



**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MAGNOLIA RESERVE, SECTION ONE  
MONTGOMERY COUNTY**

[The following text is extremely faint and illegible due to heavy noise and artifacts in the scan. It appears to be a list of names and addresses, possibly a table of contents or a list of parties involved in the declaration.]

**Table of Contents**

ARTICLE I ..... 5  
DEFINITIONS ..... 5  
Section 1.01 "Annexable Area" ..... 5  
Section 1.02 "Association" ..... 5  
Section 1.03 "MAGNOLIA RESERVE" ..... 5  
Section 1.04 "Board of Directors" ..... 5  
Section 1.05 "Committee" ..... 5  
Section 1.06 "Builders" ..... 5  
Section 1.07 "Common Area" ..... 5  
Section 1.08 "Contractor" ..... 5  
Section 1.09 "Developer" ..... 5  
Section 1.10 "Lot" ..... 6  
Section 1.11 "Member" ..... 6  
Section 1.12 "Owner" ..... 6  
Section 1.13 "Living Area" ..... 6  
Section 1.14 "Model Homes" ..... 6  
Section 1.15 "Regulated Modification" ..... 6  
ARTICLE II ..... 6  
RESERVATIONS, EXCEPTIONS AND DEDICATIONS ..... 6  
Section 2.01 Recorded Subdivision Map of the Property ..... 6  
Section 2.02 Easements ..... 6  
Section 2.03 Title Subject to Easements ..... 7  
Section 2.04 Utility Easements ..... 7  
Section 2.05 Roads and Streets ..... 7  
Section 2.06 Restricted Reserve A ..... 7  
Section 2.07 Restricted Reserve B ..... 7  
Section 2.08 Restricted Reserves C and D ..... 7  
Section 2.09 Restricted Reserve E ..... 7  
Section 2.10 Restricted Reserves F and H ..... 8  
Section 2.11 Restricted Reserve G ..... 8  
Section 2.12 Restricted Reserve I ..... 8  
Section 2.13 Developer's Right to Revise Restrictions on Restricted Reserves ..... 8  
ARTICLE III ..... 8  
USE RESTRICTIONS ..... 8  
Section 3.01 Single Family Residential Construction ..... 8  
Section 3.02 Composite Building Site ..... 9  
Section 3.03 Location of the Improvements upon the Lot ..... 9  
Section 3.04 Residential Foundation Requirements ..... 9  
Section 3.05 Type of Construction, Materials and Landscaping ..... 10  
Section 3.06 Driveways ..... 11  
Section 3.07 Address Numerals ..... 11  
Section 3.08 Use of Temporary Structures and Sales Offices ..... 11  
Section 3.09 Water Supply ..... 11  
Section 3.10 Electric Utility Service ..... 11  
Section 3.11 Outside Toilets ..... 11  
Section 3.12 Walls, Fences and Hedges ..... 11  
Section 3.13 Prohibition of Offensive Activities ..... 12  
Section 3.14 Swimming Pools ..... 12  
Section 3.15 Excavation ..... 12  
Section 3.16 Trash and Care of Lots During Construction of Residence ..... 12  
Section 3.17 Inspections ..... 13  
Section 3.18 Garbage and Trash Disposal ..... 13  
Section 3.19 Junked Motor Vehicles Prohibited ..... 13  
Section 3.20 Signs ..... 13

Section 3.21	Livestock and Animals	14
Section 3.22	Logging & Mineral Development	14
Section 3.23	Clearing of Lots	14
Section 3.24	Drainage	14
Section 3.25	Lot Maintenance	15
Section 3.26	Exterior Maintenance of Building	15
Section 3.27	Storage of Vehicles and Equipment	15
Section 3.28	Views, Obstructions and Privacy	16
Section 3.29	Antennas and Satellite Dishes	16
Section 3.30	Solar Panels	16
Section 3.31	Wind Generators	17
Section 3.32	Generators	17
Section 3.33	Drying of Clothes in Public View	17
Section 3.34	Mailboxes	17
Section 3.35	Hazardous Substances	17
Section 3.36	Flag Poles	17
Section 3.37	Model Homes	17
ARTICLE IV		17
ARCHITECTURAL CONTROL COMMITTEE		17
Section 4.01	Basic Control	17
Section 4.02	Architectural Control Committee	18
Section 4.03	Effect of Inaction	18
Section 4.04	Effect of Approval	19
Section 4.05	Minimum Construction Standards	19
Section 4.06	Variance	19
Section 4.07	No Implied Waiver or Estoppel	19
Section 4.08	Disclaimer	19
Section 4.09	Subject to Association	19
Section 4.10	Compliance Deposit Agreement	19
Section 4.11	Inspection Rights	19
ARTICLE V		20
MAGNOLIA RESERVE HOME OWNERS ASSOCIATION		20
Section 5.01	Membership	20
Section 5.02	Non-Profit Corporation	20
Section 5.03	Bylaws	20
Section 5.04	Owner's Right of Enjoyment	20
Section 5.05	Delegation of Use	20
ARTICLE VI		20
MAINTENANCE FUND		20
Section 6.01	Maintenance Fund Obligation	20
Section 6.02	Basis of the Maintenance Charge	21
Section 6.03	Creation of Lien and Personal Obligation	21
Section 6.04	Notice of Lien	22
Section 6.05	Liens Subordinate to Mortgages	22
Section 6.06	Purpose of the Maintenance Charge	22
Section 6.07	Exempt Property	22
Section 6.08	Handling of Maintenance Charges	23
Section 6.09	Maintenance Charges as Independent Covenant	23
ARTICLE VII		23
DEVELOPER'S RIGHTS AND RESERVATIONS		23
Section 7.01	Period of Developer's Rights and Reservations	23
Section 7.02	Right to Construct Additional Improvements in Common Area	23
Section 7.03	Developer's Rights to Use Common Areas in Promotion and Marketing of the Property and Annexable Area	23
Section 7.04	Developer's Rights to Grant and Create Easements	23
Section 7.05	Developer's Rights to Convey Additional Common Area to the Association	23

Section 7.06	Annexation of Annexable Area .....	24
ARTICLE VIII.....		24
DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION .....		
Section 8.01	General Duties and Powers of the Association.....	24
Section 8.02	Duty to Accept the Property and Facilities Transferred by Developer.....	24
Section 8.03	Duty to Manage and Care for the Common Areas and Pathways .....	24
Section 8.04	Other Insurance Bonds .....	24
Section 8.05	Duty to Prepare Budgets .....	24
Section 8.06	Duty to Levy and Collect the Maintenance Charge .....	24
Section 8.07	Duty to Provide Annual Review .....	25
Section 8.08	Duties with Respect to Architectural Approvals .....	25
Section 8.09	Power to Acquire Property and Construct Improvements .....	25
Section 8.10	Power to Adopt Rules and Regulations .....	25
Section 8.11	Power to Enforce Restrictions and Rules and Regulations.....	25
Section 8.12	Power to Grant Easements.....	25
Section 8.13	Power to Convey and Dedicate Property to Government Agencies .....	25
Section 8.14	Power to Remove and Appoint Members of the Committee.....	25
ARTICLE IX.....		26
GENERAL PROVISIONS .....		
Section 9.01	Term .....	26
Section 9.02	Amendments .....	26
Section 9.03	Amendments by the Developer .....	26
Section 9.04	Severability .....	26
Section 9.05	Liberal Interpretation .....	26
Section 9.06	Successors and Assigns .....	26
Section 9.07	Effect of Violations on Mortgages .....	26
Section 9.08	Terminology.....	26
Section 9.09	Developer's Rights and Prerogatives .....	27
Section 9.10	Limitation of Liability.....	27
Section 9.11	Security Measures.....	27
ARTICLE X.....		28
MANDATORY DISPUTE RESOLUTION PROCEDURES AND LIMITATIONS PERIODS.....		
Section 10.01	"Dispute" or "Disputes" and "Disputing Parties" Defined; Scope.....	28
Section 10.02	Presentment of Dispute Required.....	28
Section 10.03	Settlement by Agreement .....	28
Section 10.04	Mediation .....	29
Section 10.05	Binding Arbitration .....	29
Section 10.06	Developer's Rights of Inspection .....	29
Section 10.07	MEMBERS' AND OWNERS' IRREVOCABLE POWER OF ATTORNEY .....	29
Section 10.08	WHEN DISPUTE NOTICE MUST BE GIVEN.....	30
Section 10.09	Remedial Measures .....	30
Section 10.10	TWO YEAR MAXIMUM LIMITATIONS PERIOD .....	30



**Section 1.10 "Lot"** shall mean and refer to any plot of land identified as a Lot or tract on the Plat of the Subdivision. For purposes of this instrument, "Lot" shall not be deemed to include any portion of any "Common Areas," "Reserves," "Restricted Reserves" or "Unrestricted Reserves", (defined herein as any Common Areas, Reserves, Restricted Reserves, Restricted Open Space Reserves, or Unrestricted Reserves shown on the Plat) in the Subdivision, regardless of the use made of such area. No Lot may be resubdivided without the prior written consent of the Association.

**Section 1.11 "Member"** shall mean and refer to every person or entity who holds a membership in the Association.

**Section 1.12 "Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot or Reserve which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely as security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

**Section 1.13 "Living Area"** shall mean and refer to the area computed using exterior dimensions of the entire living area of a residence that is heated and cooled; e.g. both floors of a two-story residence, excluding attic, garage, basement, breezeway or porch.

**Section 1.14 "Model Homes"** Refers to a fully constructed and completed home used to market and sell its homes in the surrounding area.

**Section 1.15 "Regulated Modification"** shall mean and refer (without implication that any matter contained in this definition is permitted or prohibited by the terms of this Declaration) the commencement, placement, construction, reconstruction or erection of or modification, alteration, or addition to, any building, structure, improvement, thing or device, and any usage thereof, whether temporary or permanent, excluding such matters and activities conducted wholly within the interior of a residence which does not affect the exterior appearance of the residence, structure or improvement, including (but not limited to) by way of illustration:

(i) Any residence, building, garage, outbuilding, porch, shed, greenhouse, gazebo, pergola, outdoor kitchen, covered or uncovered patio or deck, swimming pool, hot tub, radio or television or any other antenna, satellite dish, microwave and similar systems, fence, wall, screening device or improvement, curbing, paving, wall, landscaping of any kind, fountains, statuary, lighting, signs, forts, ziplines, play structures, other temporary or permanent modifications or alterations;

(ii) Any change to the design or appearance of the exterior of any residence or garage upon any Lot, or to any other approved outbuilding, including without limitation any change in the style, color grade or appearance of exterior brick or cladding, siding, shingles or other roof material, windows, doors, garages doors, external lighting, or other visible exterior features on a Lot;

(iii) Any demolition of a residence; garage or outbuilding upon any lot, (demolition must be approved by the ACC under Article IV herein);

(iv) Any excavation, fill, ditch, diversion, dam, drainage system, berm, pond, paving, hardscape or other thing, device or system which effects or alters the flow of surface or subsurface waters to, from, upon, across, or under any Lot or any other portion of the Subdivision.

## ARTICLE II RESERVATIONS, EXCEPTIONS AND DEDICATIONS

**Section 2.01 Recorded Subdivision Map of the Property.** The plat ("Plat") of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat, replats or amendments of the Plat of the Subdivision recorded or hereafter recorded shall be incorporated herein and made a part hereof and shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Developer, conveying said Property or any part thereof whether specifically referred to therein or not.

**Section 2.02 Easements.** Developer, subject to the provisions of Section 3.02 for Composite Building Sites, reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Montgomery County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Area and/or Lots. The Property Owners Association, the Developer and its assigns, further expressly reserves the right, but does not have the obligation, to enter upon any Lot for the purpose of improving, constructing or maintaining any natural drainage pattern, area or easement. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or any Utility District serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer, the Association nor any utility company, water district, political Subdivision or other authorized entity using the easements herein referred to shall be liable for any

damages done by them or their assigns, agents, or employees, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements.

### **Section 2.03 Title Subject to Easements.**

(a) It is expressly agreed and understood that the title conveyed by Developer to any of the Lots by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water line, gas, sewer, electric lighting, electric power, telegraph or telephone purposes and other easements hereafter granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot. The Developer may convey title to said easements to the public, a public utility company or the Association.

(b) At the sole election of Developer, prior to the Control Transfer Date (defined in Section 4.02(b)), or thereafter at the sole election of the Association by vote of its Board of Directors, the Developer or Association, without necessity of obtaining consent from any Owner, shall have the right to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public, quasi-public or private utility purposes, including without limitation gas, electricity, telephone, sanitary or storm, cable television and similar services, along, over, above, across and under the Subdivision and/or any Lot (regardless of ownership at the time of the granting of the easement) expressly including and not limited to any side of any Lot (front, side or back); provided such additional easements shall not be located in such manner as to encroach upon the footprint or foundation of any then existing building (including any residence) or any swimming pool. Any such easement shall not be effective unless and until notice thereof is filed in the Real Property Records of Montgomery County, Texas. Title to any Lot may not be held or construed in any event to include title to any easement established by this Section 2.03 or title to any utility improvement constructed or placed in the easement.

