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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
LAKE CREEK VILLAGE**

After Recording Return To:

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## TABLE OF CONTENTS

<b>ARTICLE I.</b>	<b>DEFINITION OF TERMS .....</b>	<b>5</b>
<b>ARTICLE II.</b>	<b>PURPOSE AND INTENT .....</b>	<b>8</b>
<b>ARTICLE III.</b>	<b>PROPERTY SUBJECT TO RESTRICTIONS.....</b>	<b>8</b>
A.	PROPERTY INITIALLY ENCUMBERED .....	8
B.	ANNEXATION OF ADDITIONAL PROPERTY .....	9
C.	DE-ANNEXATION OF PROPERTY .....	9
<b>ARTICLE IV.</b>	<b>ASSOCIATION MEMBERSHIP, VOTING RIGHTS AND BOARD OF DIRECTORS.....</b>	<b>9</b>
A.	ELIGIBILITY .....	9
B.	MEMBERSHIP .....	9
C.	VOTING RIGHTS .....	10
1.	<i>Class A Membership</i> .....	10
2.	<i>Class B Membership</i> .....	10
D.	VOTING PROCEDURES .....	10
E.	RIGHT TO APPOINT/ELECT BOARD OF DIRECTORS .....	10
<b>ARTICLE V.</b>	<b>EFFECTIVE DATE OF DECLARATION.....</b>	<b>11</b>
<b>ARTICLE VI.</b>	<b>USE RESTRICTIONS.....</b>	<b>11</b>
A.	RESIDENTIAL USES PERMITTED .....	11
B.	NON-PERMITTED USES .....	12
C.	ANIMALS AND PETS.....	13
D.	ANTENNAS.....	14
E.	BASKETBALL GOALS AND BACKBOARDS.....	14
F.	COMMON AREA .....	14
G.	EXTERIOR SEASONAL DECORATIONS .....	15
H.	FLAGS AND FLAGPOLES.....	15
I.	GENERAL NUISANCES .....	15
J.	MONUMENTS AND FENCES .....	16
K.	OUTBUILDINGS .....	17
L.	OUTSIDE STORAGE AND TRASH COLLECTION .....	17
M.	PARKING AND PROHIBITED VEHICLES .....	17
N.	PLAY STRUCTURES.....	18
O.	SCREENING .....	19
P.	SIGNS .....	19
Q.	SWIMMING POOLS/SPAS .....	20
R.	TREE REMOVAL .....	20
S.	WINDOW AIR CONDITIONING UNITS .....	21
T.	WIND TURBINES .....	21
U.	WINDOW TREATMENTS .....	21
<b>ARTICLE VII.</b>	<b>NOTICES AND EASEMENTS .....</b>	<b>21</b>
A.	EASEMENTS FOR GREEN BELT, POND MAINTENANCE, FLOOD WATER AND OTHER LANDSCAPE RESERVES.....	21
B.	EASEMENTS TO SERVE ADDITIONAL PROPERTY .....	22
C.	UTILITIES AND GENERAL .....	22
D.	RESTRICTED RESERVES .....	23
E.	UNRESTRICTED RESERVE .....	24
F.	POND.....	25
<b>ARTICLE VIII.</b>	<b>ZERO LOT LINE LOTS.....</b>	<b>25</b>

A.	GENERAL .....	26
B.	EASEMENTS .....	26
<b>ARTICLE IX.</b>	<b>DEED RESTRICTION ENFORCEMENT .....</b>	<b>28</b>
A.	AUTHORITY TO PROMULGATE RULES, POLICIES AND GUIDELINES .....	28
B.	ATTORNEY’S FEES AND FINES .....	28
C.	REMEDIES .....	28
D.	ENFORCEMENT BY OWNERS .....	29
E.	SELF HELP .....	29
<b>ARTICLE X.</b>	<b>ARCHITECTURAL RESTRICTIONS .....</b>	<b>30</b>
A.	ARCHITECTURAL REVIEW COMMITTEE - “ARC” .....	30
B.	ARC APPROVAL REQUIRED .....	31
C.	BUILDING SETBACKS .....	32
D.	LANDSCAPING AND SPRINKLER SYSTEM .....	32
E.	GRADING AND DRAINAGE .....	33
F.	TEMPORARY STRUCTURES .....	33
G.	MASONRY AND GARAGES .....	33
H.	STORIES AND MINIMUM SQUARE FOOTAGE .....	33
<b>ARTICLE XI.</b>	<b>MAINTENANCE .....</b>	<b>34</b>
A.	GENERAL MAINTENANCE .....	34
B.	LANDSCAPING .....	34
C.	SPRINKLER SYSTEMS .....	34
D.	AUTHORIZATION AND EASEMENT FOR ASSOCIATION MAINTENANCE .....	35
E.	DWELLING AND IMPROVEMENT EXTERIORS .....	35
F.	OTHER HAZARDS .....	35
G.	LIABILITY, COST AND APPROVAL .....	36
H.	CASUALTY LOSSES .....	36
<b>ARTICLE XII.</b>	<b>STANDARDS AND PROCEDURES .....</b>	<b>36</b>
<b>ARTICLE XIII.</b>	<b>VARIANCES .....</b>	<b>37</b>
<b>ARTICLE XIV.</b>	<b>LIMITATION OF LIABILITY .....</b>	<b>37</b>
<b>ARTICLE XV.</b>	<b>ASSESSMENTS .....</b>	<b>38</b>
A.	CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS .....	38
B.	PURPOSE OF ASSESSMENTS .....	38
C.	ANNUAL ASSESSMENT .....	39
1.	<i>Creation</i> .....	39
2.	<i>Rate</i> .....	39
3.	<i>Commencement</i> .....	39
4.	<i>Proration</i> .....	39
5.	<i>Levying of the Assessment</i> .....	40
D.	SPECIAL ASSESSMENT .....	40
E.	CAPITALIZATION FEE .....	41
F.	COLLECTION AND REMEDIES FOR ASSESSMENTS .....	41
G.	SUBORDINATION OF THE LIEN TO PURCHASE MONEY MORTGAGES .....	42
H.	NOTICE OF DELINQUENCY .....	43
<b>ARTICLE XVI.</b>	<b>MODIFICATION AND TERMINATION OF COVENANTS .....</b>	<b>43</b>
A.	AMENDMENT BY DECLARANT .....	43
B.	AMENDMENT BY OWNERS .....	44

<b>ARTICLE XVII. ALTERNATE DISPUTE RESOLUTION.....</b>	<b>45</b>
A. DISPUTE RESOLUTION .....	45
B. OUTSIDE MEDIATOR.....	45
C. MEDIATION IS NOT A WAIVER .....	45
D. ASSESSMENT COLLECTION AND LIEN FORECLOSURE .....	45
E. TERM.....	45
<b>ARTICLE XVIII. GENERAL PROVISIONS .....</b>	<b>46</b>
A. SEVERABILITY .....	46
B. COMPLIANCE WITH LAWS .....	46
C. GENDER AND NUMBER .....	46
D. HEADLINES .....	46
E. GOVERNING LAW .....	46
F. FINES FOR VIOLATIONS .....	46
G. BOOKS AND RECORDS .....	46
H. NOTICES .....	47
I. MERGERS .....	47
J. CURRENT ADDRESS AND OCCUPANTS .....	47
K. SECURITY .....	47
L. VIEW IMPAIRMENT .....	48
M. VIDEO, DATA AND COMMUNICATION SERVICE AGREEMENTS .....	48
N. OCCUPANTS BOUND.....	48
O. TRANSFER OF TITLE AND RESALE CERTIFICATE.....	48

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR LAKE CREEK VILLAGE**

STATE OF TEXAS                   §  
  §  
COUNTY OF MONTGOMERY       §

This Declaration of Covenants, Conditions and Restrictions for Lake Creek Village, is made on the date hereinafter set forth by LeFevre Development Inc., a Texas corporation, hereinafter referred to as the “Declarant” with the joinder and consent of Motik Builders, Inc., a Texas corporation, and Phillip and Holly LeFevre.

**W I T N E S S E T H:**

WHEREAS, Motik Builders, Inc., Philip LeFevre, Holly LeFevre and Declarant are the owners of certain property in Montgomery County, Texas, platted as Lake Creek Village Section One, according to the map or plat thereof, recorded under Clerk’s File No. 2015021798 (the “Plat”) in the Plat Records of Montgomery County, Texas (the “Property” “Subdivision” and/or “Lake Creek Village”, which term(s) are further defined below and shall include additional land as same may be annexed into the Lake Creek Village subdivision and made subject to this Declaration); and

WHEREAS, Motik Builders, Inc., Philip LeFevre, Holly LeFevre and Declarant desire to develop the Subdivision as a single-family, residential use subdivision, and to provide and adopt a uniform plan of development including assessments, conditions, covenants, easements, reservations, and restrictions designed to govern the Subdivision; and

WHEREAS, Motik Builders, Inc., Philip LeFevre, Holly LeFevre and Declarant desire to subject the Subdivision, together with additional land as may hereinafter be made subject hereto, to the assessments, conditions, covenants, easements, reservations, and restrictions hereinafter set forth, for the benefit of the Subdivision, additions thereto, and each Owner of any part thereof; and

WHEREAS, Motik Builders, Inc., Philip LeFevre, Holly LeFevre and Declarant have deemed it desirable, for the efficient preservation of the amenities in the Subdivision and enforcement of this Declaration, to create an Association to which shall be delegated and assigned the authority to administer and enforce these assessments, conditions, covenants, easements, reservations and restrictions, including levying, collecting and disbursing the Assessments; and

WHEREAS, there has been or will be incorporated one or more non-profit corporations created under the laws of the State of Texas, including the first being the Lake Creek Village Community Association, Inc., the Directors of which Association either have or will establish certain Bylaws by which the Association shall be governed through its Board of Directors, for the purpose of exercising the functions aforesaid and any other duties as set out in the Bylaws and/or other Dedicatory Instruments.

NOW, THEREFORE, Declarant with the joinder and approval of Motik Builders, Inc., Philip LeFevre, and Holly LeFevre, does hereby declare that the Property shall be developed, improved, sold, used and enjoyed in accordance with, and subject to the following plan of development, including the assessments, conditions, covenants, easements, reservations, and restrictions hereinafter set forth, all of which are hereby adopted for, and placed upon the Lots within the Subdivision and shall be covenants running with the land and be binding on all parties, now and at anytime hereinafter having or claiming any right, title or interest in the Property or any part thereof, their heirs, executors, administrators, successors and assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired, and shall inure to the benefit of each Owner of any part of the Property.

The Property is subject to this Declaration, which may be amended or supplemented from time to time. If any conflict exists between all or any portion of the Declaration and any amendment and/or supplement, the more restrictive provision shall control.

## **ARTICLE I. DEFINITION OF TERMS**

The following words when used herein shall have the following meanings when capitalized (unless the context requires otherwise and then the term is not capitalized):

- A. "ARC" means the Architectural Review Committee established for the Property as set forth in this Declaration.
- B. "Assessment" means the assessments levied against all Lots for the purposes set out herein or any other charge authorized by this Declaration, the Bylaws, or rules and regulations.
- C. "Association" means one or more non-profit corporations, including its successors, assigns, or replacements, created under the laws of the State of Texas, with the first being the Lake Creek Village Community Association, Inc. Declarant is hereby authorized to incorporate one or more entities to provide the functions of the Association. No more than one such non-profit corporation shall be in existence at any one time. The Association is a Texas non-profit corporation that has jurisdiction over all properties located within the Subdivision, as same may be amended from time to time as additional property is annexed into the Subdivision (hereinafter defined) as allowed under this Declaration. For purposes of clarity, when "Association" is used herein, that term includes the authority, rights, remedies and obligations of the nonprofit corporation, and the authority of the Board, as defined herein, to carry out the authority, rights, remedies and obligations of the Association.
- D. "Board" means the Board of Directors of the Association as provided within the Bylaws.
- E. "Builder" means an individual or entity that purchases a single or multiple Lots from the Declarant for the purpose of constructing Dwellings thereon, which Dwellings will be offered for sale to purchasers. "Builder" shall not include an individual or entity constructing additions onto a Dwelling already in existence, performing repairs

or maintenance or re-constructing or replacing a Dwelling after demolition or destruction, either partial or complete. Additionally, Builder shall not include the Declarant.

- F. "Bylaws" mean the Bylaws of the Lake Creek Village Community Association, Inc., as they may be amended from time to time.
- G. "Common Area" means all real property owned in fee or held in easement, lease, or license by the Association for the common use and/or enjoyment of the Owners and shall include areas designated by Declarant to be conveyed by deed or easement to the Association.
- H. "Community Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing throughout the Subdivision. Such standards may be defined in the Guidelines or rules and regulations. Such standards may be specifically determined, and modified, by the Declarant at any time during the Development Period, and thereafter by the Board and/or the ARC.
- I. "Declarant" means LeFevre Development, Inc., a Texas corporation, its successors and assigns as same may be evidenced by a written instrument recorded in the real property records of the Montgomery County Clerk's office.
- J. "Development Period" means the period of time that Declarant reserves the right to facilitate the development, construction and marketing of the Subdivision and the right to direct the size, shape and composition of the Subdivision, which retained rights shall be vested in the Declarant until Declarant no longer owns any portion of the Property or such time as Declarant assigns or relinquishes all of its retained rights.
- K. "Declaration" means this Declaration of Covenants, Conditions, and Restrictions for Lake Creek Village, which encumbers the Property, and any other property brought under the control of this Declaration, or any supplemental declaration, annexation agreement and/or amendment thereto.
- L. "Dedictory Instruments" shall mean each document governing the establishment, maintenance and operation of the Subdivision, including but not limited to the Declaration, Bylaws, Certificate of Formation, and similar instruments governing the administration or operation of the Association, as well as any and all rules, Guidelines and policies, and any supplements or amendments to such documents, enforceable by the Association.
- M. "Deed Restriction Violation" means a condition on a Lot that does not comply with the terms and conditions of all Dedictory Instruments covering the establishment, maintenance, and operation of the Subdivision. Failure to pay all amounts due and owing on a Lot shall also be considered a Deed Restriction Violation.
- N. "Dwelling" means a main residential structure constructed on a Lot or Homesite intended for single family residential use.

