

ARTICLE VII.

INSURANCE; REPAIR; RESTORATION

Section 7.1. Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board, officers, managers, agents and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be deemed appropriate by the Board and/or as specifically required by the Eligible Mortgagees or Eligible Insurers. Such insurance may include, but need not include, and need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs;

(b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Board, Owners, Residents or Guests with respect to the Common Properties;

(c) Fidelity bonds for all Directors, officers and employees of the Association having control over the receipt or disbursement of funds; and

(d) Liability insurance regarding the errors and omissions of Directors, officers, managers, employees and representatives of the Association.

Section 7.2. Insurance and Condemnation Proceeds. The Association shall be the exclusive representative of the Members in any proceedings, negotiations, settlements or agreements concerning insurance or condemnation with respect to the Common Properties. The Association and the Members may use the net insurance or condemnation proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance or condemnation. Any balance from the proceeds of insurance or condemnation paid to the Association, remaining after satisfactory completion of repair, restoration and replacement or after the Board has elected to waive the repair, restoration or replacement, shall be retained by the Association as part of a general reserve fund for repair, restoration, maintenance and replacement of the Common Properties.

Section 7.3. Insufficient Proceeds. If insurance or condemnation proceeds are insufficient to repair or replace any loss of or damage to the Common Properties, the Association may levy a Special Assessment or, to the extent applicable, a Special Group Assessment, as provided for in **Article V** to cover the deficiency.

Section 7.4. Liability Insurance Arrangements. The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, Members or authorized representatives of the Association. Neither Declarant nor the Association will carry any insurance pertaining to, nor does either assume any liabilities or responsibility for, the real or personal property of Owners or Residents

(and their Guests). Each Owner and Resident expressly understands, covenants and agrees with Declarant and the Association that:

(a) neither Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of any Owner, Resident or their Guests; and

(b) each Owner or Resident shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's or Resident's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner or Resident covering his or her real and personal property.

Section 7.5. Liability Insurance. The Association may, but shall not be obligated to, require an Owner or Builder to obtain a comprehensive general liability policy prior to the commencement of construction or modification of any improvement for which plans and specifications must be submitted to the ARC for approval under this Declaration and the Design Guidelines. Such policy, if required, shall have a combined single limit of not less than One Hundred Thousand Dollars (\$100,000.00) covering all losses, damages and claims arising out of the general contractor's or Builder's use of, activities on and/or ownership of the Lot, including property damage, bodily injury and death. Such policy, if required, shall also name the general contractor or Builder, as applicable, as the insured party and the Association as an additional insured. In addition, the general contractor or Builder shall obtain, if required by the Board, worker's compensation insurance, if and to the extent required by law; employer's liability insurance; automobile liability insurance covering all motor vehicles owned, hired or used in connection with the general contractor's or Builder's construction activities in the Addition; and builder's risk insurance covering the general contractor's or Builder's activities in the Addition, all in such amounts as are reasonable to the Association. Notwithstanding the foregoing, to the extent this **Section 7.5** conflicts with any provisions addressing the same subject matter set forth in the Design Guidelines, such terms and provisions of the Design Guidelines shall control.

A certificate evidencing insurance required to be maintained pursuant to this **Section 7.5** shall be provided to the Association prior to the commencement of any construction or modification of an improvement on a Lot, and such insurance shall be maintained in effect so long as the original contractor and/or Builder is engaging in any construction on any Lot within the Addition.

ARTICLE VIII.

ARCHITECTURAL REVIEW

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Section 8.1. Architectural Review Committee. The Architectural Review Committee (also referred to as the ARC) shall be composed of at least three (3) individuals initially selected and appointed by Declarant, each generally familiar with residential and community development design matters and knowledgeable about Declarant's concern for a consistent first class approach to and construction of improvements within the Addition whose compensation, if any, shall be established from time to time by the Board. During the Development Period, the Declarant, at its sole option, or the ARC, with Declarant's approval, may appoint a

representative and delegate the functions of the ARC to such representative. During the Development Period, Declarant shall have full authority to remove any member of the ARC or a delegate thereof, and appoint a successor, and in the event of the death, incapacity, removal or resignation of any member of the ARC, to designate and appoint a successor. After expiration of the Development Period (or earlier with Declarant's approval), the ARC shall become the province of the Association, and from and after such time, the Board may, at its option, or in the event of the death, incapacity, removal or resignation of any member of the ARC, appoint the members of the ARC, who shall thereafter serve and may be removed in the Board's discretion.

Section 8.2. ARC Jurisdiction.