(c) Easements established or obtained pursuant to this Section 2.03 may not, once established or obtained, be adversely effected by any subsequent amendment of this Declaration. The foregoing does not limit subsequent abandonment or other modification of easement rights in accordance with applicable instruments covering any easement, by consent or agreement of the impacted parties.

### **Section 2.04 Utility Easements.**

(a) Utility ground and aerial easements have been dedicated in accordance with the Plat and by separate recorded easement documents. Utility easements on side lot lines may be eliminated and canceled along adjoining Lot lines in a Composite Building Site in accordance with Section 3.02 hereof.

(b) No building, swimming pool bowl or other structure or Regulated Modification shall be located over, under, upon or across any portion of any utility easement. The deck and/or patio area adjacent to a swimming pool may encroach over, under, upon or across any portion of any utility easement with consent from the applicable utilities. The Owner of each Lot shall have the right to construct, keep and maintain concrete drives, walkways, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives, walkways, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

(c) The Owner of each Lot hereby indemnifies and holds harmless Developer and Association, and public utility companies having facilities located over, on, across or under utility easements from any loss, expense, suit or demand resulting from death, injuries to persons or damage to property in any way occurring, incident to, arising out of or in connection with said Owner's installation, maintenance, repair or removal of any permitted improvements located within utility easements, expressly including where such death, injury or damage is caused or alleged to be caused by the sole or contributory negligence of such public utility or the Developer or the Association, their respective employees, officers, contractors, or agents.

**Section 2.05 Roads and Streets.** Subject to the terms and conditions of Section 2.01 and this Section 2.05, the roads and streets in this Subdivision, as shown on the Plat, are hereby dedicated in addition to roadways, as utility easements for the purpose of constructing, operating, maintaining or repairing a system(s) of electric lighting, electrical power, telegraph and telephone lines, gas lines, sewers, water lines, storm drainage (surface or underground) cable television, or any other utilities that the Developer sees fit to install (or permit to be installed) in, across and/or under the Property.

**Section 2.06 Restricted Reserve A.** Restricted Reserve A is reserved for Water Plant. The Water plant will be constructed and maintained by Quadvest, LP or its assigns.

**Section 2.07 Restricted Reserve B.** Restricted Reserve B is reserved for Recreation. Restricted Reserve B will be constructed by the Developer and maintained by the Association.

**Section 2.08 Restricted Reserves C and D.** Restricted Reserves C and D of the Subdivision are reserved for open space and landscaping. Restricted Reserve C & D will be constructed by the Developer and maintained by the Association.

**Section 2.09 Restricted Reserve E.** Restricted Reserve E is reserved as a Utility Easement.

**Section 2.10 Restricted Reserves F and H** Restricted Reserves F and H of the subdivision are reserved for Detention. Restricted Reserves F and H will be constructed by the Developer and maintained by the Association. Restricted Reserve H will also include a walking trail and will be maintained by the Association.

**Section 2.11 Restricted Reserve G** Restricted Reserve G is reserved for a Lift Station and other utilities as determined by the Developer.

**Section 2.12 Restricted Reserve I.**

- (a) Restricted Reserve I of the Subdivision is reserved for a Wastewater Treatment Plant ("Plant") and any and all associated buildings, sheds, tanks, equipment housed, pumps, lines, pipes, lighting, machinery, conduits and any other equipment installed therein or used in connection therewith. The Plant and its activities and operations may be associated with noise involved in the operation of the Plant machinery, pumps and equipment; and/or olfactory issues such as unpleasant odors. The noise and odors may emanate beyond the bounds of Restricted Reserve I.
- (b) Developer has contracted with a third party for the installation of the Plant for the treatment of the wastewater from this Subdivision. No septic tank may be installed on any Lot which is served by the sewer system.
- (c) Save and except for each of the Reservations in this Article II, no part of this Declaration shall be deemed to apply in any manner to the area identified or platted as Restricted Reserve I.

**Section 2.13 Developer's Right to Revise Restrictions on Restricted Reserves.** Prior to the Control Transfer Date, Developer has the express right and power to amend, modify, revise, revoke, rescind, terminate and/or change the restrictions and/or use of any of the Restricted Reserves (specifically including Restricted Reserves A-I), without necessity of approval, or consent of any owner, the Association, or any other party.

ARTICLE III  
USE RESTRICTIONS

**Section 3.01 Single Family Residential Construction.** No building shall be erected, altered, placed or permitted to remain on any Lot or Building Site other than one single-family dwelling unit ("Main Dwelling") per each Lot or composite building site to be used solely for residential purposes. Minimum square footages of living space for all dwellings, excluding porches and garages, and be built with new construction materials are as follows:

- i) **Single-story main dwellings** shall have a minimum of 2,400 square feet of living area
- ii) **Two-story main dwellings** shall have a minimum of 2,800 square feet with a minimum of 2,000 square feet of living area on the first floor.
- iii) **Guest dwellings** shall have a minimum of 500 square feet and a maximum of not more than 50% of the square footage of the main dwelling.

**Guest/Pool Houses:** The guest or pool houses must be built after or while the Main Dwelling is being built and be approved in writing by the Architectural Control Committee prior to construction. Guest or pool houses shall 1) correspond with the main dwelling structure in architecture, style, color, design and materials; and 2) the height of the outbuilding is limited to a maximum of fifteen feet (15') in height (inclusive of the roof);

**Garages:** Each Main Dwelling shall have a fully enclosed garage for not less than two (2) cars or more than four (4) cars, which garage is available for parking automobiles at all times without any modification being made to the interior of said garage. Main Dwelling garages shall have a minimum of 440 square feet of parkable area. A guest house may have a fully enclosed garage for not more than two (2) cars. Guest house garages shall have a maximum of 440 square feet of parkable area. No Recreational Vehicle garages are permitted. A carport is not an acceptable substitute for the garage requirements herein, although the Committee may consider supplemental carports constructed of the same design, materials and colors as the residential structure and which is integrated with the residential structure (and not free standing). No carport shall be erected or permitted to remain on any lot without the express written approval of the Committee through the process described in Article IV to this Declaration.

**Outbuildings:** An outbuilding is defined as any structure which is not attached to the main structure. This may include gazebos, greenhouses, arbors/pergolas, playhouses/forts, storage sheds/workshops, or other similar structures. One or more outbuildings may be permitted per lot, if 1) it is situated in the rear yard; 2) it is partially concealed from the view of the public or adjacent property owners using vegetation of 45-gallon trees or bushes that are no less than 6 feet in height; 3) the plans for the outbuilding are approved in writing in advance by the Architectural Control Committee; 4) said outbuilding shall be limited to a maximum of five hundred (500) square feet. Other outbuildings that are permitted include animal cages or animal runs, if you have a privacy fence and does not exceed height of the fence. Outbuildings not permitted are barns and animal coops.

Any building, structure or improvement commenced on any tract shall be completed as to exterior finish and appearance within six (6) months from the setting of forms for the foundation of said building or structure. Dwellings shall be **sixty (60%) percent masonry construction** or its equivalent, excluding windows, on its exterior wall area, unless another type of material is approved in writing by the Committee, (stucco, stone, cultured stone and brick are considered masonry; Hardl-Plank, Smart Siding or other fiber cement-based products are not considered masonry). The roof of any Dwelling shall be constructed of either 30/40-year composition shingles, copper, tile, slate, standing seam metal or other material approved by the Developer or Architectural Control Committee and according to the guidelines adopted by the Committee, prior to construction. The use of sheet metal or similar material on the roof or



exterior sides of any Dwelling other than as flashing is prohibited. As used herein, the term "residential purposes" shall be construed to prohibit mobile homes, trailers, modular or manufactured homes, pre-fabricated or log homes being placed on said Lots, or the use of said Lots for duplex houses, churches, condominiums, townhouses, garage apartments, or apartment houses, and no Lot shall be used for business, educational or professional purposes of any kind whatsoever, nor for any commercial or manufacturing purposes with the exception of use as a model home (Section 3.37). No log siding shall be used on exterior of any Dwelling.

Occupancy shall be limited to one (1) family, which shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit, or no more than two (2) persons who are not so related living together as a single household unit. It is not the intent of the Developer to exclude any individual from a dwelling who is authorized to so remain by any state or federal law. If it is found that this section, or any other section, of the Restrictions are in violation of any law, then the prohibited section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law. All dwellings must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property and according to the guidelines adopted by the Committee. There shall be no workshops or barns constructed, erected, placed or permitted in the Subdivision. The term "dwelling" does not include single or double wide manufactured or mobile homes, or any old or used houses to be moved on the Lot or any log homes and said manufactured or mobile and used homes or log homes are not permitted within the Subdivision.

An Owner may maintain a home office in a Dwelling so long as: 1) the existence or operation of the business activity does not involve persons coming onto the property who do not reside on the property, or door-to-door solicitation of residents of the property; 2) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the property; and 3) the existence or operation of the business activity is consistent with the residential character of the property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the property, as may be determined in the sole discretion of the Board.

**Section 3.02 Composite Building Site.** Any Owner of one or more adjoining Lots (or portions thereof) may, with prior written approval of the Architectural Control Committee, consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting composite site, in which case the side set-back lines along the common lot lines shall be eliminated and said set-back lines shall thereupon be measured from the resulting side property lines rather than from the center adjacent Lot lines as indicated on the Plat. Lots with oversized drainage easements that the Association is responsible for maintaining may not be consolidated Composite Building Site status may not be granted until an application for construction of a dwelling has been approved by the Architectural Control Committee, and will be applicable for the next assessment calendar year. Owners must submit for Composite Building Site only at the time of building. No prorated assessments will be authorized when Composite Building Site approval is granted. Further, any utility easements along said common lot lines shall be eliminated and abandoned upon approval of a Composite Building Site provided such easements are not then being used for utility purposes. Any such Composite Building Site must have a front building set-back line of not less than the minimum front building set-back line of all Lots in the same block and the main dwelling must cross at least one of the original common Lot lines. Following approval of a Composite Building Site, the site will be considered as one (1) Lot for purposes of voting rights in the Association and the Owner will pay a Maintenance Charge for each lot to the Association.

**Section 3.03 Location of the Improvements upon the Lot.** No building of any kind shall be located on any Lot nearer to any side or rear property line, or nearer to any public road or waterway than as may be indicated on the Plat; provided, however, as to any Lot, the Architectural Control Committee may waive or alter any such setback line if the Architectural Control Committee, in the exercise of the Architectural Control Committee's sole discretion, deems such waiver or alteration is necessary to permit effective utilization of a Lot. Any such waiver or alteration must be in writing and recorded in the Deed of Records of Montgomery County, Texas. All dwellings placed on Property must be equipped with septic tank or other sewage disposal system meeting all applicable laws, rules, standards and specifications, and all such dwellings must be served with water and electricity. The main residential structure on any Lot shall face the front of the Lot towards the street or road, unless a deviation is approved in writing by the Architectural Control Committee. On corner lots, the Front of lot is defined as (i) on a rectangular lot; the narrowest property line facing a street or (ii) on a square lot the property line facing a secondary road. The Recorded plat will show all building line setback lines and in the event of a conflict with these Restrictions, said Plat shall control.

The building setback lines shall be as follows (provided, any conflict with the building setback lines set forth on the Plat shall be controlled by the Plat):

- I. **FRONT setback lines.** The building setback line along the front of each Lot shall be fifty feet (50') on all Lots, unless otherwise shown on the Plat.
- II. **SIDE setback lines.** The building setback line along the side of each Lot shall be seven and one-half feet (7.5') on all Lots unless otherwise shown on the Plat. The building setback line on lots with a drainage easement greater than seven and one-half feet (7.5') as indicated on the plat, will be five feet (5') from the edge of the drainage easement.
- III. **REAR setback lines.** The building setback line along the rear of each Lot shall be fifteen feet (15') on all Lots, unless otherwise shown on the Plat. The building setback line on lots with a drainage easement greater than ten feet (10') in the rear, as indicated on the plat, will be five feet (5') from the edge of the REAR drainage easement.
- IV. **Corner setback lines.** All corner lots have a twenty-five foot (25') side setback line down the side of the lot facing the street:

**Section 3.04 Residential Foundation Requirements.** All building foundations shall consist of either: (i) concrete slabs, or (ii) piers and beams, with the entire building being skirted with brick or materials

which match the outside of the building as may be approved by the Architectural Control Committee. Provided, however, the Architectural Control Committee may approve a different type of foundation when circumstances such as topography of the Lot make it impractical to use one of the above foundations for all or any portion of the foundation of the building improvements constructed on the Lot. Minimum finished slab elevation for all structures shall be eighteen inches (18") above 100 year flood plain and eighteen inches (18") higher than the crown of any down gradient roadway, or such other level as may be established by the Commissioner's Court or County Engineer of Montgomery County, Texas, and other applicable governmental authorities. The minimum slab elevation must also be a minimum of eighteen inches (18") above the finished grade of the Lot. The minimum slab elevation can be obtained from the Developer or Association.

All references in this Declaration to required minimum slab elevations and/or any slab elevations approved by the Committee do not constitute a guaranty by the Developer, the Committee or the Association that the residence will be free of flood or related damage, or whether the slab is adequate for the intended construction.