- O. "Guidelines" means general, architectural, and/or builder guidelines, and application and review procedures, if any, that may set forth various standards relating to exterior harmony of any and all improvements placed upon or constructed on any Lot and/or construction types and aesthetics, which Guidelines may be promulgated and amended by the Declarant (during the Development Period) and thereafter by the Association or the ARC, without notice to Owners. There shall be no limitation on the scope of amendments to the Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Guidelines less restrictive. Guidelines may be promulgated by the Association, ARC, or Declarant, pursuant to the terms set forth herein, and enforceable by the Association.
- P. "Hardscape" shall include but not be limited to such items as rocks, landscape timbers, railroad ties, fountains, statuary, sculpture, terracing materials, lawn swings, and yard art.
- Q. "Homesite" means one or more Lots upon which a single-family Dwelling may be erected subject to this Declaration.
- R. "Lot" means a parcel of Property defined as one Lot by the Plat and/or any replat thereof recorded in the real property records of Montgomery County, Texas, and encumbered by this Declaration, and restricted to single-family residential use. Homesites may be comprised of more than one Lot; each such Lot will be subject to the rights and duties of membership in the Association. There shall be an Assessment due for each Lot owned as defined by the then-plat of record, subject to the limitations herein. Notwithstanding anything contained herein to the contrary, this definition shall not include any Lot for so long as it is being used by Declarant as a model home Lot and/or a sales information center.
- S. "Member" means an Owner, as defined in this Article, subject to the provisions set forth in this Declaration.
- T. "Member in Good Standing" shall mean Declarant and a Member (a) who is not delinquent in the payment of any Assessment against the Member's Lot or any interest, late charges, costs or reasonable attorney's fees added to such Assessment under the provisions of the Dedicatory Instruments or as provided by law, (b) who is not delinquent on payments made pursuant to a payment plan for Assessments, (c) who does not have any condition on his Lot which violates any Dedicatory Instrument which has progressed to the stage of a written notice of a hearing to be held by the Association or its designated committee, or beyond, and which remains unresolved as of the date of determination of the Member's standing, (d) who has not failed to pay any fine levied against the Member and/or the Member's Lot pursuant to the Dedicatory Instruments, and (e) who has not failed to comply with all terms of a judgment obtained against the Member by the Association, including the payment of all sums due the Association by virtue of such judgment. If one Occupant of a particular Dwelling does not qualify as a Member in Good Standing, then all Occupants of such Dwelling shall not be considered as Members in Good Standing. Additionally, if an Owner of multiple Lots does not qualify as a Member in Good



Standing as to one Lot, then such Owner shall not qualify as a Member in Good Standing as to all Lots owned by the Owner.

- U. "Occupant" shall mean residents, tenants, lessees, guests, and invitees of any Lot or Dwelling within the Properties for any period of time.
- V. "Outbuildings" shall mean and refer to structures such as (by way of example and not limitation) storage buildings, sheds, greenhouses, gazebos and shade trellises.
- W. "Owner" means an owner of any portion of the Property. Persons or entities holding title only as a lienholder shall not be an Owner for purposes of this Declaration.
- X. "Recreational Sites" means Common Area property that is set aside for use as recreational facilities, reserves, or green space and is encumbered by this Declaration, a recorded plat, or both.
- Y. "Special Assessment" means an Assessment levied pursuant to the terms set forth herein, for a specific purpose.
- Z. "Supplemental Amendment" or "Annexation Agreement" shall mean an amendment or supplement to this Declaration, executed by or consented to by Declarant which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Declarant or the Association pursuant to the provisions of this Declaration to subject additional property to this Declaration.
- AA. "Subdivision," the "Property," and/or "Lake Creek Village" means the Lake Creek Village Subdivision located in Montgomery County, Texas. As of the date of this Declaration, the Subdivision is more particularly described in the Plat. The Subdivision may be supplemented as additional land is annexed into the Subdivision by the recording of an Annexation Agreement or Supplemental Amendment.

## **ARTICLE II. PURPOSE AND INTENT**

The Subdivision is intended to be a single-family, residential development that is planned to feature residential uses. This Declaration shall serve as the means by which design, maintenance and use of the Property, and additional property made a part of the Subdivision, will be established.

## **ARTICLE III. PROPERTY SUBJECT TO RESTRICTIONS**

### **A. Property Initially Encumbered**

The Property that is initially encumbered by this Declaration and is therefore a part of the Subdivision is more particularly described in the Plat. Owners of the Property are Members of the Association and have executed this Declaration.

B. Annexation of Additional Property

Without the joinder of any other Owners or Members, the Declarant reserves the exclusive right for twenty-five (25) years following the recording of this Declaration to annex any additional property into the Subdivision. Such annexation shall be accomplished by the execution and filing for record of a Supplemental Amendment or Annexation Agreement setting forth the land being annexed and/or the specific restrictions relating to such property, if different. Any Supplemental Declaration or Annexation Agreement may contain covenants, conditions, restrictions and easements which apply only to the real property annexed and/or may create exceptions to, or otherwise modify, the terms of this Declaration as they may apply to the real property being annexed in order to reflect the different or unique character and/or intended use of such real property.

The right of the Declarant to annex land under this Section shall pass to the Association upon the expiration of the twenty-five (25) year term granted above.

C. De-annexation of Property

During the Development Period, the Declarant, without the joinder of any other Owners or Members, may de-annex from the Subdivision any property owned by the Declarant. During the Development Period, property not owned by the Declarant may be de-annexed with the prior written consent of the Declarant.

**ARTICLE IV. ASSOCIATION MEMBERSHIP, VOTING RIGHTS AND BOARD OF DIRECTORS**

A. Eligibility

Eligibility to vote, or serve as a director or officer of the Board, after the expiration of the term of the initial Board shall be predicated upon that person being a Member of the Association. Nothing contained herein creates a fiduciary duty owed by the Board to the Members of the Association.

B. Membership

The sole criteria to become a Member of the Association is to hold title to a Lot within the Subdivision. This is not to imply that any holder of a mere security interest (such as a mortgagee, or holder of any other lien against property) would be a Member, unless that holder of the security interest foreclosed and thereby became the Owner of the Lot(s). Membership is appurtenant to and runs with the land. Membership is not severable as an individual right and cannot be separately conveyed to any party or entity. All duties and obligations set forth in this Declaration are the responsibility of each Member. No waiver of use of rights of enjoyment created by this Declaration shall relieve Members or their successors or assigns of such duties or obligations. Mandatory membership shall begin with the execution of this Declaration and pass with title to the land (regardless of any method of conveyance) to any subsequent grantee, successor, or assignee of Members.

In consideration for payment of Assessments, all Owners of Lots in the Subdivision, and subsequently annexed sections if any, shall have the right to the use and enjoyment of the

Common Area in the Subdivision. Owners who are not Members in Good Standing may be prohibited from utilizing Common Areas in the Subdivision.

C. Voting Rights

Multiple Owners of any single Lot must vote in agreement (under any method they devise among themselves), but in no case shall such multiple Owners cast portions of votes. The vote (or votes, in the case of Class B Members) attributable to any single Lot must be voted in the same manner (i.e. all Owners of the Lot for, or all Owners of the Lot against a particular issue) but in no event can there be more than one Class A vote cast per Lot. The Association shall have two classes of membership, Class A and Class B, as follows:

1. Class A Membership

Class A Members shall be all Members with the exception of Class B Members, if any. Each Class A Member's voting rights shall be based on the number of Lots owned and shall be determined as follows:

One (1) vote shall be granted to Class A Members for each Lot owned.

2. Class B Membership

Class B Members shall include the Declarant and such Owners as the Declarant may, in its sole discretion, confer Class B Membership status upon. Such conferring of Class B Membership shall be in writing by the Declarant. Each Class B Member's voting rights shall be based on the number of Lots owned, and shall be determined as follows:

Ten (10) votes shall be granted to Class B Members for each Lot owned.

D. Voting Procedures

Class A and Class B Members shall exercise their votes as set out in the Dedicatory Instruments.

E. Right to Appoint/Elect Board of Directors

Declarant shall retain the authority to appoint all members of the Board of Directors of the Association until not later than the tenth (10th) anniversary of the date this Declaration was recorded in the Real Property Records of Montgomery County, Texas, by which time one-third (1/3) of the Board members (who must be Members of the Association) must be elected by the Owners other than the Declarant, as set forth in the Bylaws. After such anniversary, Declarant shall retain the authority to appoint the remaining two-thirds (2/3) of the members of the Board of Directors of the Association until such time as Declarant no longer owns any portion of the Property. The Declarant may assign to the Association its authority to appoint some or all (as applicable) members of the Board of Directors of the Association, with such assignment evidenced by an instrument recorded in the Real Property Records of Montgomery County, Texas.

Upon termination of Declarant's authority to appoint two-thirds (2/3) of the members of the Board of Directors of the Association, any remaining Class B Members shall be converted to Class A Members and elections shall be held to elect the members of the Board of Directors of the Association (who must be Members of the Association) pursuant to the provisions of the Certificate of Formation and the Bylaws of the Association. In the event Class B Membership terminates pursuant to the above provisions, and thereafter additional property is annexed into the jurisdiction of the Association, which results in the Declarant owning property in the Subdivision, only Declarant's Class B Membership shall be restored (no other previously designated Class B Membership shall be restored), until it again terminates as specified hereinabove. Notwithstanding anything contained herein to the contrary, the Declarant may assign, temporarily or permanently, all or a portion of its rights as Declarant to any person(s).

#### **ARTICLE V. EFFECTIVE DATE OF DECLARATION**

This Declaration shall be effective as of the date this document is recorded in the Real Property Records of Montgomery County, Texas.

#### **ARTICLE VI. USE RESTRICTIONS**

Notwithstanding anything contained herein to the contrary, the provisions of this Article, "Use Restrictions" shall apply only to Lots unless other portions of the Property are specifically included in said provisions.

##### **A. Residential Uses Permitted**

Homesites within the Subdivision shall be used exclusively for single-family residential purposes. The term "Single-Family" as used herein shall refer not only to the architectural design of the Dwelling but also to the permitted number of inhabitants, which shall be limited to a single family, as defined below. Single-Family shall mean the use of and improvement to a Lot with no more than one building designed for and containing facilities for living, sleeping, cooking, and eating therein. In no case may a Lot contain more than one Dwelling. No multi-family Dwellings may be constructed on any Lot. No building, Outbuilding or portion thereof shall be constructed for income property, such that Occupants would occupy less than the entire Lot and/or Homesite.

It is permitted for Owners to lease a Dwelling in the Subdivision, so long as Occupants are leasing the entire land and improvements comprising the Homesite. "Leasing" for purposes of this Declaration, is defined as occupancy of a Dwelling by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. No fraction or portion of any Dwelling may be leased or rented. All leases must be in writing and shall contain such terms as the Board may prescribe from time to time. All leases shall provide that they may be terminated in the event of a violation of the Declaration or the Dedicatory Instruments of the Subdivision by an Occupant or Occupant's family, and the Board, in its sole discretion, may require termination by the Owner and eviction of the Occupant in such event. Rental or lease of the Lot and Dwelling shall not relieve the Owner from compliance with this Declaration or the Dedicatory Instruments.

No Dwelling may be occupied by more than one single family. By way of illustration, the following are examples of an approved single family:

**EXAMPLE NO. 1: Owners are Husband and Wife and reside in Dwelling.**

Additional approved residents are:

- a) children of husband and/or wife;
- b) no more than a total of 2 parents of the husband or wife;
- c) one unrelated person; and
- d) one household employee

**EXAMPLE NO. 2: Owners are Domestic Partner One and Domestic Partner Two and reside in Dwelling.**

Additional approved residents are:

- a) children of either or both domestic partners;
- b) no more than a total of 2 parents of the domestic partners;
- c) one unrelated person; and
- d) one household employee

**EXAMPLE NO. 3: Owners are Roommate One and Roommate Two and reside in Dwelling.**

Additional approved residents are:

- a) children of either or both roommates;
- b) no more than a total of 2 parents of the roommates;
- c) one unrelated person; and
- d) one household employee

It is not the intent of this provision to exclude from a Lot any individual who is authorized to so remain by any state or federal law. If it is found that this provision is in violation of any law, then this provision shall be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by law.

**B. Non-Permitted Uses**

1. No trade or business may be conducted in or from any Dwelling, Lot or Homesite, except such use within a Dwelling where (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property; (c) the business activity does not involve visitation to the Dwelling or Homesite by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Subdivision; and (d) 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 of the Subdivision, as may be determined in the sole discretion of the Board. The uses set out in this Section 1 (a) through (d) shall be referred to singularly or collectively as an "Incidental Business Use." At no time may an Incidental Business Use cause increased parking or traffic within the Subdivision. Any increased parking or traffic within the Subdivision as a result of an Incidental Business Use shall be deemed to

be a Deed Restriction Violation. A day-care facility, home day-care facility, church, nursery, pre-school, beauty parlor, or barber shop or other similar facility is expressly prohibited.

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 that involves the manufacture or provision of goods for or to persons other than the provider's family, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does not generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Dwelling shall not be considered a trade or business within the meaning of this Section. This Section does not apply to any activity conducted by the Declarant, or by a Builder with approval of the Declarant, with respect to its development and sale of the Property. Garage sales, attic sales, estate sales, moving sales, or yard sales (or any similar vending of merchandise) conducted on any Homesite more than once per year shall be considered business activity and therefore prohibited. The Association may, but is not required to, adopt rules and regulations regarding such sales.

2. No vehicles displaying signs or advertising shall be permitted to be parked within public view in the Subdivision, other than service vehicles contracted by Owners to perform specific services. No vehicles with more than two axles shall be permitted to be parked or stored for a period in excess of twelve (12) hours per week in the Subdivision, without prior written permission of the Board, whose approval may be issued or withheld at its sole and absolute discretion.

