

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR DURANGO CREEK, SECTION 6
A SUBDIVISION IN MONTGOMERY COUNTY, TEXAS**

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This Declaration is made on the date hereinafter set forth by D. R. HORTON-TEXAS, LTD., a Texas limited partnership, hereinafter called “**Declarant**”, said corporation having its local offices in Conroe, Montgomery County, Texas.

WHEREAS, Declarant is the owner of the following described land and premises in Montgomery County, Texas, to-wit:

All that certain tract or parcel of land known as DURANGO CREEK, SECTION 6, a subdivision of 16.956 acres of land in the Dickinson Garrett Survey, Abstract No. A-225, Montgomery County, Texas (the “**Subdivision**”), the Subdivision being comprised of 88 Lots in 3 Blocks and 3 Restricted Reserves; a map or plat of the Subdivision being recorded on December 26, 2013, as File No. 2013-136742, in Cabinet Z, Sheets 2723-2725, Map Records, Montgomery County, Texas, reference to which is here made for all purposes; and

WHEREAS, it is the desire of Declarant to provide for the preservation of the values and amenities in the Subdivision and, to this end, to subject the Subdivision to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of DURANGO CREEK SECTION 6, DURANGO CREEK SECTION 5, DURANGO CREEK SECTION 4, DURANGO CREEK SECTION 3, DURANGO CREEK SECTION 2, DURANGO CREEK SECTION 1, and such other properties as have heretofore or may hereafter be brought within the general scheme of development of DURANGO CREEK, and the owners thereof;

NOW THEREFORE, Declarant does hereby dedicate the streets, easements, drives and parkways in said DURANGO CREEK, SECTION 6, for use by the public as such, reserving the right unto itself, its successors and assigns, to, at any time, use the same for the installation, maintenance, repair and renewal of any and all public utilities, and declares that the land shown to be subdivided, according to the hereinabove mentioned plat, is held, and shall hereafter be conveyed, subject to the covenants, reservations, conditions, stipulations, easements and restrictions as hereinafter set forth.

ARTICLE I.

DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings (unless the context clearly indicates otherwise):

A. **"Declarant"** shall mean and refer to D. R. HORTON-TEXAS, LTD., a Texas limited partnership, the successor to Honea Egypt Venture, Ltd., pursuant to the Assignment of Declarant Rights, recorded on August 17, 2012, as Document No. 2012078887, under Image Code 475-12-2394, Official Public Records, Montgomery County, Texas, having been previously recorded on July 16, 2012, as Document No. 2012066618, under Image Code 447-12-1036, and to its successors and assigns.

B. **"Properties"** shall mean and refer to DURANGO CREEK, SECTION 6, subject to the reservations and exceptions set forth herein and/or in the Subdivision Plat; and to DURANGO CREEK, SECTION 5, subject to the reservations and exceptions set forth in the Amended & Restated Declaration of Covenants, Conditions and Restrictions for Durango Creek, Section 5 (as recorded in the Official Public Records of Real Property of Montgomery County, Texas, on November 21, 2013, as Document No. 2013125692), and/or the recorded plat of Durango Creek, Section Five (as recorded in Cabinet Z, Sheet 2389 et seq., Map Records of Montgomery County, Texas); and to DURANGO CREEK, SECTION 4, subject to the reservations and exceptions set forth in the Declaration of Covenants, Conditions and Restrictions for Durango Creek, Section 4 (as recorded in the Official Public Records of Real Property of Montgomery County, Texas, on July 27, 2007, as Document No. 2007-088021), and/or the recorded plat of Durango Creek, Section 4 (as recorded in Cabinet Z, Sheet 725 et seq., Map Records of Montgomery County, Texas); DURANGO CREEK, SECTION 3, subject to the reservations and exceptions set forth in the Declaration of Covenants, Conditions and Restrictions for Durango Creek, Section 3 (as recorded in the Official Public Records of Real Property of Montgomery County, Texas, on July 7, 2006, as Document No. 2006-076463) and/or the recorded plat of Durango Creek, Section 3 (as recorded in Cabinet Z, Sheet 400 et seq., Map Records of Montgomery County, Texas); and to DURANGO CREEK, SECTION 2, subject to the reservations and exceptions set forth in the Declaration of Covenants, Conditions and Restrictions for Durango Creek, Section 2 (as recorded in the Official Public Records of Real Property of Montgomery County, Texas under Clerk's File No. 2005-103399) and/or in the recorded plat of Durango Creek, Section 2 (as recorded in Cabinet Y, Sheets 195 and 196, Map Records of Montgomery County, Texas); and to DURANGO CREEK, SECTION 1, subject to the reservations and exceptions set forth in the Declaration of Covenants, Conditions and Restrictions for Durango Creek, Section 1 (as recorded in the Official Public Records of Real Property of

Montgomery County, Texas under Clerk's File No. 2004-065106) and/or in the recorded plat of Durango Creek, Section 1 (as recorded in Cabinet W, Sheets 18-19, Map Records of Montgomery County, Texas); and to any additional properties brought within the general scheme of development of DURANGO CREEK or made subject to the terms hereof pursuant to the provisions set forth herein or in a separate document.

C. **"Street"** shall mean and include any street, drive, boulevard, road, alley, lane, avenue, or any place shown on the Subdivision Plat as a thoroughfare.

D. **"Lot"** and/or **"Lots"** shall mean and refer to any of the numbered lots shown upon the Subdivision Plat of DURANGO CREEK, SECTION 6, all of which are restricted hereby to use for residential purposes, but shall not include any Reserve or Restricted Reserve designated or depicted on the Subdivision Plat.

E. **"Owner"** shall mean and refer to the owner(s), whether one or more persons or entities, of the fee simple title to any lot which is part of the Properties. In the case of an executory contract of sale or contract for deed covering any lot, the "Owner" shall be the purchaser named in the contract. "Owner" shall not mean or refer to any person or entity holding only a lien, easement, mineral interest, or royalty interest in a Lot.

F. **"Subdivision Plat"** shall mean and refer to the map or plat of DURANGO CREEK, SECTION 6, recorded on December 26, 2013, as File No. 2013-136742, in Cabinet Z, Sheets 2723-2725, Map Records, Montgomery County, Texas, as it may be amended or corrected from time to time.

G. **"Association"** shall mean and refer to the Durango Creek Property Owners Association, a Texas non-profit corporation, and to any non-profit corporation which succeeds to all or substantially all of its assets by any merger, consolidation, or conveyance of assets, as provided for in ARTICLE VIII hereof.

H. **"Architectural Control Committee"** shall mean and refer to the Durango Creek Architectural Control Committee, as provided for in ARTICLE VI hereof.

I. **"Member"** shall mean and refer to a member of the Association during the period of such membership, and shall include the Owner (during the period of his ownership) of each Lot as hereinafter set forth in ARTICLE VIII hereof. "Member" shall also include the owner of any portion of the Properties if such owner is expressly declared to be a member of the Association by the provisions of this Declaration or by a separate document.

J. **“Community Properties”** shall mean and refer to any properties, real or personal, hereafter conveyed to or otherwise acquired by the Association for the use and benefit of the Owners or Members or otherwise dedicated such Owners or Members. References hereinafter made to “Community Properties” shall mean such properties whenever acquired by the Association. The term shall not apply to any property acquired by the Association pursuant to a foreclosure of the vendor’s lien provided for in Paragraph D of Article VIII below unless such property is later dedicated by the Association for the use and benefit of the Owners or Members.

