner in accordance with this Declaration and shall give rise to a cause of action to recover sums

due for damages or injunctive relief, or both, maintainable by the Declarant, the Manager, the Board on behalf of the Association, the ACC, or by an aggrieved Owner. No Residential Dwelling, building, or structure shall be permitted to fall into disrepair, and each such Residential Dwelling, building, or structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner of the Lot at such Owner's sole cost and expense. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the Provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half (1½) percent per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **Each such Owner shall indemnify and hold harmless the Association and its officers, directors, employees, and agents from any cost, loss, damage, expense, liability, claim, or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.20 (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim, or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence, or similar negligence short of actual gross negligence.**

2.21 Liability of Owners for Damage to Other Lots. No Owner shall in any way alter, modify, add to, or otherwise perform any work upon any Lot not owned by the Owner without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to: (i) any Lot not owned by Owner and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse, or negligence of such Owner or Owner's family, or by any tenant or other Occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an Individual Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectible in the same manner as provided in this Declaration.

2.22 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of the Restrictions. Any Owner acquiring a Lot in reliance on the Restrictions shall assume all risks of the validity and enforceability thereof, and by acquiring the Lot, agrees to hold Declarant harmless therefrom.

2.23 Party Wall Fences. A fence or wall located on or near the dividing line between two (2) Lots and intended to benefit both Lots constitutes a “Party Wall” and, to the extent not inconsistent with the provisions of this Section 2.23, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

(a) **Encroachments and Easement.** If the Party Wall is on one Lot due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this Section 2.23. Each Lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

(b) **Right to Repair.** If the Party Wall is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired Party Wall.

(c) **Maintenance Costs.** The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Public Records of Fayette County, Texas, and has the right to foreclose the lien as if it were a mechanic’s lien. The right of an Owner to require contribution from another Owner under this Section is appurtenant to the Lot and passes to the Owner’s successors in title.

(d) **Alterations.** The Owner of a Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining Lot. The Party Wall will always remain in the same location as when erected unless otherwise approved by the Owner of each Lot sharing the Party Wall and the ACC.

2.24 Playscapes, Sports Courts, and Recreational Facilities. Playscapes and Sports Courts are permissible at the sole discretion of the ACC. If allowed, these facilities must be sited at the rear or side of the residence and screened so as to minimize the visual and audio impact of the facility on adjacent properties. Such siting and screening must be approved in advance and in writing by the ACC. Sport Courts may not be lighted or enclosed with netting. Tennis courts are not permitted. Barbeque grills or other types of outdoor cooking equipment shall be located at the rear or side of the residence and screened from view.

2.25 Decorations and Lighting. Yard ornaments, including but not limited to, birdhouses, fountains, sculpture, statues, and banners require ACC approval. Holiday yard ornaments and lights are permitted up to thirty (30) days prior to the Applicable Holiday, but shall be removed within thirty (30) days after the Applicable Holiday. Outside lighting fixtures shall be placed so as to illuminate only the yard of the applicable Lot and so as not to affect or reflect into surrounding residences or yards.

2.26 Exterior Colors. Iridescent colors or tones considered to be brilliant are not permissible. For the purpose of this paragraph, "brilliant" is construed to mean a color that is not in the general texture of both the overall community and natural setting of the Subdivision. The purpose of this covenant is to maintain harmony of the exterior paint colors of the buildings throughout the Subdivision with earth tones and forest tones. All exterior finishes should be in subdued earth tones such as gray, green, brown, muted blues or reds, or other similar colors. Garage doors should be painted a muted color and blend with other colors of the home, as prescribed herein.

ARTICLE 3 **USE AND CONSTRUCTION RESTRICTIONS**

3.01 Design Guidelines. The ACC, with the written approval of the Declarant (during the Development and Sale Period), may adopt Design Guidelines as set forth herein. Any and all Improvements erected, placed, constructed, painted, altered, modified, or remodeled on any portion of the Property shall strictly comply with the requirements of the Design Guidelines, unless a variance is obtained pursuant to the Declaration.

3.02 Approval for Construction. Unless prosecuted by the Declarant, no Improvements shall be constructed upon any Lot without the prior written approval of the ACC.

3.03 Masonry Requirements. A minimum of one hundred (100) percent of the exterior of the front wall and fifty (50) percent of the two side walls of the first floor of the residence on each Lot, inclusive of doors, windows, and similar openings, shall be constructed of masonry veneer, exclusive of roofs, eaves, soffits, gables, garage doors, and trim work. For purposes of the section, masonry or masonry veneer includes brick, rock, stone, or stucco. Fiber cement siding does not meet the definition of masonry or masonry veneer for this section. No concrete, concrete block, or cinder block shall be used as an exposed masonry or masonry veneer surface of a residence or building.