3. No livestock, domestic or wild animals, nor plants or crops shall be raised on any Homesite, Lot, or any portion of the Property for the purpose of breeding or selling same, whether for profit or not. Exchange of such animals, plants or produce for anything of value to the seller shall constitute a sale of the merchandise and therefore prohibited under this provision.

#### C. Animals and Pets

No animals, livestock, including swine or poultry of any kind (other than chickens, as described below) shall be raised, bred, or kept on any portion of the Subdivision, except that dogs, cats, chickens (which term excludes roosters) or other usual and common household pets, not to exceed a total of three (3) pets, may be permitted in or on a Homesite or in a Dwelling. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. No pets are permitted to roam free. If, in the sole discretion of the Board, any pet endangers the health or safety of any Owner or resident, makes objectionable noise, or constitutes a nuisance or inconvenience to the residents or Owners of other Dwellings, or the Owner of any portion of the Subdivision, it must be removed upon request of the Board. No animals or pets shall be kept, bred, or maintained for any commercial purpose. Dogs and cats shall at all times whenever they are outside a Dwelling and/or fence, be confined on a leash which must be held by a responsible

person. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Subdivision, or nearby property, or destructive of wildlife, that animal shall be deemed to be a Deed Restriction Violation. If the owner of a dangerous animal refuses to remove that animal from the Subdivision, in violation of this Declaration or the Dedicatory Instruments, the Association or its agents shall be authorized to request a local governmental agency with appropriate jurisdiction to take over the enforcement of this provision.

D. Antennas

No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Subdivision, including any Homesite, which is visible from any street, Common Area or other Lot unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a visible location as approved by the ARC. The ARC may require as much screening as possible while not substantially interfering with reception. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property. The Declarant, by promulgating this Section, is not attempting to violate the Telecommunications Act of 1996 (the "1996 Act"), as same may be amended from time to time. This Section shall be interpreted to be as restrictive as possible while not violating the 1996 Act.

In the event that it is impossible to receive a signal from a non-visible location, the installation of antennas shall be subject to rules and regulations which may be promulgated by the Board setting out preferred alternate locations for antennas.

Declarant and the Association shall have the right, without the obligation, to erect an aerial, satellite dish, or other apparatus (of any size) for a master antenna, cable, or other communication system for the benefit of all or any portion of the Subdivision, should any master system or systems require such exterior apparatus.

E. Basketball Goals and Backboards

No basketball goal, net and/or backboard may be kept, placed or mounted upon any Lot or kept, placed, attached or mounted to any fence or Dwelling without prior written approval by the ARC. All basketball goals and/or backboards are subject to the Guidelines as to type, location, and hours of use. All basketball goals and/or backboards shall at all times be maintained and kept in good condition. If any basketball goal, net and/or backboard is placed within the Subdivision in violation of this Declaration, the Association or its agents shall be authorized to exercise its Self Help remedy, as set forth in this Declaration, to bring the Owner's Lot into compliance with this provision.

F. Common Area

The Association, subject to the rights of the Members set forth in this Declaration and any amendments or Supplemental Amendments thereto, shall be responsible for the exclusive

management and control of the Common Area and all improvements thereon and shall keep it in good, clean, attractive and sanitary condition. No Member may appropriate any portion of the Common Area or any improvement thereon for his or her own exclusive use. Any Member or his or her guests, family or invitees that cause damage to the Common Area shall be financially responsible for said damage. The cost of repair, if not timely paid by the Member (within thirty [30] days) shall be assessed against the Member's Lot and secured by the continuing lien set forth in this Declaration.

G. Exterior Seasonal Decorations

The display of exterior seasonal decorations, by way of illustration but not limited to lights, banners, flags, wreaths, shall be subject to reasonable rules and regulations, if any, promulgated by the Board. Such rules may address the appearance and length of time of such display. Such display shall be maintained and kept in good condition at all times. If any exterior seasonal decorations are placed, or remain, within the Subdivision in violation of this Declaration or the Dedicatory Instruments, the Board or its agents shall be authorized to exercise its Self Help remedy, to bring the Owner's Lot into compliance with this provision.

H. Flags and Flagpoles

The size, number, and placement of flagpoles, and the display of flags within the Subdivision, shall be subject to any Guidelines, rules or policies adopted by the Association.

The Declarant, by promulgating this Section, is not attempting to violate any local, state or federal law. This Section shall be interpreted to be as restrictive as possible while not violating any laws of the State of Texas and/or the United States of America.

I. General Nuisances

No portion of the Subdivision shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, animal, or material be kept upon any portion of the Subdivision that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, comfort, or serenity of the Owners and/or Occupants of surrounding Homesites and users of the Common Areas.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Subdivision. There shall not be maintained any plants, animals, device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Subdivision. No outside burning of wood (except for wood burned in approved outdoor fire pits and fireplaces), leaves, trash, garbage or household refuse shall be permitted within the Subdivision. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for residential monitoring purposes, shall be installed or operated on the Property, unless required by federal, state or local regulation. The use and discharge of firecrackers and other fireworks is prohibited within the Subdivision.



It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot or Homesite. The pursuit of hobbies or other visible activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, that might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Subdivision. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours.

Notwithstanding anything contained herein to the contrary, the Association shall have the right but not the obligation to enter upon any Common Area and/or street right-of-way and remove signs not authorized by the Board in advance, and/or to regulate (including, but not limited to, the prohibition of) street vending and similar non-approved activities.

No portion of the Subdivision shall be used, in whole or in part, in a way that creates a nuisance within the Subdivision. Activities or conditions constituting a nuisance are incapable of exhaustive definition which will fit all cases, but they can include those activities and conditions that endanger life or health, give unreasonable offense to senses, or obstruct reasonable use of property. Those activities or conditions that cause minor and/or infrequent disturbances resulting from ordinary life activities within a deed restricted community are not intended to constitute a nuisance. Whether such activity or condition constitutes a nuisance will be determined by the Board. The Board may adopt rules or policies to further define what constitutes a nuisance, as warranted.

J. Monuments and Fences

The Declarant and/or the Association are hereby granted an easement to place, maintain and repair a monument, fence or marker within the Subdivision.

On all Lots, fencing shall be permitted but is not required. Any such fencing shall be in a location and of a material and design as required by the Guidelines and as approved in writing by the ARC. Fencing placed on the following Lots must be wrought-iron in appearance and subject to prior written approval by the ARC:

Block 1, Lots 14 – 27

Owners shall be responsible for the maintenance, repair and/or replacement of all perimeter fences of their respective Lots which are in existence at the time of transfer to Owner. Replacement fences shall be of a similar material and design as originally constructed. The maintenance of any portion of a fence which lies between Lots shall be the joint responsibility of the Lot Owners on whose property the fence lies between. In the event an Owner fails to repair, replace or maintain any fence in a manner consistent with the Community Wide Standard in the sole discretion of the Board, the Board may exercise its Self Help remedy pursuant to the terms set forth in this Declaration, and shall have the right, but not the obligation, through its agents, contractors and/or employees to enter such Lot for the repair and/or replacement of such fence after notice to the Owner. Any expense incurred by the Association in effectuating such

repairs/replacement shall be the responsibility of the Owner(s) having such obligation to maintain and shall be secured by the continuing lien on the Lot.

K. Outbuildings

Outbuildings shall not be constructed or placed on a Lot within the Subdivision without the prior written approval of the ARC. Reasonable Guidelines may be established from time to time addressing factors including, but not limited to, the appearance, type, size, quality and location of Outbuildings on a Lot. Notwithstanding the foregoing, Outbuildings made of plastic are prohibited.

L. Outside Storage and Trash Collection

No equipment, machinery, or materials of any kind or nature shall be stored on any Homesite forward of the fence at the front wall of the Dwelling situated thereon, unless the equipment, machinery or materials is being used temporarily (not more than one week) and is incident to repair or construction of the Dwelling or Homesite. All equipment, machinery, and materials shall be properly stored out of sight of every other Homesite immediately after use of such item, and all trash, debris, excess, or unused materials or supplies shall likewise be disposed of immediately off of the Homesite, or stored out of view until trash collection occurs.

Trash may only be placed outside for collection the evening before collection. Such trash must be contained to protect from animals or spillage and trash cans must be removed from sight the same evening of collection.

M. Parking and Prohibited Vehicles

No commercial vehicles or non-motorized vehicle, by way of example and not limited to tow trucks, plumbing or similar service type vans or trucks, boat, trailer, marine craft, recreational vehicle, camper rig off of truck, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, street, easement, or right-of-way, unless such vehicle or object is completely concealed from public view inside a garage or enclosure approved by the ARC. Passenger automobiles, passenger vans, motorcycles, or pick-up trucks that: (a) are in operating condition; (b) are qualified by current vehicle registration and inspection stickers; (c) are currently licensed and in daily use as motor vehicles on the streets and highways of the State of Texas; (d) do not exceed Eighty inches (80") in height, or One Hundred inches (100") in width and (e) have no advertising or signs located thereon, may be parked in the driveway on a Lot, however, no vehicle shall be parked so as to obstruct or block a sidewalk or be parked on a grassy area. The restriction concerning advertising and signs shall not apply to any vehicles, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a Dwelling in the immediate vicinity. Storage of any vehicles in the street is prohibited. Storage shall mean the parking of a vehicle for the shorter of: (i) seventy-two (72) consecutive hours or (ii) seven (7) days in any calendar month, whichever occurs first.

Vehicles to be parked on a Homesite must meet the restrictions of this Declaration and the Dedicatory Instruments, and at all times be operable, unless otherwise completely concealed in an enclosed garage, have current license tags, current state inspection stickers, and comply

with current mandatory insurance under the laws of the State of Texas. Any vehicle not in daily use as a motor vehicle on the streets and highways of the State of Texas and not in compliance with the foregoing shall be considered stored on the property and such storage is strictly prohibited unless same is completely concealed in an enclosed garage. A vehicle that cannot physically fit within the designed garage of the Dwelling with the door closed will be construed as a vehicle not incident to residential use of a Homesite. Additional rules and regulations for the use, maintenance and parking on private and/or public streets may be promulgated by the Association.

Recreational vehicles, such as mobile homes, motor homes, campers, and boats are not considered vehicles incident to the residential use of a Homesite and therefore are not permitted to be stored on Homesites for any period of time greater than forty-eight (48) hours. A recreational vehicle with not more than two (2) axles may be parked in front of or on the Homesite for up to forty-eight (48) hours for loading, and unloading only.

The parking of any vehicle in a location other than a driveway, within an enclosed garage of a Homesite, or other paved area on a Lot or Recreational Site which is provided for parking is expressly prohibited. Parking in the public street is prohibited. Further, Owners may not allow any vehicle to be parked in any manner that blocks access to any Lot other than the Owner's Lot. The Owners of any Lot, by virtue of ownership of Property within the Subdivision, hereby contractually covenant and agree that the Association has jurisdiction over the public streets within the Subdivision, and shall have the right without the obligation to enforce the ban on parking on the public streets.

Notwithstanding anything contained herein to the contrary, the Board may promulgate parking rules which may change the permitted locations for parking, dimensions of permitted vehicles and/or the length of time for temporary parking or storage of vehicles. If there is a conflict between this Section and parking rules promulgated by the Board, the parking rules shall control.

The Association may establish from time to time reasonable rules regarding the use, maintenance and parking of vehicles on private and/or public streets, and the Association has discretion to determine the various types of vehicles that fall within the scope of any such rules.

#### N. Play Structures

Play Structures (as defined herein) shall not be constructed or placed on a Lot within the Subdivision without the prior written approval of the Board. Guidelines may be established from time to time regarding play forts, play houses, swing sets and other recreational equipment ("Play Structures"), taking into account such factors including but not limited to the overall height, size, location and number of Play Structures placed on a Lot. In setting the Guidelines, factors including but not limited to the size and configuration of the Lot, the location of the Lot in the community, the location of the Play Structure on the Lot, the type of fencing on the Lot and visibility of the Play Structure from streets, Common Areas and amenities may be taken into account.

O. Screening

No Owner or Occupant of any portion of the Property shall permit the keeping of articles, goods, materials, utility boxes, refuse, trash, storage tanks, or like equipment on the Property which may be considered a nuisance or hazard in the sole discretion of the Board. Air conditioners, utility boxes, garbage containers, antennas to the extent reasonably possible and pursuant to the terms set forth herein, or like equipment, shall not be kept in the open, exposed to public view, or exposed to view from adjacent Homesites and must be screened from view and placed in a location first approved in writing by the ARC. Such screen shall be of a height at least equal to that of the materials or equipment being stored, but in no event shall such screen be more than six feet (6') in height. Added screening must also be provided to shield such stored materials and equipment from grade view from adjacent Dwellings or Common Area. Utility boxes must be screened so that they are not visible from the street and as may be set out in the Guidelines. A combination of trees, hedges, shrubs or fences should be used as screening material, as same may be set out in the Guidelines. All screening designs, locations, and materials are subject to prior written ARC approval. Any such screening installed must be maintained in a clean and neat manner at all times, and may not detract from the appearance of the Property.

P. Signs

No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following:

1. For Sale Signs. An Owner may erect one (1) sign on his Lot, not exceeding 2'x3' in area, fastened only to a stake in the ground and extending not more than three (3') feet above the surface of such Lot advertising the property for sale.
2. Political Signs. Not more than one sign per political candidate or ballot item, not exceeding 4' x 6' in area, may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be displayed before the ninetieth day preceding the date of the election and shall be removed before the tenth day after such election.
3. School Spirit Signs. Signs containing information about one or more children residing in the Dwelling and the school they attend shall be permitted so long as the sign is not more than 36" x 36" and is fastened only to a stake in the ground. There shall be no more than one sign for each child residing in the Dwelling, and said signs may not be displayed more than ten (10) days in any calendar month, for more than three (3) months in a calendar year.
4. Security Signs/Stickers. Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the Dwelling shall be permitted so long as the sign is not more than 8" x 8" or the sticker is no more than 4" x 4". There shall be no more than one sign and no more than six (6) stickers located on the windows or doors.

Stickers shall also be permitted upon windows and doors for a "Child Find" program or a similar program sponsored by a local police and/or local fire department.