K. **“FHA”** shall mean and refer to the Federal Housing Administration.

L. **“VA”** shall mean and refer to the Veterans Administration.

M. **“Corner Lot”** shall mean and refer to a Lot which abuts on more than one Street. Any Lot, except a “Corner Lot”, is deemed to front the Street upon which it abuts. A “Corner Lot” shall be deemed to front on the side of the Lot having the deepest building setback line, as depicted on the Subdivision Plat.

N. **“Reserve”** or **“Reserves”** shall mean and refer to the area or areas designated on the Subdivision Plat as reserves.

O. **“Builder”** shall mean and refer to the Owner of a Lot who owns the Lot for the sole purpose of building a residence for sale to third parties and is designated in writing as a Builder by Declarant. If a Builder sells rents or leases a Lot to a third party, he shall cease to occupy the status of a Builder with respect to such Lot. As used in this Declaration, “Builder” does not refer to Declarant or to a home building or home marketing company that is an affiliate of Declarant.

ARTICLE II.

RESTRICTIONS

Declarant declares, covenants and agrees that, for the purpose of creating and carrying out a uniform plan for development, improvement and sale of property in DURANGO CREEK, SECTION 6, as a restricted subdivision, and for the purpose of preserving the value, amenities, desirability and attractiveness of the Subdivision and Properties, the Lots are held and shall be hereafter conveyed subject to the covenants, conditions, stipulations, easements and restrictions herein set forth; and same shall be considered a part of each contract, deed or conveyance affecting said Lots, or any portion of same, as though fully incorporated therein; and same shall constitute covenants running with the land, and shall be binding upon and shall inure to the benefit of Declarant and its successors and assigns and all subsequent purchasers of said Lots or any portion of same.

ARTICLE III.

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

A. The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, the streets and easements shown thereon, and such Subdivision Plat further establishes certain restrictions applicable to the Subdivision, including, without limitation, certain minimum setback lines. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat are incorporated herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said property depicted thereon or any part thereof, whether specifically referred to therein or not.

B. All sales and conveyances of Lots by contract, deed or other conveyance and dedications of streets in the Subdivision shall be subject to the easements and rights-of-way as shown on the Subdivision Plat, and to any easements over, under, along or across such portion of each Lot, as may be reserved in each deed, as being appropriate or necessary for the purpose of installing, using, repairing and maintaining public utilities, water, sewer lines, electric lighting and telephone poles, pipe lines, drainage ditches or structures, and/or any equipment necessary for the performance of any public or quasi-public utility service and functioning, with the right of access thereto for the purpose of further construction, maintenance and repairs. Such easements shall be for the general benefit of the Subdivision and the owners of the Properties and are hereby reserved and created in favor of any and all utility companies into and upon said property for the purposes aforesaid.

C. Declarant reserves the right, in Declarant's sole judgment and discretion, to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements, but such changes and additions shall be reserved and created in favor of any and all utility companies into and upon said Lots for the purposes hereinabove set forth.

D. Neither Declarant nor any utility company using the easements referred to herein shall be liable for any damages done by them, or their assigns, agents, employees or servants, to fences, shrubbery, trees, flowers, structures or buildings or other property situated on the land covered by such easements as a result of construction, maintenance or repair work conducted by Declarant, the utility company or their assigns, agents, employees or servants.

E. It is expressly agreed and understood that the title conveyed by Declarant to any Lot or other parcel of land within the Properties by contract, deed or other conveyance shall convey no interest in any pipes, lines, poles or conduits, or in any utility facility or appurtenances thereto constructed by or under Declarant, any utility company or any easement owner, or their agents, through, along or upon the

premises affected thereby, or any part thereof, to serve said land or other portion of the Properties, or the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party, and such right is hereby expressly reserved.

F. Declarant shall have the right (but shall never be obligated) to subdivide or resubdivide into Lots, by recorded plat or in any other lawful manner, all or any part of the property in DURANGO CREEK, SECTION 6.

G. From time to time, Declarant may own other land near or adjacent to DURANGO CREEK, SECTION 6, or the other Properties. While Declarant may subdivide other portions of its property, or may subject the same to a declaration, Declarant shall have no obligation to do so, and if Declarant elects to do so, any subdivision plat or declaration executed by Declarant with respect to any of its property may be the same or similar or dissimilar to the Subdivision Plat covering DURANGO CREEK, SECTION 6, or any part thereof, or to this Declaration.

ARTICLE IV.

USE OF LAND

A. **Single Family Residential Purposes.** Except as otherwise provided in the last sentence of this paragraph, all Lots shall be used for single family residential purposes only (hereinafter sometimes referred to as "Residential Lots"), and no business, professional, commercial or manufacturing use shall be made of any of said Lots, even though such business, professional, commercial or manufacturing use be subordinate to use of the premises as a residence. Except as otherwise provided in the last sentence of this paragraph, no structure other than one single family residence and its outbuildings shall be constructed, placed on, or permitted to remain on any Lot in the Subdivision. As used herein, the term "residential purposes" shall be construed to prohibit the use of said Lots for duplex houses, garage apartments for rental purposes or apartment houses. Each Residential Lot shall be occupied by only one (1) family. The term "single family" as used herein shall refer not only to the architectural design of a dwelling but also to the status and permitted number of inhabitants, which shall be limited to the Owner or the Owner's tenant and such Owner's or tenant's immediate family (i.e., any number of persons related by blood, adoption or marriage) and not more than one (1) person not so related. Nothing herein shall be construed to prohibit Declarant or a Builder from constructing, placing, or maintaining on any Lot or Lots one or more model homes or sales offices, and Declarant expressly reserves on behalf of itself and any Builder the right and privilege to so construct, place or maintain such structures on any Lot in the Subdivision.

B. **Signs.** No signs, billboards, posters or advertising devices of any kind shall be erected, permitted or maintained on any Lot within the Subdivision without the express prior written consent of the Architectural Control Committee except (a) one sign of not more than five (5) square feet advertising the particular Lot or tract on which the sign is situated for sale or rent, and (b) one sign of not more than five (5) square feet to identify the particular Lot as may be required by FHA or VA during the period of actual construction of a single family residential structure thereon. The right is reserved by Declarant to construct and maintain or to allow Builders within the Subdivision to construct and maintain, or to assign such rights to such entities and successors or assigns of such entities as it deems fit to construct and maintain such signs, billboards and advertising devices as is customary in connection with the general sale of property in the Subdivision.

C. **Animals.** No farm animals, livestock, poultry or exotic animals of any kind shall be raised, bred or kept on any Lot. Not more than two (2) dogs, cats or other domestic household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. All such pets shall be kept within the boundaries of the Lot unless on a leash and accompanied by the Owner. All pens and enclosures having to do with the animals must be approved by the Architectural Control Committee and shall be built in a workman like manner with new materials and kept in a clean and sanitary condition.

D. **Nuisances.** No noxious or offensive trade or activity shall be carried on upon any Lot or other tract within the Subdivision nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No part of any Lot or any improvements situated thereon shall be put to any industrial, manufacturing or other use which may become an annoyance or nuisance to the neighborhood or which may be offensive by reason of odor, fumes, dust, smoke, noise, vibration, or pollution, including but not limited to, factories, slaughter houses, tanneries, or truck stops, or which are hazardous by reason of the excessive danger of fire or explosion. The Association shall have the sole and absolute discretion and authority to determine what conditions or activities constitute a nuisance or annoyance to the neighborhood.

