

This document is re-typed to incorporate the Declaration of Covenants and Restrictions recorded at File No. 2008055166 and the amendments recorded at File No. 2011089443, 2011123822, 2015031602, 2016018472, and 2017057010 recorded in the Fort Bend County Public Records.

DECLARATION OF COVENANTS AND RESTRICTIONS

OF

**ESTATES AT WHISPERING OAKS
(A Residential Subdivision)**

May 19, 2008

TABLE OF CONTENTS

RECITALS..... 5

1. DEFINITIONS..... 6-9

2. DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION..... 9

 2.1 Description of Project..... 9

 2.2 Name of Project 9

 2.3 No severance of Residence Estate..... 9

 2.4 Replat of Subdivision 9

 2.5 Title to Comon Properties 9

3. RESERVATIONS, EXCEPTIONS AND DEDICATIONS..... 10

 3.1 Existing Easements 10

 3.2 Changes and Additions..... 10

 3.3 Title to Easements and Appurtenances Not Conveyed..... 10

 3.4 Installation and Maintenance 10

 3.5 Private Streets and Drives 10

 3.6 Emergency and Service Vehicles 10

 3.7 Surface Areas 10

 3.8 Natural Gas Service 11

 3.9 Telephone Service 11

 3.10 Electric Distribution System 11

4. THE ASSOCIATION..... 11

 4.1 General Duties and Powers..... 11

 4.2 General Duties of the Association..... 11

 4.3 General Powers of the Association..... 12

 4.4 Association Rules..... 12

 4.5 Indemnification..... 13

 4.6 Non-Liability of Officials 13

 4.7 Easements 13

 4.8 Accounting 13

 4.9 Records..... 13

 4.10 Delegation of Powers..... 14

 4.11 Emergency Powers..... 14

5. ASSOCIATION MEMBERS..... 14

5.1 Membership	14
5.2 Transfer	14
5.3 Voting Rights.....	14
5.4 Classes of Voting Membership	15
5.5 Corporate Membership	15
5.6 Suspension of Voting Rights.....	15
6. <u>ASSESSMENTS</u>	15
6.1 Creation of the Lien and Personal Obligation	15
6.2 Purpose of Assessment	15
6.3 Annual Assessments	16
6.4 Supplemental Assessments.....	17
6.5 Special Assessments.....	17
6.6 Notice and Quorum for Any Action on Assessment.....	17
6.7 Uniform Rate of Assessments	17
6.8 Date of Commencement of Assessments; Due Dates	18
6.9 Effect of Nonpayment of Assessments	18
6.10 Subordination of the Lien to Mortgages	19
6.11 Exemption of Owner	19
6.12 Unallocated Tax Assessments.....	19
6.13 Certificate of Payment.....	19
6.14 Assessment for Declarant.....	19
7. <u>RIGHTS AND OBLIGATION OF OWNERS/MEMBERS</u>	20
7.1 Obligations of Owners.....	20
7.2 Members' right of Enjoyment	20
7.3 Delegation of Use.....	20
7.4 Waiver of Use.....	20
7.5 Limitations	20
8. <u>ARCHITECTURAL CONTROL</u>	21
8.1 Establishment and Appointment of Review Board.....	21
8.2 Design Guidelines	21
8.3 General Provisions.....	21
8.4 Approval and Conformity of Plans	21
8.5 Compensation; Delegations.....	22
8.6 Non-Liability and Release	22

8.7 New Home Construction Deposit.....	22
9. <u>USE RESTRICTIONS</u>	23
9.1 Residential Use	23
9.2 No Commercial Use	23
9.3 Dwelling Unit and Building Restrictions	23
9.4 Construction Standards	24
9.5 Exterior Surfaces.....	24
9.6 Garages	24
9.7 Walls and Fences.....	24
9.8 Vehicles.....	24
9.9 Animals	24
9.10 New and Permanent Construction/Temporary Improvements	25
9.11 Lot Drainage.....	25
9.12 Trees and Vegetation.....	25
9.13 Garbage, Trash, Debris and Hazardous Materials	25
9.14 Mechanical Equipment.....	26
9.15 Outside Speakers, Amplifiers and Antenna	26
9.16 Lights.....	26
9.17 Utility Service	26
9.18 Machinery and Equipment	26
9.19 Miscellaneous Building Requirements	26
9.20 Fires	27
9.21 Nuisances	27
9.22 Safe Condition.....	27
9.23 Further Subdivision	27
9.24 Variances	27
9.25 Declaration's Construction Exemption	28
9.26 Enforcement.....	28
9.27 Modification	28
10. <u>MAINTENANCE</u>	28
10.1 Maintenance of Common Properties	28
10.2 Maintenance of Lots by Owner	29
10.3 Damage or Destruction by Owners.....	29
10.4 Non Performance by Owners.....	29
10.5 Total or Partial Destruction	29

10.6 Payment of Utility Charges	29
11. <u>INSURANCE</u>	30
11.1 Scope of Coverage	30
11.2 Insurance on Lots	30
11.3 Certificates of Insurance	31
11.4 Fidelity Bonds.....	31
11.5 Payment of Premiums.....	31
11.6 Payment of Insurance Proceeds.....	31
11.7 Annual Insurance Review	31
12. <u>GENERAL PROVISIONS</u>	31
12.1 Enforcement.....	32
12.2 No Waiver	32
12.3 Cumulative Remedies.....	32
12.4 Severability.....	32
12.5 Violations and Nuisances.....	32
12.6 Violations of Law	32
12.7 Joint and Severable Liability	32
12.8 Attorney’s Fees	32
12.9 Binding Effect.....	32
12.10 Notices	33
12.11 Construction By Declarant	33
12.12 Non-Liability of Officials	34
12.13 Term.....	34
12.14 Amendments	35
12.15 Gender	35
12.16 Section Headings	35
12.17 Survival of Liability	35
12.18 Statutory Construction	35
12.19 Right to Use Similar Name.....	35
12.20 Gated Entrances	35
SIGNATURE PAGE	36
Exhibit	
“A” – List of Lots	
“B” – Construction Regulations	

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF
ESTATES AT WHISPERING OAKS
(A Residential Subdivision)**

This Declaration of Covenants and Restrictions (the **Declaration**) is executed to be effective as of May 19, 2008 (the **Effective Date**), by **FM-359 PARTNERS, LP**, a Texas limited partnership (the **Declarant**). Declarant does hereby COVENANT, AGREE and DECLARE that the hereinafter described property located in Fort Bend County, Texas, is subject to the covenants, conditions, restrictions, easements, charges and liens of the Declaration upon the use, occupancy, and enjoyment thereof.

RECITALS

The Real Property. Declarant is the owner of certain property located in Fort Bend County, Texas, more particularly described as follows (the **Real Property**):

Whispering Oaks, an addition in Fort Bend County, Texas, according to the map or plat thereof recorded in Plat No. 20070206 or the Map/Plat Records of Fort Bend County, Texas.

General Plan and Declaration. Declarant desires to impose a general plan for the benefit of all future owners of lots for the development of the Real Property, for the purpose of enhancing and protecting the value, desirability, and attractiveness thereof.

The Association. For the efficient preservation of the value and amenities in the Real Property, Declarant deems it desirable to provide for an agency to which will be delegated and assigned the powers of maintaining and administering all Common Properties and Common Facilities (as those terms are herein defined), and enforcing and administering the covenants and restrictions and collecting and disbursing the as easements and charges hereinafter created, and therefore, Declarant shall cause a nonprofit corporation to be incorporated under the laws of the State of Texas to which such powers may be delegated in the future. Estates at Whispering Oaks Homeowners Association, a nonprofit corporation, has been incorporated under the laws of the State of Texas for the purpose of exercising such powers and functions mentioned herein. No more than one such non-profit corporation shall be in existence at any one time.

Beneficiaries. Declarant desires and intends that the owners, mortgagees and other beneficiaries, occupants and all other persons hereinafter designated who acquires any interest in the Real Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote the Property.

NOW, THEREFORE, Declarant, for the purposes above set forth, declares that the Real Property hereafter shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with and be binding upon the Real Property and all parties having or acquiring any right, title or interest in or to the Real Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association and each Member of the Association.

ARTICLE I
Definitions

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms should appear throughout this Declaration with the initial letter of such term capitalized.

Amendment means an amendment to this Declaration adopted in accordance with the provisions of Section 11.15 hereof.

Association means Estates at Whispering Oaks Homeowners Association, a Texas non- profit corporation.

Association Rules means, the rules and regulations adopted by the Association in accordance with the provisions of Section 4.4 of this Declaration, as may be amended from time to time.

Board means the Board of Directors of the Association.

Certificate of Formation means the Certificate of Formation of the Association filed with the Secretary of State of Texas.

Common Access Easements means that area or any portion of any Lot or Common Properties which has been designated on the Plat as an access or drainage easement. The areas so designated may be used by the record owners, or their guests, of the Subdivision, to include, but not necessarily limited to, sidewalks, walking trails and drainage ways.