All signs and emblems within the Subdivision are subject to Guidelines that may be promulgated by the Declarant during the Development Period and thereafter, the Board.

A Builder and/or the Declarant may place certain information and advertising signs on Lots without the prior permission of the ARC, so long as such signs are similar to those listed as acceptable for Builder use in the Guidelines promulgated by the Declarant during the Development Period and thereafter, the Board, and so long as such signs do not otherwise violate this Declaration.

If any sign is placed within the Subdivision, including but not limited to the streets, street right-of-ways, and Common Areas, in violation of this Declaration or the Dedicatory Instruments, the Board or its agents shall have the right but not the obligation to enter upon any Lot, Homesite, street, street right-of-way, and Common Areas and remove and/or dispose of any such sign violation, and in doing so shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry, removal and/or disposal nor in any way shall the Association or its agent be liable for any accounting or other claim for such action.

Guidelines may be established from time to time addressing the display of signs, including but not limited to billboards, posters, school activities, political signs, security signs/stickers and advertising devices within the Subdivision. The right is reserved by Declarant to construct and maintain, or to allow Builders to construct and maintain signs and other advertising devices on land they own and on the Common Area as is customary in connection with the sale of developed tracts and newly constructed residential Dwellings. In addition, the Declarant and the Association shall have the right to erect and maintain directional and informational signs along the streets within the Property and identifying signs and monuments at entrances to the Subdivision.

Q. Swimming Pools/Spas

No above ground swimming pools are permitted. All swimming pools and spas require prior written approval by the ARC as set forth herein.

R. Tree Removal

No trees greater than three (3) caliper inches to be measured at a point six (6) inches above grade shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in writing by the ARC. In the event of an intentional or unintentional violation of this Section, the violator may be required to replace the removed tree with one (1) or more comparable trees of such size and number, and in such locations, as the Board may determine necessary, in its sole discretion, to mitigate the damage.

S. Window Air Conditioning Units

No window or wall type air conditioners shall be permitted to be used, placed or maintained on or in any building on the Lots, with the exception that window or wall type air conditioners shall be permitted for the benefit of a garage if such air conditioning unit is located at the rear of the garage unit, is screened from public view, and is screened from view by any other Lot, Common Area or Dwelling. All window air conditioning units require prior written ARC approval as set forth herein.

All living areas within the home, including any room additions, must be centrally air-conditioned, unless otherwise approved by the ARC. Units that are alternatives to centrally air-conditioned units must be screened from public view, and will require ARC approval.

T. Wind Turbines

No device used to convert wind into energy, including by way of illustration and not limitation, wind turbines, wind pumps, wind chargers and windmills, shall be permitted to be used, placed or maintained in any location within the Subdivision. Provided, however, this provision does not apply to Common Areas within the Subdivision. The Board shall have the sole discretion to determine what devices are prohibited pursuant to this provision.

U. Window Treatments

Within three (3) months of occupying a Dwelling on any Homesite, an Owner shall install appropriate window treatments in keeping with the Community Wide Standard. Appropriate window treatments would include, by way of illustration and not limitation, curtains and draperies with backing material of white, light beige, cream, light tan, or light gray; blinds or miniblinds of the same colors or natural wood; and/or shutters of the same colors or natural wood. No other window treatment color may be visible from the exterior of the Dwelling. The Board shall have the sole discretion to determine what window treatments are appropriate.

Expressly prohibited both before and after the initial three (3) months of occupancy are any temporary or disposable coverings not consistent with the Community Wide Standard, such as reflective materials, newspapers, shower curtains, fabric not sewn into finished curtains or draperies, other paper, plastic, cardboard, or other materials not expressly made for or commonly used by the general public for window coverings in a residential subdivision of the same caliber as the Subdivision.

**ARTICLE VII. NOTICES AND EASEMENTS**

A. Easements for Green Belt, Pond Maintenance, Flood Water and Other Landscape Reserves

Declarant and Association reserve for themselves and their successors, assigns and designees the non-exclusive right and easement, but not the obligation, to enter upon the green belts, landscape reserves, ponds, and other bodies of water located within the Property (a) to install, keep, maintain and replace pumps in order to obtain water for the irrigation of any of the Common Area, (b) to construct, maintain and repair any fountain, wall, dam, hardedge, canal, or

other structure retaining water therein, and (c) to remove trash and other debris and fulfill their maintenance responsibilities as provided in this Declaration. Declarant's rights and easements hereunder shall be transferred to the Association at such time as Declarant shall cease to own any portion of the Property subject to the Declaration, or such earlier time as Declarant may decide, in its sole discretion, and transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any portion of the Property abutting or containing any portion of any of the green belts and landscape reserves to the extent reasonably necessary to exercise their rights and responsibilities under this Declaration.

There is further reserved, for the benefit of Declarant, the Association, and their designees, a perpetual, non-exclusive right and easement of access and encroachment over Common Areas in order to enter upon and across such portions of the Property for the purpose of exercising rights and performing obligations under this Declaration. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other person or entity liable for damage resulting from flood due to hurricanes, heavy rainfall, or other natural disasters.

There is further reserved for the Declarant, the Association and/or their designees an easement for the over spray of herbicides, fungicides, pesticides, fertilizers, and water over portions of the Subdivision located adjacent to any landscape/open space reserves, greenbelts, canals, ponds, or other bodies of water.

#### B. Easements to Serve Additional Property

The Declarant and Association and its duly authorized agents, representatives, and employees, as well as its designees, successors, assignees, licensees and mortgagees, shall have and there is hereby reserved an easement over the Common Areas for the purposes of enjoyment, use, access and development of any annexed property, whether or not such Property is made subject to this Declaration. This easement includes but is not limited to a right of ingress and egress over the Common Areas for construction of roads and for tying in and installation of utilities on any annexed property.

Declarant agrees that if an easement is exercised for permanent access to any annexed property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance to any access roadway serving the property. Such agreement shall provide for sharing of costs based on the ratio that the number of Dwellings or buildings on that portion of the property that is served by the easement and is not made subject to this Declaration bears to the total number of Dwellings and buildings within the Property.

#### C. Utilities and General

There are hereby reserved unto Declarant, so long as the Declarant owns any Property, the Association, and the designees of each (which may include, without limitation, Montgomery County and any utility companies) access and maintenance easements upon, across, over, and

under all of the Property to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining any or all of the following which may exist now or in the future: cable television systems, master television antenna systems, monitoring and similar systems, roads, walkways, bicycle pathways, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on Property that Declarant owns or within easements designated for such purposes on recorded plats of the Property. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Dwelling; any damage to a Homesite resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person or entity exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Homesite.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, cable company and natural gas supplier easements across all the Common Areas for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters boxes, installation equipment, service equipment, and any other device, machinery or equipment necessary for the proper functioning of the utility; however, the exercise of this easement shall not extend to unauthorized entry into the Dwelling on any Homesite, except in an emergency. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property, except as may be approved by the Board or Declarant.

#### D. Restricted Reserves

Owners of Lots within the Subdivision are advised that there exists Restricted Reserves "A" and "B", restricted in their use to park, drainage, and greenspace, and Restricted Reserve "C," restricted in its use to landscaping and signage located within the platted area (the "Restricted Reserves"). The Restricted Reserves may contain a pathway system which will serve the Owners and Occupants of the Subdivision. Each Owner of a Lot within the Subdivision hereby agrees to (a) release the Declarant and the Association, and their respective successors and assigns, from any liability for the placement, construction, design, operation, maintenance and replacement in or of the Restricted Reserves and any improvements therein, and (b) indemnify each of such released parties from any liability arising out of or related to such Lot Owner's use of the Restricted Reserves. The Declarant, its successors and assigns, and/or the Association have the right to promulgate rules and regulations governing the use of the Restricted Reserves. Owners whose Lots are adjacent to or abut the Restricted Reserves shall take care and shall not permit any trash, fertilizers, chemicals, petroleum products, environmental hazards or any other foreign matters to infiltrate the Restricted Reserves. Any Owner permitting or causing such infiltration shall indemnify and hold harmless the Association for all costs of clean up and remediation necessary to restore the Restricted Reserves to its condition immediately prior to said infiltration. There is further reserved for the Declarant, the Association and/or their designees an easement for the overspray of herbicides, fungicides, pesticides, fertilizers, and water over portions of the Subdivision located adjacent to the Restricted Reserves.



Regarding the Restricted Reserves, Owners grant an easement to the Declarant and the Association for any incidental odor, noise, lighting, traffic and/or visibility of the Restricted Reserves, and agree to indemnify the parties released from any damages they may sustain arising out of or related to such Lot Owner's use of the Restricted Reserves. Owners hereby acknowledge that the Association, its directors, officers, managers, agents, or employees, the Declarant or any successor declarant have made no representations or warranties nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to safety, any use, and/or any future change in use of the Restricted Reserves.

Furthermore, Owners of Lots located adjacent to, or in close proximity to, the Restricted Reserves (referred to in this section as the "Affected Lots") are subject to the risk of damage or injury due to errant sports balls and/or the use and improvements (if any) of the Restricted Reserves. Owners of Affected Lots, their successors and assigns hereby assume the risk of damage and injury and hereby release the Association and/or the Declarant, their agents, employees, officers, successors and assigns, from any and all liability for damage or injury caused by errant sports balls in, on, or around the Restricted Reserves and/or the use and improvements (if any) of the Restricted Reserves. There is hereby reserved and granted to the Declarant and the Association, as to the Affected Lots, along with the Declarant's and Association's servants, independent contractors, agents, members, guests and invitees, a perpetual, nonexclusive easement over and across the Affected Lots, or portions thereof as provided below, for the following purposes:

- (i) Flight of sports balls over, across, and upon the Affected Lots;
- (ii) Doing of every act necessary and incident to the use of and playing of recreational activities on or within the Restricted Reserve; and
- (iii) Creation of noise related to the normal maintenance, operation, use and recreational activities of the Restricted Reserve, including, but not limited to, the operation of mowing and spraying equipment. Such noise may occur from early morning until late evening.

E. Unrestricted Reserve

Owners of Lots within the Subdivision are advised that there exists Unrestricted Reserve "A", located within the southern platted portion of the Subdivision ("Unrestricted Reserve"). Owners are advised that the Unrestricted Reserve may be replatted in the future for residential or commercial use. Each Owner of a Lot within the Subdivision hereby agrees to (a) release the Declarant and the Association, and their respective successors and assigns, from any liability for the placement, construction, design, operation, maintenance and replacement in or of the Unrestricted Reserve, and (b) indemnify each of such released parties from any liability arising out of or related to such Lot Owner's use of the Unrestricted Reserve. The Declarant, its successors and assigns, and/or the Association have the right to promulgate rules and regulations governing the use of the Unrestricted Reserve. Owners whose Lots are adjacent to or abut the Unrestricted Reserve shall take care and shall not permit any trash, fertilizers, chemicals, petroleum products, environmental hazards or any other foreign matters to infiltrate the

Unrestricted Reserve. Any Owner permitting or causing such infiltration shall indemnify and hold harmless the Association for all costs of clean up and remediation necessary to restore the Unrestricted Reserve to its condition immediately prior to said infiltration. There is further reserved for the Declarant, the Association and/or their designees an easement for the overspray of herbicides, fungicides, pesticides, fertilizers, and water over portions of the Subdivision located adjacent to the Unrestricted Reserve.

Regarding the Unrestricted Reserve, Owners grant an easement to the Declarant and the Association for any incidental odor, noise, lighting, traffic and/or visibility of the Unrestricted Reserve, and agree to indemnify the parties released from any damages they may sustain arising out of or related to such Lot Owner's use of the Unrestricted Reserve. Owners hereby acknowledge that the Association, its directors, officers, managers, agents, or employees, the Declarant or any successor declarant have made no representations or warranties nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to safety, any use, and/or any future change in use of the Unrestricted Reserve.

#### F. Pond

Owners of Lots within the Subdivision are advised that there may exist a pond within portions of a Restricted Reserve (the "Pond"). It should be noted that there may be potentially dangerous conditions that may exist in the Pond such as, but not limited to the following: holes, streams, roots, stumps, ditches, gullies, erosion and/or instability of natural topography, insects, reptiles, and/or animals. It is possible for some or all of these conditions to extend into the Subdivision and the Lots within the Subdivision. Each Owner of a Lot within the Subdivision hereby agrees to (a) release the Declarant and the Association, and their respective successors and assigns, from any liability for the existence, placement, construction, design, operation, maintenance and replacement in or of the Pond, and (b) indemnify each of such released parties from any liability arising out of or related to the Pond.

Owners further grant an easement to the Declarant and the Association for any incidental noise, lighting, odors, parking and/or traffic, which may occur due to the existence of the Pond. Owners hereby acknowledge that the Association, its directors, officers, managers, agents, or employees, the Declarant or any successor declarant have made no representations or warranties nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to water level variances, safety, any use, and/or any future change in use of the Pond. There is further reserved for the Declarant, the Association and/or their designees an easement for the overspray of herbicides, fungicides, pesticides, fertilizers, and water over portions of the Subdivision located adjacent to the Pond.

### **ARTICLE VIII. ZERO LOT LINE LOTS**

The Subdivision shall contain Zero Lot Line Lots based upon a zero side building setback concept, and the Zero Lot Line pattern specific to each Zero Lot Line Lot is as set forth on Exhibit "A" which is attached hereto and incorporated herein by reference or all purposes.

A. General

Each Dwelling on a Zero Lot Line Lot shall be designed so as to provide that all or a portion of the linear distance of one (1) wall of the Dwelling shall be constructed either adjacent to and abutting, or within one foot (1') or less of a side Lot line. Such side Lot line where there is such construction shall be hereinafter referred to as the "Zero Lot Line". Provided however, an open court or patio may be built adjacent and abutting, or within one foot (1') or less of the aforementioned Zero Lot Line, but said open court or patio must be enclosed by a masonry wall having a minimum height of seven feet (7') above the foundation. This wall must, as is the case with the residence wall, be constructed adjacent to, or within one foot (1') or less of the abutting Zero Lot Line and enclose the court or patio in such a manner as to appear to be an extension of the Dwelling. The Zero Lot Line walls shall have no exterior objects or appurtenances, for example, there shall be no electrical panels (unless required by the electric company), vents, plumbing clean outs or openings of any kind unless such Zero Lot Line side is on the street side of a corner Lot. Provided, however, the ARC has discretion to approve windows in this particular location. If the Zero Lot Line side is on the street side of a corner Lot, normal openings and exterior appurtenances may be constructed on the Dwelling abutting the Zero Lot Line. Provided, however, the roof overhang and the attached guttering of the Dwelling may extend and encroach over the Zero Lot Line for a distance not to exceed eighteen (18) inches.