E. **Firearms and Fireworks.** The use or discharge of firearms or fireworks in the Subdivision is strictly and expressly prohibited.

F. **Sale of Alcohol.** No spiritous, vinous, malt or medicated bitters capable of producing intoxication shall ever be sold or offered for sale on any Lot or any part thereof, nor shall said premises or any part thereof be used for illegal or immoral purposes.

G. **Vehicle Repair.** No Owner of any Lot in DURANGO CREEK, SECTION 6, nor any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets abutting such Lots other than work of an emergency or temporary nature on the Owner's, visitor's or guest's vehicle.

H. **Construction Work.** Except in an emergency or when other unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted on weekdays only after 7:00 a.m. and before 9:00 p.m., on Saturdays only after 7:00 a.m. and before 7:00 p.m., and on Sundays only after 10:00 a.m. and before 6:00 p.m.

I. **Mailboxes, House Numbers, Etc.** Mailboxes, house numbers and similar items used in DURANGO CREEK, SECTION 6, must be harmonious with the overall character and aesthetics of the community and the decision of the Architectural Control Committee that any such item is not so harmonious is final.

J. **Trash, Rubbish Garbage, Etc.** No trash, rubbish, garbage, manure, debris, or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping ground for such materials. In a manner consistent with good housekeeping, the Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense; and prior to such removal, all such prohibited matter shall be placed in sanitary refuse containers constructed of metal, plastic or masonry materials with tightfitting sanitary covers or lids and placed in an area adequately screened by planting or fencing so as not to be seen from neighboring Lots or the Street. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal.

K. **Storage.** No Lot shall be used for the open storage of any materials whatsoever, which storage is visible from the Street, except that new building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced, and then such materials shall be placed within the property lines of the Lot or parcel of land upon which the improvements are to be erected with the exception that during construction of the original improvements some building materials may be placed or stored between the pavement and the property line. Such materials may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, after which time these materials shall either be removed

from the Lot or stored in a suitable enclosure on the Lot. Under no circumstances shall building materials be placed or stored on the Street paving.

L. **Driveway Access.** Each Lot, except Corner Lots, shall have direct driveway access from the Street or Cul-de-sac abutting such Lot. Corner Lots shall have direct driveway access to the Street to which such Lot fronts unless access via the side Street is approved in writing by and in the sole and absolute discretion of the Architectural Control Committee. Driveways shall be constructed of concrete unless otherwise approved by the Architectural Control Committee. Unless otherwise approved in writing by and in the sole and absolute discretion of the Architectural Control Committee, a garage on a Lot which fronts on a Cul-de-sac shall have direct driveway access only from the abutting Cul-de-sac Street. The Owner of each Lot shall construct and maintain at his expense the driveway from his garage to the abutting Cul-de-sac or Street, whichever is permitted, including the portion in the Street easement, and he shall repair at his expense any damage to the Street or Cul-de-sac occasioned by connecting his driveway thereto. No Owner of a Lot shall have the right, by virtue of such ownership, to make any improvement to any Street or Cul-de-sac.

M. **Landscaping.** The Owner of each Lot upon which is located a residence, as a minimum, shall fully sod or sprig with grass and maintain the area between the front of his residence and the curb line of the abutting Street and must plant shrubs around the front of the dwelling.

N. **Maintenance of Lots and Improvements.** The Owner of each Lot upon which a residence or other improvement is located shall keep such improvements in a good, attractive and neat condition. If, in the opinion of the Board of Directors of the Association or the Architectural Control Committee, any residence or other improvement is in need of painting or repairs, the Owner shall promptly paint or repair such improvements upon receipt of notice thereof from the Board or Architectural Control Committee.

ARTICLE V.

ARCHITECTURAL RESTRICTIONS

A. **Dwellings; Garages.** Only one single family residence, which shall be a dwelling of one story, one and one-half story, or two story construction, shall be built or permitted on each Lot. No dwellings in excess of two stories shall be permitted. All Lots shall have an enclosed garage, either attached or detached, for not less than two cars nor more than three cars. Carports on Lots are prohibited.

B. **Prohibited Dwellings, Etc.** No structure of any temporary character, motor home, recreational vehicle, 18-Wheeler, boat, trailer, basement, tent, shack, garage, barn or other outbuildings

shall be used on any Lot at any time as a residence, either temporarily or permanently, nor placed or stored thereon except as may be otherwise provided in this Declaration. A temporary building may be placed on a Lot only if such building is necessary as a construction shack, and its placement on the Lot shall be allowed only if approved by the Architectural Control Committee upon prior request in writing made to the Architectural Control Committee. Additionally, permanent storage buildings may be constructed or placed on a Lot with the prior written approval of the Architectural Control Committee.

C. **Mobile Homes, Manufactured Homes, Water Wells, Septic Systems, Etc.** No mobile homes, manufactured homes or prefabricated homes built off the premises shall be permitted on any Lot. No residence or other building of any kind or character, other than a storage building approved by the Architectural Control Committee, shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon. No water well, septic tank, disposal plant, outside toilet or cesspool shall be built on any Lot or maintained thereon. Provided, however, that Declarant, its sales agents, successors and assigns, reserves the exclusive right to erect, place and maintain such facilities upon any portions of the Subdivision, or to grant Builders the right of erection, placement and maintenance of such facilities upon any portion of the Subdivision as Declarant, its successors and assigns, in its sole discretion, may deem necessary or convenient while selling Lots, selling or constructing residences and/or constructing other improvements in the Subdivision. Such facilities may include, but shall not necessarily be limited to, sales and construction offices, storage areas, model units and portable toilet facilities.

D. **Required Fronting of Dwellings.** Unless otherwise approved in writing by the Architectural Control Committee, or unless otherwise stipulated herein, all improvements shall be constructed on the Lot so as to face the Street upon which such Lot fronts.

E. **Dwellings on Corner Lots.** Dwellings on Corner Lots shall have a presentable frontage on all Streets on which the particular Corner Lot fronts and must be fenced on both sides.

F. **Minimum Size of Dwellings.** The ground floor area of any one-story, single family dwelling, exclusive of open porches and garages, shall contain not less than 1,200 square feet of living space. The ground floor area of any one and one-half story or two story, single family dwelling, exclusive of open porches and garages, shall contain not less than 800 square feet of living space, and the total living area of any one and one-half or two story, single family dwelling, exclusive of porches and garages, shall contain not less than 1,800 square feet of living space. No dwelling larger than 3,100 square feet, exclusive of open porches and garages, may be built or maintained on any Lot or Lots.

G. **Building Lines, Setbacks, Easements, Etc.** The building lines of any residence to be erected in DURANGO CREEK, SECTION 6 are as follows, provided that, for the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest or shortest dimension abutting a Street. Unless otherwise approved by the Architectural Control Committee, each main residence building will face the front of the Lot, and each attached or detached garage will either face upon the front lot line or face upon a line drawn perpendicular to the front lot line, and shall not be located nearer to the front lot line than the minimum building setback lines shown on the Subdivision Plat or provided for herein. Driveway access will be provided from the front lot line only, except that said access may be provided to Corner Lots from a side street. No building shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum setback lines shown on the Subdivision Plat. No building shall be located on any Lot nearer minimum setback lines or easement on any lot line. Unless a greater building setback line is shown on the Subdivision Plat, no building shall be located nearer than five (5) feet to an interior lot line. No accessory or storage building shall be erected on any Lot nearer than any applicable building setback line or easement on any property line of said Lot.