All foundations are required to be engineered and designed by a licensed, registered engineer based upon appropriate soils information taken from the specific Lot in question as recommended by such engineer. However, at the minimum, soils borings and soils reports by a qualified soils engineer are required for all Lots prior to such engineer's design of the foundation. The Lot Owner/Builder shall perform a sufficient soil investigation to determine proper slab design and sufficient structural integrity and approval of any plans by the Committee and/or Developer is not a warranty or representation as to the adequacy of the foundation design for the intended construction.

The residential foundation plans to be used in the construction of the Dwelling must be submitted to the Committee along with the plans and specifications for the residence as provided in Section 4.01. All foundation plans must be signed, sealed and dated by the engineer designing said foundation plans. The Committee and/or Developer shall rely solely upon Owner/Builder's engineer as to the adequacy of said foundation design when issuing architectural approval of the residence to be constructed. No independent evaluation of a foundation plan will be made by the Committee. The Committee's sole function as to foundation plans are to determine if the plans have been prepared by a licensed registered engineer, as evidenced by the placement of an official seal on the plans.

The Owner/Builder shall establish and construct the residence and garage slab elevation sufficient to avoid water entering into the Dwelling and garage in the event of a heavy rain. A special drainage structure, as recommended and designed by a licensed engineer or other person on behalf of the Owner is recommended wherein the slab elevation is lower than the road ditches.

The granting of approvals of foundation plans and the Dwelling and garage slab elevation shall in no way serve as a warranty as to the quality of the plans and specifications and/or that the Dwelling shall be free from flood damage from rising or wind-driven water or the flow of surface water from other locations within the Subdivision and in no event shall the Developer, the Committee or the Association have any liability as a result of the Committee's approval or disapproval of any improvement.

### **Section 3.05 Type of Construction, Materials and Landscaping.**

(a) The exterior wall area of Dwellings and garages shall be sixty (60%) percent masonry construction or its equivalent, excluding windows, unless another type of material is approved in writing by the Committee (stucco, stone, cultured stone and brick are considered masonry). Hard-Plank, Smart Siding or other fiber cement-based products are not considered masonry but may be used for architectural features on the dwelling or garage, including for accents, gables or columns subject to the Architectural Control Committee's approval. All chimneys shall be of masonry construction.

(b) No external roofing material other than slate, tile, metal, built up roof, or composition (where the type, weight, quality and color has been specifically approved by the Committee) shall be used on any building in any part of the Subdivision without the written approval of the Committee. All roofing material must be applied in accordance with the manufacturer's specifications. Roof vents, vent stacks, galvanized roof valleys and other roof items must be painted to match the roof materials. Galvanized roof valleys must be primed before being painted to insure the prevention of peeling.

(c) No window or wall type air conditioners shall be permitted to be used, erected, placed or maintained on or in any building in any part of the Subdivision.

(d) All roof ventilation (other than ridge ventilators) shall be located to the rear of the roof ridge line and/or gable of any structure and shall not extend above the highest point of such structure, so as not to be visible from any street. The Committee shall have the right to approve the exceptions to the foregoing in cases where energy conservation and heating/cooling efficiency require ventilators that, because of the particular roof design, cannot be hidden from view.

(e) All homes must be landscaped within three (3) months of completion of the Main Dwelling. The landscape layout and plans must be approved by the Architectural Control Committee, at least thirty (30) days prior to the final grade of the Main Dwelling. Landscaping of the front and back yards shall be a well-designed balance of mature trees, shrubs and lawn grass around the perimeter of each dwelling. Trees shall be a minimum of thirty (30) Gallon in size. All landscape improvements must be irrigated by an irrigation system. While low-water-requirement turf products may be considered by the Architectural Control Committee, desired turf products include Buffalo, Blue Grama, Zoysia, St. Augustine and Bermuda Grass. No artificial vegetation and/or plantings will be permitted on any portion of the property. All exterior landscape lighting must be approved by the Architectural Control Committee except for traditional holiday decorative lights, for commonly recognized holidays, which may be displayed only for the month during which the holiday occurs.

(f) **Summer/Outdoor Kitchen Structures.** Such improvements may be permitted in accordance with Summer/Outdoor construction specifications as adopted, amended, altered and repealed from time to time, by the Architectural Control Committee and approved by the Board of Directors. Summer/Outdoor Kitchens are defined as structures open to the air on at least two (2) sides that are freestanding and have built-in appliances. The structure shall be no more than fifteen (15') feet in height to the highest point from the ground level. It must be in harmony with the main Residential Dwelling in terms of material, construction, roofing and color. The structure must be approved by the Architectural Control Committee and comply with all building setback lines and may not encroach in any utility easement.

(g) **Pervious Cover.** The total area of the lot that may be developed can be no more than fifty-five percent (55%) of the lot. This includes, but is not limited to, home, garage, hardscape, pool and/or any other buildings, decking, patios/verandas, gazebos, etc., subject to ACC approval.

**Section 3.06 Driveways.** All driveways in the Subdivision shall be constructed of concrete and shall be completed within six (6) months from the setting of forms for the foundation of said building or structure as indicated in Section 3.01. Further, the driveway or entrance to each lot, from the pavement of the street shall be paved with concrete, and shall include concrete headwalls and a county approved culvert shall be installed to cross any roadside drainage ditch. All driveway culverts shall be installed with the flowline level with the final grade of the ditch, or as may be required by Montgomery County. Culverts shall be made of concrete and shall be of a type and size according to Developer's engineered drawings. It is the responsibility of every Builder or Owner to ensure that the construction, size and placement of any culvert on their property meets the Developer's guideline. **The Builder or Owner must contact Montgomery County to set all driveway culverts.** It is understood that if the Builder or Owner does not have Montgomery County install the culvert and should Developer, Association or Montgomery County require the removal, replacement, correction, modification or repair of any culvert, it shall be the responsibility of the Property Owner to pay for such work. Should Montgomery County require Developer or Association to remove, replace, correct, repair or modify any culvert as a precondition to acceptance of the subdivision roads into the county road system, Developer or Association shall have the right to undertake such work and Property Owner shall reimburse Developer or Association for all costs. All driveways must be no less than seven and one-half (7.5') feet from the edge of the property. Driveways will not be built over each lot's side building lines as noted in Section 3.03.

**Section 3.07 Address Numerals.** All assigned address numbers shall be prominently displayed in cast stone markers within the side of each concrete driveway headwall as noted in Section 3.06.

**Section 3.08 Use of Temporary Structures and Sales Offices.** No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently without the written authorization from Developer. Developer reserves the exclusive right to erect, place and maintain such facilities and signage in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements within the Subdivision.

**Section 3.09 Water Supply.** Developer has contracted with a third party for the installation of a central water system for the Subdivision. All residential Dwellings in this Subdivision shall be equipped with and served by a central fresh water system installed, operated and continuously maintained in accordance with applicable utility company and governmental requirements, and no water wells shall be made, bored or drilled, nor any type or kind of private system installed or used except upon approval of the Architectural Control Committee and any required governmental authorities. Wells may be drilled by the Developer or Association for use in watering common areas and filling of detention ponds in common areas. All Dwellings must tap into and remain connected to the central water system for the Subdivision.

**Section 3.10 Electric Utility Service.** Prior to beginning any construction on a Lot, each Lot owner, at his expense, shall be required to install electric service lines from the transformer or source of feed to the meter location on said Lot. Further, each Lot owner may expect to pay a charge for connection to such electric utility service, and the owner is obligated to contact the electric utility company providing service to the Subdivision to determine the amount of such charge and make arrangements for the installation of said electrical service lines and connection to the electrical distribution system. Owner shall also be responsible for all charges for all utility service furnished to Owner's Lot.

**Section 3.11 Outside Toilets.** No outside, open, or pit type toilets will be permitted in this Subdivision unless approved during construction.

**Section 3.12 Walls, Fences and Hedges.** Walls and fences must be approved prior to construction by the Architectural Control Committee. Fences may not extend into the drainage easement in the side or rear of each lot unless that drainage is only a seven and one-half foot (7.5') easement. All fencing must be six (6) foot cedar wood, or ornamental iron, aluminum or wrought iron fencing. Iron fencing must be black in color. No wall, fence, planter or hedge shall be erected, planted or maintained outside of the lot lines of a Lot.

- I. **Iron Fencing** – Non-privacy, ornamental Iron fencing must be painted black and not exceed six (6) feet in height.
- II. **Pool fence** – If a lot with a pool does not have a perimeter fence around it, then the pool area must be fenced with a non-privacy, ornamental iron fence as described above and approved by the Committee.
- III. **Wood Fences** – Lots may have cedar wood privacy fencing no taller than six feet (6') in height. Fencing must be no closer than five feet (5') from the front corners of the home. This is subject to ACC approval.

Prohibited Fence materials

1. Synthetic Materials
2. Electric
3. Vinyl
4. Spill Rail
5. Barbed wire
6. Chain link
7. Solid Masonry Fences
8. Other materials may be added to this list at the Architectural Control Committee's discretion.

Owner may obtain permission from the Committee to construct a cage, kennel or dog run out of chain link fence, provided any such outside pen, cage, kennel, shelter, concrete pet pad, run, track or other building, structure or device directly or indirectly related to animals cannot be seen, heard or smelled by anyone other than the subject Lot Owner. Such improvement must be approved as to materials, size and location by the Architectural Control Committee and may be denied in its sole and absolute discretion.

Driveway entrances may be constructed of masonry columns, ornamental iron or similar materials in harmony with the Dwelling on said Lot as may be approved by the Architectural Control Committee. The Owner of any Lot upon which the Developer may have constructed a fence shall be responsible for the maintenance and repair of said fence.

Further, no fences shall be constructed within or across any drainage easement as shown on the Plat of the Subdivision or within or across any outside drainage easement referenced on the Plat. For the purposes hereof, the drainage easements include the drainage easements shown on the Plat, and all drainage which existed at the time that the overall grading of the Subdivision was completed by Developer. This is to ensure the Association has access to the rear or sides of these lots to maintain oversized drainage easements.

Fences may NOT be constructed to the side or rear property lines of any lot that has a drainage easement greater than seven and one-half feet (7.5') in width. Any fence on a Lot with a fifteen foot (15'), twenty foot (20') or thirty foot (30') drainage easement at the side or rear must stop at the edge of the drainage easement and not encroach into the drainage easement.

Fences may NOT encroach into any utility easements as shown on the plat.

**Section 3.13 Prohibition of Offensive Activities.** Without expanding the permitted use of the Lots, no activity, whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes. This restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision, for model homes, and for home offices described in Section 3.01 hereof. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be or become an annoyance or a nuisance to the Subdivision. No exterior speaker, horn, whistle, bell or other sound device, except security and fire devices used exclusively for security and fire purposes, shall be located, used or placed on a Lot. Exterior patio speakers may be permitted on the rear of the dwelling, but at no time are the exterior speakers permitted to become an annoyance or a nuisance to adjacent property owners. Without limitation, the discharge or use of firearms is expressly prohibited. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance. Activities expressly prohibited, include, without limitation, (1) the use or discharge of firearms, firecrackers or other fireworks within the Subdivision, (2) the storage of ammonium nitrate, flammable liquids in excess of five gallons (3) Garage Sales, bake sales, cook-offs, swap meets, or sale of other used personal property (unless organized by the Association) or (4) other activities which may be offensive by reason of odor, fumes, dust, smoke, noise, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion.

**Section 3.14 Swimming Pools.** No swimming pool may be constructed on any Lot without the prior written approval of the Committee. Each application made to the Committee shall be accompanied by two sets of plans and specifications for the proposed swimming pool construction to be done on such Lot, including a plot plan showing the location and dimensions of the swimming pool and all related improvements, together with the plumbing and excavation disposal plan, and landscape plan. An application fee and/or deposit of not less than \$1,000 must be submitted with the application for a pool. A portion of the deposit may be refunded as determined by the Committee. The Committee's approval or disapproval of such swimming pool shall be made in the same manner as described in Article IV hereof for other building improvements. The Owner shall be responsible for all necessary temporary erosion control measures required during swimming pool construction on said Lot to insure that there is no erosion into Detention Lakes or natural waterways. Swimming pool drains shall be piped into the ditch in the front of the Lot or other approved drainage area. In no event shall swimming pools be drained or discharge water into the Detention Lakes. The swimming pool drain outfall shall be terminated through a concrete pad constructed flush with the slope of the ditch so as not to interfere with the maintenance or mowing of the ditch. The Swimming Pool may not be erected within any utility easement; however, the pool deck may encroach into the utility easement with consent of the applicable utility company. No portion of a swimming pool shall be erected in front of a Dwelling. Pools may be erected outside the rear building line setbacks as long as the pool has no permanent structure built above the pool deck.

**Section 3.15 Excavation.** The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as may be necessary in conjunction with ponds, the landscaping of or construction of improvements on such Lot.

**Section 3.16 Trash and Care of Lots During Construction of Residence**  
(a) No materials or trash hauled from the Lot may be placed elsewhere in the Subdivision or on land owned by Developer whether adjoining the Subdivision or not. Burning on the lots is strictly prohibited regardless of any governmental rules or regulations.

(b) All Owners, during their respective construction of a residence, are required to continuously keep the Lot in a reasonably clean and organized condition. A trash container is required on Lot(s) during construction and papers, rubbish, trash, scrap, and unusable building materials are to be kept picked up and hauled from the Lot. Failure to install a trash container/ dumpster during construction shall result in a fine against the property owner's account and shall be collectable as any other assessment. Other usable building materials are to be kept stacked and organized in a reasonable manner upon the Lot. It is recommended that a lockable container be placed on the Lot during construction for unused building materials.