The minimum distance between the Zero Lot Line and the closest wall of the Dwelling situated upon the Adjoining Lot (as defined below) shall be a minimum of five (5) feet. No Dwelling shall be located on any Lot within any Utility Easement along the rear Lot line.

Notwithstanding anything contained herein to the contrary, restrictions regarding emergency escape and rescue openings in Section R310 of the International Residential Code shall control.

B. Easements

Save and except Lots 3, 9, 10, 20, 27, 28, in Block 1, each Owner within Section One shall have a perpetual, non-exclusive easement ("Easement") over, on and across any Lot or Restricted Reserve which is adjacent to and contiguous with the Zero Lot Line side of said Owner's Lot (the "Adjoining Lot"). This Easement shall be limited to an area that is five (5') feet in width and parallel to such Owner's Zero Lot Line, and shall be further limited to the purposes of construction of improvements located on the Zero Lot Line; maintenance, repair and upkeep as is reasonably necessary for improvements on the Zero Lot Line; and for ingress and egress in the event of an emergency. This five foot (5') wide Easement shall also be used for eaves overhang, guttering, eaves drip, and land drain for any and all rain water flowing naturally from the eaves of the Owner's Zero Lot Line Home onto the Adjoining Lot.

Conditions and use of the Easement are hereby declared and established by and between the Owner of the home placed on the Zero Lot Line ("Benefiting Owner") and the Owner of the Adjoining Lot, which shall be covenants running with the land and binding on both of the above-mentioned Owners and all of their respective heirs, successors, and assigns forever, to-wit:

(i) The Benefiting Owner must replace or return to existing condition, any fencing, landscaping or other items on the Adjoining Lot that s/he may disturb during construction, repair or maintenance, save and except as set out below in subsection (ii).

(ii) This Easement, when used by the Benefiting Owner for such construction, repair or maintenance, must be left clean and unobstructed, unless the Easement is actively being utilized, and any items removed must be replaced.

(iii) The Benefiting Owner must notify the Owner of the Adjoining Lot of his intent to do any construction, repair or maintenance at least forty-eight (48) hours prior to starting any work. The hours that such Easement may be utilized shall be between 8:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. through 6:00 p.m. on Saturday, and noon through 6:00 p.m. on Sunday.

Notwithstanding the above, in the case of an emergency, and to prevent imminent damage to the Zero Lot Line Home or occupants, a Benefiting Owner may enter the Easement at whatever time necessary and without prior notice to the Owner of the Adjoining Lot to do necessary repairs or escape any injury to the occupants.

(iv) Both the Benefiting Owner and the Adjoining Lot Owner shall have the right of surface drainage over, along and upon the Easement area. Neither Owner shall use the Easement area in such a manner as will interfere with such drainage.

(v) Neither Owner shall attach any object to the Zero Lot Line Home or wall facing onto the Easement area and the Owner of the Adjoining Lot will not use such Zero Lot Line Home and/or wall as a playing surface for, or as a part of any sport or game. In addition, no structure shall be constructed or placed upon the Easement area by either Owner, except the roof overhang and guttering as provided for above, and a fence by the Owner of the Adjoining Lot, which allows proper surface drainage; however, access to the Easement must be preserved for the Benefiting Owner.

(vi) Neither Owner shall construct or place or caused to be constructed or placed any structure or object of any kind which impedes egress from any window located on the wall of the Zero Lot Line Home facing onto the Easement Area.

Save and except Lots 3, 9, 10, 20, 27, 28, in Block 1, Owners of each Zero Lot Line Home shall have and are hereby granted, a perpetual and non-exclusive five foot (5') underground easement, extending five feet (5') into the side building setback line of the Adjoining Lot with said easement being contiguous to the Zero Lot Line of the Lot benefiting from said easement, hereinafter the "Bell Bottom Easement". Said underground Bell Bottom Easement shall be used solely for the installation, construction and maintenance of underground bell bottoms in conjunction with the installation or repair of residential foundations.

## ARTICLE IX. DEED RESTRICTION ENFORCEMENT

### A. Authority to Promulgate Rules, Policies and Guidelines

The Declarant, during the Development Period, and thereafter, the Board has the authority, without the obligation, to promulgate, make, modify, amend, cancel, limit, create exceptions to, and enforce reasonable rules and regulations policies, and Guidelines (pursuant to the terms set forth herein), including but not limited to rules and policies concerning enforcement of the covenants and restrictions contained in this Declaration, any Supplemental Amendment and/or amendments concerning the use and enjoyment of the Property, including without limitation, rules limiting the use of the Common Area, establishing and setting the amount of fines for violations of this Declaration or any Dedicatory Instrument, and all fees and costs generated in the enforcement of the Dedicatory Instruments. Such rules and regulations, policies and Guidelines shall be binding upon all Owners and Occupants, if any. The rights and remedies contained in this Article are cumulative and supplement all other rights of enforcement under applicable law.

### B. Attorney's Fees and Fines

In addition to all other remedies that may be available, after giving notice and an opportunity to be heard as may be required by §209 of the Texas Property Code, as same may be amended, the Association has the right to collect attorney's fees and/or fines as set by the Board from any Owner that is in violation of the Dedicatory Instruments, any applicable Supplemental Amendment or amendments, any Guidelines, or any other rule or regulation promulgated by the Association. Said attorneys fees and fines shall be added to the violating Owner's Assessment account and shall be secured by the continuing lien on the Lot.

### C. Remedies

Every Owner shall comply with all provisions of the Dedicatory Instruments. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association. In addition, the Board has the authority, but not the obligation, to enforce the covenants, conditions and restrictions contained in the Dedicatory Instruments, and to regulate the use, maintenance, repair replacement, modification, and appearance of the Subdivision, and may avail itself of any and all remedies provided in the Dedicatory Instruments. Notwithstanding anything contained herein to the contrary, the Board shall have no duty, legal or otherwise, to institute legal or other proceedings on behalf of or in the name of an Owner.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;

- (ii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iii) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

D. Enforcement by Owners

Each Lot Owner is empowered to enforce the covenants, conditions and restrictions contained in the Dedicatory Instruments; provided, however, no Owner shall have the right to enforce the lien rights retained in this Declaration in favor of the Association and/or other rights, regarding Assessments, retained by the Association.

E. Self Help

"Self Help" shall mean the authority, but not the obligation, of the Association, upon approval of not less than a majority of the Board members, to enter upon a Lot or Homesite and cause to be performed any of the Owner's maintenance and repair obligations, or acts required by that Owner to bring his/her Lot or Homesite into compliance with the Dedicatory Instruments, if said Owner fails to perform same after written demand from the Board. In exercising its Self Help remedy, the Association shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such exercise of Self Help, nor in any way shall the Association or its agent be liable for any accounting or other claim for such action. The Association shall have the right, but not the obligation, to enter into any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with the Dedicatory Instruments, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in the case of emergency situations, and as otherwise specified herein, the Association shall give the violating Owner notice as may be required by law, of its intent to exercise Self Help.

Subject to any notice that may be required by law, any costs incurred by the Association in the exercise of its Self Help remedy shall be the personal obligation of the person or entity who was the Owner of the Lot at the time when the Self Help costs were incurred. The personal obligation for such costs shall not pass to successors in title unless expressly assumed by them. Subject to any notice that may be required by law, the costs incurred by the Association in exercising its Self Help remedy, which costs may include by way of illustration and not limitation, the actual costs incurred by the Association and an administrative fee set by the Board, shall be charged to the subject Owner's Assessment account and shall be supported by the continuing lien created herein.

## ARTICLE X. ARCHITECTURAL RESTRICTIONS

**NOTE WELL:** The provisions of this Article are broad and sweeping and an extremely wide range of activities are regulated hereby. Owners are advised to review this Article and the Guidelines carefully to ensure that they comply with all of the requirements before commencing any work or engaging in any activity on or in connection with their Lot or Dwelling to ensure they comply with all of the provisions set forth herein and in the Guidelines. Work commenced, performed, or completed without prior approval as required herein, in the Guidelines, or otherwise in violation of the terms of this Declaration, the Guidelines, or applicable law may subject the Owner of the Lot to substantial costs, expenses, fees, and penalties, which may be in addition to a requirement that the Lot and/or Dwelling be restored to its original condition.

### A. Architectural Review Committee - "ARC"

The ARC shall be a committee of the Board. The initial ARC shall be composed of three (3) individuals designated by Declarant, one of whom may be designated as representative to act on behalf of the ARC. The Declarant reserves the right to appoint replacements as necessary by reason of resignation, removal or incapacity. The Declarant shall retain the right of ARC appointment until the first to occur of the following:

1. the Declarant no longer owns any portion of the Property, or
2. the Declarant relinquishes, in writing, its authority over ARC appointment.

At such time, the Board of the Association shall have the right to replace such ARC members by duly appointing three Owners who are Members in Good Standing with the Association. The Board reserves the right to appoint replacements as necessary by reason of resignation, removal or incapacity. Such removal and/or appointment shall be at the sole authority and discretion of the Board.

The Board shall have the right to review any action or non-action taken by the ARC and shall be the final authority.

At any time prior to the happening of (1) or (2) above, the Declarant may, without obligation, assign to the Board, or such other person the Declarant deems appropriate, all or a portion of Declarant's ARC rights and/or the responsibility for review and approval of modifications to existing Dwellings.

The Association, ARC and, during Development Period, the Declarant, shall have the right, but not the obligation, to promulgate Guidelines as to construction types and aesthetics, which may be changed, amended or modified at any time without notice to the Owners. Different Guidelines for additional property that may be annexed into the Subdivision may be promulgated.

The ARC shall have the authority, but not the obligation, to delegate review and approval or denial of plans for modifications of existing improvements within the Subdivision to a Modifications Committee. The members of the Modifications Committee shall be appointed,

and may be removed, by the Declarant during the Development Period, and thereafter by the Board. A denial by the Modifications Committee, if it is created, may be appealed to the ARC.

**B. ARC Approval Required**

No buildings, Hardscape, additions, modifications or improvements shall be erected, placed or performed on any Lot or Homesite until the construction plans and specifications including, but not limited to, the site plan, design development plan, and exterior plan have been submitted in duplicate to and approved in writing by the ARC as hereinafter provided. The ARC is hereby vested with the right, but not the obligation, to refuse to review a request for an improvement or modification, or to deny such a request, if the Owner requesting same is not a Member in Good Standing. Builders may submit their design plans as master design plans, which plans shall include all specifications, including specifications as to brick color and paint color that may be used when building each design. The ARC or the Board may, at their sole discretion, retain and/or delegate review of plans and specifications to a designated AIA architect or other such person or firm as may be designated by the Board, experienced or qualified to review same, who may then render an opinion to the ARC or Board. Approval of plans and specifications shall not cover or include approval for any other purpose and specifically, but without limitation, shall not be construed as any representation as to or responsibility for the structural design or engineering of the improvement or the ultimate construction thereof. In the event the ARC fails to approve such plans and specifications within thirty (30) days after the receipt thereof, they shall be deemed to be disapproved. Notwithstanding any other provision contained herein, any Dwellings, additions, or improvements erected or placed on any Homesite shall be deemed to comply with the Guidelines and related covenants contained in the Declaration unless the ARC so notifies the Owner otherwise in writing within four (4) years from the completion thereof. This provision, however, shall not be deemed a waiver of the right of the ARC or Declarant to enforce the continuing restrictions contained herein.

The Board and/or the ARC shall have the authority hereunder to require any Owner or Owner's agents or contractors to cease and desist in constructing or altering any improvements on any Homesite, where such actions have not first been reviewed and approved, constitute a violation of the Declaration, the Guidelines or any other documents promulgated by the Board and/or the ARC. Written notice may be delivered to the Owner, or any agent or contractor with apparent authority to accept same, and such notice shall be binding on Owner as if actually delivered to Owner. The violating Owner shall remove such violating improvements or sitework at its sole expense and without delay, returning same to its original condition or bringing the Homesite into compliance with the Declaration, ARC documents and any plans and specifications approved by the ARC for construction on that Homesite. If an Owner proceeds with construction that is not approved by the ARC, or that is a variance of the approved plans, the Association may assess fines as provided for herein, and may continue to assess such fines until ARC approval is granted or the violation is removed. This Declaration is notice of such liability for violation and Owners hereby agree to bear the cost and expense to cure any violations according to this provision, regardless of the substantial cost, time or loss of business involved. Each Owner acknowledges that it may not always be possible to identify objectionable features of proposed construction or alteration of improvements until such construction and/or alteration is completed, in which case it may be unreasonable to require changes to the



improvements involved; however, the ARC may refuse to approve similar proposals in the future.

The ARC or its agents or assigns shall have the right, but not the obligation, to enter any Lot or Homesite to determine if violations of this Declaration, the Guidelines, or any other Dedicatory Instrument exist. In so doing, the ARC shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry nor in any way shall the Association or its agent be liable for any accounting or other claim for such action.

The ARC shall have the right to set reasonable time constraints for both the commencement and completion of construction, which constraints shall be no less than ninety (90) days to commence construction and no more than nine (9) months to complete construction. If construction fails to start before the designated commencement date or is not completed before the designated completion date the plans shall be deemed not approved. Plan approval shall be effective for twelve (12) months after issued by the ARC. If no construction has been commenced within the twelve (12) month period after ARC approval, the plan approval shall expire, and plans must be re-submitted prior to commencement of construction.

The ARC has the right to charge a review fee, to be established by the Board, for review of any plans or specifications submitted for approval to the ARC.