H. **Fences, Walls, Structures, Hedges, Etc.** All fences must have prior written approval by the Architectural Control Committee. No fence or wall shall be erected, placed or maintained on any Lot nearer to any Street than the minimum building setback lines as shown on the Subdivision Plat. Additionally, and notwithstanding the foregoing, no fence or wall shall be erected, placed or maintained on any Lot nearer to the front property line than ten feet (10') behind the front facade of the home. All fences shall be a maximum of six feet (6') in height and constructed of cedar or other natural wood product unless otherwise approved in writing by the Architectural Control Committee. The erection of chain link, barbed wire or other wire fences on any Lot is expressly prohibited. No fence, wall, structure, hedge, or shrub planting which obstructs sight lines shall be placed or permitted to remain on any Corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet from the intersection of the street property lines extended.

I. **Antennas, Aerials, Satellite Dishes.** No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any dwelling, which is visible from any street, common area or other Lot unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a visible location as approved by the Architectural Control Committee. The Architectural Control Committee may require as much screening as possible while not

substantially interfering with reception. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Property. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No broadcast antenna mast may exceed the height of the center ridge of the roofline. No Multichannel Multipoint Distribution Service ("MMDS") antenna mast may exceed the height of twelve feet (12') above the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties. The Declarant, by promulgating this Section, is not attempting to violate the Telecommunications Act of 1996 ("the 1996 Act"), as may be amended from time to time. This Section shall be interpreted to be as restrictive as possible while not violating the 1996 Act.

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

J. **Exterior Material, Etc.** At least three (3) sides of the exterior walls up to the plate line on each dwelling, excluding gables, windows and door openings, shall consist of brick, stone or stucco type material. The remaining must be masonry horizontal siding, masonry fascia, and masonry soffit (hardiplank or equal). In all cases the material for construction of the exterior of the dwellings must be approved by the Committee. No garage or permitted accessory building shall exceed in height the dwelling to which they are appurtenant without the written consent of the Architectural Control Committee. Every garage and permitted accessory building, except a greenhouse, shall correspond in style and architecture to the dwelling to which it is appurtenant.

K. **Painting of Buildings.** No building of any kind or character which incorporates frame construction on the exterior shall be erected on any Lot unless same, at the time of construction, shall receive at least two coats of paint, unless the exterior is of redwood or cedar material.

L. **Removal of Dirt, Gravel, Iron Ore, Etc.** The digging and removal of dirt, gravel, iron ore, or any other surface substance on any Lot is expressly prohibited except as may be necessary in conjunction with the landscaping or construction on such Lot. Further, there shall be no timber cut or trees removed on any Lot except as may be necessary in the construction of a dwelling thereon without the written approval of the Architectural Control Committee.

M. **Property Maintenance.** Grass and weeds shall be kept mowed to prevent unsightly appearance. Dead or damaged trees which might create a hazard to property or persons on any Lot or adjacent Lot shall be promptly removed or repaired. If an Owner fails to keep grass and weeds mowed or fails to remove or repair dead or damaged trees after request by Declarant or the Association, then the Declarant or Association may mow or cause to be mowed such grass and weeds or may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damage done in such mowing or removal. The reasonable cost and expense incurred by the Association in mowing such grass and weeds and/or removing or repairing dead or damaged trees shall be added to the Owner's maintenance account provided for in Article VIII below and shall be secured by the vendor's lien referenced in said Article VIII. No Lot or other tract shall be used as dumping grounds for rubbish, trash, rubble or extra soil, except that Declarant may designate fill areas into which materials specified by Declarant may be placed. The Association may, but is not obligated to, cause to be planted or installed, and thereafter maintained, shrubbery or other screening devices around boxes, transformers and other above-ground utility equipment which, in the discretion of the Board of Directors of the Association, shall be screened from view to preserve the beauty of the Subdivision. There is hereby reserved in favor of the Association the right to enter upon the Lots to plant, install, maintain and replace such shrubbery or other screening devices. Provided, further, if a Lot is visible to full public view, the Owner shall construct and maintain a fenced area or other suitable enclosure to screen from public view yard equipment and wood piles or storage piles which are incident to the normal residential requirements of a typical family. The outside drying of clothes in the Subdivision is prohibited.

N. **Street Lights, Utility Easements.** Declarant has arranged for an electric utility company (the "Utility Company") to install street lighting in the Subdivision and an electric or other utility distribution system providing residential service in the Subdivision and for such purposes has granted the Utility Company certain easements in the Subdivision, and may from time to time grant additional easements over those portions of the Subdivision it then owns. All facilities installed by the Utility Company shall in all events remain the sole property of the Utility Company. In connection with such utility services, the following restrictions and covenants are imposed and shall be binding and enforceable as to each and all Lots in the Subdivision as required by the Utility Company.

1. The Utility Company shall have an easement along, over and across each Lot for the purpose of installing, constructing, maintaining, repairing, inspecting, replacing, removing and operating its electric service facilities for residential service to such Lot, the location of which shall be where such facilities are originally placed by the Utility Company in its discretion.

2. The Utility Company shall be granted reasonable access for the purpose of enjoying such easement rights, and all facilities installed by the Utility Company shall remain its sole property. The Utility Company shall have the right, but no obligation, to keep such easements clear of trees, bushes and other growths, or any hazards to its facilities, including the right to trim, cut or remove same without liability therefor.
3. The facilities of the Utility Company shall not be disturbed or damaged and the area over or under the Utility Company's facilities shall be kept free of excavations, structures, trees and other obstructions.
4. The locked rotor current of any motor or other equipment connected to the Utility Company's service shall be limited in accordance with applicable safety codes and the standard service practices of the Utility Company.
5. Residential and street lighting service in the Subdivision shall be provided subject to the Utility Company's general terms and conditions and charged for in accordance with applicable rate schedules, the Utility Company having the right in all events to change the terms, conditions and rate applicable to such class of service from time to time and at any time.
6. The Owner of each Lot, and all successors in title thereto, shall be liable for and shall pay an amount reasonably allocated to such Lot by the Utility Company based upon the going rate for street lighting service, as may be provided in the Utility Company's specific rate schedule for such service, and in superseding rate schedules, except during any period that full responsibility for such street lighting and payment for such facilities and energy consumed thereby is assumed and paid to the Utility Company by the Association, a municipality or other governmental body.

O. **Encroachment on Utility Easements.** Easements for the electrical service or other utilities may be crossed by driveways and walkways provided that, if required by any utility company furnishing electric or other utility service, the Builder or Owner shall make prior arrangements with such utility company and shall comply with such conditions and requirements as may be imposed by the utility companies. Such easements for utility services shall be kept clear of all other improvements, including, buildings, patio or other pavings, and neither Builder nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants, to shrubbery, trees, flowers, or other improvements of the Owner and located on the land covered by said easements.

P. **Mineral Production and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot or other tract within the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot or other such tract. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or other tract in the Subdivision.