Common Expenses means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Common Properties and Common Facilities, including but not limited to, the following:

(a) maintenance, management, operation, repair and replacement of the Common Properties, and all other areas of the Real Property which the Association is entitled and obligated to maintain, as provided in Section 10.1 hereof;

(b) unpaid Assessments and reimbursement to Declarant of any sums representing a Subsidy Obligation, as prescribed in Section 6.14 hereof;

(c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) the costs of utilities, irrigation, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Project;

(e) the costs of fire, casualty, liability, workmen's compensation and/or other insurance covering the Common Properties and Common Facilities;

(f) the costs of any other insurance obtained by the Association;

(g) reasonable reserves, as deemed appropriate by the Board;

(h) the costs of bonding of the members of the Board, the Association officers, and professional managing agent or any other person handling the funds of the Association;

- (i) taxes paid by the Association;
- (j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Properties and Common Facilities;
- (k) Board; and costs incurred by the Review Board or other committees established by the Board; and
- (l) other expenses incurred by the Association or the costs of any other items provided for by Special Assessments for any reason whatsoever in connection with the Common Properties and Common Facilities or the costs of any other items designated by this Declaration, the Certificate of Formation, Bylaws or Association Rules, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

Common Facilities means all existing and subsequently provided improvements upon or within the Common Properties except those as may be expressly excluded by the terms of this Declaration. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: structures for recreation; storage or buildings for protection of equipment; fountains; statuary; lakes; drainage; sidewalks; walking trails; private streets; common driveways; guest parking spaces; landscaping; and other similar or appurtenant improvements.

Common Properties means all of those areas of land within the Real Property as shown on the Plat, except the Lots and the streets not designated as Private Streets or Private Drives, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue of the Plat, and prior grants or dedications by Declarant. Upon recording of this Declaration, Declarant shall convey to the Association by Special Warranty Deed title to the Common Properties, free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), and title exceptions of record. Common Properties shall include Common Access Easements (including the drainage easements over the Lots shown on the Plat), and Common Access Easements need not be conveyed to the Association to be treated as Common Properties under the Declaration.

Construction Regulations means the regulations governing the construction of Improvements on the Lots, as provided in Section 9.4(b) hereof and attached hereto as Exhibit B.

Declarant means **FM-359 PARTNERS, LP**, a Texas limited partnership, or any Person to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned in connection with the sale to the assignee of Declarant's rights of all or part of the Lots then owned by Declarant to be held for sale to Public Purchasers. The Declarant's rights shall only be assigned by a written instrument recorded in the Real Property Records, expressly assigning those rights.

Declaration means this instrument, as from time to time may be amended and supplemented, in accordance with the terms thereof.

Dwelling Unit means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

Improvement(s) means each and every physical improvement of any kind whatsoever to any portion of the Real Property, including, but not limited to, the entry way improvements, any excavation, grading, fill work, building, Dwelling Unit, walkway, driveway, road, parking area, wall, fence, swimming pool, utility installation, drainage facility, stairway, patio, courtyard, pole, sign, retaining walls, or landscaping and any and all components of any of the foregoing (including, but not limited to, exterior paint, texture, color and finish scheme) and any and all modifications, alterations of, or additions to, any of the foregoing.

Lot means any parcel of real property designated as a numbered lot on the Plat and any Improvements located thereon. The platted lots are referred to collectively herein as **Lots**. For purposes of assessing the Owners, the Lots are designated as **Regular Lots** and **Estate Lots** on Exhibit A annexed hereto and made a part hereof for all purposes.

Member means every Person who qualifies for membership pursuant to Section 5.1 hereof, including Declarant so long as Declarant qualifies for membership in accordance with the terms of said section.

Mortgage means any duly recorded mortgage or deed of trust encumbering a Lot. A **First Mortgage** refers to a Mortgage which has priority over all other Mortgages encumbering a specific Lot.

Mortgagee means the mortgagee or beneficiary under any Mortgage. A **First Mortgagee** means the holder of a Mortgage that has priority over all other Mortgages encumbering a Lot.

Operating Deficit has the meaning assigned to such term in Section 6.14 hereof.

Owner means one or more Persons who are alone or collectively the record owner of a fee simple title to a Lot, including Declarant, or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation. If fee title to a Lot is owned other than by Declarant, the Owner of the fee title and not the lessee of such Lot is deemed the Owner regardless of the term of the lease.

Person means an individual, corporation, partnership, limited liability company, trust or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

Plat means the map or plat of Whispering Oaks, an addition in Fort Bend County, Texas, according to the map or plat thereof recorded in Plat No. 20070206 or the Map/Plat Records of Fort Bend County, Texas, and any subsequently recorded replat thereof.

Project means the Real Property, together with all Improvements located thereon or to be located thereon and all easements, rights, and appurtenances belonging thereto.

Proportionate Share means, as to one Lot, a fraction, the numerator is one, and, initially, the denominator is the number of Lots shown on the Plat and included in the Real Property, which as of the Effective Date hereof equals 71, subject to increase to 75, as provided in Section 2.4 hereof, which increase becomes effective upon filing of the replat as contemplated by said Section 2.4.

Public Purchaser means a Person who purchases a Lot, and does not include (i) Declarant or any Related Party who acquires a Lot by sale or distribution, or (ii) a Person who acquires title to more than one Lot contemporaneously with the assignment by Declarant to such Person of Declarant's rights reserved in the Declaration, as contemplated under the definition of Declarant.

Real Property is defined in the introductory paragraph to this Declaration.

Real Property Records means the Real Property Records of Fort Bend County, Texas.

Related Party means as of the date hereof (i) any Person owning or holding an interest or position in Declarant, or (ii) any Person owning or holding an interest in any Person described in (i) of this paragraph.

Residence means any subdivided Lot shown on the Plat, together with the Dwelling Unit, garage, patio and other Improvements thereon and all rights and easements appurtenant thereto granted pursuant to this Declaration and to the deed of conveyance.

Review Board means the Review Board or committees established by the Board of Directors of the Association in accordance with Article VIII of this Declaration.

Single Family means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household.

Subdivision means Whispering Oaks, an addition to Fort Bend County according to the map or plat thereof recorded in Plat No. 20070206 or the Map/Plat Records of Fort Bend County, Texas.

Subsidy Obligation means the obligation of the Declarant to advance all sums necessary to fund the Operating Deficit, as provided in Section 6.14 hereof.

Vehicles means automobiles, motor homes, boats, trailers and trucks.

Visible From Neighboring Property means, with respect to any given object, that such object is or would be visible by an individual who is six feet tall, standing on any part of such neighboring property (which may include a Lot or any portion of the Common Properties) at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II Description of Project Subject to Declaration

Section 2.1 Description of Project. The Project is composed of the Real Property, together with all Improvements located thereon or to be located thereon and all easements, rights and appurtenances belonging thereto.

Section 2.2 Name of Project. The Project is referred to as ***Whispering Oaks Subdivision***.

Section 2.3 No Severance of Residence Estate. No Owner shall be entitled to sever or partition his interest in his Lot from his right and easement to use and enjoy the Common Properties. The right to use the Common Properties as established by this Declaration shall not be separated, severed, partitioned or separately conveyed, encumbered, or otherwise transferred, and such right to use the Common Properties shall conclusively be deemed transferred or encumbered with the Lot to which they are appurtenant even though the description in the instrument of conveyance or encumbrance may refer only to the Lot. Nothing contained in this Article shall be construed to preclude an Owner from creating a co-tenancy in the ownership of a Lot with any other Person or Persons.

Section 2.4 Replat of Subdivision. Declarant reserves the right to file a replat of the Plat (the ***Replat***) with the authorities of Fort Bend County, Texas, in order to subdivide a portion of the Common Properties, and record same with the Real Property Records. The purpose of the Replat will be to subdivide a portion of the Common Properties to create an additional four Lots, which will be in such configuration and with boundaries thereof as the Declarant determines in its sole discretion.

Section 2.5 Title to Common Properties. The Declarant may retain the legal title to the Common Properties and Common Facilities until such time as it has completed improvements thereon and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Once title to such Common Properties and Facilities has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges relating to such Common Properties and Facilities granted to the Association in the Declaration.

ARTICLE III
Reservations, Exceptions and Dedications

Section 3.1 Existing Easements. The Plat dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such Plat also establishes certain dedications, limitations, reservations and restrictions applicable to the Real Property. Further, Declarant and Declarant's predecessors in title have heretofore granted, created and dedicated, by several recorded instruments, certain other easements and related rights for public utility purposes affecting the Real Property. All dedications, limitations, reservations and restrictions shown on the Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Real Property are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth 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 any part of the Real Property.

Section 3.2 Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing any Improvements.

Section 3.3 Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or any, drainage, water, gas, sewer, storm sewer, electric power, telephone way or any pipes, lines, poles or conduits on or in any utility facility or appurtenance thereto constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot, or any other portion of the Real Property, and 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 is hereby expressly reserved in Declarant.

Section 3.4 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Real Property for ingress and egress, installing, replacing, repairing and maintaining all drainage ways, utilities, including, but not limited to, water, sewer, telephone, electricity, gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to affix and maintain pipes, wire, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Real Property. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocate don the Real Property until approved by Declarant or the Association's Board of Directors if not specifically provided by the Plat.

Section 3.5 Private Streets and Drives. The *Private Streets* and *Private Drives* situated in the Common Properties shall be construed to be an easement available for the general use of the Members, and their guests and invitees, and for public ingress and egress for the benefit of the Lots to the extent required by applicable governmental regulations.

Section 3.6 Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vel1icles and other service vehicles to enter upon the Real Property in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Real Property to render any service.

Section 3.7 Surface Areas. The surface of easement areas for underground utility services may be paved for streets, driveways and may be used for planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective

agents, employees, servants or assigns, to the pavement or to any of the aforesaid vegetation as a result of activity relating to the construction, maintenance or repair of any such easement area.