(a) No building, structure, fence, wall or other Improvement of any kind or nature shall be erected, placed or altered on any Lot, nor shall any staking, clearing, excavation, grading and other site work, exterior modifications of existing Improvements, and (substantive) planting or removal of landscaping materials take place on any Lot, except in compliance with this Declaration, the Design Guidelines, and architectural bulletins promulgated by the ARC. Approval of a majority of the ARC members (or its designated representative) shall constitute approval by the ARC. Notwithstanding the foregoing, this Article shall not apply to the activities of Declarant in connection with the development of the Addition or to improvements to the Common Properties by Declarant or by or on behalf of the Association.

(b) **The ARC shall have exclusive and absolute authority to administer and enforce architectural controls on each Lot in the Addition, as provided herein and in the Design Guidelines.**

(c) **BEFORE UNDERTAKING ANY ALTERATION, EACH OWNER AND MORTGAGEE (OR PROSPECTIVE PURCHASER AND MORTGAGEE) OF ANY LOT IN THE ADDITION IS STRONGLY ENCOURAGED TO CONTACT THE ARC TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES AND TO DISCUSS THE ALTERATION PROPOSAL.**

Section 8.3. Review Standards. In reviewing any application, the ARC may consider, among other things, all standards set forth within this Declaration, the Design Guidelines, bulletins promulgated by the ARC, any amendments to such documents, or matters in which the ARC has been vested with the authority to render a final interpretation and decision. In addition, the ARC may consider an applicant's financial ability to complete proposed Improvements according to such applicant's submitted plans.

The ARC is authorized and empowered (but not obligated) to consider and review any and all aspects of construction, location and landscaping on any part of the property within the Addition. In addition, the ARC shall be permitted to consider technological advances and changes in design and materials, and such comparable or alternative techniques, methods or materials may or may not be permitted, in the ARC's reasonable discretion.

Section 8.4. Design Guidelines. The Design Guidelines are intended to be explanatory and illustrative of the general intent of the proposed development of Lots to be developed within the Addition and a guide to assist the ARC in reviewing plans and specifications for Improvements to be located and constructed on each Lot. The ARC may,

from time to time, publish and promulgate additions or revisions thereto, and any amendments to the Design Guidelines shall be prospective only and shall not apply or require modifications to or removal of structures previously approved (in accordance with the terms and provisions of the Design Guidelines) once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and Declarant, the Board or the ARC, as determined by the terms and provisions hereof and of the Design Guidelines, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive. The Design Guidelines may contain general provisions applicable to all of the Lots, as well as specific provisions which vary from one portion of the Addition to another depending upon location and unique characteristics.

The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Addition, and all such Persons shall conduct their activities in accordance with such Design Guidelines. The ARC shall have the right, power and authority to establish and prescribe bulletins pursuant to the Design Guidelines and/or amendments as necessary to give either effect pertaining to the purpose of the Design Guidelines set forth herein and therein.

PRIOR TO THE ACQUISITION OF ANY INTEREST IN, AND CONSTRUCTION ON A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF ANY LOT IN THE ADDITION IS STRONGLY ENCOURAGED TO CONTACT DECLARANT OR THE ASSOCIATION OR THE ARC TO OBTAIN AND REVIEW AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS, BULLETINS AND LOT INFORMATION SHEETS AND THE MOST RECENT DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT IN QUESTION.

Declarant, the Association or the ARC, as applicable, will provide or make available such information and materials upon request.

Section 8.5. General.

(a) The ARC shall be entitled, at any time and from time to time, to associate or employ a staff and to seek and obtain professional advice and counsel (including, but not limited to, architects, attorneys, designers, engineers and landscape technicians) in connection with the performance of its duties with all reasonable costs and expenses related thereto paid for or reimbursed by the Association. The Association may, in turn, reasonably recoup some or all of these expenses from the applicants seeking review and approval of plans and specifications.

(b) Neither Declarant nor the Association, the ARC, the Board or officers, Directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. No approval of plans and specifications and no publication of any Design Guidelines, architectural bulletins or lot information sheets shall be construed as representing or implying that such plans, specifications, guidelines, bulletins or sheets will, if followed, result in properly designed Improvements and/or Improvements built in a

good and workmanlike manner. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS, AND EVERY OWNER OF EACH AND EVERY LOT, AGREES THAT IT WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE ARC, THE BOARD, OR THE OFFICERS, MANAGERS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM, TO RECOVER ANY SUCH DAMAGES, AND EACH AND EVERY OWNER HEREBY RELEASES, REMISES AND QUITCLAIMS ALL CLAIMS, DEMANDS AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

(c) After reasonable notice to an Owner, any agent of the ARC may from time to time at any reasonable hour or hours enter and inspect any Lot or the Improvements located thereon to confirm improvement or maintenance or alteration in compliance with the provisions hereof and/or of the Design Guidelines. No Improvements or addition or change or alteration thereof shall be constructed, erected, placed, altered or maintained on any Lot which is in violation of the Zoning Ordinance or any of the other laws or ordinances of the County or any other applicable governmental laws, rules or regulations. However, Declarant, the Association, the ARC and their respective officers, directors, managers, agents and employees shall have no obligation to enforce or to report the violation of any such law, ordinance, rule or regulation.