3.04 Minimum Square Footage and Frontage. The minimum (living area) square footage for each residence, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages, shall be fifteen hundred (1500) square feet. Residences constructed on corner Lots shall have a presentable frontage on all streets on which the particular corner Lot abuts.

3.05 Rentals. Nothing in the Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided, however, that all rentals must be for terms of at least six (6) months. All leases shall be in writing and shall require that the Owner (lessor) state in writing in the lease that the lessee shall abide by all terms in this Declaration. The Owner must provide to its lessee copies of the Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. No owner shall be permitted to lease less than the entire Lot.

3.06 Garages and Carports. Each residence constructed upon a Lot shall have a private garage for not less than two (2) automobiles with a maximum of three (3) automobiles. The location, orientation, and opening of each garage to be located on a Lot shall be approved in advance of construction by the ACC. All garages shall be maintained for the parking of automobiles and storage, and no garage may be permanently enclosed or otherwise used for habitation. Carports of any kind are not permitted.

3.07 Windows. All windows on each residence shall have a consistent design throughout the residence and shall comply with any other applicable requirements that may be set forth in the Design Guidelines. No foil paper, cardboard, plywood, newspaper, sheets or other bed linens, or other unsuitable materials will be allowed to screen or cover windows either internally or externally. The Board's decision about the suitability of window coverings shall be final. All broken windows or cracked windows shall be repaired immediately.

3.08 Fences, Driveways, Sidewalks, Trees, and Mailboxes. All fences and walls shall comply with all applicable ordinances. Unless otherwise approved by the ACC, no fence, wall, or hedge will be erected or maintained on any Lot nearer to the street than the front elevation of the residence constructed on the Lot, except for fences erected in conjunction with the model homes or sales offices. The ACC will have the sole discretion to determine the front elevation of the residence for the purpose of this Section 3.08. Fences constructed on corner Lots may be installed five (5) feet from the sidewalk and/or curb along the side yard adjacent to the street provided that such fencing complies with applicable governmental ordinances. Unless otherwise approved by the ACC, all perimeter fences and other fences visible from a street will be constructed of masonry, cedar, treated pine, or other materials as may be approved from time to time by the ACC. All such fences will be up to seven (7) feet in height unless otherwise approved by the ACC. The "good side" of the fence (the side that shows fence slats or pickets only) shall always face the public street closest to such fence. Chain link fences, metal cloth fences, or agricultural fences are allowed only if fully screened from public view (e.g., "dog runs"). Notwithstanding the foregoing, the ACC is empowered to waive the aforesaid fence limitations in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive, or advanced building concept design or material and the resulting decorative

wall and or retaining wall will not detract from the general appearance of the neighborhood. In addition, nothing herein contained shall be deemed as prohibiting or limiting Declarants right and privilege to erect an entry wall or fence and/or perimeter wall or fence serving the Subdivision, the style and composition of such walls or fences, if applicable, to be determined solely by the Declarant. No fence, wall, hedge, shrub planting, or tree, which obstructs sight lines, shall be placed or permitted on any corner Lot. No tree shall be permitted to remain within such intersections, unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

The Owner of each Lot on which a residence is built shall construct and maintain at his expense a concrete driveway from his garage to an abutting street, including the portion of the street right-of-way. Only one (1) curb cut entrance per lot is allowed. The Owner shall repair at his expense any damage to the street caused by connecting the driveway thereto.

The Owner of each Lot on which a residence is built shall construct and maintain at his expense a concrete sidewalk from his front entrance/porch to an abutting street, including the portion of the street right-of-way. The sidewalk shall be a minimum of three (3) feet wide.

All mailboxes and mailbox holders shall be of a standard design accepted by the ACC and adhering to the applicable specifications of the U.S. Postal Service. All mailboxes shall be located as directed by the U.S. Postal Service. Each Lot Owner shall be responsible for the maintenance of his/her mailbox.

Mailboxes shall include cluster mailboxes if required by the US Post Office.

3.09 Building Restrictions. Only site built homes are permitted. No home of any type or style may be moved onto any Lot. No “barndominium” style homes or log style homes are permitted. Only new building materials shall be used for constructing any Improvements. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings, and exterior stairways shall blend or be painted to blend with the color of the surface from which they project. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including without limitation, the exterior surfaces of any Improvements. No metal panel such as R-Panel, U-Panel, M-Panel, Corrugated Panel, or other similar panels shall be used on exterior wall surfaces of the Residence.

3.10 Trash Containers. Trash containers and recycling bins must be stored in one of the following locations:

- (a) inside the garage of the single-family residence constructed on the Lot; or
- (b) behind the single-family residence of fence constructed on the Lot in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent lot.

3.11 Drainage. There shall be no interference with the established drainage patterns over any of the Property, including the Lots, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved in

advance by the ACC. Specifically, and not by way of limitation, no improvement, including landscaping, may be installed which impedes the proper drainage of water between Lots. No owner shall channel water unless the construction of said channel is approved in advance by the ACC and any governmental agency under whom this responsibility falls.