Section 3.8 Natural Gas Service. Natural gas service will be provided to each Lot and the Common Properties by a natural gas company through gas lines in utility easements to be operated, maintained and repaired by such company. The Declarant and the Association shall have the power and authority to grant such other easements in, under, upon and over the Common Properties as the gas company may require to furnish gas service. The Association shall have no responsibility for maintenance of any gas lines.

Section 3.9 Telephone Service. Telephone service shall be available to each Lot and the Common Properties by way of underground cables which shall be installed, owned and maintained by a telephone company. The Declarant and/or the Association shall be authorized and empowered to grant such specific easements in, under, on or above the Common Properties as the telephone company may require to furnish such service.

Section 3.10 Electric Distribution System. An overhead and in designated areas an underground electric distribution system will be installed in the Project. The owner of each Lot containing a single Dwelling Unit, at such Owner's cost, shall furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of the electric company's metering at the structure to the point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant, at the request of the electric company, has either by designation on the Plat or by separate instrument granted necessary easements to the electric company, in the location and of a size designated by the electric company, providing for the installation, maintenance and operation of this electric distribution system and also has granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowners' owned and installed service wires. In addition, the owner of each Lot containing a single dwelling unit, shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standard and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved for so long as underground service is maintained in the Dwelling Unit involved. For as long as underground service is maintained, the electric service to each Dwelling Unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current. The provisions of the preceding paragraph also apply to any future residential development in Reserve(s) shown on the Plat, if any, as such plat exists at the execution of the agreement for underground electric service between the electric company and Declarant or thereafter.

ARTICLE IV The Association

Section 4.1 General Duties and Powers. In addition to the duties and powers enumerated in its Certificate of Formation, Bylaws and elsewhere in this Declaration, and without limiting the generality thereof, the Association has the specific duties and powers specified in this Article.

Section 4.2 General Duties of the Association. The Association, through its Board, shall have the duty and obligation to:

- (a) Enforce the provisions of this Declaration, the Certificate of Formation, Bylaws and Association Rules by appropriate means and carry out the obligations of the Association hereunder.
- (b) Maintain and otherwise manage the following:

- (i) The Common Properties, Common Facilities and all Improvements in which the Association holds an interest, subject to terms of any instrument transferring such interest to the Association;
 - (ii) All personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and
 - (iii) All property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration.
- (c) Pay all real and personal property taxes and other charges assessed to or payable by the Association.
- (d) Obtain for the benefit of the Common Properties and Common Facilities, water, electric, refuse collections and other services.
- (e) Establish a Review Board to govern issues set forth in this Declaration as being within the purview of the Review Board as well as other issues the Board deems suitable for the Review Board.

Section 4.3 General Powers of the Association. The Association, through its Board, has the power but not the obligation to undertake each of the following:

- (a) Employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of residential developments similar to the Project, to perform all or any part of the duties and responsibilities of the Association;
- (b) Acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Project, for the administration of the affairs of the Association or for the benefit of the Members;
- (c) Borrow money as may be needed in connection with the discharge by the Association of its powers and duties;
- (d) Provide maintenance of other items to the extent determined desirable by the Board;
- (e) Negotiate and enter into contracts with First Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Project; and
- (f) Expend any funds for the installation, construction, reconstruction, repair or replacement of capital Improvements of the Common Properties, so long as funds are available to the Association from any source (subject to compliance with the provisions of **Section 6.5** hereof), including without limitation the Association's operating account and reserves, and funds from Special Assessments.

Section 4.4 Association Rules. The Board is empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the ***Association Rules***), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Common Properties or any other part of the Project. After Declarant's Class B Membership terminates, the Declarant has the right to appoint one member to the Board so long as it owns one Lot. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern

such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Properties and Common Facilities; provided, however, that the Association Rules may not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Certificate of Formation or Bylaws. The Association agrees to make available to each Owner of a copy of the Association Rules, as they may from time to time be adopted, amended or repealed, and any notices setting forth the adoption, amendment or repeal of specific portions of the Association Rules. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and all other Persons having any interest in, or making any use of, the Real Property, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration or the Certificate of Formation or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Certificate of Formation or Bylaws to the extent of any such conflict.

Section 4.5 Indemnification. To the fullest extent permitted by law, the Association shall indemnify and defend the officers, directors and every other person serving as an employee or direct agent of the Association or on behalf of the Association as a member of a committee or otherwise, and Declarant, including its partners or any Related Party to it (to the extent a claim may be brought against Declarant by reason of its appointment, removal or control of members of the Board), against all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or, in the case of Declarant, by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement thereof, whether or not he is a director, officer or serving in such other specified capacity at the time such expenses are incurred, unless the Board determines, in good faith, that such officer, director, or other person, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

Section 4.6 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board, any other committees of the Association nor any member thereof, nor any directors or officers of the Association, shall be liable to any owner, tenant, the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board, or such committees or Persons reasonably believed to be within the scope of their respective duties.

Section 4.7 Easements. In addition to the easements granted herein, the Association is authorized and empowered to grant upon, over, across, through or under Common Properties owned or controlled by the Association such permits, licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Properties or for the preservation of the health, safety, convenience and welfare of the Owners provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

Section 4.8 Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners at reasonable times during regular business hours, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

Section 4.9 Records. The Association shall, upon reasonable written requests and during

reasonable business hours, make available for inspection by each Owner the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Certificate of Formation, Bylaws and Association Rules. Declarant shall be under no obligation to make its own books and records available for inspection by any Owner, Member or other Person.

Section 4.10 Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Certificate of Formation, Bylaws and Association Rules; provided, however, no such delegation to a professional management company or otherwise shall relieve the Association of its obligation to perform any such delegated duty.

Section 4.11 Emergency Powers. The Association or any person authorized by the Association may enter any Lot (other than any Improvements situated thereon) in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association unless covered by insurance carried by the Owner.

ARTICLE V ASSOCIATION MEMBERS

Section 5.1 Membership. Every Owner shall be a Member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Certificate of Formation, Bylaws and Association Rules to the extent the provisions thereof are not in conflict with this Declaration. Membership in the Association of Owners is appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot is the sole qualification for membership in the Association; provided, however, a Member's voting rights or privileges in the Association and the Common Properties may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership shall exist based upon ownership of a single Lot.

Section 5.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the purchaser of the interest of an Owner in a Lot. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. To help defray the administrative expenses involved with the transfer of memberships, the Association shall assess a transfer fee for every transfer of membership associated with a Lot after the conveyance by Declarant of such Lot to an initial purchaser. The transfer fee shall initially be \$75.00 for each transfer and shall be payable by the purchaser of the Lot being conveyed. The amount of the transfer fee shall be subject to adjustment by the Association.

Section 5.3 Voting Rights. An Owner's right to vote shall vest immediately upon the date Annual Assessments commence upon such Owner's Lot as provided in this Declaration. All voting rights are subject to the restrictions and limitations provided herein and in the Certificate of Formation, Bylaws and Association Rules.

Section 5.4 Classes of Voting Membership.

(a) The Association has two classes of voting membership.

Class A. Class A Members shall be all Owners with the exception of the Declarant, unless the Declarant becomes a Class A Member, as hereinafter described. Class A Members are entitled to one vote for each Lot in which they hold the interest required for membership. After termination

of its Class B membership interest, Declarant shall also be a Class A Member, if it continues to own a Lot. When more than one Person owns a portion of the interest in a Lot required for membership, each such Person shall be a Member and 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. The vote for each Lot shall be cast as a unit, and fractional votes shall not be allowed. If joint Owners are unable to agree among themselves as to how their vote or votes should be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. If more than one vote is cast for a particular Lot, none of such votes shall be counted and such votes shall be deemed void.

Class B. The Class B Member is the Declarant. The Class B Member is entitled to 10 votes for each Lot in which it holds the interest required for membership; provided that the Class B membership terminates and is converted to Class A membership when it no longer owns a Lot, or, if earlier, when it notifies the Association in writing that it relinquishes its Class B membership.

- (b) If the next annual meeting of Members is not scheduled within 90 days following the date the Class B membership interests terminate, the Board of Directors shall call a special meeting of Members within 90 days of such termination for the purpose of electing a new Board of Directors.

Section 5.5 Corporate Membership. If any Lot is owned by a corporation, partnership, trust, or other entity (the ***Ownership Entity***), such Ownership Entity shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership. In the absence of such designation and until such designation is made, the chief executive officer, if any, of the Ownership Entity shall have the power to vote the membership, and if there is no chief executive officer, then the board of directors or general partner of such Ownership Entity shall designate who shall have the power to vote the membership.

Section 5.6 Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Declaration, the Certificate of Formation, Bylaws or Association Rules for a period of **15** days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including accrued interest and attorney's fees, are brought current. If any Owner is in default of any obligation of this Declaration, the Certificate of Formation, Bylaws or Association Rules, and remains in default for more than 15 days after written notice from the Association to cure same, said Member's right to vote shall be suspended until said default is cured.

ARTICLE VI Assessments

Section 6.1 Creation of the Lien and Personal Obligation. Each Owner (except Declarant) of a Lot, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association, Annual Assessments, Supplemental Assessments, and Special Assessments, such Assessments and other fees to be fixed, established and collected from time to time as provided in this Declaration. Such Assessments and other fees, together with interest thereon, late charges, attorney's fees, court costs, and other costs of collection thereof, shall be a continuing lien upon the Lot against which each such Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time when such Assessment and other fees becomes due.

