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DECLARATION  
 OF  
 COVENANTS, CONDITIONS, RESTRICTIONS,  
 EASEMENTS CHARGES AND LIENS  
 ON AND FOR  
 SANDY COVE RANCH ON RICHLAND CHAMBERS LAKE

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STATE OF TEXAS COUNTY OF NAVARRO

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the named records of: Navarro County as stamped hereon by me.

Jun 28, 2007

Sherry Dawd, COUNTY CLERK  
Navarro County

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DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS

SANDY COVE RANCH ON RICHLAND CHAMBERS LAKE

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS (this "Declaration") is made and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by SANDY COVE RANCH ON RICHLAND CHAMBERS LAKE, L.P., a Texas limited partnership (sometimes referred to herein as "Declarant"):

28<sup>th</sup> June 2007

PREAMBLE

Declarant is the owner and developer of certain real property to be hereafter commonly known and described as Sandy Cove Ranch on Richland Chambers Lake (referred to herein as "Sandy Cove", located in Navarro County, Texas, which is a planned residential development consisting of an approximately 94.71 acre tract of land, being more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes.

Declarant desires to take advantage of the unique features of the Addition (as hereinafter defined), and proposes to establish and implement plans for residential living, recreation, aesthetic and quality-of-life considerations. The purposes of this Declaration are to (a) protect Declarant and Owners, as hereinafter defined, against the improper development and use of Lots (as hereinafter defined) within the Addition; (b) assure compatibility of design of improvements within the Addition; (c) secure and preserve sufficient setbacks and space between improvements so as to create an aesthetically pleasing environment; (d) provide for landscaping and the maintenance thereof and of the Common Properties, as hereinafter defined; and (e) in general, encourage construction of attractive, high quality, permanent improvements that will promote the general welfare of Declarant and Owners. In view of Declarant's long-range plans, Declarant desires to impose these restrictions now and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the first-class quality and distinction of the Addition. The restrictive covenants hereinbelow are designed to also comply with the requirements of the Zoning Ordinance, as hereinafter defined, to better ensure the care and maintenance of the properties located within the Addition, including the Common Properties, and to preserve the best interests of Declarant and of Owners of Lots located within the Addition after completion of all development and construction therein.

Sandy Cove Ranch Community Association, Inc. has been or will be chartered as a non-profit Texas corporation to assist in the ownership, management, use and care of the various properties located within the Addition, including the Common Properties, and to assist in the

administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration.

## DECLARATION

Declarant hereby declares that the Addition (and such additions thereto as may hereafter be made pursuant to **Article II** hereof) are and shall be owned, held, mortgaged, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title or interest in the Addition or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

Additional land outside of the Addition may be annexed, provided that such annexation is in accordance with **Article II** hereof.

## ARTICLE I.

### CERTAIN DEFINITIONS

The following words, when used in this Declaration or in any Supplemental Declaration (defined below) (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

**"Addition"** shall mean and refer to Sandy Cove Ranch on Richland Chambers Lake, consisting of (i) the real property shown on the Plat and more particularly described on **Exhibit "A"** attached hereto and made a part hereof for all purposes, together with, all and singular, all easements in or upon or benefiting such real property and all other rights and appurtenances belonging or in anywise pertaining thereto, and (ii) such additional property as is hereafter made subject to this Declaration pursuant to **Section 2.2**.

**"Affiliate"** shall mean a partner, director, subsidiary, shareholder, officer, employee, agent, co-venturer, executor, personal representative, trustee, attorney or a Person or entity which (either directly or indirectly through one or more intermediaries), controls, is in common control with or is controlled by, another Person or entity and any Person or entity that is a director, trustee, officer, employee, agent, partner, shareholder, subsidiary or attorney of any of the foregoing. For the purposes of this definition, the term "control" means (a) legal or beneficial ownership of 10% or more of the voting interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise.

**"Annual Assessment"** shall have the meaning specified in **Section 5.3**.

**"Architectural Review Committee"** or **"ARC"** shall mean and refer to that particular committee which may be from time to time appointed or selected pursuant to **Section 8.1**.

**"Assessment"** or **"Assessments"** shall mean and refer individually or collectively to any charges levied against a Lot or Owner pursuant to this Declaration or applicable state law, including (without limitation) the Annual Assessments, the Special Assessments, the Special Group Assessments and the Individual Assessments, where the context requires, as provided herein.

**"Association"** shall mean and refer to SANDY COVE RANCH COMMUNITY ASSOCIATION, INC., an existing (or to-be-formed) non-profit Texas corporation which has (or will have) the power, duty and responsibility of maintaining and administering certain portions of the Addition and all of the Common Properties, administering and enforcing the Covenants and otherwise maintaining and enhancing the quality of life within the Addition.

**"Board"** shall mean and refer to the Board of Directors of the Association.

**"Builder"** shall mean and refer to any Person who purchases one or more Lots for the purpose of constructing Improvements thereon for later sale to consumers, in the ordinary course of such Person's business.

**"Bylaws"** shall mean and refer to the Bylaws of the Association, as may be adopted and amended from time to time in accordance with the provisions thereof, and which may be recorded in the Records.

**"Certificate"** shall mean and refer to the Certificate of Formation of the Association, as the same may be from time to time duly amended or modified, on file (or to be filed) in the Office of the Secretary of State of the State of Texas, Austin, Texas, and which may be recorded in the Records.

**"Charges"** shall mean and refer to charges imposed against an Owner delinquent in the payment of its Assessments, including, but not limited to the "fines" as described in Section 6.2(d).

**"Class A Member"** shall mean each Owner of a Lot.

**"Class B Member"** shall mean Declarant.

**"County"** shall mean and refer to the County of Navarro, Texas.

**"Common Properties"** shall mean and refer to those certain portions of the Addition that are more particularly described on Exhibit "B" attached hereto and made a part hereof for all purposes, and such additions thereto as may hereafter be made pursuant to **Article II**, whether improved or unimproved, or whether an easement or interest therein, now or hereafter owned by the Association, or that are dedicated to the Association on any recorded plat of any portion of the Addition, or that are declared to be Common Properties by Declarant, or that are intended by Declarant to be Common Properties. Common Properties shall include all areas of land within the Addition that are known, described or designated as green areas, common areas, any controlled access areas and monitoring devices, flood gates, street lighting and signs (and all elements thereof), private parks, creek or shoreline easement areas, entry ways, monuments, gates and gate houses, recreational easements, lakes, ponds, dams, perimeter fences and columns, off-site monuments and directional signs, landscape easements,

greenbelt(s), swimming pool(s), tennis courts(s), boat ramps and docks, open spaces, paths and trails, and the like; provided, however, that the foregoing shall not be deemed to be a representation or warranty that any or all of the foregoing types of Common Properties will be provided. Declarant, reserves the right to use, during the Development Period, portions of the Common Properties (e.g. a sales information center) for business matters directly and indirectly related to development of Sandy Cove. Common Properties will also include: (i) any and all public right-of-way lands for which Navarro County has required or does require that Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as but not limited to: street medians, streetscape, hike and bike trails, park areas and quasi-governmental service facilities; and (ii) any and all facilities provided by Declarant and/or the Association to or for the benefit of the local police, fire and similar governmental departments for which no reimbursement via public funds is requested or anticipated. One or more portions of the Common Properties may from time to time be reasonably limited to private functions, and conversely, one or more portions of otherwise private property may be utilized for Association functions and activities. Declarant shall convey record title to some or all of the Common Properties to the Association if, as and when deemed appropriate by Declarant or as may be required by governmental officials, and Declarant, during the Development Period, and thereafter, the Association, shall at all times have and retain the right to effect minor redesigns or minor reconfigurations of the Common Properties and to execute any open space declarations applicable to the Common Properties which may be permitted in order to reduce property taxes, and to take whatever steps may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes.

