

**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS, LIENS & EASEMENTS  
OF  
ESTATES OF JADE BAY**

STATE OF TEXAS           §  
  §       *Know All Men By These Presents:*  
COUNTY OF CALHOUN   §

THAT, WHEREAS, Declarant is the sole owner of the Properties;

WHEREAS, to enforce this Declaration and efficiently preserve the amenities of the Properties, Declarant deems it desirable to create the Association and to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of Declarant and subsequent owners of the Properties; and

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the maintenance, preservation, use, and enjoyment of the Properties;

NOW, THEREFORE, Declarant hereby declares that all of the Properties are subject to the following easements, restrictions, covenants, liens, and conditions:

**ARTICLE I  
DEFINITIONS**

**Section 1.01. Specific Definitions.**

(a) "Assessments" means the Annual Assessment, the Special Assessment and the Reimbursement Assessment, collectively.

(b) "Association" means Estates of Jade Bay Homeowners Association, Inc., a Texas non-profit corporation, and its successors, assigns, or replacements.

(c) "Board of Directors" or "Board" means the Association's board of directors, as that term is normally used under Texas law pertaining to non-profit corporations.

(d) "Bylaws" means the bylaws of the Association, as amended from time to time.

(e) "Certificate of Formation" means the Certificate of Formation of the Association to be filed with the Texas Secretary of the State.

(f) "Common Area" means all easements, real property and improvements, if any, owned, acquired or leased by the Association, for the common use of the Owners and Declarant.

(g) "Community-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties, as determined by the Association.

**(h)** "Declarant" means Estates of Jade Bay LLC, a Texas limited liability company.

**(i)** "Declarant Control Period" means the period of time from when this Declaration is recorded until the first to occur of: (i) the total number of votes held by Class "A" Members exceed the total number votes held by the Class "B" Member; (ii) 15 years pass from the date this Declaration is recorded; or (iii) the Class "B" Member elects to end the Declarant Control Period.

**(j)** "Declaration" means this Declaration of Covenants, Conditions, Restrictions, Liens & Easements of Estates of Jade Bay.

**(k)** "Dwelling Unit" means a residential building designed for, and limited and restricted to, occupancy by a single family on a Lot, not including an accessory building or garage. A mobile home is not a Dwelling Unit.

**(l)** "Improvement" means: (i) any structure, improvement, or appurtenance on a Lot, including: a Dwelling Unit, buildings, outbuildings, swimming pools, spas, hot tubs, patio covers, awnings, exterior paint, additions, sidewalks, walkways, sprinkler pipes, garages, sheds, carports, roads, driveways, parking areas, fences, screening, walls, retaining walls, stairs, decks, fixtures, windbreaks, basketball goals, flagpoles, signs, exterior tanks, exterior air conditioning fixtures and equipment, water softener fixtures, exterior lighting, recreational equipment or facilities, and antennae or satellite dishes; (ii) any demolition or destruction, by voluntary action, of any building, structure, fence, or other improvement; (iii) any installation or change to the landscaping on any Lot; and (iv) any exterior modification, expansion, change or alteration of an improvement.

**(m)** "Leasing" means the regular, exclusive occupancy of a Lot by any person other than the Owner, for which the Owner receives any consideration or benefit.

**(n)** "Lot" means any plot or tract of land shown on the Plat that is designated as a lot and is intended to be improved with a Dwelling Unit.

**(o)** "Majority" means those Members who hold more than half of the votes present at a meeting of the Members held in accordance with the Bylaws.

**(p)** "Member" means a Person entitled to membership in the Association, as provided herein.

**(q)** "Mortgage" means a mortgage, a lien, a deed of trust, a deed to secure debt, or any other form of security instrument affecting a Lot or interest in a Lot securing performance of an obligation.

**(r)** "Mortgagee" means a beneficiary or holder of a Mortgage.

**(s)** "Occupant" means any Person who is an occupant, tenant, guest, invitee, or licensee of a Lot, other than the Owner of such Lot.

**(t)** "Owner" means a Person who, alone or with other Persons, holds record title to any Lot, other than a Mortgagee.

**(u)** "Person" means a natural person, a corporation, a partnership, a limited liability company, a trust, an estate, or any other legal entity.

**(v)** "Plans" means the final construction plans and specifications (including a related site plan) of any Improvement to be erected, placed, constructed, maintained or altered on any Lot.

**(w)** "Plat" means the original or amended plat of Estates of Jade Bay (originally, the plat of The

Island Estate, an unrecorded subdivision), a subdivision in Calhoun County, Texas, recorded under Slides 523A and 523B of the Plat Records of Calhoun County, Texas, and Instrument No. 139266, of the Deed Records of Calhoun County, Texas, together with any amendments and replats thereto.

(x) "Properties" means the real property described on the Plat, together with any Improvements thereon or appurtenances thereto, including any additional property subjected to this Declaration by a Supplemental Declaration.

(y) "Rules and Regulations" means those rules and regulations which may be established from time to time by the Association or the Board of Directors pursuant to this Declaration.

(z) "Supermajority" means those Members who hold more than two-thirds of the votes present at a meeting of the Members held in accordance with the Bylaws.

(aa) "Supplemental Declaration" means any supplement to this Declaration by Declarant which subjects additional property to this Declaration, even if additional or different restrictions or obligations are also imposed on such additional property in such supplement.

**Section 1.02. Other Defined Terms.** Other terms defined in this Declaration have such definition throughout this Declaration.

## ARTICLE II ESTABLISHMENT OF GENERAL PLAN

**Section 2.01. General Plan.** Declarant hereby establishes this Declaration pursuant to and in furtherance of a common and general plan for the improvement and sale of Lots within the Properties, and for the purpose of enhancing and protecting the desirability and attractiveness of the Properties.

**Section 2.02. Covenants and Servitudes.** Declarant hereby imposes the covenants, conditions, restrictions, limitations, reservations, easements, and exceptions in this Declaration as restrictive covenants and equitable servitudes upon each Lot and upon the Common Areas, as a servient estate, for the benefit of each other Lot and parcel of Common Area, as the dominant estate.

## ARTICLE III COMMON AREA

**Section 3.01. Use of Common Area.** Declarant hereby grants each Owner a non-exclusive right, appurtenant to that Owner's Lot, to use and enjoy the Common Area, subject to the terms of this Declaration, any Rules and Regulations, and any recorded encumbrances affecting the Common Area.

**Section 3.02. Delegation.** Any Owner may delegate his or her right of use and enjoyment of Common Area to such Owner's family members or to such Owner's Occupants, subject to reasonable regulation by the Association and in accordance with procedures it may adopt. If an Owner delegates such right of use and enjoyment to an Occupant, such Owner shall notify the Association of any such delegation.

**Section 3.03. Sale and Mortgage of Common Area.** The Association may mortgage, pledge, hypothecate, sell, convey, transfer, or dedicate any part of the Common Area if approved by a Supermajority.

**Section 3.04. Suspension of Rights.** The Association may suspend or limit an Owner's to use any recreational facilities within the Common Area: (a) as provided in Section 4.01(b); (b) for up to 60 days for a single, non-continuing violation of this Declaration or the Rules and Regulations; (c) for as long as a single, continuing violation of this Declaration or the Rules and Regulations remains uncured and

for 60 days after such violation is cured; or (d) if an Owner violates this Declaration or the Rules and Regulations more than 5 times in any 36 month period, for any time period the Association finds appropriate, including permanent suspension.