3.12 Construction Activities. This Declaration will not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant or a Homebuilder) upon or within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the ACC in its sole and reasonable judgment, the ACC will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any portion of the Property, the ACC may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all reasonable expenses incurred in connection therewith. Any portable toilet placed on any jobsite shall be cleaned thoroughly at least every seven (7) days or more frequently as needed. All such portable toilets will be placed in a location to minimize any nuisance or injury to any adjacent Lot.

Any construction commenced on a residence as provided in this Declaration shall be substantially completed within eight (8) months from the date construction is commenced. If a period longer than eight (8) months is anticipated to construct the home, the Owner must present documentation spelling out the reason for the extended construction period to the ACC for approval.

No Homebuilder or Owner shall allow dirt, mud, gravel, or other substances to collect or remain on any street.

The hours of construction are the following:

- (a) Monday through Friday. 7:00 A.M. to 6:00 P.M.
- (b) Saturday. 8:00 A.M. to 6:00 P.M.
- (c) Sunday. No work is allowed unless completely inside the residence, and no sound or smell is apparent on any Lot or Property. The hours are 9:00 A.M. to 5:00 P.M.
- (d) Reasonable allowances will be made for necessary adjustments to the construction hours for occasional instances such as concrete pouring and finishing.

3.13 Roofing. Roof slopes shall not be less than a 7:12 pitch. Architectural appendages may have roof slopes of not less than a 4:12 pitch. Porch roof slopes shall have a roof slope of not less than a 3:12 pitch. In order to establish harmony within the community, shotgun, flat, mansard, gambrel, and A-frame roof styles will not be allowed.

The roofs of all buildings shall be constructed or covered with asphalt shingles, wood shingles, wood shakes, tile shingles, or metal with a rating of 30 years or greater. Metal roofing with "R-panel", "A-panel", "Corrugated panel", or similar profiles are not allowed. Any wood shingles must be rated by the Texas Department of Insurance as meeting fire retardant standards. In addition, roofs of buildings may be constructed with "Energy Efficiency Roofing" with the advance written approval of the ACC. For the purpose of this Section, "Energy Efficiency Roofing" means shingles that are designed primarily to (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. The ACC will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in the Restrictions. ACC approval is required for rooftop equipment and accessories. Any solar equipment and skylights shall be incorporated into the structure and building mass and be architecturally compatible with the residence. No plumbing or heating vents, stacks, and other projections of any nature shall be placed on the roof on the front of any Residence. All such vents, stacks, and other projections from the roof of any Residence shall be located on the rear roof of such Residential Dwelling and shall be painted the same color as the roofing material, unless otherwise approved by the ACC. Exposed flashings, gutters, and downspouts shall be painted to match or blend with the fascia and siding material of the Residence.

3.14 Swimming Pools. Above ground or temporary swimming pools are prohibited. Any swimming pool constructed on a lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool, which at a minimum satisfies all applicable governmental requirements. Nothing in the Section 3.14 is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable governmental regulations concerning swimming pool enclosure requirements. The swimming pool must be treated with chemicals so that the pool is at all times usable, and the water is at all times clear.

3.15 Setback Lines. All buildings or other structures, permanent or temporary, habitable or not, must be constructed, placed, and maintained in conformity with platted setback lines. In the event of any dispute regarding the location of the side, rear, or front boundary of a Lot, such dispute shall be resolved by the ACC in its sole and absolute discretion. Notwithstanding the foregoing, approved outbuildings may be placed on a Lot in accordance with the provisions of Section 2.16 hereof. No balcony, window, cornice, eave roof, or roof overhang of any kind may extend more than thirty (30) inches beyond the building setback lines herein prescribed. The ACC is empowered to grant variances from the setback requirements hereinabove provided in those instances, where in the opinion of the ACC, the proposed location of the building or other structure will not detract from the appearance and value of other Lots and will not have a detrimental

effect on the aesthetic integrity and harmony of the Property. The side Building setback on interior lot lines is 10'.

**ARTICLE 4
FOSTER'S BRANCH HOMEOWNER'S ASSOCIATION, INC.**

4.01 Organization. The association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.02 Membership.

Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot or in any way transferred, pledged, mortgaged, or alienated, except together with the title to such Lot.

**If you acquire a Lot you automatically become a member of the Association.
Membership is Mandatory.**

4.03 Governance. The Board will consist of at least three (3) Persons elected at the annual meeting of the Association or at a special meeting called for such purpose. Notwithstanding the foregoing provision or any provision in the Declaration to the contrary, until one hundred twenty (120) days after seventy-five (75) percent of the Maximum Number of Lots have been made subject to the terms and provisions of this Declaration and have conveyed by Owners other than the Declarant, Declarant will appoint and remove all members of the Board. Within one hundred and twenty (120) days after seventy-five (75) percent of the Maximum Number of Lots have been made subject to the terms and provisions of the Declaration and have been conveyed to Owners other than the Declarant, the Board will call a meeting of Members of the Association for the purpose of electing one-third (1/3) of the Board (the "Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant may appoint and remove two-thirds (2/3) of the Board from and after the Member Election Meeting until expiration or termination of Development and Sale Period. The Board Members shall not be compensated unless approved by a vote of seventy-five (75) percent of the Members.