(d) The ARC shall have the power to grant variances, waivers, tolerances or modifications of the standards set forth herein and/or in the Design Guidelines under circumstances and conditions deemed reasonable, appropriate and prudent by the ARC. Matters of "quality," "adequacy" and "propriety" are to be considered by the ARC generally from an aesthetic standpoint and not from an engineering standpoint. Plans and specifications are not to be reviewed or approved for engineering or structural design or technical quality of materials, and by approving such plans and specifications neither the ARC, nor the members thereof, nor the Association assumes liability or responsibility therefor or for any defect in any Structure constructed from such plans and specifications.

ARTICLE IX.

USE OF LOTS IN THE ADDITION; PROTECTIVE COVENANTS

Each Lot situated within the Addition shall be constructed, developed, reconstructed, repaired, occupied and used in accordance and compliance with this Declaration and with the Design Guidelines and architectural bulletins issued by the ARC (including any amendments to either) and as follows:

Section 9.1. Residential Use. All Lots shall be used for Residential Use, unless otherwise indicated on the applicable Plat. Lots shall not be further subdivided and, except for the powers and privileges herein reserved by Declarant, the boundaries between Lots shall not be relocated without the prior express written consent of the ARC. No building or structure intended for or adapted to business or commercial purposes or commercial use shall be erected, placed, permitted or maintained on any Lot, or any part hereof, save and except those related to development, construction and sales purposes of a Builder or Declarant. No Owner

shall conduct, transmit, permit or allow any type or kind of home business or home profession or hobby on any Lot or within any Dwelling Unit which would (a) attract automobile, vehicular or pedestrian traffic to the Lot, or (b) involve lights, sounds, smells, visual effects, pollution and the like which would adversely affect the peace and tranquility of any one or more of the other Owners. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the Zoning Ordinance or any other statutes, rules, regulations and ordinances of the County or any other governmental authority having jurisdiction over the Addition.

Section 9.2. Offensive Activities. No noxious or offensive activity or pollution affecting sight/sound/smell, as determined by the ARC, shall be conducted or permitted on any portion of the Addition. Excluding activities of Declarant and Builders, no direct sales activities, garage sales, yard sales, patio sales, flea markets, bazaars, sample sales, promotional dinner parties or similar activities shall be conducted on any portion of the Addition.

Section 9.3. Maintenance.

(a) Each Owner of any Lot shall have the duty and responsibility, at its sole cost and expense, to keep, maintain and landscape its Lot in a well maintained, clean and attractive condition at all times, including, without limitation, (i) the proper sodding, consistent watering and mowing of all lawns, (ii) the pruning and cutting of all trees and shrubbery, (iii) watering of all landscape, (iv) keeping lawn and garden areas alive, free of weeds and attractive, all in a manner and with such frequency as is consistent with aesthetics and good property management.

(b) Each Owner of a Lot shall have the duty and responsibility, at its sole cost and expense, to keep and maintain its Lot, and all Improvements therein and thereon, in a well maintained, safe, clean and attractive condition at all times, including, without limitation (i) prompt removal of all litter, trash, refuse and waste, (ii) keeping exterior lighting and mechanical facilities in working order, (iii) keeping driveways in good repair and condition, (iv) promptly repairing any exterior damage, (v) complying with all governmental health and police requirements, and (vi) repainting Improvements when required, all in a manner and with such frequency as is consistent with aesthetics, safety and good property management.

(c) The Association, and its agents, during normal business hours, shall have the right (if, after five (5) days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of a covenant and the action required to be taken, such action has not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any Person) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es) and/or, as may be established from time to time by the Association, to impose a daily fine during the period of violation. The Association, or its agent, shall further have the right (upon like notice and conditions) to trim or prune, at the expense of an Owner, any hedge, tree or any other planting that, in the reasonable opinion of the Association, by reason of its location on the Lot or the height or manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance. The cost of any such remedy or abatement and/or the total fine shall be paid to the Association upon demand and, if not paid within thirty (30) days thereof, shall become a contract Payment and Performance Lien upon the Lot affected, which

lien shall be retained against such Lot with the same force and effect as the Payment and Performance Lien for Assessments set forth herein.

ARTICLE X.

EASEMENTS

Section 10.1. Easements; Utilities.