Section 6.2 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively for (a) payment of Common Expenses in connection with the upkeep, maintenance and improvement of the Common Properties, Common Facilities and such portion of the Lots and such

Improvements which the Association is obligated to maintain under the provisions of the Declaration, (b) promotion of the health, safety and welfare of the Owners and residents of Lots within the Project, and (c) reimburse the Declarant for all sums advanced by it to the Association which represents a Subsidy Obligation, as prescribed in **Section 6.14 hereof**.

Section 6.3 Annual Assessments

(a) Each Owner shall pay, as its Annual Assessment, such Owner's Proportionate Share of the Common Expenses and reimburse the Declarant for all sums which represents a Subsidy Obligation paid by Declarant, as provided in **Section 6.14** hereof. Payment of Annual Assessments is in such amounts and at such times as provided in **Section 6.8** hereof; provided, however, that no resolution of the Board of Directors which fixes the amount of the regular annual maintenance charge or assessment after the first fiscal year of the Association in excess of 117% of the then existing annual maintenance charge or assessment becomes effective (expressly excluding, however, the portion of the Annual Assessment applied to repay the Declarant its Subsidy Obligation as provided in **Section 6.14** hereof), unless and until such resolutions are ratified either:

(i) By the written assent of the Members of the Association who in the aggregate then own at least 51% of the Lots which are then subject to Annual Assessment, if no meeting of the membership is held for ratification; or

(ii) By the assent of 51% of the votes of the Members of the Association who are present and voting in person or by proxy at a special meeting of the membership of the Association called for this purpose and at which a quorum is present. The written assent or the vote of the Members must be given prior to the effective date of the resolution of the Board of Directors. No increase in the annual maintenance charge or assessment shall take effect retroactively. The Board of Directors may decrease the amount of the annual maintenance charge or assessment without ratification by or assent of the Members of the Association.

(iii) If any resolution of the Board of Directors which requires ratification by the consent of the Members of the Association as provided in **Sections 6.3(a)(i) and (ii)** hereof fails to be so ratified, then the amount of the regular annual maintenance charge or assessment last in effect shall continue in effect until duly changed in accordance with the provisions of this Section 6.3(a).

(b) After the first fiscal year of the Association but not later than 60 days prior to the beginning of the second fiscal year and each fiscal year of the Association thereafter, the Board shall make available for review by each Owner at the Association's office during reasonable times a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board shall at that time determine the amount of the Annual Assessment to be paid by each Owner for his Lot by determining such Owner's Proportionate Share of the estimated Common Expenses set forth in such budget, subject to the provisions of Section 6.3(a) hereof. The Board shall then notify each Owner of the amount of the Annual Assessment to be paid by such Owner. Each Owner shall thereafter pay to the Association his Annual Assessment in quarterly installments or such other periodic basis as may be fixed by the Board. Each installment shall be due and payable on the date set forth in the written notice sent to Owners.

(c) If the Board determines during any fiscal year that the total Annual Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Board shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Annual Assessments to be paid by each Owner for the balance of the year, and the date or dates when due, subject to the provisions of **Section 6.3(a)** hereof. If the estimated total Annual Assessments for

the current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Annual Assessments for the succeeding year, or abate collection of Annual Assessments for such period as the Board deems appropriate. No reduction or abatement of Annual Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

Section 6.4 Supplemental Assessments. If the Board determines that its funds budgeted or available in any fiscal year are or will become inadequate to meet all expenses of the Association, for any reason, including without limitation, nonpayment of assessments by the Members, it shall determine the approximate amount of such inadequacies for such fiscal year and prepare a supplemental budget and may levy a Supplemental Assessment against each Lot with the power and authority to differentiate between the Regular Lots and the Estate Lots and in such amount as the Board deems necessary in order to obtain the amount of such inadequacies. Notice of any such Supplemental Assessment shall be given to each Owner. The Supplemental Assessment shall be paid on such dates and in such installments as may be determined by the Board.

Section 6.5 Special Assessments.

(a) In addition to the Annual and Supplemental Assessments, the Association may levy, in any assessment year, the Board is authorized and empowered to levy a Special Assessment, differentiating between the Regular Lots and the Estate Lots, applicable only to that fiscal year for the purpose of defraying, in whole or in part, the cost of any installation, construction, reconstruction, repair or replacement of capital Improvements of the Common Properties, including fixtures and personal property related thereto, or for any other lawful Association purpose (except as otherwise provided in Sections 6.3 and 6.4 hereof), in accordance with the following provisions:

(i) Notwithstanding anything contained in this Declaration to the contrary, in no event shall the Declarant be obligated to pay any Special Assessment for any reason whatever.

(ii) Any Special Assessments shall require the consent of the Members having at least two-thirds of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

(b) A Special Assessment may also be a charge against a particular Owner and his Lot directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and his Lot into compliance with, or charge designated as a Special Assessment of, this Declaration, the Certificate of Formation, Bylaws and Association Rules, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of the Declaration, plus interest thereon as provided for in this Declaration. A Special Assessment against a particular Owner and his Lot may be perfected by the Association in the manner prescribed in Section 6.9 hereof.

Section 6.6 Notice and Quorum for Any Action on Assessment. Written notice of any meeting called for the purpose of taking any action authorized under this Article VI shall be sent to all Members not less than 15 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 60% of all the votes of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6.7 Uniform Rate of Assessment. Except for Special Assessments levied pursuant to this Declaration with respect to a specific Lot(s) under Section 6.5(b), or elsewhere in this Declaration, as it pertains to the Declarant, Annual, Supplemental and Special Assessments must be fixed as a uniform

rate for all Lots based upon the Proportionate Share, except that the Board may differentiate between the Regular Lots and the Estate Lots.

Section 6.8 Date of Commencement of Assessments Due Dates. The amount of the Annual Assessment for the 12 month period for the first fiscal year of the Association equals \$2,200 for each of the Lots. The Annual Assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the first Lot to the purchaser thereof. The first Annual Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the Annual Assessment against each Lot at least 30 days in advance of the fiscal year, and any such Annual Assessment for the current fiscal year shall remain in effect until the thirtieth day after the Board fixes the Annual Assessment for the upcoming fiscal year. Written notice of the Annual Assessment shall be sent to every Owner prior to the commencement of the fiscal year, provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessments as fixed by the Board. The Board may require that the Annual, Supplemental or Special Assessments be paid in installments. Unless otherwise specified by the Board, Special and Supplemental Assessments shall be due 30 days after they are levied by the Association and notice of the assessment is sent to each Owner, provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessments as fixed by the Board. Except for the prorated Annual Assessment payable upon the closing of the sale of a Lot to an initial purchaser, the Annual Assessments shall be payable in advance in equal monthly installments, unless the Board determines otherwise.

Section 6.9 Effect of Nonpayment of Assessments.

(a) Any Assessment, or any installment of any Assessment, not paid within 30 days after the Assessment, or the installment of the Assessment first became due, is deemed delinquent and bears interest from the due date at the Default Rate of Interest. Each Owner shall also pay a late charge as established by the Board for each delinquent Assessment or installment of an Assessment. Any Assessment, or any installment of any Assessment, which is delinquent becomes a continuing lien on the Lot against which such Assessment was made. The lien shall be perfected by the recording of a Notice of Claim of Lien which shall set forth (a) the name of the delinquent Owner as shown on the records of the Association, (b) the legal description, street address and number of the Lot against which the claim of lien is made, (c) the amount claimed as of the date of the recording of the notice including interest, collection costs, late charges, lien recording fees and attorneys' fees, and (d) the name and address of the Association. The Association's lien priority relates back to the date of recording of this Declaration and has priority over all liens or claims created subsequent, except for tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal or other governmental body and any First Mortgage.

(b) Before recording a lien against any Lot, the Association shall present to the defaulting Owner a written demand for payment. Said demand shall state the date and amount of the delinquency. Each default constitutes a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within 10 days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association is not obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, interest, lien fees, late charges and attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

(c) The Association has the right, as its option, to enforce collection of any delinquent Assessments together with interest, late charges, attorneys' fees and any other sums due to the Association in any manner allowed by law or in equity including, but not limited to the following: (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments (such action may be brought without waiving any lien securing any such delinquent Assessments), and (ii) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a deed of trust lien in the State of Texas. The Association has the power to bid at a foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 6.10 Subordination of the Lien to Mortgages. The lien of the Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot does not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure by a First Mortgagee, shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer relieves such Lot or the Owner thereof from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 6.11 Exemption of Owner. No Owner of a Lot (except the Declarant as provided in this Declaration) may exempt himself from liability for Annual, Supplemental or Special Assessments levied against his Lot or for other amounts which he may owe to the Association under this Declaration, the Certificate of Formation, Bylaws or Association Rules by reason of any waiver or non-use of any of the Common Properties or by the abandonment of his Lot.

Section 6.12 Unallocated Tax Assessments. If any taxes are assessed against the personal property of the Association, said taxes shall be included in the Assessments made under the provisions of this Article, and, if necessary, a Supplemental or Special Assessments may be levied against the Lots in an amount equal to said taxes. Each assessment shall be due 30 days before the due date of such taxes.

Section 6.13 Certificate of Payment. The Association shall, within 15 days of a request from an Owner, furnish to such Owner a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a particular Lot have been paid and the amount of any unpaid Assessments. The Association may charge the Owner requesting a certificate a reasonable fee (as established by the Board) for each such certificate. Such certificate shall be conclusive evidence of payment of any Assessment described in the certificate as having been paid.