C. Building Setbacks

No Dwelling or other structure shall be erected nearer to any street or property line than as established in the Guidelines or the Plat. In the event there is a conflict between the Guidelines, any other documents imposed upon the Property that contains a setback requirement, and the Plat, the more restrictive will control. Notwithstanding anything to the contrary herein, in no case shall a rear setback on any Lot be less than the width of any easement existing along the rear Lot line of such Lot, as shown on the Plat. All Dwellings shall be oriented to the front of the Lot.

The combining of no more than two (2) Lots to create one Homesite may be permitted subject to prior written approval of the ARC and partial release(s) by Declarant, to the extent necessary, of easements created herein. All governmental requirements must be complied with as to combining one Lot with another Lot. If Lots are combined the side set back lines shall be measured from resulting side property lines rather than from the Lot lines as indicated on the Plat. The combining of two Lots shall not forgive the obligation to pay Assessments on all Lots so combined. By way of example and not limitation, if two Lots are combined to create one Homesite, the Homesite shall be obligated to pay two Assessments.

D. Landscaping and Sprinkler System

All open, unpaved space in the front and at the sides of a Homesite, shall be planted and landscaped. Additionally, each Homesite must have an irrigation system ("Sprinkler System") which provides water to all open unpaved space on the Homesite. Landscaping and a Sprinkler System in accordance with the plans approved by the ARC must be installed prior to occupancy of any Dwelling constructed on the Property.

Any significant changes in the existing landscaping or Sprinkler System on any Homesite must have prior written approval from the ARC.

Notwithstanding anything contained herein to the contrary, minimum standards regarding landscaping and Sprinkler Systems may be established in the Guidelines. The ARC shall have the sole discretion to determine if, as, or when the landscaping or Sprinkler System on a Lot does not meet the minimum standards established in the Guidelines.

E. Grading and Drainage

Topography of each and every Homesite must be maintained with proper grading and drainage systems such that runoff of water (rain or other precipitation, or manmade irrigation) does not cause undue erosion of the subject Homesite itself or any other Homesites, whether adjacent to the subject Homesite or not, or to the Common Areas. Owners causing (either directly or indirectly) erosion or other incidental damage to personal or real property due to inadequate or defective grading or drainage measures on their own Homesite, or because of excess runoff shall be liable to all such damaged parties for the replacement, repair and/or restoration of such damaged real or personal property.

Owners shall be responsible for ensuring that all local, state and federal rules and regulations regarding drainage and run-off are met.

F. Temporary Structures

Temporary structures may only be erected on undeveloped Property by Builders or the Declarant with the prior written approval of the ARC. Even temporary structures shall be maintained in good condition and all construction debris shall be contained to the site. Time limitations for such structures are limited to the period of active and exclusive construction and sales within the Subdivision.

G. Masonry and Garages

Dwellings must be constructed such that the exterior of the structure of the Dwelling is at least eighty-five percent (85%) masonry, which term does not include hardie board, hardie plank, or other cement board siding. Dwellings must at all times have attached garages. Garages are required to maintain fully operational overhead doors which are in good condition at all times. No garages may be used for or converted to a living area.

H. Stories and Minimum Square Footage

All dwellings shall be single-story dwellings and must comply with the following requirements regarding the minimum and maximum square feet of living area (which shall not include porches, garages or non-air conditioned areas) contained therein:

For all Lots, dwellings must contain a minimum 1,800 square feet of living area;

For Lots which are smaller than 7,500 square feet, dwellings may contain up to a maximum of 2,300 square feet of living area; and

For Lots which are 7,500 square feet or larger, dwellings may contain up to a maximum of 2,650 square feet of living area.

Notwithstanding anything contained herein to the contrary, the Declarant hereby reserves the unilateral right to develop the Subdivision, and/or any additional property which may be subjected to this Declaration, in any manner consistent with residential use, including but not limited to Dwellings which may be excluded from this requirement, and subject to different story and/or square footage requirements in other portions of the Subdivision.

## ARTICLE XI. MAINTENANCE

### A. General Maintenance

Each Owner shall maintain and keep in good repair his or her Dwelling and all structures, parking areas and other improvements, including driveway and its apron portion forward of the building line comprising the Homesite. All structures and other improvements designed to be painted must be kept painted and the paint may not be allowed to become faded, cracked, flaked or damaged in any manner. Grass, vegetation and weeds on each Homesite shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. Grass growing onto or over sidewalks, driveways, and curbs shall be presumed to be unattractive.

### B. Landscaping

The Association shall maintain all landscaping, grass and vegetation on a Lot that is in place at the time of the first sale to an Owner. Owners may not embellish the landscaping, grass, and vegetation on a Lot without the prior written approval of the Board. The Association's obligation to maintain does not include hanging baskets or potted plants located on the Lot or Dwelling. The Association's obligation related to landscaping, grass and vegetation shall include the obligation to replace dead or diseased landscaping, grass or vegetation, save and except if the Owner has caused the diseased or damaged condition of the landscaping, grass and vegetation, in which case the replacement shall be done at the sole cost and expense of the Owner. If such Owner fails or refuses to replace same, the Board, after providing notice as may be required by law setting forth the action intended to be taken by the Association and after approval by a majority vote of the Board, shall have the right but not the obligation, through its agent, contractors and/or employees, to exercise its Self Help remedy to bring the Owner's Lot into compliance.

### C. Sprinkler Systems

The Association shall have the right to maintain and control all components of Sprinkler Systems, including but not limited to the timers, to the exclusion of the Owners, and in its sole discretion, without regard to the cost, implications, and/or affect on Owners. Provided, however, that the Owners shall always be responsible to replace the Sprinkler System (and all related hardware or fixtures relating thereto) at the Owner's sole cost and expense. If, during the performance of its maintenance responsibilities, it becomes apparent to the Association that a specific Sprinkler System is in need of repair or replacement, the Owner shall be so notified in writing and shall be required to repair or replace same in a timely fashion so as to allow the

Association the ability to complete its maintenance responsibilities. If such Owner fails or refuses to repair or replace same, the Board, after providing notice as may be required by law setting forth the action intended to be taken by the Association and after approval by a majority vote of the Board, shall have the right but not the obligation, through its agent, contractors and/or employees, to exercise its Self Help remedy to bring the Owner's Lot into compliance.

D. Authorization and Easement for Association Maintenance

The Association or its agents shall be authorized to enter upon any Lot to perform its obligations or exercise its rights created hereunder, and in doing so shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry and maintenance, nor in any way shall the Association or its agents be liable for any accounting or other claim for such action. Furthermore, in the event an Owner fails to fulfill his/her maintenance obligations set forth herein in a manner consistent with the overall standard established within the Property and satisfactory to the Board, the Board, after notice as may be required by law setting forth the action intended to be taken by the Association and after approval by a majority vote of the Board, shall have the right, but not the obligation, through its agent, contractors and/or employees, to enter upon said Lot to exercise its Self Help remedy to bring the Owner's Lot into compliance with the Dedicatory Instruments. Each Owner hereby grants to the Association an easement over and across such Owner's Lot and/or Dwelling, as applicable, for the purpose of such maintenance.

The Association is hereby granted a perpetual non-exclusive easement to the extent necessary for the right to enter upon a Lot or Dwelling in order to perform its obligations or exercise its rights created hereunder. Said easement shall be over, across, under, and upon the Lot, as applicable. If it becomes necessary for the Association to enter into a Dwelling to perform its obligations or exercise its rights created hereunder, the Board, except in the case of an emergency and to the extent practicable, shall give the affected Owner(s) fifteen (15) days written notice setting forth the action intended to be taken by the Association. Such entrance by the Association shall not be withheld by the affected Owner(s).

E. Dwelling and Improvement Exteriors

In the event any Owner of any Homesite fails to maintain the exterior of the Homesite or improvement (including but not limited to the exterior of the Dwelling, improvement or other structures and the parking areas) in a manner consistent with the Community Wide Standard established within the Property as solely determined by the Board, the Board, after providing notice as may be required by law setting forth the action intended to be taken by the Association and after approval by a majority vote of the Board, shall have the right, but not the obligation, through its agents, contractors and/or employees, to enter upon said Homesite and to exercise its Self Help remedy to bring the Owner's Lot into compliance with this provision.

F. Other Hazards

To the extent necessary to prevent pest infestation, diminish fire hazards and/or diminish hazards caused by structural damage, the Association shall have the right, but not the obligation, through its agents, contractors and/or employees, to enter any unoccupied Dwelling or other

improvement located upon such Homesite, without notice to take the action necessary to prevent such pest infestation, diminish such fire hazards or diminish hazards caused by structural damage at the Owner's expense. Any such expenses, including administrative fees set by the Board, incurred by the Association shall be secured by the continuing lien created herein.

G. Liability, Cost and Approval

Neither the Association nor its agents, contractors, or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the exercise of its Self Help remedy, including the performance of the exterior maintenance, landscaping or other work authorized in this Declaration. The cost, including administrative fees set by the Board, of such exterior maintenance, interior hazard diminution and other work shall be the personal obligation of the Owner of the Homesite on which it was performed and shall become part of the Assessment payable by the Owner and secured by the lien retained in the Declaration. Alternately, the Association or any Owner of a Homesite may bring an action at law or in equity to cause the Owner to bring said Homesite into compliance with these restrictions.

All Owners' replacement, repair and restoration practices as to the improvements on Property within the Subdivision are subject to the prior written approval of the ARC and must comply with all Guidelines which may change from time to time, as found necessary and appropriate in the ARC's sole discretion.

H. Casualty Losses

It shall be the Owner's obligation to have repaired or reconstructed any damage or destruction to their Dwelling or Lot. If a Dwelling, landscaping, outbuilding or any other improvement located on a Lot is damaged by fire, storm, or any other casualty, the Owner shall bring the affected Lot and all improvements thereon, as applicable, into compliance with the Dedicatory Instruments within six (6) months of the date of the casualty, pursuant to the architectural requirements and approval process set forth in the Dedicatory Instruments. Regarding Dwellings that are totally destroyed due to casualty, the Owner(s) of such Dwellings must have the Dwellings or damaged portions of the Dwellings razed within ninety (90) days of the date of the casualty, and replaced within twelve (12) months of the date of the casualty, subject to ARC prior written approval.

## **ARTICLE XII. STANDARDS AND PROCEDURES**

The ARC may establish and promulgate Guidelines, which the ARC may modify or amend as it deems necessary and appropriate for the orderly development of the Property and the Subdivision, including, but not limited to, those portions of the Guidelines regarding workmanship, materials, building methods, observance of requirements concerning installation and maintenance of public utility facilities and services, and compliance with governmental regulations. The Guidelines may be amended by the ARC without notice, but they shall not be applied retroactively to reverse a prior approval granted by the ARC or the Association to any Owner or prospective purchaser of any Homesite. Subject to the provisions of this Article, there shall be no limitation on the scope of amendments to the Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Guidelines less restrictive. The

rules, standards, and procedures set forth in the Guidelines, as same may be amended from time to time, shall be binding and enforceable against each Owner in the same manner as any other restriction set forth in this Declaration.

### **ARTICLE XIII. VARIANCES**

The Board, upon the recommendation of the ARC, or its duly authorized representative, may authorize variances from compliance with any of the architectural provisions of this Declaration or Dedicatory Instrument, unless specifically prohibited, including restrictions upon height, size, placement of structures, or similar restrictions, when circumstances such as topography, natural obstruction, hardship, aesthetic, or environmental considerations may require. Such variances must be evidenced in writing, must be approved by at least a majority of the Board, and shall become effective upon execution. The variance must be signed by a member of the Board and recorded in the real property records of Montgomery County, Texas. If such variances are granted, no violation of the covenants, conditions, or restrictions contained in this Declaration and/or the Dedicatory Instruments shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration and/or the Dedicatory Instruments for any purpose except as to the particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all applicable governmental laws and regulations.

No granting of a variance shall be relied on by any Member or Owner, or any other person or entity (whether privy or party to the subject variance or not), as a precedent in requesting or assuming variance as to any other matter of potential or actual enforcement of any provision of this Declaration and/or the Dedicatory Instruments. Action of the ARC or Board in granting or denying a variance is a decision based expressly on one unique set of circumstances and need not be duplicated for any other request by any party or the same party for any reason whatsoever.

Notwithstanding anything contained herein to the contrary, during the Development Period, the Declarant shall have the unilateral right to grant a variance of any of the covenants, conditions and restrictions contained herein so long as the variance is in keeping with the aesthetics of the Subdivision.

### **ARTICLE XIV. LIMITATION OF LIABILITY**

**NEITHER DECLARANT, THE ASSOCIATION, THE ARC, THE BOARD, NOR ANY OF THE RESPECTIVE OFFICERS, AGENTS, MANAGERS, PARTNERS, DIRECTORS, SUCCESSORS OR ASSIGNS OF THE ABOVE, SHALL BE LIABLE IN DAMAGES OR OTHERWISE TO ANYONE WHO SUBMITS MATTERS FOR APPROVAL TO ANY OF THE ABOVE-MENTIONED PARTIES, OR TO ANY OWNER AFFECTED BY THIS DECLARATION BY REASON OF MISTAKE OF JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL, DISAPPROVAL, OR FAILURE TO APPROVE OR DISAPPROVE ANY MATTERS REQUIRING APPROVAL HEREUNDER. APPROVAL BY THE ARC, THE BOARD, OR THE ASSOCIATION, OR ANY OF THEIR RESPECTIVE OFFICERS, PARTNERS, DIRECTORS, AGENTS, MANAGERS, SUCCESSORS OR ASSIGNS, IS NOT INTENDED AS ANY KIND OF**

**WARRANTY OR GUARANTEE AS TO THE INTEGRITY OR WORKABILITY OF THE PLANS NOR THE CONTRACTORS USED.**

**ARTICLE XV. ASSESSMENTS**

**A. Creation of the Lien and Personal Obligation of Assessments**

The Owners of any Lot, by virtue of ownership of Property within the Subdivision, covenant and agree to pay to the Association as applicable:

1. Annual Assessment
2. Special Assessment
3. Capitalization Fee

The Annual Assessment, Special Assessment, and Capitalization Fee (collectively the "Assessment") as set out hereinbelow, together with attorney's fees, late fees, interest and costs shall be a charge and continuing lien upon the Homesite and/or Lot against which each such Assessment is made. Each such Assessment, together with attorney's fees, late fees, interest and costs, shall also be the personal obligation of the person or entity who was the Owner of the land at the time when the Assessment became due. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or the Board under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association. The obligation to pay Assessments is a separate covenant on the part of each Owner of a Lot.