#### **ARTICLE IV MANAGEMENT AND OPERATION OF PROPERTIES**

##### **Section 4.01. Management by Association.**

**(a) Generally.** The Association shall manage, acquire, construct, maintain, repair, replace, administer, and operate the Properties and their related matters as required in this Declaration. If the Certificate of Formation or the Bylaws conflict with the provisions of this Declaration, the provisions of this Declaration control. The Association may enter into any contracts and agreements concerning the Properties reasonably necessary or advisable to perform such obligation, including agreements with adjoining or nearby land owners or governmental entities on matters of maintenance, trash pick-up, repair, administration, security, traffic, operation of recreational facilities, or other matters of mutual interest. The Association may make and enforce Rules and Regulations governing the use of the Properties (including the Common Areas), in addition to those contained herein. If the Association makes any Rules and Regulations, the Owners shall comply with such Rules and Regulations and shall cause their Occupants to comply with such Rules and Regulations. The Owners may overrule, cancel or modify any Rules and Regulations if approved by a Majority.

**(b) Common Area.** The Association, subject to Declarant's rights in this Declaration, shall manage and control the Common Area and all Improvements thereon (including furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, consistent with the Community-Wide Standard. The Association may: (i) limit use of the Common Area and its recreational facilities to Members; (ii) charge reasonable admission or other fees (separate from Assessments) for the use of any recreational facility in the Common Area; (iii) permit non-Members to use of any recreational facility in the Common Area upon payment of admission or other fees set by the Association; (iv) limit the number of Occupants of a Member who may use the Common Area; and (v) limit or close any part of the Common Area to perform maintenance, renovation, repair, or construction and to prevent any adverse possessory or prescriptive rights from accruing to any Person or the public at large.

**(c) Acquisitions of Property.** The Association may acquire, hold and dispose of tangible and intangible personal property and real property. The Association shall accept any real or personal property, leasehold, or other interests within the Properties conveyed to it by Declarant. Declarant may retain the legal title to easements or fee simple parcels designated as Common Area and, at any time after the date hereof, convey legal title to any such Common Area to the Association.

**(d) Implied Rights.** The Association may exercise any right and take any action that is implicitly permissible in this Declaration or that is reasonably necessary to effectuate the Association's obligations in this Declaration.

**Section 4.02. Board of Directors.** The Board of Directors shall manage all business and affairs of the Association, and make all decisions and take all actions for the Association, unless otherwise reserved to the Members by law, the terms of this Declaration, Certificate of Formation, or the Bylaws.

**Section 4.03. Membership in Association.** Each Owner, whether one person or more, of a Lot is a Member of the Association, by virtue of owing the Lot, for so long as such Owner owns the Lot. Membership in the Association is appurtenant to ownership of each Lot and may not be separated from such ownership. To the extent permitted by law, the Association may charge a transfer processing fee

when the ownership of any Lot changes. Mortgagees are not Members. Each Owner shall maintain with the Association such Owner's current address and phone number, and the name, address and phone number of any Occupant or property manager of each Lot owned.

**Section 4.04. Voting and Membership.** The Association has two classes of Members:

**(a) Class "A".** All Owners other than Declarant are Class "A" Members. Each Class "A" Member has one vote per Lot owned by such Member, but when more than one Person owns a Lot, although all such Persons are Members, they may cast only one vote for such Lot among them (as they determine among themselves). The Members may not cast fractional votes or more than one vote per Lot.

**(b) Class "B".** Declarant is the Class "B" Member. When Declarant sells a Lot, the Owner of such Lot will be a Class "A" Member, despite Declarant's Class "B" Member status. The Class "B" Member has 10 votes for each Lot it owns during the Declarant Control Period, at which time the Class "B" Member will have one vote for each Lot it owns.

**(c) Reinstatement of Class "B" Votes.** Notwithstanding Section 4.04(b), if additional property is made subject to this Declaration by a Supplemental Declaration, Declarant will be a Class "B" Member as to all Lots in such additional property until either 15 years pass from the date such Supplemental Declaration is recorded or Declarant elects to convert to Class "A" Membership.

**Section 4.05. Voting.** Unless otherwise stated herein, in the Certificate of Formation, in the Bylaws, or required by law, any action which requires the approval of the Members of the Association must be approved by the vote of a Majority. Any action of the Board requires the approval of a majority of the total members thereon. Any Owner who is delinquent in the payment of any Assessment may not vote while such Assessment is delinquent.

**Section 4.06. Compensation of Board.** The Association may not compensate Board members for their service on the Board, but the Association may: (a) reimburse Board members for actual expenses incurred in the performance of Board duties; and (b) employ one or more architects, engineers, land planners, management companies, accountants, bookkeepers, collection agencies, attorneys or other consultants to assist the Board in carrying out its duties hereunder, and the Association shall pay such consultants for services rendered.

**Section 4.07. Power to Enforce Declaration and Rules and Regulations.** The Association may enforce this Declaration and any Rules and Regulations, and may take any action the Association deems reasonable to cause each Member and such Member's Occupants to comply with this Declaration and any Rules and Regulations. Without limiting the generality of the foregoing, the Association may do any one or more of the following to enforce this Declaration and the Rules and Regulations:

**(a)** bring suit to restrain and enjoin any breach or threatened breach of this Declaration or the Rules and Regulations;

**(b)** bring suit to recover damages for breach of this Declaration or the Rules and Regulations;

**(c)** levy, after notice, a Reimbursement Assessment against any Member for breach of this Declaration or the Rules and Regulations; or

**(d)** exercise any other right or remedy provided in this Declaration, at law, or in equity.

**Section 4.08. Limitation on Liability.** The officers of the Association and Board members are not personally liable to the Association, any Owner or Member, any Occupant, or any other Person: (a) for any contract or commitment that they make, in good faith, on behalf of the Association (except to the

extent that such officers or Board members may be liable as Members of the Association, with all other Members); (b) for any action taken or not taken if such officer or Board member acts in good faith, with the care an ordinary, prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes is in the best interests of the Association; or (c) to the extent such liability is limited by the Bylaws, the Certificate of Formation, or by law.

**Section 4.09. Reimbursement of Declarant.** The Association may execute promissory notes or other instruments evidencing any debt that the Association owes Declarant for monies advanced, loaned, or expended by Declarant to or for the Association.

**Section 4.10. Indemnification.**

**(a) Generally.** Except as provided in Subsection (f) of this Section, the Association shall defend, indemnify and hold harmless every officer, member of the Board, member of the ARC, and their respective agents, managers or administrators (each, an "Indemnified Party") against any and all costs, liabilities and expenses, including legal fees, incurred by or imposed upon such Indemnified Party in connection with any action, claim, demand, suit, or other proceeding (each a "Proceeding") to which he or she may be a party by reason of his or her service in such capacity. This indemnification also applies to any cost, liability and expense incurred with the settlement of any Proceeding.

**(b) Continuation.** Indemnification under this Section continues for each Indemnified Party who has ceased to serve in the capacity which initially entitled such Indemnified Party to the indemnity hereunder. The rights granted pursuant to this Section are contract rights, and no amendment, modification or repeal of this Section limits or denies any such rights with respect to actions taken or proceedings arising prior to such amendment, modification or repeal.

**(c) Advance Payment.** The right to indemnification conferred in this Section includes payment or reimbursement of all reasonable expenses incurred by an Indemnified Party who was, is or is threatened to be, made a defendant or respondent in a Proceeding if such Indemnified Party has met the standard of conduct necessary for indemnification under this Section; but an Indemnified Party shall repay all amounts so advanced if he or she is ultimately determined that to not be entitled indemnification under this Section.

**(d) Appearance as a Witness.** Notwithstanding any other provision of this Section, the Association may pay or reimburse expenses incurred by an Indemnified Party in connection with his or her appearance as a witness or other participation in a Proceeding at a time when not a named defendant or respondent in the Proceeding.

**(e) Non-exclusivity of Rights.** The right to indemnification and the advancement and payment of expenses conferred in this Section is not exclusive of any other right which an Indemnified Party may have or hereafter acquire under any law.