**"Covenants"** shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration.

**"Declarant"** shall mean and refer to SANDY COVE RANCH ON RICHLAND CHAMBERS LAKE, L.P., a Texas limited partnership, or any entity which may be assigned the rights of Declarant pursuant to a written assignment executed by the then present Declarant and recorded in the Records. In addition, in the event an entity obtains title to all of the property within the Addition then owned by Declarant as a result of foreclosure of any mortgage or deed in lieu thereof, such entity may elect to become Declarant by a written election recorded in the Records. No Person merely purchasing one or more Lots from SANDY COVE RANCH ON RICHLAND CHAMBERS LAKE, L.P. or its successor or assigns in the ordinary course of business shall be considered a "Declarant".

**"Declarant Control Period"** shall mean and refer to that period of time during which Declarant controls the operation and management of the Association, commencing on the date of the filing of this Declaration in the Records and continuing thereafter until, and ending on, the earlier of (a) 120 days after 75% of the Lots have been conveyed to Owners (other than Declarant and Builders) OR (b) five (5) years from the date this Declaration is recorded in the Records.

**"Declaration"** shall mean and refer to this particular instrument entitled "DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS ON AND FOR SANDY COVE RANCH ON RICHLAND CHAMBERS LAKE," together with any and all amendments or supplements hereto or restatements hereof.

June 28, 2007

✓ page 1 says Texas Non Profit Corporation = Association  
Page 4 says Limited Partnership = Developer



**"Deed"** shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

**"Design Guidelines"** shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications, described herein or from time to time promulgated by Declarant, the Association or the ARC, as applicable, and which are applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any Improvements to any Lot within the Addition, and all amendments, bulletins, modifications, supplements and interpretations thereof. The initial Design Guidelines shall be recorded in the Records immediately following the recordation of this Declaration.

**"Development Period"** shall mean and refer to a ten (10) year period, commencing on the date this Declaration is recorded in the Records and continuing until, and ending on, the tenth (10<sup>th</sup>) anniversary thereof, or sooner if Declarant, in its sole discretion, files a notice of termination in the Records. The Development Period is a period of time during which Declarant may exercise development and special Declarant rights (as distinguished from the Declarant Control Period), is usually for a period of time longer than the Declarant Control Period and does not require that Declarant own any Lot or other property in the Addition.

*June 28, 2007*

**"Director"** shall mean and refer to any duly elected member of the Board.

**"Dwelling Unit"** shall mean and refer to any building or portion of a building situated upon any Lot which is designed and intended for Residential Use.

**"Easement Areas"** shall mean and refer to those areas which may be covered by an easement specified in Article X.

**"Eligible Insurers"** is defined in Article XIII.

**"Eligible Mortgagees"** is defined in Article XIII.

**"Exempt Property"** shall mean and refer to the following portions of the Addition: (a) all land and Improvements owned (whether now or in future) by the United States of America, the State of Texas, Navarro County, or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental (rather than a proprietary) capacity; (b) all land and Improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties; (c) all land and Improvements which are not only exempt from the payment of ad valorem real property taxes by Taxing Authorities, but also are exempt from the payment of any assessments hereunder as expressly determined by written resolution of Declarant and/or the Association; (d) such other land(s) and/or Improvement(s) and/or Lot(s) which are specifically exempted from the payment of Annual Assessments or other Assessments in accordance with the terms hereof or with a special resolution of the Association; and (e) any portion of the Addition that is owned by Declarant during the Declarant Control Period.

**"Fiscal Year"** shall mean each twelve (12) month period commencing on January 1 and ending on the following December 31, unless the Association shall otherwise select an alternative twelve month period.

**"Governing Documents"** shall mean this Declaration, the Bylaws, the Certificate, any rules, regulations and resolutions promulgated and/or adopted thereunder, the Design Guidelines and all architectural bulletins issued in connection therewith.

**"Guests"** of any party shall mean the guests, invitees, tenants, servants, agents, employees or representatives of such party, and may be limited in number and/or subject to time or other restrictions as set forth in the rules and regulations established and, from time to time, modified, amended or replaced, by the Association.

**"Improvement"** shall mean any physical change to raw land or to an existing Structure which alters the physical appearance, characteristics or properties of the land or Structure, including but not limited to the new construction of a Structure or Structures and related amenities, adding or removing square footage area or space to or from a Structure, painting or repainting a Structure, or in any way altering the size, shape or physical appearance of land or any Structure located on any Lot.

**"Individual Assessments"** shall mean and refer to the assessments that may be from time to time imposed upon an individual Owner in accordance with the provisions of Section 5.1.

**"Institutional Mortgage"** shall mean and refer to any bona fide mortgage, lien or security interest held by a bank, trust company, insurance company, savings and loan association or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association ("**FNMA**"), Federal Home Loan Mortgage Corporation ("**FHLMC**"), The Federal Housing Administration ("**FHA**"), The Veterans Administration ("**VA**"), or their successors, or mortgage loans guaranteed or subsidized by the FHA and/or VA.

**"Lot"** or **"Lots"** shall mean and refer to a lot reflected on any Plat to be used solely for Residential Use or all of the Lots together. The term shall include the land which is part of the Lot, as well as any Improvements thereon.

**"Managing Agent"** shall mean and refer to any Person who has been designated or engaged by the Board to manage the affairs of the Association, to the extent the Association elects to make such designation.

**"Maximum Lawful Rate"** shall mean and refer to the lesser of (a) the maximum lawful rate of interest permitted to be charged from time to time for the use or forbearance of money by applicable law or (b) eighteen percent (18%) per annum.

**"Member"** shall mean and refer to each Person subject to membership in the Association pursuant to **Article III**, which shall be each Owner.

**"Owner"** shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on the Lot.

**"Payment and Performance Lien"** shall mean and refer to the lien described within **Sections 5.8 and 5.9**.

**"Person"** shall mean an individual (natural person), partnership, joint venture, corporation, limited liability company, joint stock company, trust (including a business trust), unincorporated association or any other legal entity, or a government or any political subdivision or agency thereof.

**"Plat" or "Plats"** shall mean and refer to any final subdivision plat or plats of property located within the Addition, which has or have been approved by the County, including specifically, but without limitation, that certain amended plat of the Addition filed in Cabinet \_\_\_\_, Page \_\_\_\_ of the Records.