4.04 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board (except as provided by Section 4.03) and on all other matters to be voted on by the Members will be calculated as set forth below.

- (a) The Owner of each Lot will have one (1) vote for each Lot so owned.
- (b) In addition to the votes to which Declarant is entitled by reason of Section 4.04(a), for every one (1) vote outstanding in favor of any other person or entity,

Declarant will have four (4) additional votes until the expiration of the Development and Sale Period.

(c) When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing by a majority of said undivided owners to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this Section 4.04.

4.05 Powers. The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) Rules, Bylaws, and Community Manual. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, Bylaws and Community Manual not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property (including the operation, maintenance, and preservation thereof) or the Association.

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect assessments, as provided in Article 6 below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot and into any Improvement thereon for the purpose of inspecting the Lot, enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in Article 6 hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors, or assigns. The

Association may not alter or demolish any Improvements on any Lot in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Association or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **Each such Owner and Resident will indemnify and hold harmless the Association, its officers, directors, employees, and agents from any cost, loss, damage, expense, liability, claim, or cause of action incurred or that may arise by reason of the Association’s acts or activities under this Section 4.05(e) (including any cost, loss, damage, expense, liability, claim, or cause of action arising out of the Association’s negligence in connection therewith) except for such cost, loss, damage, expense, liability, claim, or cause of action arising by reason of the Association’s gross negligence or willful misconduct. “Gross Negligence” does not include simple negligence, contributory negligence, or similar negligence short of actual gross negligence.**

(f) Legal and Accounting Services. To retain and pay for legal, accounting, architectural, engineering, professional, or other similar services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of way or mortgages, out of, in, on, over, or under any Property for the purpose of construction, erecting, operating, or maintaining the following:

- (i) Any purpose necessary to carry out this Declaration;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails, and paths;
- (iii) Lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; and/or
- (v) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use of occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by governmental authority.

(h) Manager. To retain and pay for the services of a person or firm (the “Manager”), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Board may delegate any other duties, powers, and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees, or any other fees associated with the provision of management services to the Association or its Members. **The Members hereby release the Association and the Members of the Board and Committee Members from liability for any omission or improper exercise by the Manager of any such duty, power, or function so delegated.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening, and all other utilities, services, repair, and maintenance for any portion of the Property.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Restrictions or as determined by the Board.

(k) Construction. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board.

(l) Contracts. To enter in Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members.

(m) Property Ownership. To acquire, own, and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift, or otherwise.

4.06 INTENTIONALLY DELETED.

4.07 Indemnification. To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant, or agent of the Association against expense, including attorneys' fees, reasonably incurred by him in connection with such action, suit, or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he: (a) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association; or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

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

4.09 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development and Sale Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations, and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development and Sale Period.

ARTICLE 5 INSURANCE

5.01 Insurance. Each Owner will be required to purchase and maintain commercially standard insurance (to the extent of its full fair market value) on the Improvements located upon such Owner's Lot. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the "Board, in its discretion", may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance. During the Development and Sale Period, Declarant reserves the right to satisfy the insurance obligations of the Association with a master insurance program controlled by Declarant.

The Association will not provide insurance which covers any Owner's Lot or any Improvements or personal property located on a Lot.
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5.02 Restoration. In the event of any fire or other casualty, unless otherwise approved by the ACC, the Owner will promptly repair, restore, and replace any damaged or destroyed structures to the same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration, or replacement will be commenced and complete in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration, or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete, or effect such repair, restoration, replacement, or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation, or administrative, or public body or tribunal from commencing such repair, restoration, replacement, or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand

by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half (1 ½) percent per month) will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including but not limited to, foreclosure of such liens against the Owner's Lot. **Each such Owner will indemnify and hold harmless the Association, its officers, directors, committee members, employees, and agents from any cost, loss, damage, expense, liability, claim, or cause of action incurred or that may arise by reason of the Association's acts or activities under this section 5.02, except for such cost, loss, damage, expense, liability, claim, or cost of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence, or similar negligence short of actual gross negligence.**

5.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced, or cleaned up by the Association pursuant to the rights granted under this Article 5, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, or replacements exceeds any insurance proceeds allocable to such repair, restoration, or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 6 COVENANTS FOR ASSESSMENTS

6.01 Assessments.

(a) Established by Board. Assessments established by the Board pursuant to the provisions of this Article 6 will be levied against each Lot in amounts determined pursuant to Section 6.07(b) below. The total amount of Assessments will be determined by the Board pursuant to Section 6.03, 6.04, 6.05, and/or 6.06.