**(f) Limitation on Indemnification.** The Association may not indemnify any Indemnified Party under this Section if such Indemnified Party failed to act in good faith with the care an ordinary prudent person in a like position would exercise under similar circumstances, without regard to such Indemnified Party's professional background, and in a manner which such Indemnified Party believed to be in the best interests of the Association.

**Section 4.11. Inspection of Records.** Members may examine and copy, in person or by agent, accountant or attorney, the books and records of the Association at such Member's expense if the Member notifies the Association of its demand to and purpose for doing so, the purpose for doing so is proper, and the examination and copying occurs during normal business hours.

**Section 4.12. Right of Entry: Enforcement by Self Help.** If the Association deems reasonably it necessary for emergency, health, safety, or security purposes, the Association (whether exercised by itself, by its agents or employees, or by police officers, fire fighters, ambulance personnel, and similar emergency personnel) may enter upon any Lot, including any Improvements located thereon, and make repairs to Improvements, secure the Properties, or abate or remove things or conditions which are potentially hazardous or which violate any provisions of this Declaration. Except in an emergency situation, the Association shall first attempt to notify the last known Owner of the Lot before doing so. The Association may assess the costs of such efforts, including attorneys' fees, against the Owner of the Lot and collect such costs as though they are Assessments.

## **ARTICLE V MAINTENANCE**

### **Section 5.01. Association's Responsibility.**

**(a) Generally.** The Association shall maintain the Common Areas, including, but not limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all entry gates, landscaping and other flora, structures, and improvements, including any private streets situated upon the Common Area, landscaping within public rights-of-way throughout the Properties, landscaping and other flora on any public utility easement within the Properties (subject to the terms of any easement relating thereto), and such other maintenance as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association. The Association shall keep such facilities and equipment in continuous operation, except for reasonable periods for maintenance or repairs, unless a Majority votes to discontinue such operation. The Association may maintain other property which it does not own, including property dedicated to the public, if the Association determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

**(b) Maintenance Expenses.** Except as otherwise provided in this Declaration, all costs associated with maintenance, repair and replacement performed by the Association are a Common Expense allocated among all Lots as part of the Assessments, notwithstanding that the Association may be reimbursed pursuant to this Declaration or other agreement.

**(c) Additional Maintenance Responsibility.** The Association shall maintain, repair and replace any additional property of the Association (including Common Area) that is added to the Properties through a Supplemental Declaration.

### **Section 5.02. Owner's Responsibilities.**

**(a) Generally.** Each Owner shall maintain his or her Lot and all structures, parking areas and other improvements on the Lot in a neat, orderly condition and in a manner consistent with the Community-Wide Standard and all applicable covenants.

**(b) Enforcement of Owner's Responsibilities.** In addition to any other enforcement rights available to the Association, if the Owner or any Occupant of a Lot violates this Declaration or the Rules and Regulations and does not cease or cure such violation within 10 days of receiving notice thereof, the Association may repair, maintain, and restore the Lot and Improvements to the extent necessary to bring them into compliance with this Declaration and the Rules and Regulations. The Association may charge the Owner of such Lot for the cost of such work and such Owner shall pay such charge immediately. Any and all related costs, including but not limited to legal fees, plus interest thereon at the maximum rate permitted under the laws of the State of Texas, become a part of a Reimbursement Assessment payable by said Owner and payment thereof will be secured by the lien created pursuant to this Declaration. The Association will not be liable for trespass or any other tort in connection with

the work authorized in this Section.

## **ARTICLE VI NO PARTITION**

**Section 6.01.** Unless permitted in this Declaration or any Supplemental Declaration, no Person acquiring any interest in the Properties may seek judicial partition of any part of the Properties.

## **ARTICLE VII ARCHITECTURAL RESTRICTIONS**

### **Section 7.01. Architectural Review Committee.**

(a) The Board may, from time to time, appoint 3 Persons to be members of the ARC, who will be an "architectural control committee" (as such term is used in the Texas Property Code). The Board may remove any member of the ARC at any time, in its sole discretion.

(b) The ARC may: (i) promulgate architectural guidelines ("Architectural Guidelines") which place restrictions upon the Properties as to their appearance, landscaping, size, construction and materials used consistent with this Declaration (but which may not apply retroactively); and (ii) approve or deny applications for proposed original construction or modification of an Improvement.

(c) No Improvement may be erected, modified, or demolished by voluntary action unless the ARC approves the application and Plans therefor. Each such application must be accompanied by two sets of Plans, including site plans showing location on the Lot.

(d) The ARC shall make the Architectural Guidelines available to Owners and contractors who seek to engage in construction upon a Lot and who shall conduct their operations strictly in accordance therewith. The ARC may charge reasonable application fees for its review of plans.

(e) Approval of any Plans by the ARC is merely an expression of opinion that such Plans comply with this Declaration and the Architectural Guidelines if the Improvements described therein are erected in accordance with such Plans. Such approval is not a waiver or estoppel if such Improvements are not constructed in accordance with such Plans or otherwise fail to comply with the provisions hereof. No person issuing any approval or disapproval is personally liable therefor, nor is any approval a warranty as to whether such Plans comply with applicable law or are safe or structurally sound.

(f) Declarant and any contractor as so designated by Declarant are not required to obtain ARC approval or otherwise comply with any provisions of this Article during the Declarant Control Period.

(g) The ARC may, in its reasonable discretion, grant variances to any of the Architectural Guidelines or to any minor deviations from the requirements of Sections 7.02, 7.03, or 7.04.

**Section 7.02. Height and Character of Dwelling Unit.** Owners may not erect, alter, or permit on their respective Lots any Dwelling Unit that exceeds 2 stores in height or that does not contain at least 1,500 square feet of air conditioned living area (exclusive of any garage). If an Owner erects a Dwelling Unit on a Lot, such Owner must erect a fully enclosed garage suitable for two automobiles, whether attached or unattached to the Dwelling Unit. An Owner may not erect, alter, or permit more than one Dwelling Unit on any one Lot. No carports or similar structures may be constructed on any Lot. The ARC may establish Architectural Guidelines more restrictive than those in this Section.

**Section 7.03. Location of Dwelling Unit and Improvements.** No Improvement (other than fences and boundary walls, as provided in this Article) may be located on any Lot nearer to any lot line than



the minimum setback lines shown on the Plat. No Improvement may encroach upon any utility easement. Each Dwelling Unit must directly face the street on which the Lot fronts, as shown on the Plat (and Dwelling Units on Lots located at the intersection of two streets must face the street to which the greater minimum setback line runs parallel).

**Section 7.04. Exterior Wall and Chimneys.**

(a) On Lots 1 through 3 of Block 1 and Lots 1 through 5 of Block 2, all exterior walls of all Improvements on such Lots must have a masonry, brick, or stucco exterior, construction, or facade, subject to the other approvals and restrictions in this Declaration.

(b) On those Lots not described in Section 7.04(a), the exterior walls of all Improvements facing the front and sides lot lines of such Lots must have a masonry, brick, or stucco exterior, construction, or facade and the exterior walls of all Improvements facing the rear lot lines of such Lots must have a masonry, brick, wood, wood composite (such as Hardieplank), or stucco exterior, construction, or facade, subject to the other approvals and restrictions in this Declaration.

(c) All chimneys must be made of brick, masonry or stucco materials.

**Section 7.05. Temporary Structures and Mobile Homes.** No unapproved temporary Improvement, whether a tent, shack, barn, or otherwise, may be placed on any Lot, but Declarant may place temporary Improvements on the Properties while selling Lots or constructing Improvements within the Properties. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with the Association's approval. Notwithstanding anything in this Declaration to the contrary (but subject to Declarant's rights in this Declaration), trailer houses, mobile homes, manufactured homes, industrialized housing, and modular homes (whether or not with a permanent foundation or permanently affixed to the ground) are prohibited within the Properties.