Section 6.14 Assessment for Declarant.

(a) Notwithstanding the provisions of Article VI hereof to the contrary, Declarant is not obligated to pay any Annual, Supplemental and Special Assessments for any Lot owned by Declarant until such time as all of the Lots have been conveyed by Declarant to the Public Purchasers thereof (or, at the election of Declarant, the date upon which Declarant ceases to have Class B Memberships in the Association), except that Declarant agrees to pay to the Association during the Subsidy Period (as herein defined), an amount equal to the difference, if any (herein called the ***Operating Deficit***), between (i) the Common Expenses incurred by the Association and (ii) the total of Annual Assessments collected from the Owners other than Declarant during each Annual Assessment period. In the case of Special Assessments levied by the Association for reconstruction costs and capital Improvements, Declarant agrees to pay the difference between the total of such Special Assessments owed by all Owners other than Declarant and the total amount of such Special Assessment owing for the period in question. The term ***Subsidy Period*** is the period of time commencing on the Effective Date and ending upon the first to occur of the following dates: (i) the date when the Association no longer has an Operating Deficit, or (ii) the last day of the month after the end the 30 month period following the Effective Date.

(b) Declarant is entitled to reimbursement from the Association of, and the Association agrees to pay to the Declarant, an amount equal to the Subsidy Obligation advanced by Declarant, commencing as of the first day of the first fiscal year of the Association following the end of the Subsidy Period (the ***Repayment Commencement Date***).

(c) The Association agrees to reimburse the Declarant an amount equal to the Subsidy Obligation commencing with the Repayment Commencement Date in equal quarterly installments over a term of two years. After the end of such two year period, any unpaid Subsidy Obligation commences to bear interest at 15% per annum commencing as of the Repayment Commencement Date.

ARTICLE VII
Rights and Obligations of Owners/Members

Section 7.1 Obligations of Owners

- (a) Each Owner shall have his separate electric and gas meter and shall directly pay all electricity, gas, telephone service, water and other utilities used or consumed on his Lot.
- (b) Each Owner shall directly render for taxation his Lot and Improvements thereon, and directly pay all taxes levied or assessed against or upon his Lot and the Improvements thereon.
- (c) Each Owner shall be responsible for property insurance on his Residence and contents thereof, including decorations, furnishings, and personal property therein, and for his personal liability not covered by liability insurance, if any, obtained by the Association.

Section 7.2 Members' Right of Enjoyment. Every Member has a nonexclusive easement for use and enjoyment in and to the Common Properties and Common Facilities, and such right is appurtenant to and passes with the fee interest in every Lot, subject to all matters of record in the Real Property Records and in this Declaration, including without limitation, the following:

- (a) The right of the Association to establish the Association Rules.
- (b) The right of the Association to borrow money for the purposes of improving, replacing, restoring or expanding the Common Properties and Common Facilities, but not to mortgage the Common Properties and Common Facilities, provided that the prior affirmative vote or approval of the Members entitled to cast two-thirds of the voting power of the membership has been obtained to mortgage said property, and provided further that the rights of the lender thereunder shall be subordinate to the rights of the Members.
- (c) The right of the Declarant, and its agents and representative, to the nonexclusive use, without charge, of the Project (except for the Lots owned by Persons other than the Declarant), for display and exhibit purposes, for the maintenance of sales facilities, and for purposes of selling Lots and constructing Dwelling Units.

Section 7.3 Delegation of Use. Any Member may delegate his right of enjoyment to the Common Properties to the members of his family or his tenants who reside in his Residence, or to his guests, subject to rules and regulations adopted by the Board. The term **Member** also includes the executors, personal representatives and administrators of any Member, and all other Persons acquiring or succeeding to the title of the Member by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any other legal manner.

Section 7.4 Waiver of Use. No Member may exempt himself (and no Member shall be exempt) from personal liability for Assessments or release any Lot owned by him from the liens, charges and other provisions of this Declaration, the Certificate of Formation, Bylaws and the Association Rules, by voluntary waiver of, or suspension or restriction of such Member's right to the use and enjoyment of the Common Properties or the abandonment of such Member's Lot.

Section 7.5 Limitations. An Owners right and easement of enjoyment in and to the Common Properties and Common Facilities may not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot.

ARTICLE VIII
Architectural Control

Section 8.1 Establishment and Appointment of Review Board. The Review Board shall consist of a minimum of three members who shall be appointed from time to time by the Board. The Declarant shall initially appoint the members of the Review Board and retains the right to reduce or increase the number of members of the Review Board, and appoint and replace all members of the Review Board until the Declarant's Class B membership terminates. Thereafter, number and members of the Review Board shall be appointed by the Board, except that Declarant has the right to appoint one member, or a replacement for such member, of the Review Board so long as it owns one Lot. Persons appointed to the Review Board, other than those persons appointed by Declarant, must be Members or satisfy such other requirements as may be set forth in this Declaration. The Declarant voluntarily may (but shall not be required to) permit the Members to appoint one or more members of the Review Board at any time. The members of the Review Board need not be architects, Owners or occupants, and do not need to possess any special qualifications. Review Board members shall serve for a term of one year and may be reappointed or reelected; provided that such members may be removed by the Board at any time during their term of office, with or without cause. Upon removal of a member of the Review Board, the Board shall appoint a replacement member of the Review Board as soon as possible, such that the Committee consists of the minimum number of members designated in this Section 8.1.

Section 8.2 Design Guidelines. At its discretion, the Review Board may, without obligation, establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines which the Review Board may, from time to time, amend, subject to the final approval of the Board. If adopted, a copy of such guidelines shall at all times be a part of the Association's records.

Section 8.3 General Provisions.

(a) The Review Board may delegate its plan review responsibilities to one or more of its members or architectural consultants retained by the Review Board. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Review Board.

(b) The establishment of the Review Board and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declaration, the Bylaws or Association Rules.

(c) Any consent or approval of the Review Board which is required under this Declaration shall not be effective unless it is in writing and signed by the Review Board or the Persons to whom responsibility for the particular consent or approval has been delegated under Section 8.3(a) hereof.

Section 8.4 Approval and Conformity of Plans.

(a) No excavation, fill or other alteration of the topography or drainage of any Lot shall be begun and no building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property or any Lot, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, but not limited to, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Review Board.

(b) The Review Board shall have the right to refuse to approve any grading plans or plans and specifications which are not suitable or desirable, in its sole opinion, for aesthetic or any other reasons, and in passing upon such grading plans, plans and specifications, and without any limitation of the foregoing, it

shall have the right to take into consideration the suitability of the proposed building, structure or other improvement or landscaping, in light of Declarant's development plan for the Project as an exclusive residential development of custom homes. No changes or deviations in or from such grading plans and plans and specifications once approved shall be made without the prior written approval of the Review Board.

Section 8.5 Compensation; Delegations. Unless authorized by the Board, the members of the Review Board shall not receive any compensation for services rendered. All members of the Review Board shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Review Board function or duty. Professional consultants retained by the Review Board shall be paid such compensation as the Review Board determines. The Review Board may delegate its plan review responsibilities, except final plan approval, to one or more of its members or to architectural consultants which it retains.

Section 8.6 Non-Liability and Release. The Association, and its directors, officers, or employees; the Declarant, its partners, or the shareholders, officers and directors of any such partners, and any Person who is a Related Party of the Declarant; any member of the Review Board, or any agent, employee or other party providing architectural consulting services to the Review Board (*the Released Parties*) shall not be liable in damages to anyone submitting plans for approval by the Review Board, the Declarant, any Owner or other person by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans, and each Owner or other person submitting plans agrees, by submission of such plans and specifications, that he will not bring any action or suit against any of the Released Parties to recover damages as above described, including, without limitation, to recover damages arising out of or in connection with flooding, natural disaster or soil conditions, or failure to comply with the applicable federal, state and municipal zoning or building ordinances which governs the construction, use, repair and maintenance of Residences (collectively called the Applicable Laws). Approval by the Declarant or the Review Board shall not be deemed to be a representation or warranty that the Owner's plans (i) are free from defects (design, construction or otherwise), (ii) are free from hazards, such as flooding, natural disaster or adverse soil conditions or (iii) comply in whole or part with applicable governmental ordinances or regulations, including, but not limited to, the Applicable Laws. It shall be the sole responsibility of the Owner, or other person submitting plans to the Review Board or performing any construction of the Residences to comply with all such ordinances, regulations and codes including without limitation the Applicable Laws. Each Owner understands that due to the location and condition of the Owner's Lot there may be certain inherent risks and specific requirements including, but not limited to, those related to flooding, soil conditions or natural disaster and compliance with the Applicable Laws, agrees for himself, his family, guests and invitees (*the Releasing Parties*) to release the Released Parties, from any and all liability arising from any damage or injury to the person or property of the Releasing Parties arising out of or in connection with each of the aforesaid matters.

Section 8.7 New Home Construction Deposit. The Review Board shall be authorized to charge a deposit of \$2,500 to each Owner prior to the construction of a new home on the Owner's Lot. Approval of plans for a new home is conditioned upon payment in full of the deposit, construction may not commence in any way until the deposit is paid in full.

The Review Board and/or the Board, in their sole discretion, may deduct amounts from the deposit to cover fines levied for violations of the Association's dedicatory instruments, and to reimburse the Association for costs incurred in repairing, replacing or cleaning the Association property, streets, sidewalks and other property surrounding the new home construction, which costs result from the construction of the new home, whether by the Owner or the Owner's agents.