Q. **Noncompliance With Restrictions; Association's Self-Help Remedies.** In the event of default on the part of the Owner or occupant of any Lot in observing the requirements herein set forth, or any of them, and the continuance of such default after ten (10) days written notice thereof, Declarant

or its assigns or the Association shall, without liability to the Owner or occupant in trespass, or otherwise, have the right to enter upon said Lot and to cause to be cut weeds and grass and remove or cause to be removed garbage, trash and rubbish and to paint improvements, repair or replace doors, windows, gutters, rotten wood and other improvements or portions thereof in need of repair, or do any other thing necessary to secure compliance with these restrictions so as to place said Lot in a neat, attractive, healthful and sanitary condition and may render a statement of charges to the Owner or occupant of such Lot for the cost of such work. The Owner and/or occupant, as the case may be, agree(s) by the purchase or occupation of the property to pay such statement immediately upon receipt thereof, and such charges shall be secured by the maintenance lien provided for in Paragraph D of Article VIII below.

R. **Roof.** A minimum 6:12 roof pitch is required for each dwelling, garage and other primary structure. The roof of each dwelling, garage and other permitted buildings on any Lot shall be either (i) composition type shingles of such color and weight per square as shall be approved by the Architectural Control Committee, or (ii) metal roofing of such type and color as approved by the Architectural Control Committee. Wood shingles shall not be permitted.

S. **Garbage Disposal Unit.** Each kitchen in each dwelling or living quarters situated on any Lot shall be equipped with a garbage disposal unit, which shall at all times be kept in a serviceable condition.

T. **Authority to Grant Variances.** The Board of Directors of the Association, upon recommendation of the Architectural Control Committee, may authorize variances from strict compliance with any of the Architectural restrictions of this Declaration, when circumstances such as topography, natural obstruction, hardship, aesthetic, or environmental considerations may require. Such variances must be evidenced in writing and must be approved by at least a majority vote of the Board of Directors of the Association, and shall become effective upon execution of the variances. No Board member, except a Builder, shall participate in any voting, in the capacity as a Board member, regarding a variance involving that Board member's lot or the improvements thereon. If such a variance is granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision thereof, nor shall it affect in any way the Owner's obligation to comply with all applicable governmental laws and regulations. No granting of a variance shall be relied on by any Owner, or any other person or entity

(whether privy or party to the subject variance or not), as a precedent in requesting or assuming variance as to any other matter of potential or actual enforcement of any provision of this Declaration.

ARTICLE VI.

ARCHITECTURAL CONTROL COMMITTEE

A. Initial Composition, Term, Assumption of Control by Association, Number, Etc.

The Declarant or the Declarant's designate shall serve as the Architectural Control Committee for DURANGO CREEK, SECTION 6 until every Lot in DURANGO CREEK, SECTION 6 is improved with a home and owned by a person other than Declarant or a Builder, or for a shorter period as the Declarant shall determine. The members of the Declarant-appointed Architectural Control Committee need not be Owners of Lots or Members of the Association. The Declarant-appointed Architectural Control Committee for DURANGO CREEK SECTION 6 shall act independently of the Association. Declarant may add, remove and/or replace committee members in Declarant's discretion. The Association's board of directors or a committee elected or self-appointed by the owners, no matter how it is named, may not, under any circumstance, involve itself with the approval of new homes and related improvements on vacant lots in DURANGO CREEK SECTION 6. When DURANGO CREEK SECTION 6 is built-out and sold-out, or at any sooner time if Declarant so chooses, architectural control for DURANGO CREEK, SECTION 6 shall become vested in the Association and the members of the Architectural Control Committee shall be elected or appointed by the Board of Directors of the Association in accordance with its Bylaws. From and after such time the Committee shall consist of at least three (3) members.

Compensation. No person serving on the Committee shall be entitled to compensation from the Association for services performed as a committeeman. However, the Committee may employ one or more architects, engineers, attorneys or other consultants to assist the Committee in carrying out its duties hereunder; and the Association shall pay such consultants for such services as they render to the Committee.

B. Architectural Approval, Submission of Plans, Application Fee, Failure to Act, Promulgation of Construction Standards, Other Powers. No building or other improvements, including streets, driveways, sidewalks, drainage facilities, landscaping, fences, animal pens, enclosures, mailboxes, walks, fountains, statuary, outdoor lighting or signs shall be commenced, constructed, erected, placed or maintained on any Lot or elsewhere in the Subdivision (but not including commercial reserves), nor shall any exterior addition or alteration thereto be made, unless and until (1) a preliminary site plan showing all uses and dimensions, the location of buildings, entries, streets,

driveways, parking areas, pedestrian ways and storage areas, and a schematic plan for the landscaping and lighting of the property, have been submitted to and approved in writing by the Architectural Control Committee, and thereafter (2) the final working plans and specifications for the work shown on the preliminary site plan and schematic plan have been submitted to and approved in writing by the Architectural Control Committee as to compliance with this Declaration and as to harmony of external design and location in relation to property lines, building lines, easements, grades and finished ground elevation, surrounding structures, walks, paths and topography. The final working plans and specifications shall not be commenced until the preliminary site plan and schematic plan have been so approved. The final working plans and specifications shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical and plumbing details and the nature, kind, shape, height, exterior color scheme, materials and location of the proposed improvements or alterations thereto. The Architectural Control Committee may require the submission of such plans, specifications and plot plans, together with such other documents as it deems appropriate, in such form and detail as it may elect in its discretion.

The Architectural Control Committee may charge a reasonable application and/or review fee in an amount to be determined by the Committee.

In the event the Architectural Control Committee fails to approve or disapprove the preliminary site plan and schematic plan within thirty (30) days after they have been submitted to it, approval thereof will not be required and the provisions of this Paragraph "B" will be deemed to have been fully complied with.

Without limitation of the powers herein granted, the Architectural Control Committee shall have the right, with the approval of a majority of the Directors of the Association after control of the Committee passes to the Association, to specify an outline of minimum acceptable construction standards, including but not limited to acceptable exterior materials and/or finishes which may be used in the construction, alteration or repair of any improvement; provided however, that such outline may not be applied to Lots owned by Declarant or Builders in DURANGO CREEK SECTION 6, and further provided that such outline will serve as a minimum guideline and the Architectural Control Committee shall not be bound thereby.

Where not otherwise specified herein, the Architectural Control Committee also shall have the right to specify requirements for each building site as follows: minimum setbacks; the location, height and extent of fences, walls or other screening devices; and the orientation of structures with respect to streets, walks, paths and structures on adjacent property. The Architectural Control Committee shall

have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in its judgment, with the overall character and aesthetics of DURANGO CREEK, SECTION 6.

C. **Self-Help Remedy for Owner's Failure to Repair or Maintain Dwelling.** If in the opinion of the Architectural Control Committee the exterior of any dwelling is in need of repair or maintenance, the Committee shall notify the Owner thereof in writing of the need of such repairs or maintenance, and if such repairs or maintenance are not accomplished within sixty (60) days of said date then the Committee may proceed to have such repairs or maintenance work done for the account of and payment by the Owner, and the Owner shall pay upon demand the Committee's cost, together with interest at the rate of ten percent (10%) per annum until such payment is made, and reasonable attorney's fees if referred to an attorney for collection. The reasonable cost and expense incurred by the Association in making such repairs or performing such maintenance work shall be added to the Owner's maintenance account provided for in Article VIII below and shall be secured by the vendor's lien referenced in said Article VIII.

ARTICLE VII.