**Section 7.06. Drainage.** No Owner may construct Improvements on such Lot, grade such Lot, or permit such Lot to remain in a condition where surface water on such Lot drains to any other Lot or the Common Area. Each Owner shall develop a drainage plan for such Owner's Lot. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. Owners and Occupants shall not dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any drainage ditch, storm sewer, sanitary sewer, stream, or pond within the Properties. All development and maintenance of said drainage plan is at Owner's expense.

**Section 7.07. Roofs.** Unless otherwise approved, every Owner shall cover the roofs of all buildings on the Lot with fiberglass composition shingles with a life of 30 years or better or that otherwise meet the minimum specifications of the Federal Housing Authority. However, subject to ARC approval, Owners may install shingles that are designed to be wind and hail resistant, provide heating and cooling efficiencies greater and are more durable than those provided by customary composition shingles, or provide solar generation capabilities, but when installed, they must resemble the shingles used or otherwise authorized for use in the Properties, and match the aesthetics of the Properties.

**Section 7.08. Sidewalks.** Any sidewalks must: (a) be concrete, at least four feet in width, parallel to the street curb, and built in accordance with local standards and ordinances; (b) extend the full width of the Lot, and, on corner Lots, extend the full width and depth of the Lot and up to the street curb at the other; and (c) be maintained, repaired, and replaced by the Owner.

**Section 7.09. Grass, Shrubbery and Landscaping.** All grass, plants, and shrubs shall be maintained by each Owner in accordance with the Architectural Guidelines.

**Section 7.10. Satellite Dishes and Antennas.** No antenna or satellite dish which exceeds 24 inches in diameter is permitted on any Lot. Antennae may not extend higher than 24 inches above the roof fascia. The ARC may set additional restrictions on antennae and satellite dishes under 24 inches in diameter in the Architectural Guidelines.

**Section 7.11. Utility Lines.** Each Owner shall cause all electrical, telephone and other utility lines and facilities located on such Owner's Lot to be maintained, whether by governmental entity, public utility company, private utility company, or such Owner.

**Section 7.12. Exterior Lighting.** No exterior lighting may shed light from a Lot onto other Lots in such a manner that creates a nuisance.

**Section 7.13. Window Treatment.** No window may be covered with any aluminum foil or other reflective material. Window coverings must be compatible with the design of the Dwelling Unit and the Architectural Guidelines.

**Section 7.14. Air Conditioners.** No window, roof or wall-type air conditioner may be used, placed or maintained on or in any Improvement.

**Section 7.15. Disposal Unit, Water, and Sewage Disposal Requirements.** Each kitchen in each Dwelling Unit must be equipped with a garbage disposal unit, which must be kept in serviceable condition. No individual sewage disposal system are permitted on any Lot. No individual water supply system are permitted on any Lot.

**Section 7.16. Sight Distance at Intersections.** All property located at street intersections must be landscaped so as to permit safe sight across the street corner. No fence, wall, hedge, or shrub planting may be placed or permitted to remain where it would create a traffic or sight problem.

**Section 7.17. Artificial Vegetation, Exterior Sculpture and Similar Items.** No artificial vegetation, exterior sculpture, fountains, flags and temporary flagpoles, birdhouses, birdbaths, other decorative embellishments or similar items are permitted unless approved by the ARC.

**Section 7.18. Playground and Decks.** No decks, wooden or otherwise, jungle gyms, swing sets or similar playground equipment may be erected on any Lot without the approval of the ARC and must be surrounded by a fence meeting the requirements in this Declaration. Any playground or other play areas or equipment furnished by the Association or erected within the Properties are used at the risk of the user, and the Association is not liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

**Section 7.19. Walls, Fences and Hedges.** No hedge greater than 3 feet in height is permitted nearer to the front Lot line than the building set-back line adjacent to the walls of the dwelling existing on such Lot. No fence or wall may be more than 8 feet 6 inches nor less than 6 feet in height. All fences and walls must be constructed of cedar, brick, stone, wrought iron, or stucco construction or other material as approved by the ARC. Unless approved by the ARC, no chain link, chicken wire, vinyl or other wire fence will be permitted on any Lot. Walls and fences must be approved prior to construction by the ARC and may not be closer to front boundary line of a Lot than the furthest front part of the Dwelling Unit on such Lot and may not extend beyond the side and rear boundary lines of a Lot.

**Section 7.20. Flags and Flag Poles.** Subject to this Section and approval by the ARC, Owners may display a flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States armed forces. The flag of the United States may only be displayed in accordance with 4 U.S.C. 5-10. The flag of the State of Texas shall only be displayed in accordance

with Chapter 31 of the Texas Government Code. A flagpole attached to an Improvement or a freestanding pole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the Improvements on the Lot. The display of the flag, and its location and construction of the supporting flagpole must comply with appropriate ordinances, easements and setbacks of record, and a displayed flag and flagpole on which it is flown shall be maintained in good condition. Any deteriorated flag or structurally unsafe flagpole must be repaired, replaced or removed. A flagpole attached to an Improvement may not exceed 6 feet in height. A freestanding flagpole shall not exceed 20 feet in height, measured from the ground base to the top of the flagpole. Illumination of permitted flags must be subsurface and not exceed 200 watts, and positioned in a manner not directed toward and adjacent Lot. A flag displayed on a freestanding flagpole may not exceed 10 feet in height, and a flag displayed on a flagpole attached to an Improvement may not exceed 3 by 5 feet. No more than one of each permitted flags may be displayed on a flagpole at any time. Owners may not install flagpoles or display flags in the Common Area without the consent of the Association.

**Section 7.21. Religious Item Displays.** Subject to this Section, Owners may display or affix on the entry to their Dwelling Units one or more religious items, the display of which is motivated by the Owner's or Occupant's sincere religious belief. No religious items may individually or collectively exceed 25 square inches or extend more than 6 inches past the outer edge of the door frame. Notwithstanding the foregoing, the display or affixation of a religious item on an Owner's Dwelling Unit that threatens public health or safety, violates a law, or contains language, graphics, or any display that is patently offensive to a passerby is prohibited. This Section does not authorize an Owner to use a material or color for an entry door or door frame, or make an alteration to the door or door frame of the Owner's Dwelling Unit that is not authorized by the ARC and Design Guidelines.

**Section 7.22. Exterior Paint.** The exterior surfaces of building, fences or walls located in the Properties may not be painted or stained unless in accordance with the Architectural Guidelines.

**Section 7.23. Solar and Wind Collections.** Subject to this Section and approval by the ARC within 45 days of submission of a Plan, Owners may install solar energy devices on the roof of an Improvement, or in a fenced yard or patio not taller than the fence line. The term "solar energy device" has the meaning assigned by Section 171.107 of the Texas Tax Code. A solar energy device is not permitted anywhere on a Lot except on the roof of the residential dwelling or other permitted structure on the Lot or in a fenced yard or patio within the Lot. A solar energy device may not extend higher than the dwelling's or other permitted improvement's roofline, and must conform to the slope of the roofline, have a frame, support bracket, or visible piping that is a silver, bronze, or black tone commonly available in the marketplace, and be located on a roof as designated by the ARC, unless an alternate location increases the estimated annual energy production of the device by more than 10% above the energy production of the device if located in the area designated by the ARC. For determining estimated annual energy production, the parties shall use a publicly available modeling tool provided by the National Renewable Energy Laboratory. A solar energy device located in a fenced yard or patio may not be taller than or extend above the fence enclosing the yard or patio. A solar energy device may not be installed on a Lot in a manner that voids material warranties. A solar energy device that, as adjudicated by a court, threatens the public health or safety, violates a law, or is located in the Common Area is prohibited. The ARC may not withhold approval if this Section is met or exceeded, unless the ARC determines in writing that placement of the device as proposed constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The written approval of the proposed placement of the device by all Owners of property adjoining the Lot in question constitutes prima facie evidence that substantial interference does not exist. Subject to approval by the ARC, vertical, windmill-style wind

turbines, for collecting wind energy and converting it into electricity, are permitted on a Lot.