**"Records"** shall mean the Real Property Records of Navarro County, Texas, including the Map and Plat Records of Navarro County, Texas.

**"Resident"** shall mean and refer to any Person who inhabits a Dwelling Unit, either permanently or temporarily, and may include, without limitation, an Owner or a lessee and their respective families or Guests.

**"Residential Use"** shall mean and refer to any use and/or occupancy of any Lot as a permanent or temporary residence by a single person, a couple, a family or a permitted family size group of persons, which shall be deemed to mean two (2) individuals per bedroom, unless otherwise mandated or established by applicable federal, state or local law, subject to approvals of a less restrictive nature as may be approved by the Association on a case-by-case basis.

**"Special Assessments"** shall mean and refer to assessments imposed upon Owners for capital improvements or unusual or emergency matters, in accordance with the provisions of **Section 5.4**.

**"Special Group Assessment"** shall mean and refer to assessments imposed upon certain of the Owners for capital improvements or unusual or emergency matters, in accordance with the provisions of **Section 5.4**.

**"Structure"** shall mean and refer to (a) any thing or device, other than trees, shrubbery (less than two feet (2') high if in the form of a hedge in respect to a Lot) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot), including but not limited, to any building, improvement, parking facility or area, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge (more than two feet (2') high if in the form of a hedge in respect to a Lot), signboard or other temporary or permanent living quarters or any temporary or permanent improvement to any Lot; (b) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; (c) with respect to a Lot, any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (d) any change in the grade of any Lot of more than three inches (3") from the existing grade initially approved by the ARC.

**"Supplemental Declaration"** shall mean and refer to each and every instrument recorded in the Records, which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the real property described

therein, and/or otherwise amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

**"Taxing Authorities"** shall mean and refer to Navarro County, the independent school district in which the Addition is located, and the State of Texas and any and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the Texas Constitution and applicable statutes and codes.

**"Trustee"** shall mean any entity or person selected by the Association from time to time to act as trustee in connection with the Association's enforcement of remedies available to the Association pursuant hereto.

**"Zoning Ordinance"** shall mean and refer to the current zoning ordinance of Navarro County or other municipal authority applicable to the Addition and all amendments thereto.

## ARTICLE II.

### PROPERTY SUBJECT TO THIS DECLARATION

**Section 2.1. Addition.** The Addition is, and shall be, owned, held, mortgaged, transferred, sold, conveyed and occupied subject to this Declaration.

**Section 2.2. Annexation of Additional Land.** Additional land(s) may become subject to this Declaration and annexed to the Addition in any one or more of the following manners:

(a) Other than during the Development Period, in the event any person or entity desires to add or annex additional real property outside the original boundaries of the Addition to the scheme of this Declaration, such annexation proposal must first have the express, written approval of the Association, and thereafter, the written approval of Owners representing at least two-thirds (2/3's) of the Lots. Any such annexation shall be effective upon filing in the Records a Supplemental Declaration describing the property to be subjected and signed by the President and Secretary of the Association and by the owner(s) of such property, at which time the definition of "Addition" shall be deemed amended to include such property.

(b) <sup>10 YRS</sup> During the Development Period, Declarant reserves the right to amend this Declaration to annex additional property, without prior notice and without the consent of any Person other than the owner of the property in question, for the purpose of adding property to the coverage of this Declaration, to the extent originally excluded in error or as a result of any changes in the Declarant's plans for the Addition, provided such addition is not unequivocally contrary to the overall, uniform scheme of development for Addition.

(c) Any additions made pursuant to this Section 2.2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added and correspondingly subject the properties added to the Covenants of this Declaration.

(d) Upon any merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law or by lawful articles or agreement of

merger, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law or by lawful articles of agreement of merger, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants established by this Declaration, together with the covenants and restrictions established upon any other properties, as one scheme.

**Section 2.3. Withdrawal of Property.** Declarant reserves the right to amend this Declaration during the Development Period, without prior notice and without the consent of any Person or entity other than the owner of the property (if not Declarant), for the purpose of removing property from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Addition, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Addition.

### ARTICLE III.

#### **MEMBERSHIP; TRANSFER REQUIREMENTS; VOTING RIGHTS IN THE ASSOCIATION**

##### **Section 3.1. Membership.**

(a) Each and every Owner of each and every Lot shall automatically be, and must at all times remain, a Member of the Association. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of a Lot. Ownership of any Lot shall be the sole qualification for being a Member; however, a Member's privileges to use the Common Properties may be regulated or suspended as provided in this Declaration, the Bylaws or the rules and regulations promulgated by the Association and/or resolutions passed and/or adopted by the Association. Any Person who holds an interest in and to all or any part of a Lot merely as security for the performance of an obligation shall not be a Member.

(b) During the Development Period, the Association shall have two (2) classes of Members:

**Class A:** The Class A Members shall be all Owners of Lots (other than Declarant during the Development Period).

**Class B:** The Class B Member shall be Declarant. - for 10 yrs

(c) Upon the expiration of the Development Period, the Class B membership shall terminate, and thereafter the Association shall have one (1) class of Members (the Class A Members).

##### **Section 3.2. Transfers.**

(a) The membership of an Owner may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale or assignment of such Owner's interest in such Owner's Lot and then only to the purchaser or assignee as the new Owner of the Lot in question. Within fifteen (15) days of conveying or transferring fee title to a

Lot, the former (or soon-to-be former) Owner shall notify the Association of any transfer or assignment of the fee title to its Lot. Such transfer shall automatically operate to transfer the membership to the new Owner thereof.

(b) Subject, in all events, to applicable federal, state and/or local laws and regulations, and unless otherwise approved by the Association, fee simple title to a Lot may be held by any one Person, or, in the event of an individual (natural person), in the name of that individual and his/her spouse or other legal partner. As permitted by such applicable laws and regulations, the Association may establish, from time to time, reasonable limits on the number of individuals that may hold an interest in fee simple title to a Lot, and, such limits which shall be effective on a prospective (but not retroactive) basis.

(c) Within a reasonable period of time (presumed to be approximately fifteen (15) days unless otherwise established by the Association) following the recordation in the Records of a deed to any Lot, the new Owner of such Lot shall have the affirmative duty and obligation to provide to the Association (and thereafter to revise and update, within fifteen (15) days after any material change has occurred) various items of information reasonably requested by the Association, including, but not limited to, (i) the full name and address of the Owner; (ii) the full name of each individual family member who resides within the Dwelling Unit of such Owner; (iii) the business address, occupation and telephone numbers of such Owner; (iv) the description and license plate number of each automobile owned or used by such Owner (or those residing with such Owner) and brought within the Addition; (v) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Owner cannot be located) in case of an emergency; and (vi) such other information as may be reasonably requested from time to time by the Association. In the event any Owner fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

(d) Declarant or the Association may establish other reasonable requirements regarding the conveyance and transfer of ownership in a Lot and, accordingly, membership interest in the Association. This may include payment of a mandatory acquisition and/or transfer fee, to supplement funds of the Association, which may be a one-time fee or on an "each occurrence" basis, charges and requirements for issuance of resale certificates, etc. The foregoing is subject, in all events, to compliance with applicable federal, states and local laws or regulations.