(a) Easements for the installation and maintenance of utilities and drainage facilities shall be reserved as shown on the Plat (or plat filed after the date hereof for future phases of the Addition). Utility service may be installed along or near the front and/or side and/or rear Lot lines and each Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the ARC (e.g., fencing, flatwork, landscaping, etc.), no Owner shall erect, construct or permit any obstructions or permanent Improvements of any type or kind to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Electrical (and possibly other utility) easements may be located at, near or along the front or rear Lot line(s), and each Owner assumes full, complete and exclusive liability and responsibility for all cost and expense related to damage, repair, relocation and restoration of any improvements or fence located within the easement area. Except as to special street lighting or other aerial facilities which may be required by the County or applicable governmental authority or which may be required by the franchise of any utility company or which may be installed by Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed within the Addition, whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other Person, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility. The foregoing notwithstanding, aerial utility facilities may be required to deliver services to the property line of the Addition. All utility meters, equipment, air conditioning compressors, pool equipment and similar items must be visually screened and located in areas designated by the ARC pursuant to the Design Guidelines. Full rights of ingress and egress shall be had by Declarant, the Association, and all utility companies serving the Addition, and their respective successors and assigns, at all times over the Addition for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction (excluding, however, any driveway, fence or other Improvement or Structure which has been theretofore specifically approved by the ARC) that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Such easement rights shall be appurtenant to and shall pass with every Lot and the Common Properties.

(b) Each Owner shall assume full and complete responsibility for all costs and expenses arising out of or related to the repair, replacement or restoration of any utility equipment damaged or destroyed as a result of the negligence or misconduct of any Owner or its Residents or Guests. Each Owner agrees to provide, at such Owner's sole cost and expense, such land and equipment and apparatus as are necessary and appropriate to install

and maintain additional lighting and security-related measures which become technologically provident in the future.

Section 10.2. Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon the setback and sign or other easement areas applicable for each Lot for the carrying out by the Association of its functions, duties and obligations hereunder; provided, however, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner thereof as practical, and any damage caused thereby shall be repaired by the Association at the expense of the Association's maintenance fund.

Section 10.3. Additional Easements. Each of Declarant (throughout the Development Period) and the Association, on their behalf and on behalf of all Owners, each shall have the right to (a) grant and declare additional easements over, upon, under and/or across the Common Properties in favor of Declarant or any person, entity, public or quasi-public authority or utility company, and (b) modify, relocate, abandon or terminate existing easements affecting the Common Properties.

ARTICLE XI.

RIGHTS OF CERTAIN MORTGAGEES AND MORTGAGE INSURERS

Section 11.1. Applicability. The provisions within this **Article XI** are for the benefit of:

(a) The owners and holders of Institutional Mortgages which are required to satisfy the applicable requirements of FHA, VA, FNMA, FHLMC and other similar governmental, quasi-governmental and nationally recognized public and/or private sources of end financing (such mortgagees sometimes collectively referred to herein as "**Eligible Mortgagees**" and their mortgages referred to as "**Eligible Mortgages**"); and

(b) The insurers, guarantors, participants and subsidizers of the Eligible Mortgages, sometimes collectively referred to herein as the "**Eligible Insurers**".

To the extent applicable, necessary or proper, the provisions of this **Article XI** apply not only to this Declaration but also to the other Governing Documents. This **Article XI** is supplemental to, and not in substitution of, any other provisions of this Declaration or the other Governing Documents, but in the event of ambiguity or conflict, this **Article XI** shall control.

Section 11.2. Notices of Action. An Eligible Mortgagee or Eligible Insurer who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and a reasonable description of the Lot covered by the Eligible Mortgage) will be entitled to receive timely written notice of:

(a) any proposed termination of the Association;

(b) any condemnation loss or any casualty loss which affects a material portion of the Addition or which materially affects any Lot on which there is an Eligible Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;

(c) any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to the Eligible Mortgage of such Eligible Mortgagee or Eligible Insurer, where such delinquency has continued for a period of sixty (60) days;

(d) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

(e) any proposed action which would require the consent of the Eligible Mortgagees as required hereinbelow.

Section 11.3. Joinder to Documents.

(a) In addition to the provisions set forth within **Article XII**, Eligible Mortgagees who have requested the Association to notify them concerning any proposed action that requires the consent of a specified percentage of Eligible Mortgagees also have the right to join in the decision making about certain amendments to this Declaration. In such regard amendments of a "material nature," as hereinafter defined, must be approved by (i) at least sixty-seven percent (67%) of Owners, and (ii) Eligible Mortgagees representing at least fifty-one percent (51%) of the Lots that are subject to Eligible Mortgages. A substantive change to any of the following would be considered material.

- (i) voting rights;
- (ii) assessments, assessment liens, or subordination of assessment liens;
- (iii) reserves for maintenance, repair and replacement of Common Properties;
- (iv) responsibilities for maintenance and repairs;
- (v) boundaries of any Lot covered by an Eligible Mortgage;
- (vi) convertibility of any Lot into Common Properties or vice versa;
- (vii) expansion to the Addition;
- (viii) insurance or fidelity bonds;
- (ix) leasing of any Lot;
- (x) imposition of any restrictions on an Owner's right to sell or transfer its Lot;
- (xi) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgagee; or

(xii) modification of any provisions that expressly benefit Eligible Mortgagees or Eligible Insurers.