**Section 7.24. Driveways.** Each Owner shall, subject to ARC approval, construct and maintain at such Owner's expense a concrete driveway from the edge of the paved portion of the street to the garage with a minimum width of 18 feet, a minimum thickness of 4 inches, and a maximum of 20 feet of the length between expansion joints. Each Owner shall, subject to ARC approval, install and maintain at such Owner's expense under such driveway culverts of a sufficient capacity to carry all water produced by a 25 year rain, and otherwise in compliance with applicable local ordinances, laws and regulations.

**Section 7.25. Undeveloped Lots.** The Owner of any undeveloped Lot shall maintain such Lot in a neat, sanitary and attractive condition, including regular removal of trash and debris therefrom and mowing the grass thereon as necessary to prevent growth to more than 6 inches in height.

## **ARTICLE VIII USE RESTRICTIONS**

**Section 8.01. General.** Owners and Occupants may only use the Properties for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by Declarant or the Association), which the Association may enforce.

**Section 8.02. Single Family Residential Use.** Each Owner (other than Declarant) shall use his or her Lot and the Dwelling Unit thereon for single family residential purposes only. Without limiting the foregoing, an Owner may not use any part of his or her Lot for a duplex, a garage or other apartment, servant's quarters, any multifamily use, or for any business, educational, church, professional or other commercial activity unless permitted by this Article. The term "single family" means: (a) one or more persons related by blood, marriage, domestic partnership, or adoption living together as a family, which may include parents, their children and grandchildren (including stepchildren, foster children, and wards), their dependent brothers and sisters, and their parents and grandparents; or (b) no more than two unrelated persons living together as a single household unit, as well as their children (including step children, foster children and wards), their grandchildren, their dependent brothers or sister, their parents and grandparents.

**Section 8.03. Occupants Bound.** This Declaration and any Rules and Regulations bind and restrict all Occupants. Every Owner shall cause the Occupants of such Owner's Lot to comply with this Declaration and the Rules and Regulations. If an Occupant violates this Declaration or the Rules and Regulations, or damages the Common Areas, such Occupant and the Owner of the Lot which such Occupant occupies will be liable for such violation or damage.

**Section 8.04. Certain Prohibited Uses.** No Person may use any portion of the Properties to: (a) store any property in a manner that will cause it to appear to be in an unclean, unhealthy, unsightly, or unkempt condition or that will be obnoxious to the eye; (b) keep any structure, thing, or material that will emit a foul or obnoxious odor, that will cause any loud noise, or that will disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property; (c) carry on any noxious, illegal, or offensive activity; (d) do anything that tends to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any portion of the Properties; (e) keep any plant, animal, device, or thing of any sort which is noxious, dangerous, unsightly, unpleasant, or that may diminish or destroy the enjoyment of the Properties; (f) burn wood, leaves, trash, garbage or household refuse or permit any open fires, except for wood burning in an appropriate fireplace or barbeque unit; (g) use any speaker, horn, whistle, bell, or other sound device, except alarm devices used exclusively for security purposes or speakers used in a Dwelling Unit that are audible only within such Dwelling Unit; (h) use firecrackers and other fireworks; (i) perform or play musical instruments outdoors without the prior

written approval of the Association; (j) assemble and disassemble motor vehicles and other mechanical devices (unless on an irregular or infrequent basis, and are either entirely within an enclosed garage or, if outside, are begun and completed within 12 hours); (k) carry on any unsafe or hazardous activity; (l) discharge any firearms; and (m) store gasoline, heating or other fuels, or similar flammable materials, except that an Owner may store up to two tanks of propane on each Lot for grilling purposes and up to two gallons of gasoline for operation of lawn maintenance equipment.

**Section 8.05. Business Use.** Owners may not conduct any garage sales, moving sales, rummage sales or similar activity, except that each Lot may hold one garage sale, of no more than one weekend in length, per calendar year. No trade or business may be conducted in or from any Lot (unless by Declarant), except that an Owner or Occupant may conduct business activities from a home office within the Lot if: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements; (c) the business activity does not involve persons coming onto the Lot or door-to-door solicitation of residents of the Properties; (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties; (e) such activities are not a day-care facility, home day-care facility, church, nursery, pre-school, beauty parlor, barbershop or other similar facility; (f) the public is not invited, permitted, or allowed to enter the Lot and conduct business therein; (g) no sign advertising such profession or business is present; (h) on-site employees are not used; (i) the activity does not involve offensive activity or condition, noise, odor, or traffic (vehicular or pedestrian); (j) the activity complies with the laws, rules, and regulations of any applicable regulatory body or governmental agency; and (k) the activity otherwise conforms with this Declaration. Leasing of an entire Lot is not a "trade or business" for the purposes of this Section.

**Section 8.06. Leasing of Lots.** Owners may Lease their Lots, but they must do so in writing, only for single family residential purposes, under a lease that requires the Occupant to be bound and subject to Owner's obligations under this Declaration (but doing so does not relieve Owner of such obligations). Owners may not Lease their Lots for periods of less than 30 day (unless such Owner is a corporation and the Occupants are employees of such Owner) or Lease less than the entirety of a Lot. When an Owner leases its Lot, such Owner shall notify the Association of the Owner's designated address and the name of Owner's Occupant, and provide the Association with a copy of such lease. No Occupant may use the recreational facilities or Common Area of the Association until the information specified in this Section is provided to the Association and Owner delegates his or her right to use the recreational facilities and Common Area under Section 3.02.

**Section 8.07. Laws and Ordinances.** Every Owner and Occupant shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties and any violation thereof is a violation of this Declaration. The Association, however, is not obligated to enforce such laws, statutes, ordinances and rules.

**Section 8.08. Subdivision of Lots.** Declarant may replat any Lots or other portions of the Properties owned by Declarant. During the Declarant Control Period, no part of the Properties may be platted or replatted without Declarant's approval.

**Section 8.09. Parking and Prohibited Vehicles.** Cars, trucks, motorcycles, and boats may be parked on a Lot in a garage, in or behind an Improvement concealed from public view (if otherwise approved as provided in this Declaration), or behind a fence (if otherwise approved as provided in this Declaration) even if visible from the street. Otherwise, no motor vehicles or non-motorized vehicle, boat, trailer, marine craft, recreational vehicle, camper rig off of truck, hovercraft, aircraft, machinery, or equipment of any kind may be parked or stored on any part of any Lot, easement, or right-of-way,

unless such vehicle or object is completely concealed from public view inside a garage or enclosure conforming with this Declaration. Vehicles used to transport goods and materials having a tonnage in excess of  $\frac{3}{4}$  ton may not park on the Properties overnight, and no vehicle of any size which transports inflammatory or explosive cargo may be kept on the Properties at any time. No vehicle may be parked, in any grassed area or yard, in the Common Areas, in any streets, or so as to obstruct or block a sidewalk. This restriction does not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a Lot in the immediate vicinity. An Owner or Occupant may seek a temporary variance from this restriction from the Association. The Association may adopt additional Rules and Regulations regulating parking on the streets in the Properties.