(c) No trash, materials, or dirt is allowed in the street or street ditches. All Owners shall keep street and street ditches free from trash, materials, and dirt. Any such trash, materials, or excess dirt or fill inadvertently spilling or getting into the street or street ditch shall be removed by the Owner causing same without delay, not less frequently than daily. Erosion control fences must be used by an Owner to control silt from entering roadside ditches and drainage easements at the rear until grass is established. Failure to install erosion control fences during construction shall result in a fine against the property owner's account and shall be collectable as any other assessment.

(d) No Owner or Contractor may enter onto a lot adjacent to the Lot upon which he is building for purposes of ingress and egress to his Lot before, during or after construction, unless such adjacent Lot is also owned by such Owner, and all such adjacent Lots shall be kept free of any trees, underbrush, trash, rubbish and/or any other building or waste materials during or after construction of building improvements by the Owner of an adjacent Lot.

(e) Unless otherwise approved by the Developer or the Committee, no trees shall be removed from any Lot except as may be required during the construction of the Main Dwelling on the Lot. No clear cutting of trees on a Lot is permitted. Subsequent to the construction of the main dwelling on a Lot, no tree may be cleared or removed unless prior written permission is obtained from the Committee.

(f) All Builders, Owners and their Contractors shall be responsible for any damage caused to the roads, roadside ditches and easements during the construction of improvements on a Lot. Further, any Builder, Owner or Contractor shall be required to deliver to the Committee a damage deposit as may be determined by the Board of Directors prior to beginning construction of any Dwelling or other building. This damage deposit shall be returned to the Builder, Owner or Contractor upon completion of said Dwelling or other building provided the Association determines that no damage to the roads, ditches or easements was caused by said Builder, Owner or Contractor and no fines have been incurred as a result of failure to comply with these requirements. Further, any Builder, Owner or Contractor shall supply and maintain a portable toilet and trash bins for construction trash during the construction of a Dwelling in the Subdivision. All Builders, Owners and their Contractors shall be responsible for keeping construction site free of debris and trash and a concrete clean out area must be provided by the builder. Concrete clean out in roadside ditches is prohibited.

**Section 3.17 Inspections.** An application fee, inspection fee and/or deposit may be determined by the Committee and must be paid to the Committee at such time as application for architectural approval is made to the Committee, which fee shall be used for an independent inspection and to defray the expense for before and after building inspections. In the event construction requirements are incomplete or rejected at the time of inspection and it becomes necessary to have additional building inspections, a fee, in an amount to be determined by the Committee, must be paid to the Committee prior to each building inspection.

**Section 3.18 Garbage and Trash Disposal.** Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No Lot shall be used or maintained as a dumping ground for rubbish or landfill. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

**Section 3.19 Junked Motor Vehicles Prohibited.** No Lot shall be used as a depository for abandoned or junked motor vehicles. An abandoned or junked motor vehicle is one without a current, valid state vehicle inspection sticker and license plate. No junk of any kind or character, or dilapidated structure or building of any kind or character, shall be kept on any Lot. No accessories, parts or objects used with cars, boats, buses, trucks, trailers, house trailers or the like, shall be kept on any Lot other than in a garage or other structure approved by the Architectural Control Committee.

**Section 3.20 Signs.** Except as authorized herein, no signs, advertisement, billboard or advertising structure of any kind may be erected or maintained on any Lot without the consent in writing of the Architectural Control Committee, except:

- I. **For Sale or Standard Realtor Signs:** ONE (1) Association approved sign not more than twenty-four inches by thirty-six inches (24" x 36") fastened to stakes in the ground and extending not more than three (3) feet above the surface of such lot, advertising an Owner's Dwelling for sale or rent, may be placed on such Improved Lot;
- II. **Model Home Monument Sign:** Model Homes are permitted one monument that must meet the following requirements: constructed columns are to be all masonry, 12" x 12"; no taller than 6 feet; placed no further than 6 feet apart; the monument sign is not to exceed 60" x 40". Directional signage for builders is prohibited. The Developer may provide directional signage outside the development. Builders are prohibited from placing directional signs, flag signs, inflatables, balloons, open house signs, or any other temporary sign in the subdivision.
- III. **School Spirit Signs** shall be permitted containing information about one or more children residing in the Dwelling, the school they attend and the school activity, not more than twenty-four inches by thirty-six inches (24" x 36"). No more than one sign per child is permitted;

- IV. **Political Signs** may be erected upon a lot by the Owner of such dwelling advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs may not be erected more than thirty (30) days in advance of the election to which they are pertinent and shall be removed within ten (10) days after such election; and
- V. **Security Signs/Stickers** may be displayed by an Owner of a commercial security or alarm company providing service to the dwelling so long as the sign is not more than 12" x 12" or the sticker if no more than 4" x 4".

There shall be no more than one sign per Lot (other than the permitted number of School Spirit Signs); no more than one sticker on any of the doors, and stickers on no more than one window per side of the dwelling. Other than as permitted herein and in Section 3.20 hereof no signs of any kind shall be permitted on unimproved Lots. Developer or any member of such Committee shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any Lot in violation of these restrictions, and in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal.

**Section 3.21 Livestock and Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot. Dogs, cats or other common household pets of a reasonable kind and number (which may be determined by the Committee in its sole discretion) will be allowed on any Lot, provided that they are not kept, bred or maintained for commercial purposes and do not become a nuisance or threat to other Owners. In no event shall such household pets be allowed to run loose in the Subdivision.

**Section 3.22 Logging & Mineral Development.** Except within the areas designated as Drill Site locations on the Plat, and easements related thereto, no commercial logging, oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot, and, no derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Provided, however, that this provision shall not prevent the leasing of the Subdivision or any portion thereof, for oil, gas and mineral purposes and the development of same, it being contemplated that the portion or portions of the Subdivision may be developed from adjacent lands by directional drilling operations or from the Drill Sites designated on the Plat of various Sections of the Subdivision.

**Section 3.23 Clearing of Lots.** No lot shall be clear cut by property owner/builder. All lots must maintain a twenty foot (20') vegetation buffer at the rear. No tree in excess of six inch (6") caliper may be removed without approval of the Architectural Control Committee, except a diseased, dying or damaged tree may be removed to protect the dwelling and its occupants. Property owner/builder may remove any tree that lies within the footprint of the home, pool, driveway, or other ACC approved structure. Also, any tree within 5 feet (5') of the home's foundation may be removed at the property owner's/builder's discretion.

**Section 3.24 Drainage.**

(a) Each Owner of a Lot agrees for himself, his heirs, legal representatives, assigns or successors-in-interest that he will not in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots in the Subdivision, that an Owner will not plant vegetation, including but not limited to any wildflowers, and he will make adequate provisions for the drainage of his Lot in the event it becomes necessary to change the established drainage over his Lot (which provisions for drainage shall be included in the Owner's plans and specifications submitted to the Committee and shall be subject to the Committee's approval). For the purposes hereof, "established drainage" is defined as the drainage which existed at the time that the overall grading of the Subdivision, including landscaping of any Lot in the subdivision, was completed by Developer.

(b) Each Owner (including Builders), unless otherwise approved by the Committee, must finish the grade of the Lot so as to establish proper drainage from the rear of the Lot to the front street or from the building site to the front and rear of the Lot as dictated by existing drainage ditches, swales and Detention Lakes constructed by Developer or Utility Districts for drainage purposes. No pockets or low areas may be left on the Lot (whether dirt or concrete) where water will stand for 24 hours following a rain or during watering. With the approval of the Committee, an Owner may establish an alternate drainage plan for low areas by installing underground pipe and area inlets; French drains in a stone creek; or by installing an open concrete trough with area inlets, or by another method approved by the Committee. However, the drainage plan for such alternate drainage must be submitted to and approved by the Committee prior to the construction thereof. The Committee's sole function in reviewing drainage plans is to see if the drainage pattern has been or will be altered by the proposed construction and to make a determination if the Owner/Builder has graded or established drainage to handle potential flowing and rising water that may occur due to lot's improvements. It is the responsibility of the Owner to establish a drainage plan with a maximum slope of one to three foot (1:3 foot) on side lot lines to provide adequate drainage and prevent erosion into drainage easements and adjacent properties. If a one to three foot (1:3 foot) slope is not established, a retaining wall may be required by the Committee. Retaining walls or other methods of construction to control erosion and provide proper drainage are at the property owner's expense. If the proper measures are not taken to control erosion and provide adequate drainage, the Association and its contractors reserve the right to enter the Owner's property and correct the drainage by any means necessary as determined in the Committee's sole discretion. The Owner shall bear the cost of these repairs and shall reimburse the Committee for this work. The Committee may enforce this by a lien or any other enforcement method under these deed restrictions.

(c) The Subdivision has been designed and constructed utilizing surface drainage in the form of ditches and swales and, to the extent these drainage ditches and swales are located in front, side or rear Lot easements, the Owners shall not regrade or construct any improvements or other obstruction on the Lot which adversely affects the designed drainage flow. The Owner shall be responsible for returning any drainage swale disturbed during construction or thereafter to its original line and grade, and the Owner shall be responsible for maintaining the drainage ditches or swales appurtenant to said Owner's Lot in their original condition during the term of his ownership. The

Association may repair swales, should the Lot Owner fail to do so, and has the ability to recover its expenses and/or fine for the repairs. Any drainage easement of twenty feet (20') in width or greater will be maintained by the Association. This maintenance will include regular mowing, dredging or repair as needed to maintain the flow of the ditch.

(d) All Owners and/or Builders shall comply with the National Pollutant Discharge Elimination Rules and Regulations applicable to their respective Lot(s) as required by EPA under the Water Quality Act of 1987 amending the Clean Water Act, as said laws, rules and regulations may be amended from time to time.

(e) The Property Owners Association, the Developer, the ACC and their successors and assigns shall have the right but not the obligation, to enter upon any Lot or Reserve for the purpose of improving, constructing or maintaining the drainage facilities in the drainage easements shown on the Plat of the Subdivision. Without limitation, the Property Owners Association may remove accumulated silt from the drainage easements and may regrade drainage easements as may be necessary to maintain roadside drainage and prevent damage to the roadside.

(f) Except as provided in Sections 3.25 (j) and 3.25 (k), the Association may clean, mow, dredge, clear, regrade, repair or otherwise maintain the drainage ditches in the Subdivision as shown on the Plat. The Association shall have the power to levy any necessary drainage assessment to pay for such work.

(g) As stated in Section 3.12, no fences shall be constructed within or across any drainage easement as shown on the Plat of the Subdivision or within or across any outside drainage easement referenced on the Plat. This does not apply to the seven and one-half foot (7.5') drainage easements on the side of each lot. For the purposes hereof, the drainage includes the drainage easements shown on the Plat, and all drainage which existed at the time that the overall grading of the Subdivision was completed by Developer.

**Section 3.25 Lot Maintenance.** All Lots, at Owner's sole cost and expense, shall be kept at all times in a neat, attractive, healthful and sanitary condition, and the Owner or occupant of all Lots shall keep all weeds and grass thereon (outside of natural vegetation areas) cut and shall in no event use any Lot for storage of materials or equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish. Provided, however, the burning of underbrush and trees solely during Lot clearing shall be permitted and the burning of leaves or other natural debris shall be permitted on Lots containing at least one (1) acre, provided such burning shall not exceed twice a year on any such Lot. All yard equipment or storage piles shall be kept screened by a service yard or other similar facility as herein otherwise provided, so as to conceal them from view of neighboring Lots, streets or other property. All Owners shall perform necessary maintenance of their Lot, including, but not limited to the following:

- a. Prompt removal of all litter, trash, refuse, and wastes.
- b. Lawn mowing (outside of the natural vegetation areas).
- c. Tree and shrub pruning (outside of the natural vegetation areas).
- d. Keeping exterior lighting and mechanical facilities in working order.
- e. Keeping lawn and garden areas alive, free of weeds, and attractive.
- f. Keeping parking areas, walkways and driveways in good repair.
- g. Complying with all government health and policy requirements.
- h. Repainting of improvements.
- i. Repair of exterior damage to improvements.
- j. Mowing and keeping clean the drainage ditches and/or swales on their Lot.
- k. Repairing any damages done by Owner to the drainage ditches and/or swales on their Lot.

In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof, the Association or their designated agents may, in addition to any and all remedies, either at law or in equity, available for the enforcement of these restrictions, without liability to the Owner, Builder or any occupants of the Lot in trespass or otherwise, enter upon (and/or authorize one or more others to enter upon) said Lot, to cut, or cause to be cut, such weeds and grass and remove, or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner, Builder or occupant of such Lot for the cost of such work and associated materials, plus a fee of \$25.00 for each instance. Payment thereof shall be collected as an additional Maintenance Charge and shall be payable on the first day of the next calendar month.