### **Section 3.3. Voting Rights.**

(a) During the Declarant Control Period, the Class A Members and the Class B Member shall constitute the voting Members of the Association. Unless otherwise established by the Board, only voting members in good standing (as defined below) shall be entitled to vote. Class A Members in good standing shall be entitled to cast one (1) vote per Lot. Where more than one (1) Person owns and holds a record fee interest in a Lot the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing; provided, however, there shall be no fractional voting, and in no event shall any one (1) Lot yield more than one (1) vote. If more than one Person attempts to

Class A 1 vote  
Class B 3 votes for 10 years

exercise the vote for any Lot, neither shall be recognized and the vote for such Lot shall be suspended. The Class B Member shall be entitled to cast three (3) votes for each Lot it owns.

(b) Following the expiration of the Declarant Control Period, the Class A Members shall constitute the sole voting Members of the Association. Class A Members in good standing shall be entitled to cast one (1) vote per Lot. Where more than one (1) Person owns and holds a record fee interest in a Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing; provided, there shall be no fractional voting and in no event shall any one (1) Lot yield more than one (1) vote. If more than one Person attempts to exercise the vote for any Lot, neither shall be recognized and the vote for such Lot shall be suspended.

(c) Whether during or after the Declarant Control Period, the Association may suspend the voting rights of any Member who is not in good standing. Any Member shall not be in "good standing" if such Person is: (i) in violation of any portion of any of the Governing Documents and/or any portion of the Zoning Ordinance; or (ii) delinquent in the full, complete and timely payment of any Assessment or Charge which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any of the other Governing Documents. The voting rights of any Member who is not in good standing may be suspended by the Association for any period during which such Member remains not in good standing. Prior to suspending a Member's voting rights for failure to maintain good standing, the Association shall provide the Member with a written notice of each violation affecting the Member's good standing and an opportunity to cure such violations. If, after receiving notice of a violation, the Member does not cure the violation and return to good standing within thirty (30) days of the date of notice, the Association may suspend the Member's voting rights without further notice.

(d) The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for membership, meeting and voting procedures, protocol and practices, including (i) any meeting of Members; (ii) proof of membership in the Association; (iii) the status of good standing; (iv) evidence of right to vote; (v) the appointment and duties of examiners and inspectors of votes; (vi) the procedures for actual voting in person or by proxy; (vii) registration of Members for voting purposes; and (viii) such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

**Section 3.4. Notice: Voting Procedures; Meetings.** Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Certificate and/or Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Texas law. During the Development Period, from time to time, as and when determined necessary by the Board, the Board may call and schedule a meeting of the Members. From and after the expiration of the Development Period, the Members shall meet at least annually, or at more frequent times as determined by the Board, to deal with and vote on matters relating to the business of the Association, as directed by the Board, including the election of the Directors.

## ARTICLE IV.

### MEMBERS' RIGHTS AND OBLIGATIONS; COMMON PROPERTIES (INCLUDING RIGHTS AND EASEMENTS)

#### **Section 4.1. Easements.**

(a) Subject to the provisions of Sections 4.2 through 4.7 below, each and every Member in good standing with the Association shall have a non-exclusive right and easement of use and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with every Lot.

(b) Declarant reserves, during the Development Period, an easement and the right to use portions of the Common Properties (e.g., a sales information center) for business matters directly and indirectly related to the Addition, as well as marketing and promotion of the Addition and sale of Lots therein, as well an easement and right of ingress and egress in and through the Common Properties for purposes of constructing, maintaining, managing and marketing the Addition, and to provide reasonable access for the home buying public through the Common Properties (including through any gated entrances) in connection with the marketing of Lots for sale to Builders and other prospective Owners. In addition, Declarant reserves, after the termination of the Development Period, an easement and right of ingress and egress in and through the Common Properties for the purposes of showing the Addition to various parties in connection with the development and marketing of other projects by Declarant or as otherwise deemed reasonable and appropriate by Declarant. The easements set forth in this subsection (b) shall be appurtenant to and shall pass with the Addition.

(c) With prior Association approval, one or more portions of the Common Properties may from time to time be reasonably limited to private functions for use of Members and their Guests, and conversely, at the Association's election, one or more portions of otherwise private property (subject to the consent of the Owner thereof) may be utilized for Association functions and activities.

(d) Declarant shall convey record title to all of the Common Properties to the Association as and when deemed appropriate by Declarant or as may be required by governmental officials, and Declarant shall at all times have and retain the right to effect minor redesigns or minor reconfiguration of the Common Properties and to execute any open space declarations applicable to the Common Properties as and when deemed appropriate by Declarant or which may be permitted in order to reduce property taxes, and to take whatever steps may be appropriate to lawfully avoid or minimize the imposition of ad valorem taxes by the Taxing Authorities.

(e) The Common Properties shall be used exclusively by Members and their Guests and access thereto shall be prohibited to any other Person, except as otherwise provided herein. Access to the Common Properties, including all recreational facilities, boat ramps and docks, pools and tennis courts, may be restricted by gating and fencing to all other Persons.

**Section 4.2. Extent of Members' Easements.** The rights and easements of use and enjoyment created hereby shall be subject to the following:



(a) The right of Declarant or the Association to prescribe and modify, from time to time, reasonable rules, regulations and policies governing, and to charge fees and/or deposits (e.g., key and access card deposits) related to, ownership of any property in the Addition, including (without limitation) the use, operation and maintenance of the Common Properties, rules limiting the number of Guests who may use a Lot and/or the Common Properties, imposing fines for infractions of such regulations, and requiring releases or waivers of liability from all Owners, Residents and Guests prior to use of or presence on any of the Common Properties;

(b) Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by Declarant or the Association to improve or maintain the Common Properties;

(c) The right of the Association to enter into and execute contracts with any party (including, without limitation, Declarant or its Affiliates) for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(d) The right of Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Owner or Resident to use or enjoy any of the Common Properties for any period during which any assessment (including, without limitation, "fines") against such Owner's or Resident's Lot remains unpaid, or during which non-compliance with the Governing Documents exists, and otherwise for any period deemed reasonable by the Association for an infraction of the Governing Documents;

(f) The right of Declarant and/or the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by Declarant or the Association, including the right of Declarant or the Association to enter into and execute contracts with the owner-operators of any utility system or other similar operations for the purpose of extending utility service on, over or under the Common Properties to ultimately provide service to one or more of the Lots or to adjacent properties which are not owned by Declarant;

(g) The right of Declarant and/or the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes necessary for the proper development or operation of the Addition or for any other reason deemed prudent by the Board;

(h) The right of Declarant or the Association to enter into and execute contracts with the owner-operators of any community antenna television system ("CATV") or other similar operations for the purpose of extending cable or utility or other service on, over or under the Common Properties to ultimately provide service to one or more of the Lots;

(i) The right of Declarant and/or the Association to permit use of any recreational facilities situated upon the Common Properties by Persons other than Owners, their Residents and such parties' Guests upon payment of use fees established by the Association;

(j) The right of Declarant and/or the Association to hold and sponsor, whether alone or in conjunction with municipal departments or other non-profit groups and entities, events and activities within the Common Properties which are not necessarily limited only to Owners, Residents or Guests, but which may also include selected invitees and/or the general public (for which the Association may, in its discretion, charge a user fee equal to or greater than any fee charged to Owners, Residents or Guests), such as (but not necessarily limited to) children's summer recreational events, sports festivals and tournaments, summer camps, day care centers, concerts-in-the-park, wedding receptions, reunions, conferences, picnics, national and/or state holiday commemorations, educational and cultural presentations and other similar events which the Association reasonably believes will be of direct or indirect benefit to the Association and/or an appreciable number of its Members; and

(k) The Governing Documents.