MISCELLANEOUS RESTRICTIONS

A. **Restrictions Regarding Vehicles, Etc.** No boat, motor home, recreational vehicle, trailer, boat rigging, truck, bus, or other vehicle of any kind shall be stored, parked or kept on any Lot unless such vehicle is in day-to-day use off the premises and such parking is only temporary, from day-to-day; provided, however, that nothing herein contained shall be construed to prohibit the storage of any boat, motor home, trailer, boat rigging, truck, bus or vehicle in the garage permitted on any Lot covered hereby, provided further, that no such boat, motor home, trailer, boat rigging, truck, bus, vehicle or any other object shall protrude from the garage and the garage door must be operable and able to completely close at all times. No vehicles, boats, motor homes, recreational vehicles, trailers or other motorized or non-motorized vehicles, or any parts thereof, may be parked or stored in any Street, easement or right-of-way in the Subdivision; provided further, however, that during the construction of improvements on any Lot, necessary construction vehicles may be parked thereon and in the Street adjacent thereto, for and during the time of necessity therefor. No inoperative motor vehicle shall be stored or parked on any Lot or Street. All vehicles shall have a current, valid Texas inspection certificate and a current license tag, and must be maintained in good working condition. No Lot or Street shall be used to store junk, wrecked, or inoperable cars or similar items.

B. **Storage of Commercial Products.** No Lot shall be used for storage of commercial products, liquids, solid or otherwise, except those construction items which may from time to time be placed thereon by the Builder for construction purposes during the construction of the house or other permitted improvements thereon.

C. **Air Conditioners.** No window or wall type air conditioners shall be permitted to be used, erected, placed or maintained on or in any building on any Lot in the Subdivision. Provided, however, that such air conditioners may be used in sales and construction offices as such offices are provided for herein.

ARTICLE VIII.

DURANGO CREEK PROPERTY OWNERS ASSOCIATION

A. **Organization.** Declarant has caused the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas.

B. **Board of Directors.** The Association shall act through a Board of not less than three (3) nor more than seven (7) Directors, which shall manage the affairs of the Association as specified in the Bylaws of the Association.

C. **Membership.** Every person or entity, who is a record Owner of any Lot or of any of the Properties which are subject, or which may hereafter be subject to this Declaration, or a similar declaration, shall be a member of the Durango Creek Property Owners Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the Lot or other Property. Membership shall automatically pass with the title to the Lot or other Property. Ownership of such land shall be the sole qualification for membership. The owners of Reserves shall not be Members.

The Association has two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B Members shall be Declarant or its successors or any person or entity that acquires certain Lots within the Properties for purposes of development and to whom the

rights and obligations of Declarant hereunder are specifically assigned in writing by Declarant or its successors.

Class B Members shall be entitled to ten (10) votes for each Lot owned in the properties. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership. Provided, however, that the Class B membership shall be automatically reinstated whenever additional property is subjected to the jurisdiction of the Association as hereinabove provided, said Class B membership as reinstated being subject to further termination at the time when, once again, the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership.

Any voting may be by mail or in any open meeting, as provided in the Bylaws of Durango Creek Property Owners Association.

Durango Creek Property Owners Association is or shall be a non-stock, nonprofit corporation, with the principal purposes of the collection, expenditure and management of the maintenance charge funds, enforcement of the Restrictions, holding legal title to the Community Properties, if any, providing for the maintenance, preservation and architectural control of the Lots, houses and Community Properties, if any, within the Properties, the repair, maintenance and upkeep of the drainage and detention facilities within the Properties, the general overall supervision of all of the affairs and well being of the Properties and the promotion of the health, safety and welfare of the residents within the Subdivision and Properties but not the construction of any of its Streets, utilities or residences.

Books and Records. The books, records and papers of the Association shall, upon written request and by appointment, during normal business hours, be subject to inspection by any Member, for any proper purpose. The Articles of Incorporation, By-Laws, and this Declaration shall likewise be available, upon written request, for inspection, by appointment during normal business hours by any Member at the office of the Association, for any proper purpose as set forth in the By-Laws. The Association may charge a reasonable fee for copies of any books, records, papers or dedicatory instruments requested by a Member or other person.

D. **Maintenance Assessments.** Declarant imposes on each Lot within the Subdivision and each Owner of any Lot by acceptance of a deed, contract or other conveyance thereto, whether or not it shall be so expressed in such deed contract or other conveyance, is deemed to covenant and agree to pay the Association the following: (1) annual assessments or charges; and (2) special assessments for capital improvements; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall

be a charge on the land and shall be secured by a vendor's lien which is hereby reserved in favor of the Association and its successors and assigns, upon each Lot against which each such assessment is made to the same extent as if retained as a vendor's lien by Declarant in each deed to any such Lot and expressly assigned to the Association without recourse to any extent upon Declarant; provided, however, that such lien shall be subordinate, inferior and secondary to any and all liens, mortgages and encumbrances, whether now or hereafter existing, that (i) are created to secure the payment of the purchase price of each Lot, or (ii) are created to secure the payment of all amounts due or to become due under and by virtue of any contract, now or hereafter executed, for the construction, addition or repair of any improvements now or hereafter situated upon all or any part of any Lot situated within the Subdivision, or (iii) are created to secure the payment of any home equity or reverse mortgage loan. Each such assessment, together with any accrued interest and all collection costs and reasonable attorney's fees incurred to enforce payment thereof, shall also be the personal obligation of the person or entity owning such Lot at the time when each assessment becomes due and payable. The sale or transfer of any Lot shall not affect the lien securing the assessments provided for herein. However, the sale or transfer of any Lot, pursuant either to mortgage foreclosure or to any proceedings in lieu thereof, shall extinguish the lien of such assessments as to any payments that have become due and payable prior to such foreclosure, sale or transfer in lieu thereof. No foreclosure or sale or transfer in lieu thereof covering any Lot shall relieve the purchaser or transferee thereof from liability for any assessments thereafter becoming due and payable nor release any such Lot from the lien securing payment of such subsequent assessments. Nothing herein shall be construed as to require mortgagees to collect or monitor the collection of maintenance assessments from mortgagors. The failure to pay maintenance assessments shall not constitute a default under any mortgage.

E. **Purpose of Maintenance Assessments.** The assessments levied and payable to the Association shall be used exclusively to promote the recreation, health, and welfare of the residents of the Properties and for improvement, beautification, maintenance, management and operation of any Properties located within the jurisdiction of the Association. The Association may apply the maintenance fund, so far as the same may be sufficient or required, towards the payment of expenses incurred for any or all of the following purposes, to include by way of illustration but not limitation, providing patrol or watchman service; providing and maintaining street lighting; fogging for insect control; improving and maintaining streets, parks, parkways and esplanades; maintaining drainage and detention easements and facilities; collecting and disposing of garbage, ashes, rubbish and the like; caring for vacant Lots upon the Owner's failure or neglect to do so; payment of legal and all other

expenses incurred in connection with the collection, enforcement and administration of the "Maintenance Fund", and the enforcement of all covenants and restrictions for the Properties; maintenance and/or improvement of the Community Properties; operating or maintaining a swimming pool or other recreation area, if any; maintenance of all water detention ponds and other drainage facilities within the Properties; and doing any other manner of things necessary or desirable in the opinion of the Association to keep the Properties neat and in good order, or which it considers to be of general benefit to the Owners or occupants of the Properties. The judgment of the Association in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith. The foregoing enumeration of the purposes of the assessments shall not be deemed to require the Association to use the funds derived from such assessments for any one or more of such purposes or to require that any particular amount of funds be expended for any particular purpose.