### **Section 8.10. Trash, Water, and Compost.**

**(a)** No refuse, garbage, trash, lumber, grass, dirt, shrub or tree clippings, plant waste, compose, metal, bulk materials, scrap, refuse, or debris of any kind may be placed, kept, stored, or allowed to accumulate in the street or Common Areas, unless approved by the Association. Any such trash, materials, or dirt inadvertently spilling into or entering the street, street gutter or Common Areas must be removed without delay. Each Owner shall remove from the Lot all trash or rubbish cleared from the Lot. No refuse, garbage, trash, lumber, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot except within an enclosed container of a type, size and style approved by the Association and either completely concealed from view inside a garage or other approved structure or placed in a designated area for garbage or trash pickup no earlier than 6:00 p.m. on the day preceding trash pickup and returned to the garage or approved structure no later than 11:59 p.m. of the day of trash pickup. During construction of a Dwelling Unit, a dumpster may be placed on the Lot to ensure that the construction site is kept free of unsightly trash and litter.

**(b)** Except as provided in Section 8.10(c), the Association may not prohibit an Owner from: (i) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass; (ii) installing rain barrels or a rainwater harvesting system; or (iii) implementing efficient irrigation systems, including underground drip or other drip systems.

**(c)** The Association (through the Architectural Guidelines or the Rules and Regulations) may:

**(i)** regulate the requirements, including size, type, shielding, and materials, for or the location of a composting device if the restriction does not prohibit the economic installation of the device on the Lot where there is reasonably sufficient area to install the device;

**(ii)** regulate the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes;

**(iii)** regulate the installation or use of gravel, rocks, or cacti;

**(iv)** regulate yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;

**(v)** regulate the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if: (A) the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property; and (B) there is a reasonably sufficient area on the Lot in which to install the device or appurtenance;

(vi) refuse to permit a device described in Section 8.10(b) in or on property: (A) owned by the Association; (B) owned in common by the Members; or (C) in an area other than the fenced yard or patio of a Lot; and

(vii) refuse to permit a rain barrel or rainwater harvesting system to be installed in or on property if located between the front of the Dwelling Unit and an adjoining or adjacent street or the barrel or system: (A) is of a color other than a color consistent with the color scheme of the Dwelling Unit; or (B) displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured.

**Section 8.11. Lighting.** Except for traditional holiday decorative lights, which may be displayed for one month prior to and one month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved by the Association.

**Section 8.12. Excavation and Tree Removal.** The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as may be necessary in conjunction with the construction of a swimming pool, or the landscaping of or construction on such Lot. No trees may be cut or removed except to provide room for construction of Improvements or to remove dead or unsightly trees. Any void, depression or hole created by the removal of dirt or a tree must be filled.

**Section 8.13. Damage or Destruction of Improvements.** The Owners shall maintain the Lot and all Improvements thereon in a neat and habitable manner. If damage or destruction to any Improvement occurs, the Owner shall begin repairing or demolishing the destroyed or damaged Improvement within 60 days and diligently pursue such repair and demolition to completion. If, however, damage or destruction of an Improvement is not covered by insurance or the Owner's insurance claim is denied, the Owner may, within 60 days of the occurrence of such destruction or damage, apply to the Association for a "hardship" extension to the requirements of this Section. If a "hardship" extension is granted, the Owner shall cause the damage or destroyed Improvement to be demolished and the Lot to be suitably landscaped immediately.

**Section 8.14. Clothes Drying.** No outside clothesline or other outside facilities for drying or airing clothes may be erected or maintained on any Lot. Clothing or household fabric or any other article may not be hung, dried or aired on any Lot if visible from other Lots, the street, or the Common Area.

**Section 8.15. Animals.** No animals of any kind (including without limitation livestock and poultry) may be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept if they are not kept, bred, or maintained for any commercial purpose and otherwise comply with the Rules and Regulations. The Association may require the removal of any animal that violates the foregoing restriction. Each Owner and Occupant shall clean up after their respective animals.

**Section 8.16. Signs and Billboards.** No signs, billboards, posters or advertising devices of any character may be erected, permitted or maintained on any Lot except: (a) to advertise the Lot for sale or lease or to identify the builder or contractor while construction is in progress on such Lot, if the sign is ground-mounted and not more than 6 square feet in area; (b) if ground-mounted and to promote political candidates, parties or issues (but not more than 1 sign per candidate, party, or issue), and if displayed 90 days prior to the election or referendum until 10 days after the date of the election or referendum; (c) Declarant may construct and maintain any signs, billboards, and advertising devices in connection with the sale of Lots or Dwelling Units; (d) Declarant and the Association may erect signs at each entrance to the Properties or on the Common Areas; or (e) as otherwise required to be permitted by law.

**Section 8.17. Oil and Mining Operations.** No oil drilling, oil development operations, oil refining,

quarrying or mining operations of any kind are permitted upon or in any Lot, nor are any tanks, tunnels, mineral excavations or shafts permitted upon or in any Lot. No derrick or other structures designed for use in boring for oil or natural gas may be erected, maintained or permitted upon any Lot.

**Section 8.18. Treatment Facilities.** Unless required to be permitted by law, no Lot may be used for the operation of a boarding or rooming house, a residence for transients, a "group home", "family home", "community home", "half-way house", day-care center, rehabilitation center, treatment facility, or residence of residence of unrelated individuals who are engaging in, undertaking, or participating in any group living, rehabilitation, treatment, therapy, or training with respect to previous or continuing criminal activities or convictions, alleged criminal activities, alcohol or drug dependency, physical or mental handicap, or illness, or other similar matters.

**Section 8.19. Garages.** The garage door of each Dwelling Unit must remain closed when not in use.

## ARTICLE IX COVENANTS FOR ASSESSMENTS

### Section 9.01. Lien and Personal Obligation for Assessments.

**(a) Payment of Assessments.** Each Owner shall pay the Assessments charged against such Owner's Lot to the Association, as both a personal obligation of the Owner (when charged, regardless of subsequent change of ownership of such Lot) and as an obligation that runs with the Lot. Sale or transfer of a Lot does not relieve: (i) such Lot from liability for the Assessments due before or after such sale or transfer; (ii) such Lot from the Assessment Lien; or (iii) the selling or transferring Owner of such Lot from personal liability for any Assessments that accrue prior to the date of sale or transfer.

**(b) Reservation of Lien.** Declarant hereby reserves a continuing lien, held in trust by the President or Vice President of the Association from time to time serving, as trustee, upon each Lot (the "Assessment Lien") to secure payment of the Assessments charged against such Lot and conveys such Assessment Lien to the Association. Each Owner takes his or her Lot subject to such Assessment Lien.

**(c) Notice of Lien.** The Association may record additional notice of the Assessment Lien in the form of an affidavit, duly executed, sworn to and acknowledged by an officer of the Association, setting forth the amount owed, the name of the Owner of the affected Lot, according to the books and records of the Association, and the legal description of such Lot.

**(d) Enforcement of Lien.** Subject to Chapter 209 of the Texas Property Code, the Association may enforce the Assessment Lien by any method available to enforce it, including judicial and non-judicial foreclosure pursuant to Chapter 51 of the Texas Property Code (as may be amended or superseded from time to time). If the Association elects to non-judicially foreclose the Assessment Lien, the Trustee, or his successor, as hereinabove provided, shall give all required notices, then sell the applicable Lot in accordance with Section 51.002 of the Texas Property Code (as amended or superseded from time to time) and convey such Lot to its purchaser by deed binding upon the Owner.

**(e) Additional Matters Pertaining to Foreclosure.** At any foreclosure, judicial or non-judicial, the Association may bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and may apply as a cash credit against its bid all sums due to the Association. After any such foreclosure, the occupants of such Lot shall pay reasonable rent for the use of such Lot, but such occupancy will be a tenancy-at-sufferance and the purchaser at such foreclosure sale may sue for recovery of possession of such Lot by forcible detainer without further notice. The trustee designated in this Section may be changed from time to time by recording an instrument signed by the President or a Vice-President of the Association.