An Owner who leases its Lot shall be deemed to have assigned all such rights and easements set forth in this **Section 4.2** to the lessee of such Lot (such lessee being a Resident) for the period of the lease.

**Section 4.3. Restricted Actions by Members.** No Owner or Resident shall permit anything to be done on or in the Common Properties which would violate any applicable public law or the Zoning Ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any rule, regulation or restriction promulgated by the Association.

**Section 4.4. Damage to the Common Properties.** Subject to applicable state law, each Owner or Resident shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Owner or Resident or its family and/or Guests.

**Section 4.5. Rules of the Association.** All Owners, Residents and Guests shall abide by any rules and regulations adopted by the Association. The Association shall have the power to enforce compliance with the rules and regulations established from time to time by the Association by all appropriate legal and equitable remedies, and an Owner or Resident determined to have violated (or whose Guest has been determined to have violated) the Association's rules and regulations shall be liable to the Association for all damages and costs incurred by the Association as a result of such violation or in regard to the enforcement thereof, including reasonable attorneys' fees.

**Section 4.6. Use of Common Properties.** The Association shall have the power and authority to prescribe rules and regulations (which rules and regulations shall be consistent with the rights and duties established by this Declaration) regarding the use of the Common Properties which extend to and cover matters such as (but not limited to) smoking, the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, dress and attire, and the supervision by attending adults of children.

No Person (excluding Declarant) shall use any portion of the Common Properties to:

- (a) solicit, promote or conduct business, religious, political or propaganda matters; or
- (b) distribute handbills, newsletters, flyers, circulars or other printed materials, without the prior written consent of the Association (which consent may be withheld in its sole and absolute discretion).

**Section 4.7. Encroachments.** If (a) construction, reconstruction or repair activities that have been approved by the ARC or (b) shifting, settlement or other movements of any portion of Improvements that have been approved by the ARC results in either (x) the Common Properties encroaching on a Lot or Dwelling Unit or Structure or (y) a Lot or Dwelling Unit or Structure encroaching on the Common Properties or on another Lot or Dwelling Unit or Structure, and unless otherwise directed by the ARC, a valid easement shall then and there exist to permit the encroachment and reasonable and necessary maintenance activities related thereto, and such easement shall be appurtenant to and shall pass with the Common Properties and Lot in question, for so long as necessary and shall automatically terminate at such time as the Improvement is removed and/or such encroachment no longer exists, or as otherwise agreed to between the Association and Owner in question.

**Section 4.8. Residents Bound.** Each Owner of each Lot shall be deemed and held directly responsible and liable for the acts, conduct and omission of each and every Resident and Guest affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s) and the Owner's and/or Resident's Guest(s). The Payment and Performance Lien shall extend to, cover and secure the proper payment and performance by each and every Resident and Guest affiliated with each Owner.

**Section 4.9. Matters Generally Subject to the Vote of Members.** To the extent that the Association desires to encumber any portion of the Common Properties as security for payment of indebtedness incurred in respect to improvements to the Common Properties, the Association shall obtain the prior approval of the Members in the same manner as approval of a Special Assessment as provided in **Section 5.4.**

## ARTICLE V.

### COVENANTS FOR ASSESSMENTS

**Section 5.1. Creation of the Lien and Personal Obligation of Assessments.** Subject to Section 5.3(c), Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner of any Lot, by acceptance of a Deed therefore, whether or not reference to the covenants shall be so expressed in any such Deed or other conveyance, shall be deemed to have covenanted and agreed (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot so as to have affected the purchase price) to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

- (a) Annual Assessments;

(b) Special Assessments, and, to the extent applicable, Special Group Assessments, to be fixed, established and collected from time to time as hereinafter provided; and

(c) Individual Assessments (including fines) levied against individual Members to reimburse the Association for (i) extra or unusual costs incurred for items such as (but not limited to) (A) maintenance and repairs to portions of the Additions required to be made as a result of the willful misconduct or negligent acts of the individual Member and/or its Residents or Guests; or (B) the remedy, cure or minimizing of problems caused by, or as a result of, violations of these Covenants by a Member and/or its Residents or Guests; and (ii) costs incurred relating to or resulting from violations by individual Members and/or its Residents or Guests of rules and regulations established by the Association.

The Annual, Special, Special Group, and Individual Assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge running with the land and shall be a continuing lien upon each Lot against which each such Assessment is made and shall also be the continuing personal obligation of the then-existing Owner of such Lot at the time when the Assessment fell due. Subject to applicable state law, each Owner shall be directly liable and responsible to the Association for the conduct, acts and omissions of such Owner and its respective Residents and Guests associated with the Addition.

#### **Section 5.2. Purposes of Assessments; Maintenance of the Common Properties.**

The Assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Owner and Residents of the Addition and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of or addition to, the Common Properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association as to the Addition in its entirety, including, but not limited to or for: (i) the payment of taxes on the Common Properties and insurance in connection with the Common Properties; (ii) the payment for utilities and the repair, replacement and additions of various items within or constituting the Common Properties; (iii) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Addition and/or Common Properties; (iv) carrying out the duties of the Association and of the Board as set forth in **Article VI** and elsewhere in this Declaration; (v) carrying out the other various matters set forth or envisioned herein or in any Supplemental Declaration; (vi) for any matter or thing designated by the County or State of Texas in connection with any zoning, subdivision, platting, building, development or occupancy requirements; and (vii) any other expense which the Association is required by law or by the Governing Documents to pay or which, in the opinion of the Board, is necessary or proper for the operation and maintenance of the Addition or for enforcement of the Governing Documents. The items and areas described above are not intended to be exhaustive but merely illustrative.

#### **Section 5.3. Basis and Amount of Annual Assessments.**

(a) Annual Assessments, Special Assessments and Special Group Assessments shall be borne one hundred percent (100%) by the Class A Members and, if applicable, Declarant.

(b) Notwithstanding the foregoing, no assessments shall be levied against any Owner for any period of time prior to its ownership of a Lot, and the initial construction of all capital improvements upon the Common Properties shall be the responsibility of Declarant.