(b) Personal Obligation: Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

(c) Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

6.02 Maintenance Fund. The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Declaration. The funds of the Association may be used for any purpose authorized by the Restrictions and the Texas Business Organizations Code, as each may from time to time be amended.

6.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Declaration, including but not limited to, the cost of all management, repair, and maintenance, the cost of providing maintenance, landscaping, electricity, and water for the sign at the subdivision entry, the cost of administering and enforcing the covenants and restrictions contained herein, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. Subject to the provisions of Section 6.07(e), Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner, subject to the provisions of Section 6.07(e). All such regular Assessments will be due and payable to the Association annually on or before the first day of the month at the beginning of the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion.

6.04 Initial Assessment. Each Owner of a Lot will pay a one-time initial assessment to the Association in the amount of Two Hundred and No/100 Dollars (\$200.00) payable upon closing of the acquisition of each Lot by the Owner (other than upon closing of the acquisition of a Lot to or from the Declarant or a Homebuilder). The initial assessment hereunder will be due and payable by the transferee to the Association immediately upon each transfer of title to the Lot, including upon the transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development and Sale Period, and thereafter the Board, will have the power to waive the payment of any initial Assessment attributable to a Lot (or all Lots) by the recordation of a waiver of notice in the Official Public Records of Fayette County, Texas, which waiver may be temporary or permanent.

6.05 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration. The amount of any special Assessments will be at the reasonable discretion of the Board. In addition to the special Assessments authorized above, the Association may, in any fiscal year, levy a special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital

improvement upon the Property. Any special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair, or replacement of capital improvement upon the Property will be levied against all Owners based on Assessment Units.

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

6.07 Amount of Assessment.

(a) Assessments to be Levied. The Board shall levy Assessments against each "Assessment Unit" (as defined in Section 6.07(b) below). Unless otherwise provided in the Declaration, Assessments levied pursuant to Section 6.03 and Section 6.05 shall be levied uniformly against each "Assessment Unit" allocated to a Lot.

(b) Assessment Unit. Each Lot shall constitute one "Assessment Unit" unless otherwise provided in Section 6.07(c).

(c) Assessment Exemption. Notwithstanding anything in this Declaration to the contrary, no Assessments shall be levied upon Lots owned by Declarant. Following the sale of a lot by Declarant to a third party, a pro-rated assessment shall be due to the Association by the grantee of said lot.

(d) Other Exemptions. Declarant may, in its sole discretion, elect to (i) exempt any un-platted or unimproved portion of the Property or any Lot from any Assessments levied or charged pursuant to this Article 6; or (ii) delay the levy of Assessments against any unplatted, unimproved, or improved portion of the Property. Declarant or the Board may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

(e) Maximum Annual Assessment.

(i) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Declarant), the maximum regular annual Assessment (excluding the initial

assessment) shall be TWO HUNDRED DOLLARS AND NO/100 DOLLARS (\$200.00).

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Declarant), the maximum regular annual Assessment may be increased each year not more than ten (10) percent (such percent increase may be cumulative from year to year) above the maximum regular annual Assessment for the previous year without a vote of the Members.

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Declarant), the maximum regular Assessment may be increased above ten (10) percent if approved by Members entitled to cast at least sixty-seven (67) percent of the number of votes entitled to be cast by the Members of the Association.

(iv) The Board shall fix the regular annual Assessment at an amount not in excess of the maximum.

6.08 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under applicable law.

6.09 Owner's Personal Obligation - Interest. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefore (or if there is no such highest rate, then at the rate of one and one half (1 ½) percent per month, together with all costs and expenses of collection, including reasonable attorney fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner.

6.10 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article is, together with late charges as provided in Section 6.08 and interest provided in Section 6.09 hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to Section 6.01(b) above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives,

successors, or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for (i) tax liens; (ii) all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question; and (iii) home equity loans or home equity lines of credit which are secured by a second mortgage lien or second deed of trust lien of record; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was recorded in the Official Public Records of Fayette County, Texas, before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer of the Association. The Association may at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the officers of the Association and will be recorded in the Official Public Records of Fayette County, Texas. Each owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, such Owner will be required to pay the cost, expenses, and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this Section 6.10, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer of the Association. Except as otherwise provided by applicable law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this

Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

6.11 Exempt Property. The following area within the Property will be exempt from the Assessments provided for in this Article:

- (a) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Public Records of Fayette County, Texas;
- (b) Any portion of the Property owned by Declarant.