**Section 3.26 Exterior Maintenance of Building.** In the event the owner of any building in the Subdivision should allow such building to fall into disrepair and become in need of paint, repair or restoration of any nature and become unattractive and not in keeping with the neighborhood, the Association and/or the Developer will give such owner written notice of such conditions. Thirty (30) days after notice of such condition to owner, and failure of owner to begin and continue at a diligent, reasonable rate of progress to correct such condition, the Association and/or the Developer in addition to any and all remedies, either at law or in equity, available for the enforcement of these Restrictions, may at its sole discretion enter upon said premises, without liability, to do or cause to be done any work necessary to correct said situation. The owner thereof shall be billed for cost of necessary repairs, plus ten percent (10%).

All monies so owed the Association will be an additional Maintenance Charge and shall be payable on the first day of the next calendar month. These monies shall become an assessment against the Lot and collectable as any other assessment.

**Section 3.27 Storage of Vehicles and Equipment.** Without limiting the foregoing, the following restrictions shall apply to all Lots:

i) No boat, jet-ski, aircraft, travel trailer, motor home, camper body, tractor, lawn equipment or similar vehicle or equipment (collectively called "Vehicles and Equipment") may be parked for storage in the front of any Dwelling or parked on any street in the Subdivision, nor shall any such Vehicles and Equipment be parked for storage to the side or rear of any Dwelling unless completely concealed from public view. Vehicles and Equipment located on a Detention Lakefront Lot shall be stored in a garage. All boats so parked on any Lot must at all times also be stored on a trailer, unless stored in a garage. No Vehicles or Equipment shall be used as a residence whether temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for construction, maintenance or repair of a Dwelling in the Subdivision.

ii) Trucks with tonnage in excess of one and one-half tons shall not be permitted to park overnight within the Subdivision except those used by a builder during the construction of improvements in the Subdivision. No vehicle shall be permitted to park overnight on any Lot or street within the Subdivision except for those vehicles used by a builder during the construction of improvements on Lots or Common Areas in the Subdivision.

iii) No Commercial vehicle, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes shall be parked on any lots or Common Areas within the subdivision. Notwithstanding the foregoing, service and delivery vehicles may be parked on the property during the daylight hours for such period of time as is reasonably necessary to provide services or to make a delivery to the dwelling.

iv) No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Subdivision at any time.

v) No vehicles or similar equipment shall be parked or stored in an area visible from any Street except passenger automobiles, passenger vans, motorcycles and pick-up trucks that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas, and all such vehicles shall be parked in a driveway or garage and may not be parked in a yard.

**Section 3.28 Views, Obstructions and Privacy.** In order to promote the aesthetic quality of "view" within the Subdivision, the Committee shall have the right to review and approve any item placed on a Lot including, but not limited to the following:

- a. The probable view from second story windows and balconies and decks (particularly where there is potential invasion of privacy to an adjoining neighbor);
- b. Sunlight obstructions;
- c. Roof top solar collectors;
- d. Flagpoles, flags, pennants, ribbons, streamers, wind sock and weather vanes;
- e. Exterior storage sheds;
- f. Fire and burglar alarms which emit lights and sounds;
- g. Children playground or recreational equipment;
- h. Exterior lights;
- i. Ornamental statuary, sculpture and/or yard art visible from a street or common area excluding those which may be a part of an otherwise approved landscape plan;
- j. The location of the Residential Dwelling on the Lot;
- k. The location of satellite dishes and antennas; and
- l. Any Regulated Modification.

**Prohibited Items.** The following items are prohibited on any Lot:

- a. Above ground swimming pools;
- b. Window unit air conditioners;
- c. Signs (except for signs permitted in Section 3.20 hereof);
- d. Unregistered, unlicensed, inoperable or junked motor vehicles;
- e. duplex houses or other structures designed for occupation by more than one family; and
- f. mobile homes, modular homes, pre-manufactured homes, or similar pre-fabricated residential structures of any kind.

**Section 3.29 Antennas and Satellite Dishes.** No electronic antenna or device for receiving or transmitting any signal other than an antenna for receiving normal television, marine signals, citizens band signals or cellular telephone signals shall be erected, constructed, placed or permitted to remain on any Lot, house, garage or other buildings unless otherwise approved by the Committee. The Committee's decision shall be final.

No satellite dish may be maintained on any portion of any Lot outside the building lines of said Lot or forward of the front of the improvements thereon. A satellite dish may not exceed thirty-seven (37") inches in diameter and must be mounted as inconspicuously as possible to the rear of the home. However, in no event may the top of the satellite dish be more than two (2') feet above the roofline for roof mounted antennas or receivers. All dishes shall be of one solid color of black or earth tones of brown, grey, or tan. No multicolored dishes shall be permitted. Not more than two satellite dishes will be permitted on each Lot. No transmitting device of any type which would cause electrical or electronic interference in the neighborhood shall be permitted. Architectural approval is required prior to the installation of any satellite dish. The Association reserves the right to seek the removal of any device that was installed without first obtaining approval or any dish that violates these restrictions. The Committee may vary these restrictions only as is necessary to comply with the Federal Communications Act (the "Act") and the Committee may promulgate rules and regulations in accordance with the Act.

**Section 3.30 Solar Panels.** All Solar Panels installed shall be framed in such a manner so the structure members are not visible. The framing material shall be one that is in harmony with the rest of the structure. Architectural approval from the Committee is required prior to the installation of any solar panels. The Committee and Association reserve the right to seek the removal of any solar panel that was installed without first obtaining approval



or for any solar panel that violates these restrictions. Solar panels shall be installed in a location not visible from the public street in front of the residence.

**Section 3.31 Wind Generators.** No wind generators shall be erected or maintained on any Lot if said wind generator is visible from any other Lot or public street.

**Section 3.32 Generators.** Prior to installing a generator, the Lot Owner must submit to an application; \$100 review fee; survey with proposed generator location (generator may not encroach into the side or rear set-back lines) and plans or drawings of equipment wall detail and/or landscape detail. If installation is proposed to be in an enclosed generator room, a full set of architectural drawings must be submitted to the Committee for review. Obtaining any necessary permits from Montgomery County is the responsibility of the Lot Owner. The generator shall be installed by a licensed electrical contractor and must be wired directly to the electrical panel through a manual or automatic transfer switch in order to meet National Electric Code minimums. Generators shall be self-contained and enclosed with an equipment wall and landscaping so they are not visible from the road or any adjacent lot. The generator exhaust shall be installed according to the manufacturer's guidelines.

**Section 3.33 Drying of Clothes in Public View.** The drying of clothes in public view is prohibited, and the Owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds, Detention Lakes or other facilities where the rear yard or portion of the Lot is visible to the public, shall construct and maintain a drying yard or other suitable enclosure to screen drying clothes from public view.

**Section 3.34 Mailboxes.** No mailboxes are to be constructed, installed or placed in the front of all Dwellings by the Owner. Residents will receive their mail at Cluster Box Units (CBU) placed at one central location in the subdivision. The CBU installation will be coordinated with the United States Postal Office. The Developer will bear the cost of the CBU installation and the Association will maintain, repair or replace, if necessary.

**Section 3.35 Hazardous Substances.** No Lot shall be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition. Notwithstanding the foregoing, no Hazardous Substance shall be brought onto, installed, used, stored, treated, buried, disposed of or transported over the Lots or the Subdivision, and all activities on the Lots shall, at all times, comply with Applicable Law. The term "Hazardous Substance" shall mean any substance which, as of the date hereof, or from time to time hereafter, shall be listed as "hazardous" or "toxic" under the regulations implementing The Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq., The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 et seq., or listed as such in any applicable state or local law or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under applicable law. The term "Applicable Law" shall include, but shall not be limited to, CERCLA, RCRA, The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq. and any other local, state and/or federal laws or regulations that govern the existence, cleanup and/or remedy of contamination on property, the protection of the environment from spill deposited or otherwise in place contamination, the control of hazardous waste or the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

**Section 3.36 Flag Poles.** Each home shall be permitted no more than one (1) flag pole. Flag poles must be no higher than twenty feet (20') tall.

**Section 3.37 Model Homes.** Model Homes are permitted in the subdivision. Model Homes can be fully furnished, staffed, and open seven (7) days a week. Model Homes are permitted one monument that must meet the following requirements: constructed columns are to be all masonry, 12" x 12"; no taller than 6 feet (6'); placed no further than 6 feet (6') apart; the face of the monument sign is not to exceed sixty inches (60") wide by forty inches (40") tall. The developer will provide directional signage inside the development. Builders are prohibited from placing directional signs, flag signs, open house signs, or any other temporary signs in the subdivision.

#### ARTICLE IV ARCHITECTURAL CONTROL COMMITTEE

#### **Section 4.01 Basic Control**

(a) No building, Regulated Modification, or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced, or changes made in the design or exterior appearance thereof, (including, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original construction, on any Lot in the Subdivision until: (i) the payment of the applicable damage deposit, construction application fees, inspection fees and processing fees and any related fees (including the compliance deposit described in Section 4.10 if applicable) determined by the Committee; and (ii) the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, compliance with any minimum construction standards established by the Committee, quality of materials, drainage, harmony of external design and color with existing and proposed structures in the Subdivision and location with respect to topography and finished grade elevation. The granting of approval shall in no way serve as a guaranty or warranty as to the quality of the plans or specification nor the habitability, feasibility or quality of the resulting improvements.

(b) The authority for determining whether construction plans and specifications for proposed improvements are in compliance with the provisions of this Declaration as to quality and color of materials, drainage,

harmony of external design and color with existing and proposed structures and location with respect to topography, finished grade elevations and other relevant factors, rests with the Committee. Disapproval of plans and specifications, including location of the proposed improvements, may be based by the Committee on any facts that seem sufficient in the discretion of the Committee. A property owner may appeal the decision of the Committee to the Board of Directors, and the decision of the Board of Directors shall be final.

(c) Each application made to the Committee shall be accompanied by two sets of professionally drawn plans and specifications for all proposed construction (initial or alterations) to be done on such Lot, including the drainage plan for the Lot, plot plans showing the location and elevation of the improvements on the Lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the Committee shall be the address of the principal office of the Developer or the Association. If approved, one of the two sets of plans submitted shall be returned to the Owner with said approval noted thereon. The Committee may set application and inspection fees, as well as, the damage deposit set forth in Section 3.16 (f) hereof. The Owner must obtain from the Committee a receipt for said plans indicating the date said plans are received by the Committee. The plans and specifications submitted must specify such detail and forms about the proposed project/construction/Regulated Modification as the Committee may reasonably request, which may include but is not limited to:

- (i) the location upon the Lot where the Regulated Modification will occur or be placed or sited (sometimes called a plot plan or a site plan);
- (ii) the dimensions, elevations, expected appearance, nature, kind, shape, and height, of the Regulated Modification;
- (iii) the exterior colors and materials to be used;
- (iv) any information concerning structural, mechanical, electrical, plumbing, grading, paving, decking, drainage, and landscaping details and materials;
- (v) intended use(s); and
- (vi) such other information, plans or specifications as may from time to time be required or requested by the Committee, which in the sole opinion of the Committee is reasonable or necessary for it to fully and fairly evaluate the proposed Regulated Modification.

#### **Section 4.02 Architectural Control Committee.**

(a) The authority to grant or withhold architectural control approval as referred to above is vested in the Architectural Control Committee (sometimes herein referred to as the "Committee" or the "ACC"), and such authority shall be exercised by the Committee (as provided in (b) below). The Developer shall have sole and exclusive control over the Committee for this Section, and the Committee shall be made up of one or more individuals who shall be appointed to serve as the ACC by the Developer. The term "Committee" and/or "ACC" and/or "Architectural Control Committee" shall mean and refer to the "Architectural Control Committee" controlled by the Developer, and shall not mean nor give any jurisdiction to the Association's Architectural Control Committee.

(b) At the discretion of the Developer, when it wishes to transfer control of the ACC to the Association the Developer shall cause an instrument transferring control of the ACC to the Association to be placed of record in the Real Property Records of Montgomery County, Texas (which instrument shall include the "Control Transfer Date." The term "Control Transfer Date as used in this Declaration shall refer to the date when control of the ACC is transferred to the Association, and shall have no other meaning). Nothing in this provision or any part of this Declaration shall require the Developer to transfer control, and Developer has the express right to retain control for as long as it may choose to do so, in its sole discretion. However, after the Control Transfer Date (if ever), each member of the Committee must be an Owner of property in this SECTION 1 of the subdivision, the Committee shall be limited to no more than three Owners; and the members of the Committee shall be selected by the Board of Directors of the Association.

#### **Section 4.03 Effect of Inaction.**

(a) Approval or disapproval as to architectural control matters as set forth in the preceding provisions of this Declaration shall be in writing.

(b) In the event that the authority exercising the prerogative of approval or disapproval (whether the Developer or the Committee) fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within twenty-one (21) days following such submission, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof. The time to approve or disapprove shall not commence until professionally drawn plans are submitted to the Committee. Professionally drawn plans shall mean those plans prepared by an architect, engineer or certified house planner in sufficient detail to allow the Committee to review in accordance with the criteria set forth herein.

(c) In the event of disapproval by the Developer prior to the Control Transfer Date, the disapproval shall be final and there shall be no right of appeal. In the event of disapproval by the Committee after the Control Transfer Date, the Applicant shall have the right to file an appeal to the Developer, who shall have the right to review the submission and decision of the Committee. The Developer may review within twenty-one (21) days following such submission, and approve the application, and such approval shall be final; may disapprove the application and such

disapproval shall be final; and may take no action on the appeal and in the instance of the Developer taking no action within twenty-one (21) days after submission, the Committee's decision shall stand and be final.