Additions or amendments such as the correction of a technical error or the clarification of a statement shall not be considered or construed as being of a material nature.

(b) If and when Owners are considering termination of the coverage of this Declaration over the Addition, the Eligible Mortgagees representing at least sixty-seven percent (67%) of the Lots that are subject to Eligible Mortgages must approve such termination.

Section 11.4. Special FHLMC Provision.

(a) So long as and only to the extent required by FHLMC, the following provisions apply in addition to and not in lieu of the other provisions of **Article XI**. Unless two-thirds (2/3's) of the Eligible Mortgagees or Owners of Lots give their consent, and subject to the condition that any proposed action of the Association purportedly covered by the following requirements must be material and adverse, the Association shall not:

(i) except as expressly permitted hereby, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Properties which the Association owns, directly or indirectly (exclusive of the granting of easements for public utilities or for other public purposes consistent with the intended use of the Addition);

(ii) change the method of determining the obligations in respect to Assessments, Charges or other monetary obligations which may be levied against an Owner;

(iii) by act or omission charge, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance as contemplated by this Declaration and maintenance of Lots and of the Common Properties;

(iv) assign any future income of the Association, including its right to receive Assessments;

(v) fail to maintain fire and extended coverage insurance on assets owned by the Association, as required by this Declaration; or

(vi) use hazard insurance proceeds for any losses to the Common Properties for any purpose other than the repair, replacement or reconstruction of such properties.

(b) The provisions of this **Section 11.4** shall not be construed to reduce the percentage vote that must be obtained from Eligible Mortgagees when a larger percentage vote is otherwise required for any of the actions described in this **Section 11.4**.

(c) Eligible Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Properties (if any) and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance

coverage upon the lapse of a policy, for the Common Properties owned by the Association, and Eligible Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 11.5. Approval of Amendments. The failure of an Eligible Mortgagee or Eligible Insurer to respond within thirty (30) days to any written request of the Association for approval of an addition or amendment shall constitute an implied written approval of the addition or amendment.

Section 11.6. Inspection of Books. The Association shall have current copies of the Declaration, other Governing Documents, books, records and financial statements available for inspection by Owners and by Eligible Mortgagees and Eligible Insurers during normal business hours or under other reasonable circumstances.

Section 11.7. Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request with a copy of an annual financial statement within ninety (90) days following the end of each Fiscal Year. Each such Eligible Mortgagee and Eligible Insurer shall have the right to have such statements audited by an independent certified public accountant at its sole cost and expense, which audited report shall be made available to the Association within thirty (30) days following completion. The Association shall not be obligated to cause its financial statements to be audited by more than one (1) Eligible Mortgagee or Eligible Insurer more than once in any Fiscal Year.

Section 11.8. Enforcement. The provisions of this Article XI are and shall be for the benefit only of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means, at law, or in equity.

Section 11.9. Attendance at Meetings. Any authorized representative(s) of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting of the Association which an Owner may attend.

Section 11.10. Annexation. With respect to any annexation of additional lands within the scheme of this Declaration, the following additional provisions shall apply in the event that any Lots are covered by Eligible Mortgages prior to the date of such annexation:

- (a) The legal method of expansion shall be generally in accordance with **Article II** herein;
- (b) The potential annexable property is legally described within **Article II**;
- (c) Prescribing Assessments and/or granting voting rights to the annexed properties shall be generally in accordance with **Articles III and V** herein;
- (d) All improvements intended for future phases will be substantially completed prior to annexation and will be consistent with the initial improvements in terms of quality of construction; and

(e) The annexation document(s) that will be recorded will likely be a declaration similar to this Declaration or an amendment hereto.

Section 11.11. Working Capital Fund. To the extent required by any promulgated regulations of any Eligible Mortgagees and/or Eligible Insurers, and/or, after the expiration of the Development Period, if determined by the Board to be reasonably necessary to the operation of the Association, the Association shall establish a working capital fund at least equal to two month's, or one-sixth (1/6), of the Annual Assessment for each Lot. Any amounts paid into this fund should not be considered as advance payments of regular assessments. Each Owner's share of the working capital fund should be collected at the time the sale of the Lot is closed or at the time such fund is established and then should be transferred to the Association for deposit to a segregated fund.

Section 11.12. Miscellaneous.

(a) No provision of this Declaration or the Bylaws shall give or shall be construed as giving any Owner or other party priority over any right of the first mortgage of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Properties (if any).

(b) Upon request, each Owner shall be obligated to furnish the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

(c) Should FNMA or FHLMC subsequently delete any of their respective requirements which necessitate the provisions of this **Article XI** or make any such requirements less stringent, the Board, without the approval of Owners, may cause an amendment to this **Article XI** to be recorded to reflect such change or changes.