(c) Notwithstanding anything herein to the contrary, Declarant shall not be liable for Annual Assessments for any Lots owned by it to the extent it is actively marketing such Lot(s) for sale (except to the extent it owns and/or is selling a Lot which has been improved for Declarant's (personal) Residential Use). During the Declarant Control Period, Declarant shall be responsible for all expenses actually incurred by the Association in excess of the Annual Assessments. Notwithstanding the foregoing, in the event the Association incurs any expense not ordinarily anticipated in the day-to-day management and operation of the Addition and Common Properties, including but not limited to expenses incurred in connection with lawsuits against the Association, or incurred in connection with damage to property, or injury or death to any person, which are not covered by insurance proceeds, the liability of Declarant for such expenses shall not exceed the amount that Declarant would be required to pay if it were liable for Annual Assessments as any other Owner, and any excess amounts payable by the Association shall be assessed to all Owners, including Declarant. From and after the expiration of the Declarant Control Period, Declarant will no longer be responsible for the difference between the Association's expenses in excess of the Annual Assessments.

(d) In determining each Annual Assessment, the Board shall separately assess each Lot in the manner herein provided, and each Lot shall be charged with and subjected to a lien for the amount of such separate assessment which shall be deemed the "Annual Assessment" with respect to such Lot.

(e) The initial Annual Assessment for the calendar year 2007 shall be pursuant to a budget prepared by Declarant upon Declarant's projections of reasonable expenses to be incurred by the Association in such year. Commencing with the calendar year 2008, and each year thereafter, the Annual Assessments for such Fiscal Year shall be established and assessed pursuant to a budget prepared by the Association upon the Association's projections of reasonable expenses to be incurred by the Association in such year. The Association may be permitted at any time during the term of this Declaration to increase the regular Annual Assessment for each Lot without a vote of the Members from Fiscal Year to Fiscal Year and/or for the remainder of any Fiscal Year as deemed necessary.

#### **Section 5.4. Special Assessments and Special Group Assessments.**

(a) Special Assessments. In addition to the regular Annual Assessments authorized by **Section 5.3**, the Association may levy in any Fiscal Year a Special Assessment, applicable to that Fiscal Year only, for the purpose of (a) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto, (b) defraying, in whole or in part, the cost of any extraordinary, unusual or emergency matters (including, without limitation, those matters arising out of litigation and/or judgments), or (c) common expenses not anticipated by the annual budget and for which no reserve funds exist. Prior to the expiration of the Development Period, any Special Assessment in respect to improvements to the Common Properties must have the affirmative vote of Declarant and at least two-thirds (2/3's) of the Class A Members, and such assessment shall be payable by all Owners, except

as otherwise provided herein. From and after the expiration of the Development Period, any Special Assessment must have the affirmative approval of at least two-thirds (2/3's) of the Class A Members at a meeting or meetings called for that purpose with at least thirty percent (30%) of the Class A Members (or their proxies) present, after adequate notice.

(b) Special Group Assessments. Where any such funds are required for the purpose of (a) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including any necessary fixtures and personal property related thereto, (b) defraying, in whole or in part, the cost of any extraordinary, unusual or emergency matters (including, without limitation, those matters arising out of litigation and/or judgments) or (c) common expenses not anticipated by the annual budget and for which no reserve funds exist upon a portion of the Addition restricted to the common use and enjoyment of the Owners of Lots sharing a common interest, separate and apart from the interest of all of the Owners in the Addition, then the Association shall be permitted to levy a Special Group Assessment against only the Lots in that group. These Special Group Assessments shall be levied in the same manner as hereinbefore provided for Special Assessments, except that the voting Members shall be comprised only of Owners of Lots to be affected by the Special Group Assessment.

**Section 5.5. Rate of Assessments.** Prior to the expiration of the Declarant Control Period, Annual Assessments, Special Assessments, and, to the extent of the affected Lots only, Special Group Assessments in respect to Lots must be fixed at a uniform rate for all Lots, unless otherwise approved by Declarant. From and after the expiration of the Declarant Control Period, Annual Assessments, Special Assessments, and, to the extent of the affected Lots only, Special Group Assessments in respect to Lots must be fixed at a uniform rate for all Lots, unless otherwise approved by at least two-thirds (2/3rds) of the members of the Board.

**Section 5.6. Date of Commencement of Assessments; Due Dates.** Unless otherwise established by the Association, beginning January 1 of each calendar year, the Annual Assessment shall be due and payable in full in advance on the first day of each Fiscal Year and shall, if not paid within thirty (30) consecutive calendar days thereafter, automatically become delinquent. At the Association's discretion, Annual Assessments may be levied on any other periodic basis (semi-annually, quarterly, monthly, etc.) and the due date and delinquency determination shall be set by the Association accordingly. Written notice of the applicable assessment shall be actually or constructively furnished to every Owner subject thereto in accordance with the procedures then determined by the Board as being reasonable and economical, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence. The Association may (but is not required to), however, prescribe time-price differential payment schedules which would permit the collection of an amount greater than the Annual Assessment on a semi-annual, quarterly or monthly basis provided that the creditworthiness of Owner was acceptable to the Association and the inconvenience to the staff of the Association for additional invoicing and collection efforts was minimized or eliminated. The Association may further prescribe (a) procedures for collecting advance Annual Assessments and/or a pro-rated amount of Annual Assessments from new Owners out of "closing transactions" and (b) different procedures for collecting Assessments from Owners who have had a recent history of being untimely.

**Section 5.7. Effect of Non-Payment of Assessment; the Personal Obligation of Owner; the Lien in Respect to a Lot; and Remedies of Association.**

(a) Effective as of, and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Lot to secure the full and timely payment of each and all Assessments and all other Charges and monetary amounts and performance obligations due under this Declaration and/or the Design Guidelines or other Governing Documents with respect to the Lots. Such lien shall be at all times superior to any claim of homestead by or in any Owner of a Lot. If any Assessment or Charge or other monetary amount or any part thereof levied by the Association against any Lot (or the Owner or a Resident thereof) is not paid by the Owner of a Lot on the date(s) when due, then the unpaid amount of the Assessment or Charge or other monetary amount shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the Maximum Lawful Rate and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner or Resident which shall bind such Lot in the hands of the Owner and the Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid Assessment, Charge or other monetary obligation and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such Assessment, Charge or other monetary obligation shall remain the Owner's personal obligation and shall not pass to the Owner's successors in title unless expressly assumed by them. However, the lien for unpaid Assessments, Charges or other monetary obligation shall be unaffected by any sale, conveyance or transfer of a Lot and shall continue in full force and effect.

(b) No Owner may waive or otherwise escape liability for any Assessment, Charge or other monetary obligation provided herein by non-use of the Common Properties or abandonment of its Lot. No diminution or abatement of Assessments, Charges or other monetary obligation shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments, Charges or other monetary obligation being a separate and independent covenant on the part of each Owner.

(c) The Association may also give to the holder(s) of any mortgage on the Lot of the non-paying Owner written notification of such Owner's default in paying any Assessment or Charge or other monetary obligation, particularly where the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage, and a written request to receive such notification.