The Owner is responsible for ensuring that Owner, his workers and agents understand the rules, regulations, guidelines, and restrictions that can create the basis for a fine. The Association shall notify the Owner each time a deduction is made from the deposit amount. In the event the deposit amount is

exhausted, construction activities shall automatically cease and approval shall be deemed to have been rescinded, until another \$2,500.00 deposit is paid in full to the Association. Upon completion of the new home, any amount remaining from the deposit shall be refunded to the owner upon the owner's request.

ARTICLE IX Use Restrictions

Section 9.1 Residential Use. All Lots shall be used, improved and devoted exclusively to residential use. Each Residence constructed on the Real Property may be occupied only by a Single Family.

Section 9.2 No Commercial Use. Except for Declarant's use of the Project as provided in Sections 7.2(c) and 9.25 hereof, no part of a Lot may be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or any nonresidential purposes; provided, however, that the Association shall have the right to provide or authorize such services on the Common Properties as it deems appropriate for the enjoyment of the Common Properties or for the benefit of the Members. Nothing herein shall be deemed to prevent the leasing of a Residence to a Single Family from time to time by the Owner thereof, subject to all of the provisions of this Declaration, the Certificate of Formation, Bylaws and Association Rules. Any Owner who leases his Residence shall promptly notify the Association and shall advise the Association of the term of the lease and the name of each tenant.

Section 9.3 Dwelling Unit and Building Restrictions. Any Dwelling Unit and building erected, permitted or maintained on any Lot is subject to the following restrictions:

- (a) The finished first floor of any Dwelling Unit must be built above an elevation of 100.77 feet.
- (b) No Dwelling Unit including any garages, detached or attached, may be located within 40 feet of the boundary line of the front boundary line of a Lot abutting a street, and 15 feet from the side boundary line of any Lot.
- (c) All Residences, whether single or multi-storied, must contain a minimum of 3,600 square feet of livable space.
- (d) All Dwelling Units shall have interior ceiling heights of not less than ten (10) feet for the first story, exclusive of one-story porches, garages, carports, areas beneath stairwells, and finished basements. All Dwelling Units containing more than one story shall have ceiling heights of not less than nine (9) feet for the second and additional stories, exclusive of one-story porches, garages, carports, areas beneath stairwells, and finished basements (as applicable).
- (e) In respect to any Residences containing more than one story, either (i) the first story must have minimum livable area of at least 2,000 square feet and the second story must have minimum livable area of at least 1,800 square feet, or (ii) the combined total of minimum livable area of all stories must at least be 3,800 square feet; and the interior ceiling height of a Residence must be at least 10 feet for the first story and nine feet for the second story, exclusive of one-story porches, garages, carports and finished basements.
- (f) The combined total area of porches and balconies of a Dwelling Unit must have a minimum area of 300 square feet.
- (g) No Residence or Improvements may exceed 50 feet in height.
- (h) Any permanent building constructed on a slab, other than a Dwelling Unit, must have a minimum of 100 square feet and a maximum of 500 square feet of interior space and the exterior of the building must match the exterior façade of the Dwelling Unit.

Section 9.4 Construction Standards.

(a) The exterior materials of the main residential structure and any attached garage and servant's quarters shall be composed of not less than 90% brick, masonry, natural stone or stucco. All roof materials, including color, type and weight, must be approved by the Review Board. All exterior construction of any building must be completed within six months from the completion of the foundation. No Dwelling Unit may be occupied until the exterior is finished and a certificate of occupancy is issued by the Review Board. Failure to complete construction within said six months of the date construction commences is deemed a violation of these restrictions and may result in the exercise of the remedies provided for in these restrictions.

(b) The construction of any Residence and other Improvements must comply with the Construction Regulations annexed hereto as Exhibit B. All Owners are liable and obligated for the failure of his builder, contractor, subcontractor, employees and agents for failure to comply with the Construction Regulations.

Section 9.5 Exterior Surfaces. Any exposed concrete block or other fabricated masonry block unit of any Improvements must be veneered with brick, natural stone, stucco, or other finishing material. No structure made of corrugated metal shall be allowed.

Section 9.6 Garages.

(a) All Residences must have garages to park a minimum of three Vehicles.

(b) Garages of any Residences may be constructed with openings to the rear or side of the boundary line of any Lot so long as such openings are not directly visible from the street. Garages with openings to the front boundary line of a Lot are allowed so long as such openings are set more than 70 feet from the public street.

(c) No garage doors shall be permitted to remain open except for a temporary purpose, and the Board may adopt rules for the regulation of the opening of garage doors, including the assessment of charges to Owners who violate or whose tenants or invitees violate such rules.

Section 9.7 Walls and Fences. Fencing is permitted so long as such fencing is five to six feet in height and is constructed of black wrought iron or aluminum material. Columns matching the exterior of the home may be added to the fence design, including where the fence connects to the Metal Privacy Gate.

Section 9.8 Vehicles. All Vehicles of less than one ton capacity, motorcycles and motor vehicles owned by any Owner, members of such Owner's family, or tenants should be parked in the garage of such Owner's Residence, and no such vehicle may be parked overnight on any street or on any portion of the Common Properties where parking spaces may be provided. Except with the prior approval of the Review Board, no mobile home, motor home, trailer, truck with a capacity of one ton or more, camper, boat or other type of recreational vehicle shall be kept, placed, maintained, constructed, reconstructed or repaired within the Project. The provisions of this section shall not apply to emergency vehicle repairs, periodic social gatherings, the loading or unloading of household Certificate of Formation, or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvements approved by the Review Board. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Project including the assessment of charges to Owners who violate or whose invitees violate such rules. Any charges so assessed shall be Special Assessments. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

Section 9.9 Animals. No animals, including horses or other domestic farm animals, fowl, or poisonous reptiles of any kind, may be kept, bred or maintained on any Lot or in any Dwelling Unit, or in or

upon any Common Properties, except a reasonable number of generally recognized household pets and in accordance with the Association Rules. No animals shall be kept, bred or raised within the Project for commercial purposes. In no event shall any domestic pet be allowed to run freely outside its owner's Lot without a leash, or so as to create a nuisance. No animals shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals exceeds the maximum number permitted. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained in this Declaration.

Section 9.10 New and Permanent Construction/Temporary Improvements. All Dwelling Units and other Improvements and structures on a Lot must be of new and permanent construction. The foundation of each Dwelling Unit and other Improvements must be constructed primarily with concrete and match the elevation and exterior materials of such Dwelling Unit. No structure of a temporary character, trailer, basement of an incomplete building or Dwelling Unit, tent, shack, garage or other out-building shall hereafter be used at any time, on any portion of the Property for a residence, either temporarily or permanently. Temporary buildings or structures, may be approved by the Review Board for use during the construction of a Dwelling Unit. If such approval is granted, the temporary building or structure shall be removed immediately after the completion of construction.

Section 9.11 Lot Drainage. All water run-off and drainage from any Lot and the Improvements thereon shall drain or flow as follows:

(a) Drain or flow from any Residence into adjacent drainage swales and shall not be allowed to drain or flow upon adjoining Lots or Common Properties unless a drainage swale for such purpose has been created and approved by the Review Board.

(b) All drainage slopes on any Lot shall be maintained so as to prevent any erosion thereof.

(c) No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on a Lot which might damage or interfere with established drainage functions or facilities of the Project.

Section 9.12 Trees and Vegetation.

(a) On or before the occupancy of a Residence, the Owner shall plant three live trees in the case of an interior Lot, and four live trees in the case of a corner Lot. Required trees shall be placed within 20 feet from the front boundary line of any Lot. In respect to corner Lots, trees must be planted as required for an interior Lot, except trees on the side yard line must be placed within 15 feet of the side Lot line. Each tree must be of an oak species with a minimum trunk size of 3.5 inches in diameter.

(b) Trees which subsequently die or are uprooted for any reason must be replaced within 30 days. Any variation from the foregoing requirements must be approved in writing by the Review Board.

(c) No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of 12 feet, without the prior approval of the Review Board.

Section 9.13 Garbage, Trash, Debris and Hazardous Materials. No trash, rubbish, hazardous materials, or debris of any kind shall be placed, stored, or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion of the Project unsanitary, unsightly, offensive or detrimental to any other Lot in the Project or to its occupants. The Association retains the sole right and privilege to contract for the pick-up and collection of garbage and

trash for the Lots, Common Improvements and Common Properties, and no Owner or Person has the right to enter into any such contract in respect to any Lot, the Common Improvements and Common Properties. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Review Board. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the time reasonably necessary to effect such collection. The Board shall have the right, in its sole discretion, to require all Owners to place their garbage or trash containers at a specific location for collection or to require all Owners to subscribe to a trash collection service, unless such Owner subscribes for his own private trash collection service. All rubbish, trash and garbage shall be removed from the Lots and Common Properties and is not allowed to accumulate thereon. No incinerators may be kept or maintained on any Lot. During construction of a Dwelling Unit, the Owner of such Lot shall provide enclosed rubbish container for each Lot and shall keep its Lot clean of construction trash at all times. In addition, each Owner shall during such construction be responsible to immediately clean up any trash, rubbish, debris, mud and dirt brought or tracked onto the Project in connection with such construction.

Section 9.14 Mechanical Equipment. All mechanical equipment, including air conditioning and heating equipment and ducts, may not be placed in front of any Residence and is otherwise subject to the approval of the Review Board.