ARTICLE XII.

GENERAL PROVISIONS

Section 12.1. Power of Attorney.

(a) Except with respect to any matter set forth herein which requires the consent and/or approval of a certain number or percentage of Owners and such consent and/or approval is not obtained (for which the power of attorney granted herein shall not apply), and only during the term of the Development Period, each and every Owner hereby makes, constitutes and appoints Declarant as its true and lawful attorney-in-fact, coupled with an interest and irrevocable, for its and in its name, place and stead and for its use and benefit, to do the following:

(i) to exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Addition;

(ii) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this

Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(iii) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the Plat of the Addition, or any part thereof, with any easements and rights-of-way to be therein contained as Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

(b) The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Records and shall remain in full force and effect until the expiration of the Development Period, at which time such rights, powers and authority shall terminate.

(c) Notwithstanding any other provision set forth herein, the provisions of paragraph (a) above cannot be amended or modified in any respect without the consent of Owners owning at least fifty-one percent (51%) of the Lots subject to this Declaration.

Section 12.2. Further Development. During the Development Period, each and every Owner waives, relinquishes and shall not, directly or indirectly, exercise any and all rights, powers or abilities, and the Association shall not devote or expend any monies or personnel, regarding the contest, objection to, challenge, dispute, obstruction, hindrance or any manner of disagreement with the proposed or actual development (including, without limitation, zoning or re-zoning efforts or processes pertaining to residential uses) of any real property owned by Declarant or by the Affiliates, assignees or successors of Declarant within the Addition which is generally consistent with the scheme contemplated by this Declaration and the provisions of the Zoning Ordinance.

Section 12.3. Duration. This Declaration and the Covenants herein shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or Owners of any Lot, their respective legal representatives, heirs, devisees, personal representatives, successors and assigns, perpetually, to the maximum extent permitted by law, unless an agreement to abolish this Declaration and these Covenants is approved by the unanimous consent of Owners of all of the Lots and an instrument to such effect is recorded in the Records. Notwithstanding the foregoing, however, the instrument must be made and recorded one (1) year in advance of the effective date of such abolishment unless a shorter time period is approved by the unanimous consent of Owners of all of the Lots.

Section 12.4. Amendments. This Declaration and the Covenants set forth herein are expressly subject to change, modification and/or deletion by means of amendment, at any time and from time to time, on the following basis:

(a) During the Development Period (i) in response to any governmental or quasi-governmental guideline requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance, or (ii) in respect to any amendments desired by Declarant (whether of a "material nature" or not, as described below), Declarant shall have the complete

and unfettered right and privilege to amend, change, revise, modify or delete any portions of this Declaration and the Covenants set forth herein, and each and every Owner specifically and affirmatively authorizes and empowers Declarant, utilizing the attorney-in-fact status set forth in **Section 12.1** above, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions as Declarant (in its sole and absolute discretion) shall deem reasonable and appropriate.

(b) After the Development Period ends, this Declaration and these Covenants may be amended or changed upon the express written consent of the Association, without the approval of any Owner, except for amendments of a "material nature."

(c) After the Development Period ends, amendments of a "material nature" to the Declaration and these Covenants must be approved by Owners owning at least fifty-one percent (51%) of the Lots.

(d) A substantive change to any provision dealing with or governing any of the following items will be considered an amendment of a "material nature":

- (i) voting rights of any Member;
- (ii) liens securing the payment of Assessments, or subordination of liens securing the payment of Assessments, or materially and adversely changing the method of determining the obligations in respect to Assessments, Charges or other monetary obligations which may be levied against an Owner;
- (iii) material reduction of reserves for maintenance, repair, and replacement of Common Properties;
- (iv) responsibility for maintenance and repairs;
- (v) except as expressly permitted herein, convertibility of any Lot into Common Properties or vice versa;
- (vi) the addition, annexation, or withdrawal of the property to or from the Addition, except as expressly permitted by the provisions of **Article II** hereof;
- (vii) hazard or fidelity insurance requirements;
- (viii) imposition of any restrictions on an Owner's right to sell or transfer its Lot;
- (ix) restoration or repair (after a hazard damage or partial condemnation) of the Common Properties in a manner other than that specified herein; or
- (x) any action to terminate the legal status of the Addition after substantial destruction or condemnation occurs or any action which materially and adversely alters the use of hazard insurance proceeds in respect to any losses to the Common Properties for any purpose other than the repair, replacement or reconstruction of the Common Properties.