(d) If any Assessment or Charge or other monetary obligation or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent Assessment or Charge or other

monetary obligation shall bear interest from and after the date when due at the Maximum Lawful Rate until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid Assessments or Charges and delinquent accounts, and there shall also be added to the amount of any unpaid Assessment or Charge or any delinquent account any and all reasonable attorneys' fees and other costs of collection incurred by the Association.

(e) The Association may, at its discretion, but subject to all applicable debt collection statutes (i) prepare and file a lien affidavit in the Records which specifically identifies the unpaid Assessments or Charges or other monetary obligation and the fact that a lien exists to secure the repayment thereof; and (ii) suspend the use and enjoyment by such Owner or Resident (and their Guests) of the Common Properties until and unless the delinquency has been cured to the reasonable satisfaction of the Association. However, failure to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.

(f) All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the Maximum Lawful Rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of Owner to the Association and/or Declarant and not to the payment of interest, or, if such excessive interest exceeds the unpaid balance of the actual Annual Assessment due and such other indebtedness, the excess shall be refunded to Owner in question. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this **subparagraph (f)** shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

### **Section 5.8. Power of Sale in Respect to Lots.**

(a) The lien covering the Lots described within **Section 5.7** is and shall be a contract Payment and Performance Lien and may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Section 51.002 of the Texas Property Code, as may be amended ("**Section 51.002**"), in like manner of any deed of trust on real property. Each Owner hereby grants to the Association, whether or not it is expressed in



the deed or other instrument conveying such Lot to the Owner, a power of sale to be exercised in accordance with Section 51.002. Each Owner of a Lot, for the purpose of better securing each and all monetary obligations described within this Declaration and in consideration of the benefits received and to be received by virtue of the ownership of its Lot within the Addition, by acceptance of its Deed, is deemed to have granted, sold and conveyed unto the Trustee, such Owner's Lot, to have and to hold such Lot, together with the rights, privileges and appurtenances thereto belonging unto the Trustee, and to its substitutes or successors, forever. Each Owner, by its acceptance of the Deed is deemed to have bound itself and its heirs, executors, administrators, devisees, personal representatives, successors and assigns to warrant and forever defend such Owner's Lot unto the Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all Persons claiming or to claim the same or any part thereof.

(b) This conveyance by each Owner of its Lot is made in trust to secure payment by such Owner of each and all Assessments, Charges and other obligations prescribed by these Covenants to and for the benefit of the Association, as the beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, the Association may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject, however, to the notice and cure provisions set forth in Section 51.002, and in the event of default in the payment of such indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or its successor or substitute as hereinafter provided, at the request of the Association (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Lot then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, and otherwise complying with that statute, the Trustee shall sell the Lot of the non-paying Owner, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Lot then subject to the lien hereof as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the purchaser or purchasers (the "Purchaser" or "Purchasers" herein), with general warranty binding upon Owner, its heirs, executors, administrators, devisees, personal representatives, successors and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorneys' fees herein provided for, and then to the Association the full amount of principal, interest, attorneys' fees and other charges due and unpaid on such indebtedness secured hereby, rendering the balance of the sales price, if any, to Owner, its heirs, executors, administrators, devisees, personal representatives, successors and assigns and/or to any other lien holders (if so required by applicable law); and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to such sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against Owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns.

(c) It is agreed that in the event foreclosure of the Performance and Payment Lien hereunder is commenced by the Trustee, or its substitute or successor, the Association may at any time before the sale of the Lot of the non-paying Owner direct the Trustee to abandon the

sale, and may then institute suit for the collection of such indebtedness and for the foreclosure of the contract Payment and Performance Lien created hereby. It is further agreed that if the Association should institute a suit for the collection thereof and/or for a foreclosure of the contract Payment and Performance Lien created hereby, that the Association may at any time before the entry of a final judgment in such suit dismiss the same, and require the Trustee, its substitute or successor, to sell the Lot of the non-paying Owner in accordance with the provisions of this **Section 5.8**. The Association, if it is the highest bidder, shall have the right to purchase at any sale of the Lot in question and to have the amount for which such Lot is sold credited on the debt then owing. The Association in any event is hereby authorized to appoint a substitute Trustee, or a successor Trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor Trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute Trustees successively until the indebtedness hereby secured has been paid in full, or until the Lot of the non-paying Owner is sold hereunder, and each substitute and successor Trustee shall succeed to all of the rights and powers of the original Trustee named herein. In the event any sale is made of the Lot of the non-paying Owner, or any portion thereof, under the terms of this **Section 5.8**, Owner, its heirs, executors, administrators, devisees, personal representatives, successors and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the Lot so sold to the Purchaser or Purchasers at such sale, and in the event of such Owner's failure to do so, such Owner shall thereupon from and after the making of such sale be and continue as a tenant at will of such Purchaser or Purchasers, and in the event of such Owner's failure to surrender possession of the Lot in question upon demand, the Purchaser or Purchasers, its or their heirs, executors, administrators, devisees, personal representatives, successors and assigns, shall be entitled to institute and maintain an action for forcible detainer of the Lot of the non-paying Owner in the Justice of the Peace Court in the Justice Precinct in which such Lot, or any part thereof, is situated. The foreclosure of the continuing contract Payment and Performance Lien on any one or more occasions shall not remove, replace, impair or extinguish the same continuing Payment and Performance Lien from securing all obligations arising from and after the date of foreclosure.

**Section 5.9. Subordination of the Lien.** The lien on the Lots securing the payment of the Assessments, Charges and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

(a) bona-fide first mortgage or deed of trust liens for purchase money and/or (permitted) improvement purposes placed against a Lot prior to the recording of a lien by the Association, including without limitation Institutional Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;

(b) liens for taxes or other public charges as are, by applicable law, made superior to the Association's lien; and

(c) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien.

Provided, however, such subordination shall apply only to (i) the Assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien, and (ii) the permitted Payment and Performance Lien on only the Lot and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Such sale shall not relieve the Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien of any such subsequent Assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay obligations due hereunder and/or to hinder the Association in performing its functions hereunder.

**Section 5.10. Exempt Property.** The Exempt Property shall be exempted from any Assessments or Charge created herein, except as expressly provided herein.

## ARTICLE VI.

### GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

#### **Section 6.1. Constitution of the Board of Directors.** 3

(a) The affairs of the Association shall be managed by the Board consisting of three (3) individuals, each of whom shall be appointed by Declarant during the Declarant Control Period, and thereafter elected by a vote of Members. The Directors need not be Members of the Association. Directors shall be elected or appointed, as the case may be, for two (2) year terms of office and shall serve until their respective successors are elected and qualified. 5yrs

(b) During the Declarant Control Period, Declarant may appoint, remove and replace, at its discretion, all of the Directors of the Board, as well as all Officers of the Association, whether or not such individuals were originally appointed by Declarant, with no additional or further approval or consent of any Person or party. During the Declarant Control Period, any vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise of a Director, may also, with no additional or further approval or consent of any Person or party, be filled by Declarant, or, if Declarant waives such right, at any meeting of the Board by the affirmative vote of a majority of the remaining Directors. During such time period, any Director elected to fill a vacancy shall serve in such capacity until the expiration of the term of the Director whose position he or she was elected to fill.