6.12 Fines and Damages Assessment.

(a) Board Assessment. The Board may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, an occupant of the Owner's Lot, or the Owner or occupant's family, guests, employees, contractors, agents, or invitees. Any fine and/or charge for damage levied in accordance with this Section 6.12 will be considered an Individual Assessment pursuant to Article 6 of this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of the Property or any facilities located by the Owner or the Owner's family, guests, agents, occupants, or tenants. The Association, acting through an Officer, Board Member, or Manager will have authority to send notices to alleged violators, informing them of their violation and asking them to comply with the rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt and/or amend a schedule of fines.

(b) Procedure. The procedure for assessment of fines and damage charges will be as follows:

- (i) the Association, acting through an officer, Board member or Manager, must give the Owner written notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;

(ii) the written notice of the fine or damage charge must describe the violation or damage;

(iii) the written notice of the fine or damage charge must state the amount of the fine or damage charge;

(iv) the written notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and

(v) the written notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation (if the violation is capable of being remedied) and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

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

(d) Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in Section 6.09 hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to Section 6.01(b) of the Declaration. Unless otherwise provided in this Section 6.12, the fine and/or damage charge will be considered an Individual Assessment for the purpose of this Article, and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this Article 6. Written notice of such lien may be filed in the Official Records of Fayette County, Texas.

**ARTICLE 7
ARCHITECTURAL CONTROL COMMITTEE**

Declarant has a substantial interest in ensuring that Improvements within the Property maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in Section 7.02(a) below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a single person to exercise the rights of the ACC.

7.01 Construction of Improvements. No improvement may be erected, placed, constructed, painted, altered, modified, or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC.

7.02 Architectural Control Committee.

(a) Composition. The ACC will be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant may delegate this right to the Board by written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the ACC. Any delegation by Declarant of the right to appoint and remove all members of the ACC may be withdrawn until Declarant's right to appoint members of the Board pursuant to Section 4.03 has terminated. If Declarant withdraws its delegation to the Board of the right to appoint and remove all members of the ACC, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant's right to appoint all members of the ACC will automatically be assigned to the Board upon the expiration of twelve (12) months after the expiration of the Development and Sale Period. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the ACC. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the ACC unless the sub-committee exercising such duties and responsibilities is dissolved by Declarant. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with Declarant until such time as Declarant has delegated its right to appoint members of the ACC to the Board. The ACC will have the right to employ consultants and advisors, as it deems necessary or appropriate.

(b) Submission and Approval of Plans and Specification. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with Section 7.02(c) to the ACC at the offices of Declarant, at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a majority of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements, or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may

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

(c) Design Guidelines. Declarant may adopt the initial Design Guidelines, and during the Development and Sale Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines. Upon expiration or termination of the Development and Sale Period, the ACC or any sub-committee thereof created pursuant to Section 7.02(a), will have the power from time to time, to amend, modify, or supplement the Design Guidelines; provided, however, that any amendment to the Design Guidelines made by a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee, and during the Development and Sale Period, any such amendment, modification, or supplement must be approved in advance and in writing by the Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of the Declaration will control. In addition, the ACC will have the power and authority to impose a fee payable to the Association for the review of plans, specifications, and other documents and information submitted to it, pursuant to the terms of this Declaration. Such charges will be held by the Association and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC may be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(d) Actions of the Architectural Control Committee. The ACC may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the ACC, except the granting of variances. In the absence of such designation, the vote of a majority of all of the members of the ACC taken at a duly constituted meeting will constitute an act of the ACC.

(e) Failure to Act. In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails either to approve or reject such plans and specifications for a period of sixty (60) days following such submission, rejection of such plans and specifications will be presumed. In furtherance, and not in limitation of the foregoing, any failure of the ACC to act upon a request for a variance

will not be deemed a consent to such variance, and the ACC's written approval of all requests for variances will be expressly required.

(f) Variances. The ACC may grant variance from compliance with any of the provisions of the Design Guidelines or this Declaration, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, setbacks, building envelopes, colors, materials, or land use. All variances must be evidenced in writing and must be signed by at least a majority of the member of the ACC. Each variance must also be recorded in the Official Public Records of Fayette County, Texas; provided, however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the ACC, including the Declarant or its designee, the Association, or the Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the Design Guidelines.

(g) Duration of Approval. The approval of the ACC of any plans and specifications and any variances granted by the ACC, will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion within either (i) one year after issuance of approval of such plans and specifications; or (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this Section 7.02(g) and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(h) No Waiver of Future Approvals. The approval of the ACC to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the ACC.

(i) Non-Liability of Committee Members. **NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE, OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL**

COMMITTEE'S DUTIES UNDER THIS DECLARATION, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT OR BAD FAITH OF THE ARCHITECTURAL CONTROL COMMITTEE OR ONE OR MORE OF ITS MEMBERS, AS THE CASE MAY BE.

**ARTICLE 8
MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots within the Property. The provisions of this Article apply to the Declaration and the Bylaws of the Associations.

8.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or occupant which is not cured with sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

8.02 Examination of Books. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

8.03 Taxes, Assessments, and Charges. All taxes, assessments, and charges that may become liens prior to first lien mortgages under applicable law will relate only to the individual Lots and not to any other portion of the Property.