F. **Amount and Payment of Annual Assessments.** Each Lot within the Subdivision, except as hereinbelow provided, will be assessed and shall pay to the Association the annual maintenance charge for the purpose of creating a fund to be known as the "Durango Creek Maintenance Fund" to be paid annually in advance. The first annual assessment for each Lot shall be adjusted according to the number of months remaining in the calendar year after the Lot is conveyed by the Declarant. Notwithstanding any provision to the contrary contained in this Declaration, Lots that are owned by Declarant shall not be subject to the annual maintenance assessments. Provided a Lot is owned and held by the Builder for the sole purpose of building a residence thereon for sale to third parties or for model home or sales office purposes, Builders will pay with respect to each such Lot annual assessments equal to one-half (1/2) of the amount paid by the Owners of other Lots. Any Lot that is not held for such purpose or that is occupied by a Builder or a tenant of the Builder shall be subject to the full annual maintenance assessments. For the calendar year in which a Builder acquires a Lot, the annual maintenance assessment for that Lot will be prorated as of the closing date and collected at the closing of the sale of the Lot to the Builder. The Board of Directors of the Association may increase or decrease the amount of the annual assessment each year. The Association, upon demand, and for a reasonable charge, shall furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specific Lot have been paid. Any assessment not paid within thirty (30) days after its due date shall bear interest from the due date until paid at the rate of the lesser of ten percent (10%) per annum or the highest rate allowed by law. Alternatively, the Association may assess a reasonable late charge, not to exceed \$50.00, for any such assessment not paid within thirty (30) days after its due date. The Association may bring an action at law to collect such assessment against the

Owner personally obligated to pay the same and to foreclose the vendor's lien reserved herein against the Lot against which such assessment is levied or may enforce collection by any other means authorized by law. The Association shall be entitled to recover the assessments, together with interest accrued at the rate hereinabove set forth, together with collection costs and reasonable attorney's fees incurred by it in enforcing payment of such assessments. No Owner may waive or otherwise avoid liability for the assessments provided for herein by nonuse of the Community Properties or by abandonment or conveyance of his Lot. The annual maintenance charge may be adjusted from year to year by the Association, its successors and assigns, as the need of the Properties may require, and in the judgment of the Association, its successors and assigns.

G. **Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repairs or replacement of a capital improvement upon the Community or Common Properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose. Lots that are owned by Declarant shall not be subject to any special assessments. Provided a Lot is owned and held by the Builder for the sole purpose of building a residence thereon for sale to third parties or for model home or sales office purposes, Builders will pay with respect to each such Lot special assessments equal to one-half (1/2) of the amount paid by the Owners of other Lots. Any Lot that is not held for such purpose or that is occupied by a Builder or a tenant of the Builder shall be subject to full special assessments.

H. **Uniform Rate.** Both annual and special assessments must be fixed at a uniform rate for all Lots, except as otherwise provided in Sections F and G above.

ARTICLE IX.

PROPERTY RIGHTS IN THE COMMUNITY PROPERTIES

A. Subject to the provisions herein stated, every Member shall have a common right and easement of enjoyment in the Community Properties, and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

B. The rights and easements of enjoyment created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created in favor of Declarant or others as referred to or provided for herein, and shall also be subject to the following rights of the Association:

1. The Association shall have the right to borrow money and in aid thereof to mortgage the Community Properties upon approval by two-thirds (2/3rds) of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for this purpose. In the event of a default under or foreclosure sale of any such mortgage, the rights of the lender or foreclosure sale purchaser shall be subject to the easement of enjoyment of the members, except that the lender or foreclosure sale purchaser shall have the right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members of any recreational facilities and to open the enjoyment of such recreational facilities to a reasonably wider public until the mortgage debt owed to such lender, or the purchase price paid by the foreclosure purchaser and interest thereon at the rate of ten percent (10%) per annum, shall be satisfied or recovered, whereupon the possession of such Properties shall be returned to the Association and all rights hereunder of the members shall be fully restored.
 2. The Association shall have the right to take such steps as are reasonably necessary to protect the Community Properties against foreclosure of any such mortgage.
 3. The Association shall have the right to suspend the voting rights and enjoyment rights of any member for any period during which any assessment or other amount owed by such member to the Association remains unpaid in excess of sixty (60) days.
 4. The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Community Properties, and to suspend the enjoyment rights and voting rights of any member for any period not to exceed ninety (90) days for any infraction of such rules and regulations.
 5. Upon approval by two-thirds (2/3rds) of the votes of all Members, the Association shall have the right to transfer or convey all or part of the Community Properties, or interests therein, to any public authority for such purposes and subject to such conditions as may be approved by said two-thirds (2/3rds) of the votes of the members.
 6. The Association shall have the right, but not the obligation, to contract, on behalf of all Lots, for garbage and rubbish pickup and to charge the Owner of each Lot for his pro rata share to be determined by dividing the number of Lots being served into the total cost of providing such garbage and rubbish pickup and such cost to be in addition to, should the Association so elect, the assessments described herein.
- C. Each Member shall have the right to extend the rights and easements of enjoyment vested in him hereunder to the members of his family, to his tenants who reside in the Subdivision or Properties, to his guests, and to such other persons as may be permitted by the Association.

ARTICLE X.

ENFORCEMENT

The restrictions herein set forth shall inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors and assigns, and all parties claiming through or under it or them, by the Association (and the Association is hereby expressly authorized to use its funds for the purpose of assisting in the enforcement of the terms and provisions hereof), and by any and all Owners, each of whom shall be obligated and bound to observe such restrictions, covenants and conditions; provided however, that neither Declarant nor any other person shall be liable except in respect to breaches committed during its, his or their ownership of said property. The violation of any restriction, covenant or condition shall not operate to invalidate any mortgage, deed of trust or other lien acquired and held in

good faith against the Property, or any part thereof, but such liens may be enforced against any and all property covered thereby subject, nevertheless, to the restrictions, covenants and conditions mentioned herein.

In the event of any violation or attempted violation of any of the terms or provisions hereof, including any of the restrictions or covenants set forth herein, enforcement of the terms and provisions hereof shall be authorized by any proceeding at law or in equity against any person or persons so violating or attempting to violate any of the provisions hereof, including by means of actions to restrain or prevent such violation or attempted violation by injunction, prohibitive or mandatory, and it shall not be a prerequisite to the granting of any such injunction that there be inadequate remedy at law or that there be any showing of irreparable harm or damage if such injunction is not granted, and against the property to enforce any lien created by this Declaration. In addition, any person entitled to enforce the provisions hereof may recover such damages, either actual or punitive, as such person may show himself justly entitled by reason of such violation of the terms and provisions hereof. The Owner of any Lot or Lots affected shall have the right to either prevent a breach of any restriction, covenant or condition, or to enforce the performance of same. Failure by the Association or any Owner to so enforce any covenant or restriction hereof shall not be construed to constitute a waiver of the right to thereafter enforce such provision or any other provision hereof.

Fines for Violations. In addition to the other remedies and rights of enforcement provided for herein, the Association may assess fines for violations of the restrictive covenants contained in this Declaration, other than non-payment or delinquency in assessments, in amounts to be set by the Board of Directors of the Association, which fines shall be secured by the continuing assessment lien set out in this Declaration. Such fines shall be recoverable in the same manner as the maintenance charge; provided however, the Association may not foreclose the Association's lien if the debt secured by the lien consists solely of fines assessed by the Association or attorney's fees incurred by the Association solely associated with fines assessed by the Association.

ARTICLE XI.