(c) Within sixty (60) days of the termination of the Declarant Control Period, a transition meeting shall be held for the purpose of Director election by the Members. Any Director elected at such meeting shall serve in such capacity until the next annual or specially called meeting for Director election. Written notice of such meeting shall be given to each Owner at least ten (10) days before the meeting in the Association's standard manner and practice, and Owners of 10% of the Lots shall constitute a quorum for purposes of such meeting.

(d) After the termination of the Declarant Control Period, any vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise of a Director, may be filled

Quorum 10%

at any meeting of the Board by the affirmative vote of a majority of the remaining Directors. Any Director elected to fill a vacancy shall serve in such capacity until the expiration of the term of the Director whose position he or she was elected to fill.

(e) Meetings of the Association shall be held at such location, date and time as determined by the Board.

### **Section 6.2. Powers and Duties.**

(a) The affairs of the Association shall be conducted by its Board. Any action by a majority of the Directors shall constitute an act of the Board, on behalf of the Association. The Board, for the benefit of the Association, the Addition and Members, may provide and may pay for, out of the Assessment fund(s) provided for in **Article V**, costs and expenses incurred in connection with the operation and affairs of the Association, including, without limitation, the matters described in subsection (b) below. If for any reason during the Development Period, the Board is not deemed authorized to act for and on behalf of the Association, Addition and Members, then Declarant may exercise the powers and authority granted under this **Section 6.2**, to act for and on behalf of the Association, Addition and Members, and the Association shall reimburse Declarant for any and all reasonable expenses incurred in so acting.

(b) The Association may provide and may pay for, out of the Assessment fund(s) provided for in **Article V**, one or more of the following (noting, however, that such list is not exhaustive):

(i) Care, preservation and maintenance of the Common Properties (including all signs, monuments, landscaping and the like installed or placed thereon), other real property located outside the Common Properties the maintenance of which benefits the Association, Addition and/or Members, including, as may be necessary, the lake area surrounding the Addition, and the furnishing and upkeep of any desired personal property for use in or on the Common Properties;

(ii) Recreational and social programs and activities for the general benefit of the Owners and Residents and programs which are designed only for separately identifiable sub-groups of Owners and Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;

(iii) Supplementing (to the extent, if any, deemed necessary, appropriate and affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the Addition traditionally provided by local governmental agencies;

(iv) Taxes, insurance and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to the Common Properties;

(v) The services of any Person, (including Declarant and any Affiliates of Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the

Association, including the hiring and employment of one or more managers, secretarial, clerical, staff and support employees;

(vi) Such fidelity bonds as the Board may determine to be advisable;

(vii) Legal and accounting services (including audit fees) and all costs and expenses reasonably incurred by the Association and/or the ARC. The Association is specifically authorized to engage personnel (such as ad valorem tax consultants and computer operators) and to purchase and/or rent equipment (such as computers, software and electronic communication and transmission devices), for the administration of the Association, including collection of Assessments; and

(viii) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or Assessments which the Association is required to obtain or pay for pursuant to the terms of this Declaration or which, in the Board's opinion, shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

(c) The Association shall have the following additional rights, powers and duties:

(i) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(ii) To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on individual Lots and utility companies with respect to (A) any taxes on the Common Properties, (B) monthly escrow and impound payments by a mortgagee regarding the assessment, collection and disbursement process envisioned by **Article V**, (C) utility installation, consumption and service matters, and (D) the escrow or impounding of monies sufficient to timely pay the Annual Assessment applicable to any Lot;

(iii) To borrow funds (including, without limitation, the borrowing of funds from Declarant and/or its Affiliates) to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Board;

(iv) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(v) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;

(vi) To make reasonable rules and regulations for the operation and management of the Association and/or Common Properties and to amend them from time to time;

(vii) To enter into concession agreements regarding food, beverage, vending and other products and services within the Common Properties;

(viii) To prepare an annual operating budget and to make an annual financial report available for review by each Owner, upon the written request of an Owner, at the Association offices within ninety (90) days after the end of each Fiscal Year; \*

(ix) Pursuant to **Article VII**, to adjust the amount of, collect and use any insurance proceeds to repair damaged or replace lost property, and if proceeds are insufficient to repair damaged or replace lost property, to assess Owners in proportionate amounts to cover the deficiency;

(x) To provide adequate reserves for maintenance, repairs, operations, taxes and assessments for the Common Properties; \*

(xi) To engage the services of attorneys and accountants (including an annual audit) in connection the business of the Association;

(xii) To enforce the provisions of the Governing Documents and to enjoin and seek damages from any Owner for violation of such provisions or rules; and

(xiii) To exercise any and all powers, rights and duties of the Association as set forth in the Governing Documents and those general and implied powers of a property or home owner's association.

(d) The Association is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fines" system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted Individual Assessment secured by the continuing contract Payment and Performance Lien herein established.

(e) The Association may (i) borrow monies from Declarant; (ii) lease equipment from Declarant; (iii) contract with Declarant concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are (A) generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties, and (B) as to professional management contracts, terminable by the Association at any time for any reason whatsoever and without penalty upon furnishing at least ninety (90) days advance notice thereof to Declarant. The Association shall not be required to solicit bids from unrelated third parties before entering into any contract with Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with Declarant (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

(f) The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association without a vote of the Member unless otherwise provided by the Governing Documents. In the event or if for any reason the Board is deemed not authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority under **Section 12.1** to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

### **Section 6.3. Assessments.**

(a) In the event that the Association determines for any Fiscal Year to revise the amount or rate of the Annual Assessment established for the then current or prior Fiscal Year or to establish a Special Assessment or Special Group Assessment, the Board shall fix the amount of the Assessment in question against each Lot and the applicable due date(s) for each Assessment, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association.

(b) Written notice of the applicable assessment shall be actually or constructively furnished to every Owner subject thereto in accordance with the terms hereof and with the procedures then determined by the Board as being reasonable and economical; and

(c) The Association shall, upon reasonable demand, furnish to any Owner originally liable for any Assessment, a certificate in writing signed by an officer of the Association or the Managing Agent, setting forth whether the Assessment in question has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Association for the issuance of such certificate.

**Section 6.4. Maintenance Contracts.** The Association shall have full power and authority to contract with any Owner or Resident (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

**Section 6.5. Liability Limitations.** Neither any Owner or Resident nor a Director nor the officers and managers of the Association, including the Managing Agent, shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another Owner or Resident, whether such other Owner or Resident was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its Directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any Lot or the Improvements located thereon or portion thereof or for failure to repair or maintain the same. Declarant, the Association or any other Person liable to make such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Lot or any Improvement located thereon or portion thereof.

**Section 6.6. Reserve Funds.** The Association may, at its option, establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.