**ARTICLE 9
GENERAL PROVISIONS**

9.01 Terms. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Public Records of Fayette County, Texas, and continuing through and including January 1, 2067, after

which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least seventy (70) percent of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Record of Fayette County, Texas. Notwithstanding any provision in this Section 9.01 to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

9.02 Subsidies. No Lot may be used for subsidized housing such as Section 8 housing (42 U.S.C. 1437f).

9.03 Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Fayette County, Texas, of an instrument executed and acknowledged by (i) Declarant acting alone and unilaterally until expiration of the Development and Sale Period; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Members entitled to cast at least sixty-seven (67) percent of the number of votes entitled to be cast by members of the Association. Notwithstanding the foregoing provisions, during the Development and Sale Period, no amendment will be effective without the written consent of Declarant, its successors, or assigns. Specifically, and not by way of limitation, Declarant may unilaterally amend this Declaration (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on Lots; or (d) to comply with any requirements promulgated by a local, state, or governmental agency, including for example, the Department of Housing and Urban Development.

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

9.05 Enforcement. The Association or Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants,

reservations, liens, charges, and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration will not constitute a waiver of the right to enforce such right, provision, covenants, or condition in the future.

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

9.07 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

9.08 Conflicts. If there is any conflict between the provisions of this Declaration, the Certificate, the Bylaws, or any rules and regulations adopted pursuant to the terms of such documents, the provisions of this Declaration will govern.

9.09 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

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

9.11 INTENTIONALLY DELETED.

9.12 No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Property or any part will be permitted, nor will any person acquiring any interest in the Property or any part seek any such judicial partition unless the Property in question has been removed from the provisions of this Declaration pursuant to Section 11.04 below. This Section 9.12 will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from

acquiring title to real property that may or may not be subject to this Declaration, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

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

9.14 View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space within the Property will be preserved without impairment. Neither the Declarant, the ACC, nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Property) will have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

9.15 Safety and Security. Each Owner and Resident of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

ARTICLE 10 EASEMENTS

10.01 Right of Ingress and Egress. The Property shall be subject to a perpetual non-exclusive easement for the installation and maintenance, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the right, but not the obligation, to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Lots within the Property. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through the Association and paid for as part of the Assessments or directly to

Declarant, any affiliate of Declarant, or a third party, by the Owner who receives the services. The Community Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell, or assign all or any portion of the Community Systems or all or any portion of the rights, duties, or obligations with respect thereto, to the Association or to any Person. The rights of Declarant with respect to the Community Systems installed by Declarant and the services provided through such Community Systems are exclusive, and no other Person may provide such services through the Community Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in cable television and other Community Services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount, or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then provider of such services.

10.02 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of the Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations, and grants for the purpose of most efficiently and economically developing the Property.

10.03 Utility Easements. Declarant hereby reserves unto itself and Declarant's successors and assigns a perpetual non-exclusive easement over and across the Property for (i) the installation, operation, and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation, and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security, and similar services to serve the Property and any other property owned by Declarant; and (iii) the installation, operation, and maintenance of walkways, pathways, and trails, drainage systems, street lights, and signage to serve the Property and any other Property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates, or maintains the facilities and Improvements described in (i) through (iii) of this Section 10.03. The exercise of the easement reserved herein will not extend to permitting entry into any residence nor will it reasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

10.04 Subdivision Entry and Fencing Easement. Declarant reserves for itself and the Association an easement over and across the Property for the installation, maintenance, repair, or replacement of certain subdivision entry facilities and fencing which serves the Property. Declarant will have the right, from time to time, to record a

written notice in the Official Public Records of Fayette County, Texas, which identifies the subdivision entry facilities fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities and/or fencing by written notice recorded in the Official Public Records of Fayette County, Texas. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

10.05 Landscape and Monument Sign Easement. Declarant hereby reserves for itself and the Association, an easement over and across the Property for the installation, maintenance, repair, or replacement of a monument sign which serves the Property. Declarant will have the right, from time to time, to record a written notice in the Official Public Records of Fayette County, Texas, which identifies those portions of the Property to which the easement reserved hereunder applies. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

10.06 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency, or death of an Owner, Mortgagee, and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. The aforesaid power shall be vested in Declarant, its successors, and assigns, for a period of twenty-five (25) years from the date the first Lot is conveyed to an individual purchaser, or until the expiration or termination of the Development and Sale Period, whichever occurs first. Declarant hereby reserves for itself, its successors, and assigns the right to execute on behalf of each Owner, Mortgagee, and third party claiming a legal or equitable interest in the Property, any such agreements, documents, amendments, or supplements to the Restrictions which may be required by any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans (including for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Property or by any title insurance company selected by Declarant to insure title to any portion of the Property.