**B. Purpose of Assessments**

Assessments levied by the Association shall be used for any legal purpose for the benefit of the Subdivision as determined by the Board and, in particular, may, by way of example and not limitation or obligation, include the Lot maintenance and landscaping obligations created herein, maintenance, repair or improvement of any Common Area, sidewalks, pathways, fountains, parkways, private streets and roads, entry gates installed as a controlled access system, boulevards, esplanades, setbacks and entryways, patrol service, fire protection, emergency medical service, street cleaning, street lighting, mosquito control, landscape architecture, greenbelts, fences or walls, regulatory signage or directional signage, signalization, special pavement markings, entrances and entrance monuments, public or private art or sculptures, other services as may be in the Property's and Owners' interest and all buildings, services, improvements and facilities deemed necessary or desirable by the Board in connection with the administration, management, control and operation of the Subdivision. The Association may, in its sole discretion, give one or more of the purposes set forth herein preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all Members. Parkway, fountains, private streets, roads, esplanades, setbacks and entryways that are not contained in any Common Area may be included in the Association's maintenance if, in the sole discretion of the Board, the maintenance of such areas benefits the Association's Members. Such share agreements for maintenance and improvement shall require the consent of a majority of the total number of

directors of the Association. Additionally, Assessments levied by the Association may be used, in the sole discretion of the Association, to pay the Association's fair allocation for maintenance costs for the participation in any agreement among other property owners associations in the area and for consolidated programs that provide consistency and economics of scale. Approval to enter such agreements shall require a majority vote of the Board.

C. Annual Assessment

The Lots within the Subdivision shall be subject to the Annual Assessment, as follows:

1. Creation

Payment of the Annual Assessment shall be the obligation of each Owner, subject to the provisions below, and shall constitute a lien on the Homesite, or Lot(s), binding and enforceable as provided in this Declaration.

2. Rate

The initial Annual Assessment established by the Association shall not exceed One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) per Lot. The combining of two or more Lots shall not forgive the obligation of the Owner(s) of such combined Lots to pay Annual Assessments on all Lots so combined. By way of example and not limitation, if two Lots are combined to create one Homesite, the Homesite shall be obligated to pay two Annual Assessments. A Builder shall be responsible to pay fifty percent (50%) of the Annual Assessment of other Lot Owners, for the period of time that the Builder owns a Lot. Notwithstanding anything contained herein to the contrary, any Lot owned by Declarant shall not be subject to any Assessments created herein. Upon conveyance of such Lot to a purchaser, said Lot shall thereafter be subject to all Assessments and charges provided for in this Declaration and as secured by the lien created herein.

3. Commencement

For purposes of calculation, the initial Annual Assessment for a Lot shall commence on the date of closing. Annual Assessments shall be due in advance on January 1<sup>st</sup> for the coming year and shall be delinquent if not paid in full as of January 31<sup>st</sup> of each year.

4. Proration

An Owner's initial Annual Assessment shall be made for the balance of the calendar year as determined on a pro-rata basis and shall become due and payable on the commencement date described above. The Annual Assessment for any year after the first year shall be due and payable on the first day of January. Any Owner who purchases a Lot or Lots after the first day of January in any year shall be personally responsible for a pro-rated Annual Assessment amount for that year.



## 5. Levying of the Assessment

The Annual Assessment shall be levied at the sole discretion of the Board. The Board shall determine the sufficiency or insufficiency of the then-current Annual Assessment to reasonably meet the expenses for providing services and capital improvements in the Subdivision and may, at its sole discretion and without a vote by the Members, increase the Annual Assessment in an amount up to ten percent (10%) annually. The Annual Assessment may only be increased by more than ten percent (10%) annually if such increase is approved by Owners of a majority of the Lots present, in person or by proxy, at a meeting called for said purpose at which a quorum is present in person or by proxy. The Annual Assessment shall not be adjusted more than once in a calendar year nor shall any increase be construed to take effect retroactively, unless otherwise approved by Owners of a majority of the Lots subject to such Annual Assessments present at a meeting called for said purpose at which a quorum is present in person or by proxy.

Annual Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price and method of payment differentials. The Board may require advance payment of Annual Assessments at closing of the transfer of title to a Lot, and impose special requirements for Owners with a history of delinquent payment.

The annexation of all or a portion of property adjoining the Subdivision may result in the Board adjusting the rate of Annual Assessments to be charged to the annexed property such that the adjusted Annual Assessments may not be uniform with the Annual Assessments being charged to other Owners. The Board shall have the absolute discretion to determine any such adjustment on a case-by-case basis.

### D. Special Assessment

In addition to the Annual Assessment authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, modification, repair or replacement of a capital improvement in the Common Area, or any unbudgeted expenses or expenses in excess of those budgeted, unusual, infrequent expense benefiting the Association, provided that any such Special Assessment shall have the approval of both (i) the Owners of a majority of the Lots present at a meeting duly called for this purpose at which a quorum is present in person or by proxy; and (ii) the written approval of the Declarant during the Development Period. Such Special Assessment will be due and payable as set forth in the resolution authorizing such Special Assessment and shall be levied only against those Owners subject to the Annual Assessment as set forth hereinabove and shall be prorated in accordance therewith. The Association, if it so chooses, may levy a Special Assessment against only those Lots benefited by or using the capital improvement for which the Special Assessment is being levied. Special Assessments shall be due upon presentment of an invoice, or copy thereof, for the same to the last-known address of the Owner. Declarant shall not be obligated to pay Special Assessments.

E. Capitalization Fee

Each purchaser of a Lot within the Subdivision, other than the Declarant, hereby covenants and agrees to pay to the Association a one-time payment, which shall be an amount determined by the Board, but in no event may be greater than one hundred percent (100%) of the Annual Assessment, as applicable (the "Capitalization Fee"). Such Capitalization Fee shall be payable to the Association at the closing of the transfer of title to a Lot. The payment of the Capitalization Fee shall be secured by the continuing lien set out herein and shall be collected in the same manner as Assessments. The transferring Owner shall notify the Association's Secretary, or managing agent, of a pending title transfer at least seven days prior to the transfer. Such notice shall include the name of the purchaser, the date of title transfer, and other information as the Board may require.

The Capitalization Fee may be used by the Association for any purpose, which in the Association's sole discretion is for the benefit of the Subdivision, including, but not limited to, maintenance of the lakes, ponds, and other bodies of water, installation, maintenance and improvement of Recreation Sites and the facilities located thereon, maintenance of gates, fences, and/or monuments, if any, which in the Association's sole discretion, benefit the Subdivision, and/or placement of such Capitalization Fee in a reserve account. This amount shall be in addition to, not in lieu of, the Annual Assessment and shall not be considered an advance payment of such Annual Assessments. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association.

F. Collection and Remedies for Assessments

1. The Assessments provided for in this Declaration, together with attorneys' fees, interest, late fees and costs as necessary for collection, shall be a charge on and a continuing lien upon the land against which each such Assessment is made. Each such Assessment, together with attorney's fees, interest, late fees, and costs, shall also be the personal obligation of the Owner of the Lot at the time the Assessment became due. This personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by them.

2. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (1) eighteen percent (18%) or (2) the maximum non-usurious rate of interest. No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by reason of non-use or abandonment.

3. In order to secure the payment of the Assessments hereby levied, a lien is hereby reserved in each deed from the Declarant to the Owner of each Lot in the Subdivision, which lien may be foreclosed upon pursuant to the laws of the State of Texas; each Owner grants a power of sale to the Association to sell such property upon default in payment by any amount owed. Alternatively, the Association may judicially foreclose the lien or maintain an action at law to collect the amount owed.

The President of the Association, or his or her designee, is hereby appointed Trustee to exercise the Association's power of sale. Trustee shall not incur any personal liability hereunder except for his or her own willful misconduct.

Although no further action is required to create or perfect the lien, the Association may, as further evidence give notice of the lien, by executing and recording a document setting forth notice that delinquent sums are due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien.

If required by law, the Association shall also give notice and an opportunity to cure the delinquency to any holder of a lien that is inferior or subordinate to the Association's lien, pursuant to Section 209.0091 of the Texas Property Code, or its successor statute.

In the event the Association has determined to foreclose its lien provided herein, and to exercise the power of sale hereby granted, such foreclosure shall be accomplished pursuant to the requirements of Section 209.0092 of the Texas Property Code by first obtaining a court order in an application for expedited foreclosure under the rules adopted by the Supreme Court of Texas. Notwithstanding anything contained herein to the contrary, in the event that the laws of the State of Texas are changed to no longer require a court order in an application for expedited foreclosure, the Association may pursue foreclosure of its lien via any method established herein, including but not limited to nonjudicial foreclosure, as may be permitted by the then-current law, without the necessity of amending this Declaration.

At any foreclosure proceeding, any person or entity, including but not limited to the Declarant, Association or any Owner, shall have the right to bid for such Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period such foreclosed Lot is owned by the Association following foreclosure, (1) no right to vote shall be exercised on its behalf; and, (2) no Assessment shall be levied on it. Out of the proceeds of such sale, there shall be paid all expenses incurred by the Association in connection with such default, including attorneys' fees and trustee's fees; second, from such proceeds there shall be paid to the Association an amount equal to the amount of Assessments in default inclusive of interest, late charges and attorneys' fees; and, third, the remaining balance, if any, shall be paid to such Owner. Following any such foreclosure, each Occupant of any such Lot foreclosed on and each Occupant of any improvements thereon shall be deemed to be a tenant-at-sufferance and may be removed from possession by any lawful means.

G. Subordination of the Lien to Purchase Money Mortgages

The lien for Assessments, including interest, late charges, costs and attorney's fees, provided for herein shall be subordinate to the lien of any purchase money mortgage on any Lot or Homesite. The sale or transfer of any Lot or Homesite shall not affect the lien. The sale or transfer shall not relieve such Lot or Homesite from lien rights for any Assessments thereafter becoming due. Where the mortgagee holding a purchase money mortgage of record or other purchaser of a Lot or Homesite obtains title pursuant to foreclosure of the mortgage, it shall not be liable for the share of the Assessments or other charges by the Association chargeable to such

Lot or Homesite that became due prior to such acquisition of title. However, from the date of foreclosure forward, such Assessments shall again accrue and be payable to the Association.

H. Notice of Delinquency

When the Association or its agent or designee gives a written notice of the Assessment to any Owner who has not paid an Assessment that is due under this Declaration, such notice will be mailed to the Owner's last known address. The address of the Lot or Homesite shall be presumed to be the address for proper notice unless written notice of another address has been provided by the Owner to the Association.

**ARTICLE XVI. MODIFICATION AND TERMINATION OF COVENANTS**

A. Amendment by Declarant

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Development Period, the Declarant may unilaterally amend this Declaration and any Supplemental Amendment for any purpose; provided, however, any such amendment shall not adversely affect the title to any Lots or Homesites unless the Owner shall consent thereto in writing.

After the expiration of the Development Period, the Declarant may unilaterally amend this Declaration and any Supplemental Amendment at any time without the joinder or consent of any Owners, entity, Lender or other person to amend this Declaration and any Supplemental Amendment if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on Lots and Homesites; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots or Homesites; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on Lots or Homesites; or (e) for the purpose of clarifying or resolving any ambiguities or conflicts herein or in any Supplemental Amendment, or correcting any inadvertent misstatements, errors or omissions herein or in any Supplemental Amendment; provided, however, any such amendment shall not adversely affect the title to any Lots or Homesites unless the Owner shall consent thereto in writing.

Any amendment to the Declaration or a Supplemental Amendment made by Declarant shall be recorded in the Real Property Records of Montgomery County, Texas, whereupon to the extent of any conflict with this Declaration or Supplemental Amendment, and any amendment thereto, the more restrictive provision shall control.

Any amendment made by the Declarant shall become effective upon recording unless otherwise specified in the amendment.

**B. Amendment by Owners**

During the Development Period, this Declaration and any Supplemental Amendment may be amended, modified or terminated by the approval of Owners of a majority of the Lots only with the written consent of the Declarant. After the termination of the Development Period, approval by the Owners of a majority of the Lots shall be required to amend, modify or terminate this Declaration and any Supplemental Amendment; provided however, any such amendment must be approved in writing by the Association. Upon approval of the Owners, as set out above of said amended declaration or amended supplemental amendment (as evidenced by the President's or Vice-President's signature) the amended declaration or amended supplemental amendment shall be recorded in the Real Property Records of Montgomery County, Texas, whereupon to the extent of any conflict with this Declaration or Supplemental Amendment and any amendment thereto, the more restrictive provision shall control. For purposes of this Section, the approval of multiple Owners of a Lot may be reflected by the signature of any one Owner of such Lot.

Notwithstanding anything contained herein to the contrary, the Association shall be entitled to use any combination of the following methods to obtain approval of the Owners for an amendment to the Declaration and any Supplemental Amendment:

1. by written ballot, or electronic ballot as same may be established by the Board, that states the substance of the amendment and specifies the date by which a written or electronic ballot must be received to be counted;
2. at a meeting of the Members of the Association, if written notice of the meeting stating the purpose of the meeting is delivered to the Owners of the Lots; such notice may be hand-delivered to the Owners, sent via regular mail to the Owner's last known mailing address, as reflected in the Association's records, or via email to the Owner's email address as reflected in the Association's records;
3. by door-to-door circulation of a petition by the Association or a person authorized by the Association; and/or
4. by any other method permitted under this Declaration or applicable law. Any limitation of amendment to the Declaration and any Supplemental Amendment related to said Property shall not limit the rights of the Declarant pertaining to the Declaration and any Supplemental Amendment as otherwise herein reserved. Particularly reserved to the Declarant, is the right and privilege of Declarant to designate the use and architectural restrictions applicable to any portion of the Properties, as provided herein; and such designation, or subsequent change of designation, shall not be deemed to adversely affect any substantive right of any existing Owner.