## **Section 9.02. Annual Assessment.**

**(a) Generally.** Each Owner shall pay an annual assessment (the "Annual Assessment") on a per-Lot basis to the Association in an amount and under the terms provided in this Section.

**(b) Uses.** The Association may use the Annual Assessment for any purpose provided by this Declaration, including any of the following: (i) constructing and maintaining paths, parks, landscape reserves, parkways, easements, esplanades, fences, cul-de-sac and street medians, recreational facilities, tennis courts, play courts, and other common areas; (ii) payment of legal and other expenses incurred in connection with the collection, administration, and enforcement of charges, Assessments, covenants, restrictions and conditions affecting the Properties; (iii) employing patrol services, instructors, and operators; (iv) caring for vacant Lots; (v) garbage collection; and (vi) doing other things necessary or desirable, in the opinion of the Board of Directors, to keep the Properties neat and in good order or to generally benefit the Owners or Occupants. Nothing in this Section constitutes a representation or obligation that any of the above will, in fact, be provided by the Association.

**(c) Rendition and Notice.** The Board shall fix the Annual Assessment for each calendar year, at an amount not in excess of the maximum provided in Section 9.03, on or before December 1 proceeding the applicable calendar year. The Association shall send written notice each year of the Annual Assessment to every Owner subject thereto at the address of each Lot or at such other address provided to the Association in writing. Annual Assessments will be delinquent if not received by January 31 of the year for which the Annual Assessment pertains.

**(d) Treatment of Lots Owned by Declarant.** Annually, the Declarant may either pay the Annual Assessments on each Lot owned by Declarant (at the rate below), or fund the operating deficit of the Association based upon the projected operating budget for the subsequent year. Declarant must notify the Association in writing on or before October 31st of each calendar year of its intent; otherwise, each Lot owned by the Declarant will be assessed at one-fourth of the full Annual Assessment. When Declarant sells a Lot, the Annual Assessment on such Lot for the next calendar year will be at the full Annual Assessment.

## **Section 9.03. Maximum Annual Assessments.**

**(a) Without Vote of Members.** The maximum Annual Assessment for calendar year 2014 is \$200.00. Beginning in the calendar year 2015, the maximum Annual Assessment for each successive calendar year will increase, without vote of the Members, by the greater of: (i) the relative rise, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Department of Labor, Washington, D.C., or if discontinued, any successor or comparable index for the preceding month of September of each year; or (ii) by an amount not to exceed 10% over the prior year's Annual Assessment. If the Association becomes indebted to the Declarant in any manner, the Board shall fix the Annual Assessment at the maximum Annual Assessment for each respective calendar year until the Declarant has been paid in full.

**(b) With Vote of Members.** The Annual Assessment may be increased above the allowed by Section 9.03(a), if the increase is approved by the affirmative vote of a Supermajority. In lieu of notice to and a meeting of the Members, the increase may be approved by resolution bearing the signatures of those Members holding a Supermajority (determined as if at a meeting at which all Members eligible to vote were present, even if only the Declarant). Voting may also be handled by mail ballot as long as the ballots contain the name, property address, and certification by the Secretary of the Association, alternate address of the Member, if applicable, and the date and signature of the Member. Ballots may be returned by U.S. mail in envelopes specifically marked as containing ballots for the election, or may

be collected by door-to-door canvas.

**(c) Recordation of Increase of Annual Assessment.** Upon the increase of the maximum Annual Assessment pursuant to the provisions of Section 9.03(b), the Association shall cause to be recorded a sworn affidavit of the President (or any Vice President) and of the Secretary of the Association which shall certify, among other items that may be appropriate, the total number of eligible votes as of the date of the voting, the quorum required, the number of votes represented, the number of votes "for" and "against" the increase, the amount of the increased Annual Assessment so authorized, and the date by which the increased Annual Assessment must be paid. The increase in the maximum Annual Assessment so approved is effective on the date specified in the document evidencing such approval.

**Section 9.04. Special Assessments.** In addition to the Annual Assessments, the Association may, upon the affirmative vote of a Supermajority, levy a special assessment (a "Special Assessment") against each Lot to pay, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto. Upon the levying any Special Assessment, the Association shall record a sworn affidavit of an officer of the Association that certifies, among other items that may be appropriate, the total number of eligible votes of the Association as of the date of the voting, the quorum required, the number of votes voting "For" and "Against" the Special Assessment, the amount of the Special Assessment authorized, and the date by which the Special Assessment must be paid.

**Section 9.05. Reimbursement Assessments.** The Association, subject to the provisions of this Declaration, may levy an assessment for reimbursement of expenditures and costs of the Association against any Owner and such Owner's Lot incurred in curing any violation of or otherwise enforcing this Declaration, the Rules and Regulations, the Certificate of Formation, or the Bylaws (collectively, a "Reimbursement Assessment"). The Reimbursement Assessment will be due 10 days after the Association notifies the Member of the Reimbursement Assessment.

**Section 9.06. Estoppel and Resale Certificates.** The Association shall, for a reasonable charge, furnish a certificate signed by an officer of the Association or its agent setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 9.07. Attribution of Payments.** If any Owner's Assessment payment is less than the amount assessed and the payment does not specify whether it should be applied against a Annual Assessment, Special Assessment, or Reimbursement Assessment, the Association will credit the Owner's payment in the following order of priority: (a) Reimbursement Assessment until the Reimbursement assessment has been satisfied; (b) Special Assessment until the Special Assessment has been satisfied; and (c) Annual Assessment until the Annual Assessment has been satisfied. In each of the foregoing cases, payments received will be credited first to interest, attorney's fees, and other costs of collection for a particular type of Assessment, and then to Assessment reduction, satisfying the oldest of each applicable type of Assessment first, in accordance with the foregoing order of priority.

**Section 9.08. Effect of Nonpayment of Assessments.** If any Assessment is not paid by its due date, such Assessment will be delinquent and, following any notice required by the Texas Property Code, the Association may do any one or more of the following:

**(a)** charge interest at the rate of 10% per annum from the due date (or the maximum rate of interest allowed by law, if less) and all costs of collection, including reasonable attorney's fees;

**(b)** suspend all rights of the Owner as a Member of the Association (but not such Owner's

responsibilities as a Member of the Association), including eligibility to serve as a representative, director or officer, voting on matters on which Members are entitled to vote, and usage of the Common Area, until all Assessments and related costs are paid in full;

(c) pursue an action at law against the Owner personally obligated to pay the Assessment, and interest, costs of court, and reasonable attorneys' fees (when placed with an attorney for collection, whether with or without suit) incurred in such action may be added to such Assessment;

(d) foreclose on the lien retained against the Lot in accordance with the Texas Property Code and this Declaration; and

(e) assess a late charge in an amount that the Association from time to time determines.

**Section 9.09. Non-Use, Etc.** No Owner may eliminate, reduce, or otherwise escape the Assessment Lien or and liability for the Assessments by claiming non-use of the Common Area, or abandonment or non-use of a Lot.

**Section 9.10. Exempt Property.** All parts of the Properties dedicated to a public authority exempt from taxation under Texas law and all Common Area are exempt from payment of the Assessments.

**Section 9.11. No Offsets.** No offset, credit, or reduction of the Assessments is permitted for any reason, including any claim: (a) that the Association or the Board is not properly exercising its duties and powers under this Declaration; (b) of inconvenience or discomfort arising from repair or improvement to the Common Area; or (c) of impracticality, inconvenience, or discomfort arising from any action taken to comply with any law, any determination of the Board; or any other reason.

**Section 9.12. Subordination of the Lien to Mortgages.** The Assessment Lien is subordinate to any first lien, purchase money mortgages of the Lots, but the sale or transfer of any Lot pursuant to the foreclosure of a first lien, purchase money mortgage extinguishes the Assessment Lien only as to Assessments which became due prior to such sale or transfer.