#### **Section 4.04 Effect of Approval.**

(a) The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof.

(b) Despite approval by the Committee, the person or entity making application to the Committee shall be solely responsible for full compliance with all permitting requirements of any authority with jurisdiction over the Subdivision, including any governmental agencies having jurisdiction, and shall apply for and diligently pursue and obtain all required permits prior to starting any construction approved by the Committee. The Committee is expressly authorized to condition approval upon compliance with applicable permitting requirements, or deny approval pending certification satisfactory to the Committee that permits have either been received or that no such permitting is required.

(c) Despite approval by the Committee, the person or entity making application to the Committee shall be solely responsible for insuring that every Regulated Modification, as proposed and as completed, is in compliance with applicable governmental laws, ordinances, rules and regulations (including any building codes, permits, or licensing requirements) and with all applicable requirements of this Declaration and any Minimum Construction Standards adopted by the Committee. The Committee and/or Developer shall not be responsible for reviewing for making any inspection, determining compliance with, nor shall approval of any improvement or modification or Regulated Modification be deemed an approval as to, safety or safety standards, conformance with building codes, laws, governmental rules or regulations.

**Section 4.05 Minimum Construction Standards.** The Developer or the Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only and the Developer or Committee shall not be bound thereby.

**Section 4.06 Variance.** The Developer or after Control Transfer Date, the Association's Committee, as the case may be, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Developer or the Committee or the Association, when circumstances such as topography, natural obstructions, Lot configuration, Lot size, hardship, aesthetic or environmental considerations may require a variance. The Developer and the Committee reserve the right to grant variances as to building set-back lines, minimum square footage of the residence, fences, and other items. Such variances must be evidenced in writing and shall become effective when signed by the Developer or by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

**Section 4.07 No Implied Waiver or Estoppel.** No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee, Developer, or Board of Directors with respect to the construction of any improvements within the Subdivision. Specifically, the approval by the Committee or Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications or other materials submitted with respect to any other residential construction by such person or other Owners.

**Section 4.08 Disclaimer.** No approval of plans and specifications and no publication or designation of architectural standards shall ever be construed as representing or implying that such plans, specifications or standards will result in a properly designed structure or satisfy any legal requirements.

**Section 4.09 Subject to Association.** The Committee is a committee of the Developer until the Control Transfer Date, and thereafter by the Association. Without limitation of the foregoing, the Developer, or the Association if the time in issue is after the Control Transfer Date, has authority to remove members of the Committee with or without cause and to appoint successors to fill any vacancies which may exist on the Committee.

**Section 4.10 Compliance Deposit Agreement.** For any Regulated Modification with a value (in the sole opinion of the Committee) of more than \$50,000.00, the Committee shall condition approval of the Regulated Modification on the completion of a Compliance Deposit Agreement and deposit of the penal sum required in the Compliance Deposit Agreement with the Association. No project approval for which a Compliance Deposit Agreement is required shall be final until the Agreement is signed and the deposit has been provided to the Association.

**Section 4.11 Inspection Rights.** Any member of the Committee, Developer, Director of the Association, or any of their designated representatives, may enter upon a Lot without liability for trespass or otherwise for purposes of inspecting any Lot to determine compliance with this Declaration, to aide in the review of any application for a Regulated Modification; to assist the Committee in any way they deem reasonable or necessary in

their sole discretion; to examine compliance with the Committee's approval (or non-approval) of any Regulated Modification, to assess compliance with any compliance deposit agreement required by the Committee or Association.

ARTICLE V  
MAGNOLIA RESERVE HOME OWNERS ASSOCIATION

**Section 5.01 Membership.** Every person or entity who is a record owner of any Lot which is subject to the Maintenance Charge (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, including contract sellers, shall be a "Member" of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, upon the Control Transfer Date, the Directors of the Association must be Members of the Association (as more particularly described in the By-laws). Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association. The initial Board of Directors of the Association shall be designated by the Developer.

**Section 5.02 Non-Profit Corporation.** The MAGNOLIA RESERVE Home Owners Association, Inc., a non-profit corporation, has been organized and it shall be governed by the Articles of Incorporation and Bylaws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

**Section 5.03 Bylaws.** The Association has adopted or may adopt and amend whatever Bylaws it may choose to govern the organization or operation of the Subdivision and the use and enjoyment of the Lots and Common Areas, provided that the same are not in conflict with the terms and provisions hereof.

**Section 5.04 Owner's Right of Enjoyment.** Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) the right of the Association, with respect to the Common Areas, to limit the number of guests of Owners;
- (b) the right of the Association to make rules and regulations regarding use of any Common Area and to charge reasonable admission and other fees for the use of any facility situated upon the Common Areas and the right of the Association to offer membership to non-residents, whose membership fee shall be determined by the Board of Directors, but in no case, shall the non-resident membership fee be less than the annual assessment paid by the owners;
- (c) the right of the Association, in accordance with its Articles and Bylaws (and until the Control Transfer Date, subject to the prior written approval of the Developer), to (i) borrow money for the purpose of improving and maintaining the Common Areas and facilities (including borrowing from the Developer or any entity affiliated with the Developer) and (ii) mortgage said property, however, the rights of such mortgagee of said property shall be subordinate to the rights of the Owners hereunder;
- (d) the right of the Association to suspend the Member's voting rights and the Member's and "Related Users" (as hereinafter defined) right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Lot remains unpaid;
- (e) the right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration or the "Rules and Regulations," defined in Article VIII hereof, which suspension shall continue for the duration of such infraction or violation, plus a period not to exceed sixty (60) days following the cessation or curing of such infraction or violation; and,
- (f) the right of the Association, subject, until the Control Transfer Date, to the prior written approval of the Developer, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, for such purposes and subject to the provisions of this Declaration.

**Section 5.05 Delegation of Use.** Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the Member's immediate family living in the Member's residence, and his contract purchasers who reside on the Lot (collectively, the "Related Users").

ARTICLE VI  
MAINTENANCE FUND

**Section 6.01 Maintenance Fund Obligation.** Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association, in advance, an annual maintenance charge on January 1st of each year, (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments, charges or fines hereby levied, together with such interest thereon and costs of collection thereof, including reasonable attorneys' fees and fines, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made.

### **Section 6.02 Basis of the Maintenance Charge**

(a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund," which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot to the Association annually, in advance, on or before the FIRST day of January of each calendar year, or on such other date or basis (monthly, quarterly or semi-annually) as the Developer or the Board of Directors of the Association may designate in its sole discretion.

(b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Lot.

(c) The exact amount of the Maintenance Charge applicable to each Lot will be determined by the Developer until the Control Transfer Date, and thereafter by the Board of Directors of the Association during the quarter preceding the due date of the Maintenance Charge and can be increased to meet the needs of the Association without a vote of the Members of the Association. The annual Maintenance Charge shall be the amount that the Association charges all lot owners. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Developer or the Board of Directors of the Association, subject to the provisions hereof.

(d) The Maintenance Charge described in this Article VI and other charges or assessments described in this Declaration shall not apply to the Lots owned by the Developer. The Developer, prior to the Control Transfer Date, and the Association, from and after the Control Transfer Date, reserve the right at all times in their own judgment and discretion, to exempt any Lot ("Exempt Lot"), in the Subdivision from the Maintenance Charge, in accordance with Section 6.07 hereof. If an Exempt Lot is sold to any party, the Maintenance Charge shall be automatically reinstated as to the Exempt Lot and can only be waived at a later date pursuant to the provisions of the preceding sentence. The Developer, prior to the Control Transfer Date, and the Association, from and after the Control Transfer Date, shall have the further right at any time, and from time to time, to adjust or alter said Maintenance Charge from month to month as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

(e) The Board of Directors of the Association, from time to time by the adoption of a resolution for such purpose may levy and impose, against each Lot in the Subdivision, a special assessment and/or drainage assessment for a specific amount, which shall be equal for each such Lot, for the purpose of repairing drainage easements, purchasing equipment or facilities for Roadways, Common Areas or Common Facilities in the Subdivision and/or for defraying in whole or in part the cost of constructing new capital improvements or altering, remodeling, restoring or reconstructing previously existing capital improvements upon such Roadways, Common Area or Common Facilities, including fixtures and personal property related thereto. The Owner of each Lot subject to such assessment shall pay his special assessment to the Association at such time or times and in such manner as provided in such resolution. Should the special assessment equal an amount of more than one hundred percent (100%) of the then annual assessment, the membership shall be given the opportunity to vote on the special assessment at a special meeting called for that purpose. A quorum for levying a special assessment in excess of that authorized to be levied by the Board of Directors, shall be the same quorum as required for amending the deed restrictions.

**Section 6.03 Creation of Lien and Personal Obligation.** In order to secure the payment of the Maintenance Charge, and other charges and assessments (including, but not limited to, attorney's fees incurred in the enforcement of these Restrictions) hereby levied, a vendor's (purchase money) lien for the benefit of the Association, shall be and is hereby reserved in the deed from the Developer to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Association. As additional security for the payment of the Maintenance Charge and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to nonjudicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code (and any successor statute) and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 6.03 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any duly authorized officer of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

**Section 6.04 Notice of Lien.** In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection, including reasonable attorneys' fees, which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Trustees to cover the preparation and recordation of such release of lien instrument.

**Section 6.05 Liens Subordinate to Mortgages.** The liens described in this Article VI and the superior title herein reserved shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or other bona fide, third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Lot which accrued prior to the time such holder acquires title to such Lot. No such sale or transfer shall relieve such transferee of title to a Lot from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot shall not affect the Association's lien for Maintenance Charges or other charges or assessments. The Association, if requested in writing, shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of the lien described in Section 6.03 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VI. If requested, the Association may prepare a non-assignable sixty (60) day letter for a mortgage company, for a reasonable fee to be determined by the Board of Directors. Said fee may be payable to the Association or the Management Company providing the service of preparation of the sixty (60) day letter.

**Section 6.06 Purpose of the Maintenance Charge.** The Maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health and welfare of the Owners of the Subdivision and other portions of the Annexable Area which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described herein, including the maintenance of the Common Areas, Detention Lakes, Parks, Detention Pond Areas, any Greenbelt or Drainage Easements greater than twenty feet in width, Roads, or rights-of-way, and the establishment and maintenance of a reserve fund for maintenance of the Common Areas, Detention Ponds or Drainage Easements greater than twenty feet in width. The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgment of the Developer or Association, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area, etc. as may from time to time be authorized by the Association. Payment of all legal and other expenses incurred in connection with the enforcement of all charges and assessments, conveyances, restrictions, and conditions affecting the properties to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charges and assessments, landscaping in common areas, utilities, insurance, taxes, employing policemen and doing any other things or things necessary or desirable in the opinion of the Association to keep the Properties neat and in good order, or which is considered a general benefit of the Owners or occupants of the properties, it being understood that the judgment of the Association in the expenditure of said fund shall be final and conclusive so long as such judgment is exercised in good faith. The Maintenance Charge is for the purpose of promoting the recreation, health, and welfare of the Owners of the Subdivision and other portions of the Annexable Area which may hereafter become subject to the jurisdiction of the Association.

**Section 6.07 Exempt Property.** The following property subject to this Declaration shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by the Developer or the Association or a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas; however, no land or improvements devoted to dwelling use shall be exempt from said Maintenance Charge.

**Section 6.08 Handling of Maintenance Charges.** The collection and management of the Maintenance Charge or other charge or assessment levied hereunder, shall be performed by the Developer until the Control Transfer Date, at which time the Developer shall deliver to the Association all funds on hand together with all books and records of receipt and disbursements. The Developer and, upon transfer, the Association, shall maintain separate special accounts for these funds, and Owners shall be provided at least annually, information on the Maintenance Fund as provided in Section 8.07 hereof.

**Section 6.09 Maintenance Charges as Independent Covenant.** The obligation to pay the Maintenance Charge and any other charge or assessment levied hereunder is a separate and independent covenant and contractual obligation on the part of each Owner. No off-set, credit, waiver, diminution or abatement may be claimed by any Owner to avoid or diminish the obligation for payment of assessments for any reason, including, by way of illustration but not limitation (i) by non-use of any Common Areas, community amenities or abandonment of a Lot, (ii) by reason of any alleged actions or failure to act by the Association, Developer, Committee or any of their officers, directors, agents or employees, whether or not required under this Declaration, (iii) for inconvenience or discomfort arising from repairs or improvements which are the responsibility of the Developer or Association, (iv) by reason of any action taken by the Association or Developer to comply with any law, ordinance, or any order or directive of any governmental authority, or pursuant to any judgment or order of a court of competent jurisdiction.

**ARTICLE VII**  
**DEVELOPER'S RIGHTS AND RESERVATIONS**

**Section 7.01 Period of Developer's Rights and Reservations.** Developer shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association from the date hereof, until the earlier to occur of (i) the Control Transfer date or (ii) Developer's written notice to the Association of Developer's termination of the rights described in Article VII hereof – both of which are in the sole discretion of the Developer, and need not happen at any specified time (or ever, if the Developer so chooses). The "Control Transfer Date" is defined in Article 4.02 (b). The rights and reservations hereinafter set forth shall be deemed accepted and reserved in each conveyance of a Lot by Developer to an Owner whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Area is conveyed by Developer. The rights, reservations and easements hereafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Developer's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Developer's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.