ARTICLE 11 DEVELOPMENT RIGHTS

11.01 Development by Declarant. It is contemplated that the Property will be developed pursuant to a coordinated plan, which may from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to create and/or designate Lots and to subdivide with respect to any of the Property pursuant to the terms of this Section 11.01, subject to any limitations imposed on portions of the Property by any applicable Plat. These rights may be exercised with respect to any portions of the Property. As each area is developed or dedicated, Declarant may designate the use, classification, and such additional covenants, conditions, and restrictions, as Declarant may deem appropriate for that area.

11.02 Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times Declarant will have the right and privilege (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business, and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement, or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this Section 11.02 until two (2) years after expiration or termination of the Development and Sale Period.

11.03 Addition of Land. Declarant may, (alone or in conjunction with others), at any time and from time to time, add additional lands to the Property. Upon filing of a notice of addition of land, such land will be considered part of the Property for purposes of this Declaration, and such added lands will be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions, and obligations set forth in this Declaration, and the rights, privileges, duties, and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property, Declarant will be required only to record in the Official Public Record of Fayette County, Texas, a notice of addition of land containing the following provisions:

(a) A reference to this Declaration, which reference will state the volume and initial page number of the Official Public Record of Fayette County, Texas, and Plat Records of Fayette County, Texas, wherein this Declaration is recorded;

(b) A statement that such land will be considered Property for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions, and obligations of this Declaration will apply to the added land; and

(c) A legal description and plat of the added land.

11.04 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association (i) any portions of the Property which have not been included in a Plat; and (ii) any portion of the Property included in a Plat if Declarant owns the Property to be withdrawn. Upon any such withdrawal and renewal this Declaration and the covenants, conditions, restrictions, and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to record in the Official Public Records of Fayette County, Texas, a notice of withdrawal of land containing the following provisions:

(a) A reference to this Declaration, which reference will state the volume and initial page number of the Official Public Records of Fayette County, Texas, and Plat Records of Fayette County, Texas, wherein this Declaration is recorded;

(b) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and

(c) A legal description of the withdrawn land.

11.05 Assignment of Declarant’s Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

**ARTICLE 12
DISPUTE RESOLUTION**

12.01 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) **Bound Parties.** Declarant, the Association and its officers, directors, and committee members, Owners and all other parties subject to this Declaration (“Bound Party” or collectively, the “Bound Parties”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 12.02 in good faith effort to resolve such Claim.

(b) **Claim(s).** As used in this Article, the term “Claim” or “Claims” will refer to any claim, grievance, or dispute arising out of or relating to the following:

- (i) The interpretation, application, or enforcement of the Restrictions; or
- (ii) The rights, obligations, and duties of any Bound Party under the restrictions; or
- (iii) The design or construction of Improvements within the Property, other than matters of aesthetic judgment under Article 6, which will not be subject to review.

(c) Not Considered Claims. The following will not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.02:

- (i) Any legal proceeding by the Association to collect assessments or other amounts due from any Owner;
- (ii) Any legal proceeding by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;
- (iii) Any legal proceeding which does not include Declarant or the Association as a party, if such action asserts a Claim which would constitute a cause of action independent of the Restrictions;
- (iv) Any legal proceeding in which any indispensable party is not a Bound Party;
- (v) Any action by the Association to enforce the Restrictions; or
- (vi) Any legal proceeding as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by Section 12.02(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

12.02 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") will give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) The nature of the Claim, including the Persons involved and the Respondents role in the Claim; and
- (ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and
- (iii) The Claimant's proposed resolution or remedy; and
- (iv) The Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 12.02(a) (or within such other period as the parties may agree upon), the Claimant will have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Fayette County, Texas.

If the Claimant does not submit the Claim to mediation within such time or does not appear for the mediation when scheduled, the claimant will be deemed to have waived the Claim, and the Respondent will be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant will thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

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

(d) Settlement. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award will, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal

proportions) all costs incurred in enforcing such agreement or award, including without limitation, attorneys' fees and court costs.

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Fayette County, Texas.

DECLARANT:




ROLAND KALINA



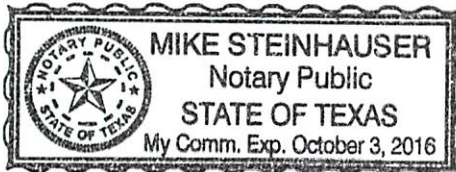
THERESA KALINA

THE STATE OF TEXAS
COUNTY OF FAYETTE

This instrument was acknowledged before me on this 10TH day of February, 2015, by Roland Kalina and Theresa Kalina.



Notary Public, State of Texas



February 11 2015 3:54 PM

STATE OF TEXAS COUNTY OF FAYETTE
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the OFFICIAL RECORDS of Fayette County, Texas as stamped hereon above time.

JULIE KARSTEDT, COUNTY CLERK

Stamps: 50 Page(s) *KS*

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