## **ARTICLE X EASEMENTS AND UTILITIES**

**Section 10.01. Title to Utility Lines.** Title to any Lot is subject to each easement affecting the for utility or other purposes, and may not include the title to the water, gas, electricity, telephone, cable television, security, storm sewer, or sanitary lines, poles, pipes, conduits, or other appurtenances or facilities constructed upon, under, along, across, or through such utility easements.

**Section 10.02. Power to Grant Easements.** Declarant, during the Declarant Control Period, and thereafter the Association, may grant access, utility, drainage, water, facility, cable television, and other easements, in, on, over, or under the Common Area.

**Section 10.03. Maintenance Easement.** Declarant hereby reserves for, and dedicates to, the Association an easement over the Properties to enable the Association to fulfill the Association's maintenance responsibilities in this Declaration.

**Section 10.04. Easements for Utilities, Etc.**

(a) **Generally.** Declarant hereby reserves unto Declarant (so long as Declarant owns any portion of the Properties), the Association, and the designees of each, a blanket easement upon, across, over and under all of the Properties of ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, alarm monitoring systems,

and similar systems, roads, walkways, bicycle pathways, drainage systems, street lights, signage, and all utilities, including water, sewers, meter boxes, telephones, gas, and electricity.

**(b) Specific Easements.** If any entity furnishing a service covered by the general easement provided in this Declaration requests a specific easement by separate recordable document, the Association may grant such easement over any part of the Properties.

## **ARTICLE XI ANNEXATION**

**Section 11.01. During Declarant Control Period.** During the Declarant Control Period, Declarant may annex additional property into the Properties, without the approval of the Owners or Association.

**Section 11.02. After Declarant Control Period.** After the Declarant Control Period, additional property may be annexed to the Properties if a Supermajority votes in favor of such action.

**Section 11.03. Annexed Property.** To annex additional property into the Properties, the Persons doing so (including the owner of such additional property) must execute and record a Supplemental Declaration. Property added to the Properties may be Lots, Common Area, or other types of property, but will be subject to the matters in this Declaration and the jurisdiction of the Association, except as provided in the Supplemental Declaration.

## **ARTICLE XII GENERAL PROVISIONS**

**Section 12.01. Duration and Amendment.** The covenants, conditions, restrictions, reservations, liens, easements, and charges in this Declaration run with the land and bind the Association, all Owners, and their respective legal representatives, heirs, successors, and assigns for 40 years from the date this Declaration is duly recorded and thereafter such covenants, conditions, restrictions, reservations, liens, easements, and charges will automatically extend and renew for successive periods of 10 years each unless, prior to said renewal date, an instrument signed by the Owners of two-thirds of the Lots is recorded that alters rescinds, or modifies this Declaration, in whole or part, as said renewal date. This Declaration may be amended if such amendment receives the affirmative vote of a Supermajority and is recorded (at which time it will be effective).

**Section 12.02. Perpetuities.** If any covenant, condition, restriction, or other provision of this Declaration violates the rule against perpetuities, then such provisions will continue only until 21 years after the death of the last survivor of the now-living descendants of Elizabeth II, Queen of England.

**Section 12.03. Security.** The Association may, but is not obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be.

**(a)** NEITHER THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND AGENTS, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT ARE INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT ARE LIABLE FOR ANY LOSS OR DAMAGE FOR FAILING TO PROVIDE ADEQUATE OR EFFECTIVE SECURITY.

**(b)** ALL OWNERS AND OCCUPANTS ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, ITS AGENTS, DECLARANT, OR ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE

PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

**(c)** EACH OWNER AND OCCUPANT UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS, AGENTS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, ITS DIRECTORS, OFFICERS AND AGENTS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

**Section 12.04. Transfer of Declarant's Rights.** Declarant may transfer any of its rights and obligations to other Persons if the transfer neither reduces an obligation nor enlarges a right, but no such transfer is effective unless it is in a written instrument signed by the Declarant and duly recorded.

**Section 12.05. Restrictions not by Declarant.** No restriction, covenant, or condition may be made that affects any part of the Properties without Declarant's consent during the Declarant Control Period.

**Section 12.06. Severability.** If any provision in this Declaration is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability.

**Section 12.07. Number and Gender.** Pronouns, whenever used herein, and of whatever gender, include natural persons and corporations, entities and associations of every kind and character, and the singular include the plural, and vice versa, whenever and as often as may be appropriate.

**Section 12.08. Delay in Enforcement.** No delay in enforcing the provisions of this Declaration with respect to any breach or violation thereof shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time.

**Section 12.09. Attorneys' Fees.** If the Association files suit against an Owner or Occupant to enforce this Declaration, the Association may recover attorney's fees from such Owner or Occupant.

**Section 12.10. No Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN WRITING, NEITHER DECLARANT NOR THE ASSOCIATION MAKE ANY REPRESENTATIONS, GUARANTEES, OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATED TO ANY PART OF THE PROPERTIES (INCLUDING ANY LOTS OR COMMON AREA) OR IMPROVEMENTS THEREON: (a) CONCERNING THEIR RESPECTIVE PHYSICAL CONDITION, COST OF MAINTENANCE, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, MERCHANTABILITY, HABITABILITY, SUITABILITY, GOOD AND WORKMANLIKE QUALITY, SAFETY, SECURITY, OR TITLE; (b) IN CONNECTION WITH THE USE, SALE, OPERATION, MAINTENANCE, DEDICATION, ASSESSMENT, TAXES, OR REGULATION THEREOF; OR (c) UNDER ANY OTHER CIRCUMSTANCES WHATSOEVER. ALL PROPERTIES AND IMPROVEMENTS ARE SOLD, CONVEYED, DEDICATED, USED, ASSESSED, REGULATED, OPERATED, MAINTAINED AND PROVIDED, IF AT ALL, IN THEIR "AS IS", "WHERE IS" AND "WITH ALL FAULTS" CONDITION.

**Section 12.11. Titles.** The headings and titles are for convenience only and do not amplify, modify, or limit the subsequent provisions. Unless expressly stated otherwise, all references to Articles and Sections refer to articles and sections of this Declaration.

**Section 12.12. Specific Enumeration.** Unless expressly stated otherwise, “includes” (and all tense variations) and other words of specific enumeration are not limited by or to the items that follow them.

**Section 12.13. No Presumption Against Drafting Party.** This Declaration will be construed without regard to any presumption or rule requiring that it be construed against the drafting party.

**Section 12.14. Herein, etc.** The words “herein”, “hereof”, “hereunder” and similar words refer to this Declaration as a whole and not to a particular provision.

**Section 12.15. No Condominium.** This Declaration does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code § 81.001, *et seq.*

**Section 12.16. Governing Law.** This Declaration will be construed and governed under the laws of the State of Texas.

**Section 12.17. Notices.** Any notice required to be sent to an Owner under this Declaration must be sent by mail, postage pre-paid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

IN WITNESS WHEREOF, Declarant executes this Declaration to be effective as of the \_\_\_\_ day of June, 2014.

**Declarant:**

Estates of Jade Bay LLC

By: \_\_\_\_\_  
Juan Martinez, Manager

STATE OF TEXAS     §  
                                  §  
COUNTY OF HARRIS §

Juan Martinez, in his capacity as Manager of and on behalf of Estates of Jade Bay LLC, acknowledged this Declaration before me on this \_\_\_\_ day of June, 2014.

\_\_\_\_\_  
Notary Public - State of Texas

**After Recording, Return To:**  
Benjamin Miller, PLLC  
4900 Woodway Drive, Suite 517  
Houston, Texas 77056