**Section 7.02 Right to Construct Additional Improvements in Common Area.** Developer shall have and hereby reserves the right (without the consent of any other Owner), but shall not be obligated, to construct additional improvements within the Common Area at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in the increase of such Maintenance Charge. Developer shall, upon the Control Transfer Date, convey or transfer such improvements to the Association and the Association shall be obligated to accept title to, care for and maintain the same as elsewhere provided in this Declaration.

**Section 7.03 Developer's Rights to Use Common Areas in Promotion and Marketing of the Property and Annexable Area.** Developer shall have and hereby reserves the right to reasonable use of the Common Area and of services offered by the Association in connection with the promotion and marketing of land within the boundaries of the Property and Annexable Area. Without limiting the generality of the foregoing, Developer: (i) may erect and maintain on any part of the Common Area such signs, temporary buildings and other structures as Developer may reasonably deem necessary or proper in connection with the promotion, development and marketing of land within the Property and Annexable Area; (ii) may use vehicles and equipment within the Common Area for promotional purposes; (iii) may permit prospective purchasers of property within the boundaries of the Property and Annexable Area, who are not Owners or Members of the Association, to use the Common Area at reasonable times and in reasonable numbers; and (iv) may refer to the services offered by the Association in connection with the development, promotion and marketing of the Property and Annexable Area. Further, the Developer and/or the Association may establish Rules and Regulations for the use of the Common Areas in the Subdivision.

**Section 7.04 Developer's Rights to Grant and Create Easements.** Developer shall have and hereby reserves the right, without the consent of any other Owner or the Association, to grant or create temporary or permanent easements, for access, utilities, pipeline easements, cable television systems, communication and security systems, drainage, water and other purposes incident to development, sale, operation and maintenance of the Subdivision, located in, on, under, over and across (i) the Lots or other property owned by Developer, (ii) the Common Area, and (iii) existing utility easements. Developer also reserves the right, without the consent of any other Owner or the Association, to (i) grant or create temporary or permanent easements for access over and across the streets and roads within the Subdivision to other public roads for the benefit of owners of property, regardless of whether the beneficiary of such easements own property which is hereafter made subject to the jurisdiction of the Association; and (ii) permit owners of property within the Annexable Area which is not made subject to the jurisdiction of the Association to use the recreational facilities of the Association and other Common Area, provided that said owners pay to the Association their proportionate share of the cost of operating and maintaining said recreational facilities and Common Areas.

**Section 7.05 Developer's Rights to Convey Additional Common Area to the Association.** Developer shall have and hereby reserves the right, but shall not be obligated to, convey

additional real property and improvements thereon, if any, to the Association as Common Area at any time and from time to time in accordance with this Declaration, without the consent of any other Owner or the Association. Said real property conveyed to the Association shall be free and clear of all encumbrance and liens, including but not limited to taxes.

**Section 7.06 Annexation of Annexable Area.** Additional residential property and common areas outside of the Subdivision including, without limitation, the Annexable Area, may, at any time and from time to time, be annexed by the Developer into the real property which becomes subject to the jurisdiction and benefit of the Association, without the consent of the Owners or any other party; provided, however, such additional residential property outside of the Annexable Area may be made subject to the jurisdiction of the Association by the Developer. The owners of Lots in such annexed property, as well as all other Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Common Areas, including the Detention Lakes, that are or may become subject to the jurisdiction of the Association, provided that such annexed property is impressed with and subject to at least the Maintenance Charge imposed hereby.

**ARTICLE VIII**  
**DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION**

**Section 8.01 General Duties and Powers of the Association.** The Association has been formed to further the common interest of the Members. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness and desirability of the Subdivision and any portion of the Annexable Area which becomes subject to the jurisdiction of the Association. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration.

**Section 8.02 Duty to Accept the Property and Facilities Transferred by Developer.** The Association shall accept title to any of the Common Areas or other real property, including any improvements thereon and personal property transferred to the Association by Developer, and equipment related thereto, together with the responsibility to perform any and all administrative functions and recreation functions associated therewith (collectively herein referred to as "Functions"), provided that such property and Functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Developer may include fee simple title, easements, leasehold interests and licenses to use such property. Any property or interest in property transferred to the Association by Developer shall be within the boundaries of the Property or Annexable Area. Any property or interest in property transferred to the Association by Developer shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens and mortgages (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, the terms of any declaration of covenants, conditions and restrictions annexing such property to the Common Area, and all easements, covenants, conditions, restrictions and equitable servitude or other encumbrances which do not materially affect the Owners authorized to use such property. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Association by the Developer shall impose upon the Association any obligation to make monetary payments to Developer or any affiliate of Developer including, but not limited to, any purchase price, rent, charge or fee. The property or interest in property transferred to the Association by Developer shall not impose any unreasonable or special burdens of ownership of property, including the management, maintenance, replacement and operation thereof.

**Section 8.03 Duty to Manage and Care for the Common Areas and Pathways.** The Property Owners Association, its successors or assigns shall have the right to enter upon any Lot or Reserve, including but not limited to all drainage easements on lots as designated in Article III, Section 3.24(e) herein for the purpose of improving, constructing or maintaining the drainage facilities in the drainage easements, Pathway Easements, and Pathway Reserves as shown on the Plat of the Subdivision. The Property Owners Association at its expense, shall maintain all drainage facilities and Pathways as shown on the Plat of the Subdivision as well as any outside drainage easements referenced on the Plat. Without limitation, the Property Owners Association shall remove accumulated silt from the drainage easements and shall regrade drainage easements as may be necessary to maintain roadside drainage and prevent damage to the roadside. For the purposes hereof, the drainage easements include the drainage easements and any Detention Lakes shown on the Plat, and all drainage which existed at the time that the overall grading of the Subdivision was completed by Developer.

**Section 8.04 Other Insurance Bonds.** The Association shall obtain such insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

**Section 8.05 Duty to Prepare Budgets.** The Association shall prepare budgets annually for the Association, which budgets shall include a reserve fund for the maintenance of all Common Areas. The adopted budget shall be presented at the Annual Meeting of the Members.

**Section 8.06 Duty to Levy and Collect the Maintenance Charge.** The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.



**Section 8.07 Duty to Provide Annual Review.** The Association shall provide for an annual unaudited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same.

**Section 8.08 Duties with Respect to Architectural Approvals.** The Association shall perform functions to assist the Committee as elsewhere provided in Article IV of this Declaration.

**Section 8.09 Power to Acquire Property and Construct Improvements.** The Association may acquire property or an interest in property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on the Property and may demolish existing improvements, without a vote of the membership as the Board of Directors in their sole discretion determine.

**Section 8.10 Power to Adopt Rules and Regulations.** The Association may adopt, amend, repeal and enforce rules and regulations ("Rules and Regulations"), fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Areas, and the use of any other property, facilities or improvements owned or operated by the Association.

**Section 8.11 Power to Enforce Restrictions and Rules and Regulations.** The Association (and any Owner with respect only to the remedies described in (ii) below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (i) By entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the Improvements situated thereon by the Owner or any other person), without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (iii) by exclusion, after notice and hearing, of any Member of Related User from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or any Related User, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues; (iv) by suspension, after notice and hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or a Related User which assessment reimbursed the Association for the costs incurred by the Association in connection with such breach; (vi) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or such Rules and Regulations by such Member or a Related User; and (vii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Members, plus attorneys' fees incurred by the Association with respect to exercising such remedy.

Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Developer, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

**Section 8.12 Power to Grant Easements.** In addition to any blanket easements described in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area.

**Section 8.13 Power to Convey and Dedicate Property to Government Agencies.** The Association shall have the power to grant, convey, dedicate or transfer any Common Areas or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, which power may be exercised (i) prior to the Control Transfer Date by the Board of Directors and (ii) from and after the Control Transfer Date by the Association, with the approval of not less than two-thirds (2/3rds) of the Members agreeing in writing or by voting at any scheduled meeting of the Members and with the prior written approval of the Developer. The Association may, subject to the limitations of the preceding sentence, convey property to a public or governmental agency or authority in lieu of such property being condemned by such public or governmental agency or authority.

**Section 8.14 Power to Remove and Appoint Members of the Committee.** The Board of Directors shall have the power to remove any member of the Association's Architectural Control Committee with or without cause after the Control Transfer Date. Likewise, after the Control Transfer Date, the Board of Directors shall have the power to appoint new members to the Committee to fill any vacancies which may exist on the Committee as they in their sole discretion determine necessary, as long as each committee member is an Owner of property in this SECTION 1 of the subdivision. Committee Members' terms shall last one (1) year beginning immediately following the annual meeting of the Members.

ARTICLE IX  
GENERAL PROVISIONS

**Section 9.01 Term.** The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an Instrument, signed by not less than two-thirds (2/3rds) of the then Owners (including the Developer) of the Lots has been recorded agreeing to cancel, amend or change, in whole or in part, this Declaration.

**Section 9.02 Amendments.** This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners (including the Developer) entitled to cast not less than two-thirds (2/3rds) of the votes of all of the Owners. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Owners of the Association, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facie evidence of the date of execution of said amendment by such Owner. Those Members (Owners, including the Developer) entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Members of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members (Owners, including the Developer) duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Notwithstanding any provision contained in the Bylaws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Montgomery County, Texas, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of Members (Owners, including the Developer) executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination.

**Section 9.03 Amendments by the Developer.** The Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an Instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, or making any other amendment, modification, correction or revision to this Declaration provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or his mortgagee. Additionally, Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or any other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of permitting the Owners to enjoy the benefits from technological advances, such as security, communications or energy-related devices or equipment which did not exist or were not in common use in residential Subdivisions at the time this Declaration was adopted. Likewise, the Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of prohibiting the use of any device or apparatus developed and/or available for residential use following the date of this Declaration if the use of such device or apparatus will adversely affect the Association or will adversely affect the property values within the Subdivision. Finally, Developer has and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or any other party, to amend this Declaration by an instrument in writing, duly signed, acknowledged and filed for record for the purpose of furthering its development of the Property in any manner as Developer deems, in its sole discretion, appropriate.

**Section 9.04 Severability.** Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

**Section 9.05 Liberal Interpretation.** The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

**Section 9.06 Successors and Assigns.** The provisions hereof shall be binding upon and inure to the benefit of the Owners, the Developer and the Association, and their respective heirs, legal representatives, executors, administrators, successors and assigns.

**Section 9.07 Effect of Violations on Mortgages.** No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien, or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

**Section 9.08 Terminology.** All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself. The terms "herein," "hereof" and similar terms, as used in this instrument, refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear. All references in this Declaration to Exhibits shall refer to the Exhibits attached hereto.

**Section 9.09 Developer's Rights and Prerogatives.** Prior to the Control Transfer

Date, the Developer may file a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for the Developer's (i) discontinuance of the exercise of any right or prerogative provided for in this Declaration to be exercised by the Developer or (ii) assignment to any third party owning property in the Subdivision or Annexable Area, of one or more of Developer's specific rights and prerogatives provided in this Declaration to be exercised by Developer. The assignee designated by Developer to exercise one or more of Developer's rights or prerogatives hereunder shall be entitled to exercise such right or prerogative until the earlier to occur of the (i) Control Transfer Date or (ii) date that said assignee files a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for said assignee's discontinuance of the exercise of said right or prerogative. From and after the date that the Developer discontinues its exercise of any right or prerogative hereunder and/or assigns its right to exercise one or more of its rights or prerogatives to an assignee, the Developer shall not incur any liability to any Owner, the Association or any other party by reason of the Developer's discontinuance or assignment of the exercise of said right(s) or prerogative(s). Upon the Developer's Assignment of its rights as of the Control Transfer Date to the Association, the Association shall be entitled to exercise all the rights and prerogatives of the Developer.

**Section 9.10 Limitation of Liability.**

(a) Neither the Developer, Association, nor the Committee are liable to any Owner, Member or person or entity making an application to the Committee for any actions or failure to act in connection with any approval, conditional approval, or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plan(s) or specifications and no issuance of any minimum construction standards may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the Regulated Modification or Item referenced in the application will comply with legal requirements, code, or the health, safety, workmanship or suitability of any purpose of the Regulated Modification.