Section 9.15 Outside Speakers, Amplifiers and Antennae. The installation of television, radio, or other electronic antennae or satellite dish or device of any type is subject to approval of the Review Board.

Section 9.16 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, which in any manner will allow light to be directed or reflected on the Common Properties, or any part thereof, or any other Lot, except as may be expressly permitted by the Association Rules or the Review Board.

Section 9.17 Utility Service. Except as approved in writing by the Review Board, no lines, wires, or other devices for the communication or transmission of electronic current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Review Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Dwelling Units or other structures approved by the Review Board.

Section 9.18 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Dwelling Unit, appurtenant structures, or other Improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Common Properties and Common Facilities.

Section 9.19 Miscellaneous Building Requirements.

(a) The roof of each Residence must be a 40 year, composition shingle roof. Any other materials not typically used for the construction of such roofs, in the opinion of the Review Board, are subject to the approval of the Review Board.

(b) Every Residence must contain a smoke detector fire alarm unit and an alarm system capable of being tied in with the Project's future master alarm system, if constructed, and maintained in good operating condition.

(c) All Residences shall provide for the disposal of waste materials through a septic system or other waste disposal system approved by the Association and the appropriate governmental authority. Each

Owner must submit a plan with regard to such septic system to the Review Board and to the appropriate governmental authority prior to the commencement of construction of any Dwelling Unit.

(d) Tanks, whether elevated, or placed on the surface or underground, and used for the storage or water, fuel of any kind, or any other substance, or for no purpose, may not be erected, placed or permitted on any Lot. Nothing herein prevents Declarant from erecting, placing, or permitting the placing of tanks or other water system apparatus on Common Properties for the use of the Association and the Members.

(e) Mailbox design, location, color and lettering will be directed by the Review Board.

(f) No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within each Dwelling Unit.

(g) Interior curtains, drapes, shutters or blinds may be installed as window covers. No aluminum foil, reflective material, newspaper or other materials not customarily made for use as window covers may be installed or placed upon the inside or outside of any Dwelling Unit or other structure. Exterior awnings, canopies, shutters and similar items may not be installed without prior written approval of the Review Board as to color and style.

Section 9.20 Fires. Other than barbecues in properly constructed barbecue pits or grills, and firepits in compliance with the Association Rules, or as otherwise expressly permitted in such rules, no open fire shall be permitted on the Project nor shall any other similar activity or condition be permitted.

Section 9.21 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Project, which may cause the insurance to be cancelled or the premiums of such insurance to be increased for any Lot or the Common Properties and Common Facilities, or which may obstruct or interfere with the rights of other Owners, or persons authorized to the use and enjoyment of the Common Properties and Common Facilities, or annoy them by reasonable noises or otherwise, nor will he commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner shall comply with the Association Rules, the requirements of all health authorities and other governmental authorities having jurisdiction over the Project. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

Section 9.22 Safe Condition. Without limiting any other provision in Article IX, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Properties and Common Facilities.

Section 9.23 Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board.

Section 9.24 Variances.

(a) Except as provided in Section 9.24(b) hereof, which provisions shall govern and control, the Review Board and Declarant (so long as Declarant is the Class B member of the Association) may, at their sole option and in extenuating circumstances, grant variances from restrictions set forth in this Article IX for the following reasons:

(i) That either (A) enforcement of a particular restriction would create a substantial non-economic hardship on an Owner, or (B) a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete: and

(ii) That the activity permitted under the variance will not have any substantial adverse effect on one or more the Owners and is consistent with the high quality of life intended for residents of the Project.

(b) The Review Board and Declarant may not grant a variance if such variance which (i) would constitute an Amendment to this Declaration, (ii) contravene any prior variance or Amendment, (iii) or would permit the reduction of the minimum livable square footage of a Dwelling Unit, as prescribed in Section 9.3 hereof.

Section 9.25 Declarant's Construction Exemption. Notwithstanding any other provision of this Declaration, the Certificate of Formation, Bylaws and Association Rules, it shall be expressly permissible for Declarant or its duly authorized agents, employees and representatives to maintain during the period of construction and sale of Lots and Dwelling Units such facilities, structures, signs or other sales-related items as are necessary or convenient, in the sole opinion of the Declarant, to the sale of Lots and Dwelling Units, including without limitation, a business office, storage area, construction yards, model units or homes and sales offices: provided, however, that such use of the Common Properties and Common Facilities by the Declarant must not unreasonably interfere with any Owner's use and enjoyment of the Common Properties and Common Facilities.

Section 9.26 Enforcement. The Association or its authorized agents may, upon reasonable written notice, enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to this Declaration, the Certificate of Formation, Bylaws and Association, is deemed a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article VI hereof. All remedies available at law or equity shall be available in the event of any breach of any provision of this Declaration by any Owner, tenant or other person.

Section 9.27 Modification. Except where Declarant's rights are involved or its consent is required, or so long as the Declarant owns at least one Lot, the Board may modify or waive the foregoing restrictions contained in this Article IX or otherwise restrict and regulate the use and occupancy of the Project, the Lots and the Residences by reasonable rules and regulations of general application adopted by the Board from time to time which shall be incorporated into the Association Rules, so long as such rules or regulations do not amend this Article IX or contravene any prior variance or Amendment.

ARTICLE X Maintenance

Section 10.1 Maintenance of Common Properties. The Association shall be responsible for the maintenance, repair and replacement of the Common Properties and may, without the approval of the Owners, do any of the following:

(a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any Common Properties (to the extent that such work is not done by a government entity, if any, the Association shall be responsible for the maintenance and upkeep of such area:

(b) Construct, reconstruct, repair, replace or refinish any portion of the Common Properties used as a road, street, walk, driveway or parking area;

(c) Replace injured and diseased trees or other vegetation in any Common Properties, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(d) Place and maintain upon any Common Properties such signs as the Board may deem

appropriate for the proper identification, use and regulation thereof;

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Properties and the beauty thereof, in accordance with the general purposes specified in this Declaration. The Board shall be the sole judge as to the appropriate maintenance of the Common Properties.

Section 10.2 Maintenance of Lots by Owner. Each Owner of a Lot shall be solely responsible for the maintenance of all portions of his Lot. The Owner of each lot shall at all times perform his obligations under this Section so that the land and Improvements comprising his Lot shall be in good condition and repair. Such obligations of Owner shall include keeping all shrubs, trees, grass, plantings and landscaping of every kind properly cultivated and free of trash, weeds and other unsightly material. All maintenance of the exterior of the Residence, including without limitation walls, fences and roofs, shall be accomplished in accordance with the terms of this Declaration after approval of the Review Board.

Section 10.3 Damage or Destruction by Owners. Each Owner shall be responsible for the repair or replacement of any damage or destruction to the Common Properties or to any other Lot which is caused by such Owner or its family members, guests, invitees, subcontractors, agents or an employees, including without limitation, any damage or destruction to concrete, paving, or curbing or other improvement within the Project. In the event such damage or destruction is not immediately repaired or replaced to the satisfaction of the Association, the Association may undertake such repair or replacement, in which case any expenses incurred by the Association in connection therewith shall be paid by said Owner to the Association upon its demand, and such amounts shall be a lien on any Lot owned by such Owner, and the Association may enforce collection of any such amounts in the same manner as provided in Article VI of the Declaration for the collection and enforcement of Assessments.

Section 10.4 Nonperformance by Owners. If any Owner fails to maintain any portion of the Lot and Improvements comprising his residence which he is obligated to maintain under the provisions of this Declaration, the Certificate of Formation, Bylaws and Association Rules, then the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of an such work performed by or at the request of the Association shall be paid for by such Owner upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot and the Association may enforce collection of such amounts in the same manner and to the same extent as provided in Article VI of this Declaration for the collection and enforcement of Assessments.

Section 10.5 Total or Partial Destruction. If any Residence is totally or partially destroyed, the owner shall either rebuild the structure in a timely manner or demolish the same and remove the debris from the Project in a timely manner. If the Owner fails to comply with his Section, the Association may undertake the work on the Owner's behalf and charge the Owner therefore. The Association may enforce collection of such amounts in the same manner and to the same extent as provided in Article VI of this Declaration for the collection and enforcement of Assessments.

Section 10.6 Payment of Utility Charges. Each Lot shall be separately metered for water, sewer, cable, television, telephone, gas, and electrical service, and all charges for such service to the Lot shall be the sole obligation and responsibility of the Owner of each lot. All bills for utility service to the Common properties shall be billed to the Association, and the Association shall be responsible for the payment of such charges. The cost of utility service to the Common Properties shall be a Common Expense of the Association and shall be included in the budget of the Association.

Article XI Insurance

Section 11.1 Scope of Coverage. The Association shall make a good faith effort to obtain and maintain, to the extent reasonable available, the following insurance coverage:

(a) Property insurance on the Common Properties insuring against all risk of direct physical loss, insured in an amount equal to the maximum insurable replacement value of the Common Properties, as determined by the Board; provided, however that the total amount of insurance after application of any deductible shall not be less than 100% of the current replacement cost of the insured property, exclusive of land, excavation, foundations and other items normally excluded from a property policy;

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Properties and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

(c) Workers compensation insurance to the extent necessary to meet the requirements of the laws of the State of Texas;

(d) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners; and

(e) The insurance policies purchased by the Association shall, to the extent reasonable available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their households;

(ii) That no act or omission of any Owner (unless acting within the scope of his authority on behalf of the Association) will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by the Owners or their Mortgagees;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as *Estates at Whispering Oaks Homeowners Association*;

(vi) For policies of hazard insurance, a standard mortgagee clause provided that the insurance carrier shall notify the First Mortgagee named in the policy at least 10 days in advance of the effective date of any substantial modification, reduction or cancellation of the policy; and

(vii) "Agreed Amount" and "Inflation Guard" endorsements.