(e) A substantive change to any provision dealing with or governing any of the following items will be considered of a "material nature", on the condition that any proposed action of the Association purportedly covered by the following must be material and adverse:

(i) except as expressly permitted hereby, any act or omission to act seeking to abandon, partition, subdivide, encumber, sell or transfer the Common Properties which the Association owns, directly or indirectly (exclusive of the granting of easements for public utilities or for other public purposes consistent with the intended use of the Addition);

(ii) any act or omission to act changing, waiving or abandoning any scheme of regulations or enforcement thereof pertaining to the design or the exterior appearance and maintenance of Structures and of the Common Properties as contemplated by this Declaration;

(iii) any act assigning any future income of the Association, including its right to receive Assessments; or

(iv) failing to maintain fire and extended coverage insurance on assets owned by the Association, as required by this Declaration.

(f) Additions or amendments to the Declaration such as the correction of a technical error or the clarification of a statement shall not be considered or construed as being "material" and may be made by Declarant (during the Development Period) and by the Association (after the Development Period ends).

(g) All amendments shall be in the form of a written instrument able to be, and shall be, duly recorded in the Records. The instrument shall contain such information as is necessary to adequately identify the legal description of the Addition and the recording information of this Declaration. To the extent that Declarant, pursuant to the terms hereof, has the right to unilaterally amend this Declaration, an amendment may be executed by Declarant alone and need not name the Association or be executed by an officer of the Association. To the extent approval of a certain number or percentage of Owners or Directors or Eligible Mortgagees, as the case may be, is required, such instrument need not be signed by all approving parties, but shall be signed and acknowledged by an authorized officer of the Association, certifying that the requisite number or percentage (of Owners or Directors or Eligible Mortgagees, as the case may be) was obtained. When a certain percentage, share or number of Owners is called for herein or in any of the other Governing Documents, such reference shall mean the Owners of at least that percentage, share or number of the Lots.

(h) No amendment to this Declaration may affect Declarant's rights hereunder or amend this **Section 12.4** without Declarant's written acknowledgment and consent, which must be part of the recorded instrument.

Section 12.5. Enforcement. Each Owner shall be deemed, and held responsible and liable for the acts, conduct and omissions of each and every Owner, Resident and Guest affiliated with that Owner's Lot, and such liability and responsibility of each Owner shall be joint and several with its Residents and Guests. The contract Performance and Payment Lien

covering Lots shall extend to, cover and secure the proper payment and performance of all obligations under this Declaration by each and every Resident and Guest affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional restraints and restrictions on the "good standing" qualifications of any Person who occupies such Owner's Lot. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Addition. Enforcement of these Covenants may be initiated by any proceeding at law or in equity against any Person violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants; but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including court costs and reasonable attorneys' fees, from the non-prevailing party.

Section 12.6. Validity. Violation of or failure to comply with these Covenants, and all terms and provisions set forth in this Declaration, shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of these Covenants, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. These Covenants, and all terms and provisions set forth in this Declaration, are subject, in all events, to compliance with applicable local, state and federal laws, ordinances and regulations. In the event any portion of these Covenants and/or any terms or provisions set forth in this Declaration conflict(s) with mandatory provisions of any applicable federal, state or local law, ordinance or regulation, then such legal requirement shall control.

Section 12.7. Proposals of Declarant. The development plans and proposals of Declarant, as may be set forth in or inferred by various provisions herein, are mere proposals and expressions of the existing good faith intentions and plans of Declarant and shall not be deemed or construed as promises, solicitations, inducements, contractual commitments or material representations by Declarant upon which any Person can or should rely. Nothing contained in or inferable from this Declaration shall ever be deemed to impose upon any other land owned or to be owned by Declarant, or any related entity, any covenants, restrictions, easements or liens or to create any servitudes, negative reciprocal easements or other interests in any such land in favor of any Person other than Declarant.

Section 12.8. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender ("his," "her," and "its" all being construed to mean any one or other of same), and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

Section 12.9. Notices to Owner. Any notice required to be given to any Owner of a Lot under the provisions of this Declaration shall be deemed to have been properly delivered when: (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the Person who appears as Owner on the records of the Association at the time of

such mailing or (ii) delivered by hand or by messenger to the last known address of such Person within the Addition, or (iii) sent electronically to the last known electronic address of such Person, or (iv) as otherwise reasonably established by the Association pursuant to contact information provided by such Person. In all events, if an Owner fails to give the Association either a physical or electronic address or if the address provided is no longer effective or valid, all notices may be sent to the Owner's Lot, and the Owner shall be deemed to have received the notice (whether or not it is actually received).

Section 12.10. Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Owner in the performance of such mortgagor's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s), identification of the Lot in question, and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

Section 12.11. Disputes. Matters of dispute or disagreement between Owners or Members with respect to interpretation or application of the provisions (excluding **Article VIII** architectural matters) of this Declaration or the Bylaws, shall be determined by the Board. Matters pertaining to **Article VIII** architectural matters shall be determined by the ARC. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners.