## ARTICLE XVII. ALTERNATE DISPUTE RESOLUTION

### A. Dispute Resolution

No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners; Members; the Board of Directors; officers in the Association; or the Association.

Disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process.

### B. Outside Mediator

In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator will either be an attorney-mediator skilled in community association law, a Professional Community Association Manager as certified by the Community Associations Institute, or a Certified Property Manager as certified by the Institute of Real Estate Managers. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in the Subdivision, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. The Board shall maintain a list of no less than five (5) potential mediators, but the parties will be in no way limited to their choice by this list. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than thirty (30) days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

### C. Mediation is Not a Waiver

By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before a mediation may be scheduled.

### D. Assessment Collection and Lien Foreclosure

The provisions of this Declaration dealing with Alternate Dispute Resolution shall not apply to the collection of Assessments and/or the foreclosure of the lien by the Association as set out in the Declaration.

### E. Term

This Article shall be in full force and effect for an initial period of three (3) years from the date of execution of this Declaration. However, this Article shall remain in full force and

effect unless, at the first open meeting of the Association after such initial period, a majority of the Board of Directors votes to terminate the provisions of this Article.

## ARTICLE XVIII. GENERAL PROVISIONS

### A. Severability

The invalidity of any one or more of the provisions of this Declaration shall not affect the validity of the other provisions thereof.

### B. Compliance with Laws

At all times, each Owner shall comply with all applicable federal, state, county, and municipal laws, ordinances, rules, and regulations with respect to the use, occupancy, and condition of the Homesite and any improvements thereon. If any provision contained in this Declaration or any supplemental declaration or amendment is found to violate any law, then the provision shall be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by law.

### C. Gender and Number

The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof applicable either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

### D. Headlines

The titles and captions for this Declaration and the sections contained herein are for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

### E. Governing Law

The provisions in this Declaration shall be governed by and enforced in accordance with the laws of the State of Texas. Any and all obligations performable hereunder are to be performed in Montgomery County, Texas.

### F. Fines for Violations

The Association may assess fines for violations of the Dedicatory Instruments, other than non-payment or delinquency in Assessments, in amounts to be set by the Board of Directors, which fines shall be secured by the continuing lien set out in this Declaration.

### G. Books and Records

The books, records and papers of the Association shall, upon written request and by appointment, during normal business hours, be subject to inspection by any Member, pursuant to a Records Production and Copying Policy adopted by the Association.

H. Notices

Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

I. Mergers

Upon a merger or consolidation of the Association with another association as provided in its Certificate of Formation, the Association's properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation or to a like organization or governmental agency. The surviving or consolidated association shall administer any restrictions together with any Declarations of Covenants, Conditions and Restrictions governing these and any other properties, under one administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

J. Current Address and Occupants

Owners are required to notify the Association in writing of their current address if other than the physical address of the Lot or Homesite at all times. If an Owner fails to notify the Association of their current address, the Association shall use the address of the Lot or Homesite as the current address. If Owner leases the property, he shall supply the name of the Occupant present upon the execution of any lease.

K. Security

NEITHER THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, NOR THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. NEITHER SHALL THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR SUCCESSOR DECLARANT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT DOES NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY DWELLING, OR OWNER OR USER OF AN IMPROVEMENT, ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLINGS AND IMPROVEMENTS AND TO THE CONTENTS OF DWELLINGS AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES,



DECLARANT OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER OR OCCUPANT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

L. View Impairment

Neither the Declarant, nor the Association, guarantee or represent that any view over and across the Lots, Common Areas, reserves or open space within the Subdivision will be preserved without impairment. The Declarant and the Association shall have no obligation to relocate, prune, or thin trees or shrubs on the Common Area. The Association shall have the right to add trees and other landscaping to the Common Area. There shall be no express or implied easements for view purposes or for the passage of light and air.

M. Video, Data and Communication Service Agreements

Subject to the approval of the Declarant during the Development Period, the Association has or may hereafter enter into an agreement with a service provider for the provision of cable television and/or other communication services in order to obtain access to benefits and services for the benefit of Owners and Dwellings located in the Subdivision. Payment for services and benefits provided pursuant to video, data and/or communication service agreements executed pursuant to this provision will be made from Assessments levied and collected by the Association pursuant to the authority granted herein, and such Assessments shall be supported by the lien created herein. While Owners are free to obtain the same or similar services from a provider of their choice, no Owner may avoid paying any portion of Assessments levied based on non-use of video, data or communication services provided and paid for by the Association with Assessments.

N. Occupants Bound

All provisions of the Dedicatory Instruments applicable to the Property and Owners, shall also apply to all Occupants of any Lot or Dwelling. Every Owner shall cause all Occupants to comply with the foregoing, and every Owner shall be responsible for all violations, losses, or damages caused by an Occupant, notwithstanding the fact that such Occupant is jointly and severally liable and may be sanctioned for any violation. In addition to all other remedies available to the Association in the event of a violation by an Occupant, the Association may require that the Occupant be removed from and not be allowed to return to the Subdivision and/or that any lease, agreement or permission given allowing the Occupant to be present be terminated.

O. Transfer of Title and Resale Certificate

1. Transfer of Title: Any Owner, other than the Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title,

and such other information as the Board may reasonably require. The person, other than the Declarant, transferring title shall continue to be jointly and severally responsible with the person accepting title for all obligations of the Owner, including Assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

Upon acceptance of title to a Lot, the new Owner of the Lot shall pay to the Association an administrative transfer fee to cover the administrative expenses associated with updating the Association's records, which transfer fee is supported by the lien created herein. Such fees shall be in such amount as the Board may reasonably determine necessary to cover its costs, including but not limited to, and fees charged by a management company retained by the Association for updating its records.

2. Resale Certificate: No Owner, other than the Declarant, shall transfer title to a Lot, together with the improvements thereon, unless and until he or she has requested and obtained a resale certificate signed by a representative of the Association as described in Chapter 207 of the Texas Property Code, or its successor statute ("Resale Certificate") indicating, in addition to all other matters described in Chapter 207, the information required in Section 5.012 of the Texas Property Code.

The Association may charge a reasonable fee to prepare, assemble, copy, and deliver a Resale Certificate and accompanying information and any update to a Resale Certificate, which charge is supported by the lien created herein.

[THIS SPACE IS INTENTIONALLY LEFT BLANK]



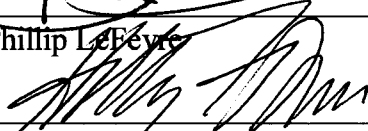
**JOINDER AND CONSENT**

WHEREAS, the undersigned, being the owner of a portion of the Property hereby agree to encumber all of the Property by the Declaration, and subject the Property to the covenants, conditions, and restrictions within the Declaration and to the jurisdiction of the Association.

SIGNED this the 4<sup>th</sup> day of June, 2015.



Phillip LeFevre

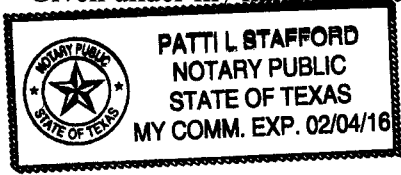


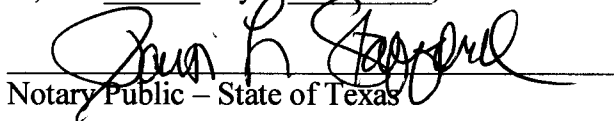
Holly LeFevre

STATE OF TEXAS                   §  
   §  
COUNTY OF MONTGOMERY       §

BEFORE ME, the undersigned authority, on this day personally appeared PHILLIP LEFEVRE, known by me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed the same for the purposes and in the capacity herein expressed.

Given under my hand and seal of office, this 4<sup>th</sup> day of June, 2015.

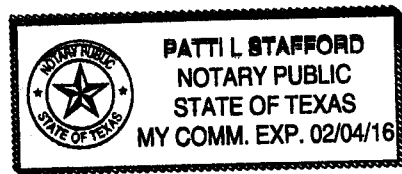


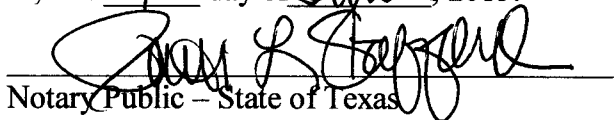
  
Notary Public – State of Texas

STATE OF TEXAS                   §  
   §  
COUNTY OF MONTGOMERY       §

BEFORE ME, the undersigned authority, on this day personally appeared HOLLY LEFEVRE, known by me to be the person whose name is subscribed to this instrument, and acknowledged to me that she executed the same for the purposes and in the capacity herein expressed.

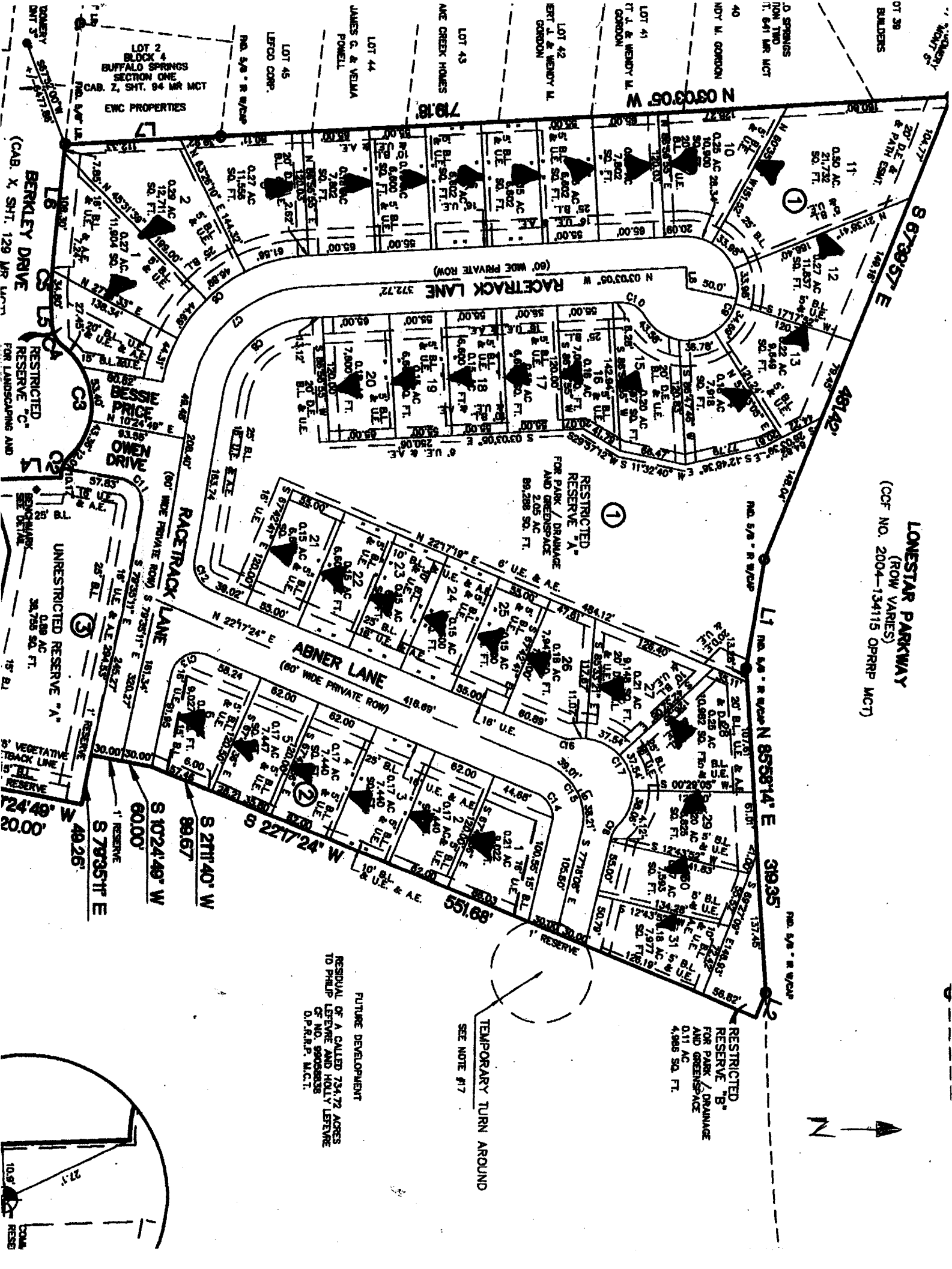
Given under my hand and seal of office, this 4<sup>th</sup> day of June, 2015.



  
Notary Public – State of Texas



**EXHIBIT "A"**



OT 38 BUILDERS

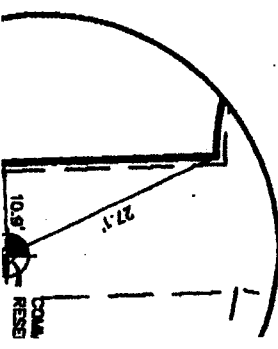
**LONESTAR PARKWAY**  
(ROW VARIES)  
(CCF NO. 2004-134115 OPRRP MCT)



RESTRICTED RESERVE "B" FOR PARK / DRAINAGE AND GREENSPACE  
0.11 AC  
4,985 SQ. FT.

TEMPORARY TURN AROUND  
SEE NOTE #17

FUTURE DEVELOPMENT  
RESIDUAL OF A CALLED 734.72 ACRES TO PHILIP LEVINE AND HOLLY LEVINE OF NO. 9900888 O.P.R.R.P. M.C.T.



**FILED FOR RECORD**

06/08/2015 3:31PM

*Mark Tumbull*

COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS  
COUNTY OF MONTGOMERY

I hereby certify this instrument was filed in file number  
sequence on the date and at the time stamped herein  
by me and was duly RECORDED in the Official Public  
Records of Montgomery County, Texas.

**06/08/2015**



*Mark Tumbull*

County Clerk  
Montgomery County, Texas