GENERAL PROVISIONS

A. **Term.** These covenants shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each.

B. **Severability.** Invalidation of any one of these covenants by judgment, court order or otherwise shall in no way affect any other provisions, which shall remain in full force and effect except as to any terms and provisions which are invalidated.

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

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

E. **Amendment.** This Declaration may be amended in whole or in part by an instrument executed by the President of the Association when approved in writing by two-thirds (2/3rds) of the votes of the Members. Such voting may be at a meeting of Members or by mail. Following any such amendment, every reference herein to this Declaration shall be held and construed to be a reference to this Declaration as so amended.

F. **Declarant's Right to Amend.** Until every Lot in DURANGO CREEK SECTION 6 is improved with a home and owned by a person other than Declarant or a Builder, Declarant reserves the right, at all times, to amend and/or restate this Declaration and every other dedicatory instrument, unilaterally, for any purpose, without the joinder or any Owner, Member and other person owning an interest in any of the property within the Subdivision. In addition to exercising this right on its own initiative, Declarant may exercise this right at the request of the Association to address a concern of the membership.

G. **Successors in Title.** The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of D. R. HORTON-TEXAS, LTD., the Architectural Control Committee and the Association, and their respective successors and assigns.

H. NEITHER THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, NOR THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTIES. NEITHER SHALL THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES

UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEM WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNATED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY DWELLING AND EACH TENANT, GUEST, INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLINGS AND TO THE CONTENTS OF DWELLINGS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES. DECLARANT OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

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

ARTICLE XII.

ANNEXATION OF ADDITIONAL PROPERTY

DURANGO CREEK, SECTION 6 is land adjacent to the tract originally consisting of 69.859 acres, more or less, described in the instrument recorded in the Real Property Records of Montgomery County, Texas, under Clerk's File No. 2003-065547. Other lands adjacent thereto or adjacent to the Subdivision may hereafter be brought within the jurisdiction of the Association by Declarant at Declarant's option and discretion; provided however, no such annexation of such remainder shall be

inferred or implied from any provision herein. The Owners of Lots in each existing or future section of DURANGO CREEK so brought within the Association's jurisdiction, as well as all other owners of lands made subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Community Properties that may become subject to the jurisdiction of the Association as a result thereof, and the facilities thereon, and shall be entitled to the use and benefit of the Durango Creek Maintenance Fund, provided that each future section of DURANGO CREEK must be impressed with and subject to the annual maintenance charge and assessment imposed hereby on a uniform, per lot basis equivalent to the maintenance charge imposed hereby, and further, such sections shall be made by recorded restrictions subject to the jurisdiction of the Association. Such additional stages of development may be subjected to the jurisdiction of the Association by Declarant without approval by the membership of the Association. Upon a merger or consolidation of the Association with another Association, the Association's properties, rights and obligations may be transferred to another surviving or consolidated Association, or alternatively, the properties, rights and obligations of another Association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association shall administer the Covenants and Restrictions established by this Declaration, together with the Covenants and Restrictions applicable to the properties of the other Association as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the Covenants and Restrictions established by this Declaration.

ARTICLE XIII.

MINERAL EXCEPTIONS

There is hereby excepted from the Subdivision, including the Lots, Restricted Reserves and Community Properties, if any, all oil, gas and other minerals in, on or under the Subdivision, but Declarant hereby waives and relinquishes its right to use the surface of such land for exploration for, or development of oil, gas and other minerals.

ARTICLE XIV.

NEW HOME SALES

A. **General.** This Article applies to every "New Home Sale," being the sale by Declarant or a Builder to a homeowner of a Lot that is improved with a newly constructed dwelling, or a vacant Lot with a contract for construction of the first dwelling. The request for or issuance of a "resale certificate" does not convert a New Home Sale into a home resale for purposes of this Article. At time of closing a New Home Sale, the purchasing Owner is liable to the Association for a one-time (per Lot per closing) non-refundable (by the Association) capitalization fee ("**Cap Fee**") payable to the Association. Cap

Fees are in addition to, not in lieu of, annual assessments and may not be considered an advance payment of annual or special assessments. Cap Fees are recoverable in the same manner as the maintenance charge or annual assessment. The amount of the Cap Fee equals the **full amount (100%) of the annual assessment per Lot**. The Association accounts to which Cap Fees are applied will be determined by the Board, in its sole discretion, from time to time, subject to the Declarant Privileges below. The Association is not required by this Article to apply Cap Fees to reserve accounts.

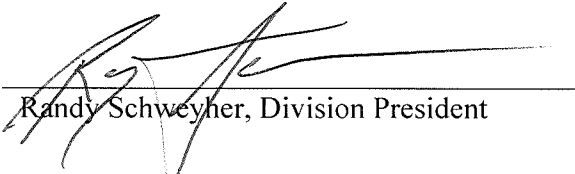
B. Obligation for Cap Fees. If the Cap Fee is not collected at the closing of a New Home Sale, the buyer remains liable to the Association for the Cap Fee until it is received, subject to the unilateral right of Declarant (hereby reserved) to waive or reduce Cap Fees on a case-by-case basis, retroactively or prospectively. Declarant has no liability to any party for Cap Fees that are not collected at time of closing.

C. Declarant Privileges. As long as Declarant owns a Lot, Declarant, in its sole discretion, from time to time, may determine how Cap Fees are allocated by the Association between and among (1) the Association's operating expenses, (2) reimbursement to Declarant for its payment, if any, of Association expenses, (3) the Association's reserve accounts, or (4) any other account or obligation of the Association. Cap Fees contributed to the Association's operating funds while Declarant owns a Lot may be used to defray or reimburse Declarant's contributions, if any, for the Association's operating expenses that are not funded by annual assessments received from Members of the Association. As long as Declarant owns a Lot, the following require the prior written and acknowledged consent of Declarant, which may not be deemed or implied from any circumstance or writing: (1) any amendment of this Article, (2) any decision by the Association pertaining to Cap Fees for vacant Lots or New Home Sales, (3) any interpretation or application of this Article that pertains to Declarant, Builders, or New Home Sales.

IN WITNESS WHEREOF, this Declaration is executed this 6th day of February 2014.

D. R. HORTON - TEXAS, LTD., a Texas limited partnership

By: D. R. HORTON, INC., a Delaware corporation, its authorized agent

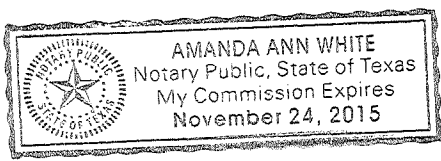
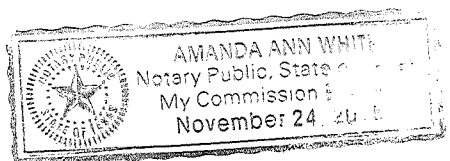
By: 
Randy Schweyher, Division President

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this 7th day of ^{February} ~~January~~ 2014 by Randy Schweyher, a Division President of D. R. Horton, Inc., a Delaware corporation, on behalf of said corporation in its capacity as authorized agent for D. R. Horton - Texas, Ltd., a Texas limited partnership, on behalf of the limited partnership.

Amanda White
Notary Public, The State of Texas

AFTER RECORDING RETURN TO:
D. R. Horton, Inc.
400 Carriage Hills Boulevard
Conroe, Texas 77384



E-FILED FOR RECORD
02/07/2014 11:27AM

Mark Tumbull

COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY

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

02/07/2014



Mark Tumbull

County Clerk
Montgomery County, Texas