Section 11.2 Insurance on Lots. The Association shall not be obligated to obtain property

insurance, liability insurance, flood insurance or any other type of insurance covering the Lots or the Improvements located thereon. The procurement and maintenance of insurance on each Lot, including all Improvements on such Lot shall be the sole obligation of the Owner thereof. Each Owner shall also be responsible for obtaining all liability insurance, personal property insurance and any other type of insurance to the extent desired by such Owner.

Section 11.3 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, at the requesting party's expense to any Owner. Any insurance obtained pursuant to this Article may not be cancelled until 30 days after notice of the proposed cancellation has been mailed to the Association and to each Owner to whom certificates of insurance have been issued.

Section 11.4 Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, without limitation, any management agent to whom the Association has delegated some or all of the responsibility for the handling of such funds. The total amount of fidelity bond coverage shall be based upon the best business judgment of the Board, and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. In no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three months of Annual Assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also:

- (a) Name the Association as an obligee;
- (b) Contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and
- (c) Provide that they may not be cancelled (including cancellation from non- payment of premium) or substantially modified without at least 10 days prior written notice to the Association.

Section 11.5 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Sections 11.1 and 11.4 hereof shall be included in the budget of the Association and shall be paid by the Association.

Section 11.6 Payment of Insurance Proceeds. With respect to any loss to the Common Properties covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association. Subject to the provisions of Article XI hereof, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Properties.

Section 11.7 Annual Insurance Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Properties in light of increased construction costs, inflation, practice in Fort Bend County, Texas, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

ARTICLE XII General Provisions

Section 12.1 Enforcement. The Association and any Owner has the right to enforce, by

proceedings at law or in equity, (i) all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation, and (ii) the provisions of the Certificate of Formation or Bylaws and any amendments thereto. With respect to Assessment liens or any other liens or charges under this Declaration and Association Rules, the Association has the exclusive right to enforcement thereof, except that the Declarant has the right to enforce the provisions of Section 6.14 hereof, notwithstanding anything contained to the contrary in this Declaration.

Section 12.2 No Waiver: Failure by the Association, or by any Member, to enforce any covenant, condition, or restriction herein contained, or the Certification of Formation, Bylaws or Association Rules in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

Section 12.3 Cumulative Remedies. All right, options and remedies of Declarant, the Association, or the Owners under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, or the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

Section 12.4 Severability. Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 12.5 Violations and Nuisances. Every act or omission whereby any provision of the Declarant is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmation action, by Declarant, the Association or any Owner.

Section 12.6 Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 12.7 Joint and Severable Liability. In the case of joint ownership of a Residence, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

Section 12.8 Attorney's Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with this Declaration, the Certificate of Formation, Bylaws, and Association Rules, the Association is entitled to recover from the defaulting Member the reasonable attorneys' fees and related costs incurred by the Association in connection therewith.

Section 12.9 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any Lot subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferee and assigns, binds himself, his heirs, personal representatives, successors, transferee and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Project and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all

subsequent and future Owners, grantees, purchasers, assignees, lessees and transferee thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the interest of each Owner by virtue of his purchase of a Lot or Residence within the Project (specifically, fee ownership of the Lot or Residence including all rights and easements granted to him by this Declaration and by the deed of conveyance) and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Residence even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Residence.

Section 12.10 Notices. Any notice to be given under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United State mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's residence. In the case of co-owners, any such notice may be delivered or sent to any one of the co-owners on behalf of all co-owners and shall be deemed delivered to all such co-owners.

(b) Notice to the Association shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, addressed as follows:

Estates at W11ispering Oaks Homeowners Association
5702 4th Street
Katy, Texas 77493

(c) Notice to the Declarant shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, addressed as follows:

FM-359 Partners, LP
5702 4th Street
Katy, Texas 77493

Any of the above notices so deposited in the mail shall be deemed delivered 72 hours after such deposit.

Section 12.11 Construction By Declarant. Subject to the provisions of Section 12.14 hereof and so long as the exercise by Declarant of its rights in this Section 12.11 do not unreasonably interfere in any material respect with the Members' rights to use and enjoy the Common Properties, nothing else in this Declaration shall prohibit or limit the right of Declarant at any time so long as it owns one Lot to establish in the Common Properties or on any Lot prior to the sale thereof by the Declarant to a Public Purchaser any of the following:

(a) To construct additional Improvements as Declarant deems advisable in the Common Properties or on any Lot prior to the sale of such Lot, including the right to erect, construct and maintain on the Real Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise; and

(b) To grant additional licenses, reservations and rights-of-way in the Common Properties or on any Lot prior to the sale of such Lot, to itself, utility companies or others. as may from time to time be reasonably necessary to the proper development and disposal of the Project; and

- (c) To alter its construction plans and designs for the Project as it deems appropriate.

Section 12.12 Non-liability of Officials. To the fullest extent permitted by law, neither the Board, the Review Board, any committees of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 12.13 Term. The covenants and restrictions of this Declaration shall run with and bind the Project for a term of 50 years from the date this Declaration is recorded. Thereafter they shall be automatically extended for successive periods of 10 years each, unless there is an affirmative vote to terminate this Declaration by the then Members or their proxies casting 75% of the total votes cast at an election held for such purpose within six months prior to the expiration of the initial effective period hereof or any 10 year extension.

Section 12.14 Amendments. Subject to the other provisions of this Declaration, this Declaration may be amended under the following terms:

(a) **Association's Right to Amend.** Except as otherwise provided in Sections 12.14(b), (c), (d) and (e) hereof, any proposed amendments or modifications to the Declaration (an *Amendment*) must be approved by a majority of the Board before its adoption, and the approval of (i) not less than 51% of the voting power of the Members, and (ii) the Declarant so long as it owns at least one Lot.

(b) **Other Vote Requirement.** Notwithstanding the requirement to obtain the consent of not less than 51% of the voting power of the Members under Section 12.14(a) hereof, 75% of the voting power of the Members is required for any Amendment which amends or changes any of the following provisions of this Declaration:

- (i) Subdivide any Lots;
- (ii) Amend the Plat as it pertains solely to the Real Property, but not any other portion of the Subdivision;
- (iii) Change the right of each Member to cast one vote for each Lot which such Owner owns; and
- (iv) The uniform rate assessed against each Lot which is the Proportionate Share, as provided in Section 6.7 hereof.

(c) **Declarant's Right to Amend.** Until Declarant's Class B Membership terminates, the Declarant reserves the right to amend this Declaration without the approval of the Association, the Members, or any other Person, except that no such amendment shall have the effect of:

- (i) Changing the Plat of an Owner's Lot without the consent of the Owner thereof;
- (ii) Changing the Proportionate Share of the Owners for the purpose of levying Assessments, as provided in Section 6.7 hereof; or
- (iii) Amending provisions of Sections 12.14 (b) and (c) hereof.

(d) **General.** An Amendment that requires the vote and written consent of the Members as provided herein, shall be effective when executed by the President and Secretary of the Association who

shall certify that the Amendment has been approved, and when recorded in the Real Property Records. Any Amendment which the Declarant is authorized to adopt as provided in Section 12.14(c) hereof shall be effective when executed by Declarant and when recorded in the Real Property Records.

(e) **Subsidy Obligation.** The provisions of Sections 6.3(a) and 6.14 and subparagraph (b) of the definition of the term "Common Expenses" of this Declaration, may not be amended without the written consent of the Declarant so long as the Declarant has not been repaid an amount equal to the aggregated of the funds advanced by Declarant to fund the Subsidy Obligation, plus any interest due thereon, as prescribed in Section 6.14.

Section 12.15 Gender. The singular, wherever used in this Declaration shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 12.16 Section Headings. The marginal or topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Articles, Sections or this Declaration.

Section 12.17 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incident thereto.

Section 12.18 Statutory Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Certificate of Formation, Bylaws or Association Rules, the provisions of the Declaration shall prevail.

Section 12.19 Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Declarant is hereby authorized and empowered without any further consent on the part of the Association to execute and deliver such letters, documents or other writings as may be required by the Secretary of State of Texas in order for any other corporation formed or incorporated by Declarant to use a corporate name which is the same deceptively similar to the name of the Association.

Section 12.20 Gated Entrances. Declarant intends to construct a gated entrance to the Project in order to limit access and provide more privacy to the Owners and other occupants of Lots. Each Owner and occupant, and their families, guests and invitees acknowledge that the gated entry way may restrict or delay entry into the Project by the police, fire department, ambulances and other emergency vehicles or personnel. Each Owner and other occupant and their families, guests and invitees agree to assume the risk that the gated entries will restrict or delay entry to the Project by emergency vehicles and personnel. Neither Declarant nor the Association nor any director, officer, agent or employee of Declarant or the Association shall be liable to any Owner or other occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence, maintenance or adequacy of the gated entries. It is contemplated that the gated entrance shall be operated by remote openers and the Association shall have the right to impose rules in the Association Rules governing the issuance of remote units and the cost to purchase and re-issue such remote units.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first written above.