Section 12.12. Binding Arbitration. Notwithstanding anything contained herein, all Owners agree that any dispute of any nature whatsoever arising directly or indirectly from this Declaration or other Governing Documents, including the Design Guidelines, or the development, sale or use of a Lot or Dwelling Unit thereon shall be determined by binding arbitration in accordance with the rules and procedures of the American Arbitration Association. The venue for any such arbitration shall be Dallas County, Texas, and the decision resulting from such arbitration procedure shall be binding and conclusive on the parties and non-appealable. If, at the time such arbitration is to be held, the American Arbitration Association is not in existence and has no successor, the arbitrators shall be appointed by a Judge of an appropriate District Court of Dallas County, Texas, or by any successor court, upon application of any Owner. The number of arbitrators to be appointed shall be three (3). The parties to the arbitration, in addition to the rights granted under the rules of the American Arbitration Association, shall have the right to offer evidence and testify at the hearings and cross-examine witnesses.

Section 12.13. Residential Construction Liability Act. Without waiving any rights under law or equity, all Owners acknowledge, covenant and agree that residential construction defect claims regarding any home against Declarant or any Builder in Texas are controlled by the Texas Residential Construction Liability Act (Tex. Prop. Code §27.001 *et seq.*, as amended) which preempts the Texas Deceptive Trade Practices Act (Tex. Bus. & Comm. Code §17.41 *et seq.*, as amended) and any other law, and such claims may also be subject to the Texas Residential Construction Commission Act (Tex. Prop. Code, Chapters 401 *et seq.*, as amended).

Section 12.14. Severability. Each section, part, term or provision of this Declaration and the Design Guidelines shall be considered severable, and if, for any reason, any section, part, term or provision herein or therein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other affect on other sections, parts, terms or provisions of this Declaration or the Design Guidelines, as applicable, as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto and thereto, and said invalid sections, parts, terms or provisions shall not be deemed to be a part of this Declaration or of the Design Guidelines, as applicable, or, at the Association's discretion, deemed automatically modified as necessary to resolve such invalidity or conflict.

Section 12.15. Release of Liability. Although all Owners, Residents and Guests may be required to sign releases of liability releasing and holding harmless Declarant, the Association, the Board and any officers, directors or employees thereof (the "**Indemnified Parties**") from any and all liability, claims, losses, and actions arising out of or in connection with the use of any of the Common Properties, the mere use of such Common Properties and/or presence thereon, in and of itself, by any Person shall constitute a full and complete release and indemnification of the Addition and the Indemnified Parties arising out of and in connection with the Common Properties and/or use thereof or presence thereon. **DECLARANT, ON ITS BEHALF AND ON BEHALF OF THE ASSOCIATION, EXPRESSLY DISCLAIMS AND DISAVOWS ANY AND ALL REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF FITNESS OR SAFETY FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY OF THE COMMON PROPERTIES OR ANY IMPROVEMENTS OR EQUIPMENT LOCATED ON OR ASSOCIATED WITH THE COMMON PROPERTIES.**

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Witness the hand of an authorized representatives of Declarant on the acknowledgment date noted below.

DECLARANT:

**SANDY COVE RANCH ON RICHLAND
CHAMBERS LAKE, L.P.,**
a Texas limited partnership

By: Sandy Cove Ranch Partners Management,
LLC, a Texas limited liability company,
its general partner

By: *[Signature]*
Name: MICHAEL E. MONTGOMERY
Title: MANAGER

THE STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on June 27, 2007, by
Michael E. Montgomery of Sandy Cove Ranch Partners Management,
LLC, a Texas limited liability company, general partner of SANDY COVE RANCH ON
RICHLAND CHAMBERS LAKE, L.P., a Texas limited partnership, on behalf of said partnership.

Kathie Keller
Notary Public, State of Texas

Kathie Keller
Printed/Typed Name

My Commission Expires:

June 21, 2010

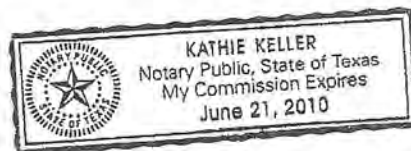


EXHIBIT "A"

Attachment to Declaration of
Covenants, Conditions, Restrictions,
Easements, Charges and Liens
on and for
Sandy Cove Ranch on Richland Chambers Lake

DESCRIPTION OF THE ADDITION

EXHIBIT "B"

Attachment to Declaration of
Covenants, Conditions, Restrictions,
Easements, Charges and Liens
on and for
Sandy Cove Ranch on Richland Chambers Lake

DESCRIPTION OF THE COMMON PROPERTIES

Boat ramp area (approx. 1.01 acres)

Pool and parking area (approx. 2.14 acres)

Common area (approx. 29.65 acres)

60' road winding throughout the Addition