(b) NO COVENANTS, REPRESENTATIONS, GUARANTIES OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR BY OPERATION OF LAW, AND INCLUDING EXCLUSION OF ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY AND FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE, SHALL BE DEEMED TO BE GIVEN OR MADE BY DEVELOPER, OR DEVELOPER'S OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES, BY ANY PROVISIONS OF THIS DECLARATION REGARDING ANY DEVELOPMENT ACTIVITIES OR OTHERWISE. WITHOUT LIMITATION OF THE FOREGOING DEVELOPER EXPRESSLY DISCLAIMS ALL COVENANTS, REPRESENTATIONS, GUARANTIES AND WARRANTIES, EXPRESS AND IMPLIED, AND BY OPERATION OF LAW (I) AS TO ANY FUTURE DEVELOPMENT, (II) FOR MANAGEMENT OR SUPERVISION OF BUILDING, CONSTRUCTION AND ALL OTHER WORK BY ANY BUILDER, VENDOR OR SUPPLIER NOT DIRECTLY EMPLOYED BY DEVELOPER, INCLUDING ANY DUTY TO ENFORCE ANY PROVISIONS OF THIS DECLARATION AS TO ANY SUCH PARTY, (III) THE NATURE, CONDITION, APPEARANCE, USE AND ALL OTHER MATTERS PERTAINING TO ANY PROPERTIES ADJACENT TO OR IN THE AREA OF THE SUBDIVISION, OR WHICH ARE NOT OTHERWISE SUBJECT TO THIS DECLARATION, INCLUDING WITHOUT LIMITATION ANY OBLIGATION NOW OR IN THE FUTURE TO INCLUDE IN THE SUBDIVISION OR IN ANY MANNER TO OTHERWISE SUBJECT ANY SUCH PROPERTIES TO THIS DECLARATION, (IV) THE MANAGEMENT OR OPERATION OF THE ASSOCIATION, (V) AS TO ENFORCEMENT OF ANY PROVISIONS OF THE DECLARATION AS TO ANY OWNER, TENANT OR ANY OTHER PERSON, AND (VI) AS TO ANY ENVIRONMENTAL HAZARDS OR CONDITIONS AFFECTING THE SUBDIVISION, INCLUDING ALL LOTS, COMMUNITY PROPERTIES AND RESERVES, OR AFFECTING ANY AREA OR ADJACENT PROPERTIES.

(c) IN ADDITION THE ASSOCIATION AND EACH OWNER HEREBY RELEASES DEVELOPER FROM, AND THE ASSOCIATION AND EACH OWNER MUST HEREAFTER INDEMNIFY, PROTECT, DEFEND, SAVE AND HOLD HARMLESS DEVELOPER, AND DEVELOPER'S EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS AND AGENTS FROM AND AGAINST, ANY AND ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES AND COURT COSTS) IN ANY WAY RELATING TO, CONNECTED WITH OR ARISING OUT OF ANY OF THE DEVELOPMENT OF EACH OWNER'S LOT, THE DEVELOPMENT OF THE COMMON AREAS, THE OPERATION OF THE ASSOCIATION PRIOR TO THE CONTROL TRANSFER DATE, INCLUDING WITHOUT LIMITATION THE COST OF ANY REMOVAL OF HAZARDOUS SUBSTANCES OR CONTAMINANTS OF ANY KIND FROM THE PROPERTY AND ANY OTHER REMEDIAL COSTS REGARDING ANY ENVIRONMENTAL HAZARD OR CONDITION, OR THE OWNERSHIP, LEASING, USE, CONDITION, OPERATION, MAINTENANCE OR MANAGEMENT OF THE PROPERTY, REGARDLESS OF WHETHER THE SAME ARISES OR ACCRUES DURING OR AFTER THE PASSING OF THE CONTROL TRANSFER DATE. THE PROVISIONS OF THIS SECTION CONSTITUTE A COVENANT OF RELEASE AND INDEMNIFICATION RUNNING WITH THE LAND (INCLUDING EACH LOT AND ALL PROPERTY SUBJECT TO THIS DECLARATION), AND IS BINDING UPON EACH OWNER AND ANY TENANTS, AND THEIR RESPECTIVE FAMILY OR OTHER HOUSEHOLD MEMBERS, SUCCESSORS IN TITLE OR INTEREST, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.

**Section 9.11 Security Measures.** The Developer and/or Association are under no obligation to, but may from time to time engage in activities or provide Subdivision Facilities, including activities, devices or services which may have the effect of enhancing safety or security within the Subdivision, and are under no obligation to but may from time to time provide information through newsletters or other sources of communication regarding same (all such matters and all activities, services or devices of this nature are referred to in the Declaration as, "Security Measures"). Each Owner and their tenants and each Member covenant and agree, with respect to any and all Security Measures provided directly or indirectly by the Developer and/or Association, as follows:

(a) SECURITY IS THE SOLE RESPONSIBILITY OF LOCAL LAW ENFORCEMENT AGENCIES AND INDIVIDUAL OWNERS AND THEIR TENANTS -- NOT THE DEVELOPER OR ASSOCIATION. Security Measures

may be provided at the sole discretion of the Developer or the Association's Board of Directors. The providing of any Security Measures at any time will in no way prevent the Developer or Board from thereafter discontinuing, or from temporarily or permanently modifying, terminating or removing, any Security Measures, in whole or in part. Owners, Members and their tenants hereby covenant that they do not and will not rely on any Security Measures for their safety or the safety of their property.

(b) Providing of any Security Measures may never be construed as (i) an undertaking by the Developer or the Association to provide personal security as to any Member, Owner, or tenant, or as to any other Person, or (ii) a representation or undertaking that any Security Measures will be effective, functional, or continued, or (iii) a representation, guarantee or warranty that the presence of any Security Measure will in any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause. WITHOUT LIMITATION OF THE FOREGOING, DEVELOPER AND THE ASSOCIATION SHALL NOT HAVE ANY DUTY WHATSOEVER TO WARN, ADVISE OR INFORM ANY MEMBER, OWNER, TENANT OR ANY OTHER PERSON AS TO CRIMINAL CONDUCT OF ANY KIND OR AS TO ANY OTHER MATTERS REGARDING OR RELATING TO SECURITY MEASURES, PAST OR PRESENT.

(c) DEVELOPER AND THE ASSOCIATION HAVE NO DUTY, OBLIGATION OR RESPONSIBILITY OF ANY KIND WHATSOEVER TO WARN, ADVISE OR IN ANY OTHER MANNER INFORM ANY MEMBERS, OWNERS, TENANTS, OR ANY OTHER RESIDENTS OR OCCUPANTS OF ANY LOT OR SUBDIVISION PROPERTIES, OR ANY LAW ENFORCEMENT AGENCY, OR ANY OTHER PERSON AS TO ANY ALLEGED, SUSPECTED OR KNOWN CRIMINAL ACTIVITIES OF ANY KIND, CRIMINAL HISTORY OR BACKGROUND OF ANY PERSON, OR CRIMINAL INVESTIGATIONS BY LAW ENFORCEMENT AGENCIES OR BY ANY OTHER PERSON (ALL SUCH MATTERS, ACTIVITIES AND INVESTIGATIONS HEREIN REFERRED TO AS "CRIMINAL MATTERS"), regardless of whether the Criminal Matters involve the Subdivision, other areas in the vicinity or any other place. The Association may (but has no obligation to) from time to time disclose and/or transmit information concerning Criminal Matters to Owners, tenants, and any other occupants of Lots, to any law enforcement agencies, and to any other Person which the Association's officers, directors, agents, and employees in their sole discretion deem advisable. Any such disclosure and/or transmittal of information shall in no way be deemed an undertaking to do so in the future, either as to the Criminal Matters then involved or as to any other current or future Criminal Matters.

(d) *Developer and/or the Association are not liable for, and each Member, Owner, and tenant indemnify, and hold Developer and the Association harmless from, any injury, loss or damages whatsoever, including without limitation any injury or damages caused by any crime, including but not limited to theft, burglary, trespass, assault, vandalism or any other crime, to any person or property arising, directly or indirectly, from the providing or failure to provide any Security Measure, the discontinuation, modification, disruption, defect, malfunction, operation, repair, replacement or use of any Security Measure, or the providing or failure to provide any warning or disclosure regarding actual or suspected Criminal Matters.*

#### ARTICLE X

#### MANDATORY DISPUTE RESOLUTION PROCEDURES AND LIMITATIONS PERIODS

##### Section 10.01 "Dispute" or "Disputes" and "Disputing Parties" Defined;

**Scope.** "Dispute" or "Disputes" means any claim, demand, action or cause of action, and all rights or remedies regarding same, whether in contract or tort, statutory or common law, or legal or equitable, claimed or asserted by the Association, by the Committee, by any Member or Owner or any other person not associated with or employed by Developer (the "Disputing Party"), against or adverse to Developer regarding any aspect of (i) the design, construction, development, operation, maintenance, repair or management of the Subdivision, including any Association or Committee matter prior to the Control Transfer Date, including any property transferred to the Association under this Declaration, expressly including any matters pertaining to drainage within or from the Subdivision, (ii) the design, construction, sale, maintenance or repair of each Lot, including the residence and/or improvements thereon and all appurtenances thereto, (iii) the establishment, operation or management of, and any acts or omissions of, the Association or the Committee prior to the Control Transfer Date (iv) the construction, operation, application or enforcement of any provisions of, or otherwise arising out of or relating to, this Declaration or the breach thereof, and (v) all other matters relating directly or indirectly to any of the foregoing.

**Section 10.02 Presentment of Dispute Required.** The Disputing Party must submit written notice to Developer by certified mail, return receipt requested, within the time as hereafter set forth, setting forth all Disputes, if any, claimed or asserted against or adverse to Developer (herein referred to as the "Dispute Notice"). The Dispute Notice must set forth each claim, demand, action and cause of action to be included in the Dispute, a reasonably detailed factual description thereof and all remedial action deemed necessary to remedy all Disputes, and a reasonably detailed description of the nature and extent and amount of all claims for damages, if any. Upon request of Developer, the Disputing Party must also provide Developer with any evidence that depicts the nature and cause of the Dispute, the nature and extent of all remedial action deemed necessary to remedy the Dispute, and the nature and extent and amount of all claims for damages, including expert reports, photographs and videotapes to the fullest extent the evidence would be discoverable under the Texas Rules of Civil Procedure. ALL DISPUTES NOT SET FORTH IN THE DISPUTE NOTICE, IF ANY, ARE WAIVED BY THE DISPUTING PARTY.

**Section 10.03 Settlement by Agreement.** Developer and the Disputing Party agree to use reasonable efforts to resolve all Disputes set forth in the written Dispute Notice within sixty days after Developer's receipt of the Dispute Notice. To that end Developer may by written request require the Disputing Party to attend and participate in one or more meetings at Developer's office or a location selected by Developer within the County where the Subdivision is located during the sixty day period in an effort to resolve all Disputes. If requested by the Developer, the Disputing Party must submit a written proposal for resolution of all matters set forth in the Dispute Notice to the Developer at least two business days before any meeting.

**Section 10.04 Mediation.** If all matters set forth in the Dispute Notice have not been settled by written agreement within the sixty-day period described in the immediately preceding Section, then Developer by written request may require that all unresolved matters be submitted to non-binding mediation with a mediator agreed upon by the parties to the dispute. The mediator must meet the requirement of Section 154.052 of the Texas Civil Practice and Remedies Code. The mediation must be conducted within thirty days after selection of the mediator. The mediation must be attended by a person or persons with authority and discretion to negotiate and settle all Disputes. The mediator shall determine the format and rules for the mediation, provided, the provisions of Sections 154.053, 154.071 and 154.073 of the Texas Civil Practice and Remedies Code regarding conduct of the mediator, effect of a written settlement agreement and confidentiality shall apply. Fees and expenses of the mediator shall be borne by the parties equally.

**Section 10.05 Binding Arbitration.**

(a) If all Disputes have not been resolved by agreement of the parties or through mediation as above provided within one hundred twenty (120) days after Developer's receipt of the Dispute Notice, then Developer or the Disputing Party may by written request, whether made before or after the institution of any legal action, require that all unresolved matters as set forth in the Dispute Notice be submitted to binding arbitration before a single arbitrator conducted in accordance with the Construction Industry Arbitration Rules (or substantial equivalent) of the American Arbitration Association ("AAA"). SUCH ARBITRATION WILL BE BINDING AND FINAL TO THE EXTENT ALLOWED BY LAW, AND THE ASSOCIATION, COMMITTEE, EACH MEMBER AND OWNER AND THEIR RESPECTIVE RELATED PARTIES HEREBY WAIVE THE RIGHT TO PURSUE ANY OTHER RESOLUTION OF A DISPUTE, INCLUDING A PROCEEDING IN ANY JUDICIAL FORUM.

(b) If necessary Developer may compel submission of Disputes to binding arbitration and/or participation in such arbitration by an action in any court having jurisdiction. Judgment on any award or decision rendered by the arbitrator may be entered in and otherwise enforced by any court having jurisdiction.

(c) The arbitrator must be a licensed attorney in the state of Texas, must have at least 3 years background experience with deed restrictions, homeowners associations, construction and real estate disputes. The arbitrator will be appointed by agreement of the parties from a list of arbitrators qualified as aforesaid to be provided by AAA, or if the parties cannot agree within ten days after receipt of the list, then an arbitrator will be appointed by AAA in accordance with its rules for appointment from a roster.

(d) The arbitration proceedings must be conducted in Montgomery County, Texas or Harris County, Texas and shall be conducted in accord with the Texas Rules of Evidence, and in accord with those Texas Rules of Civil Procedure that pertain to bench trials. In rendering its award, the arbitrator must determine the rights and obligations of the parties according to the substantive and procedural laws of the State of Texas, and in accordance with applicable provisions of the Declaration and applicable AAA rules. A Transcript of the proceeding shall be made by a court reporter, unless waived in writing by both sides. No arbitration award shall be confirmed by a trial court absent an arbitration transcript or a waiver of a transcript in writing, signed by both sides. A material failure to conduct the proceeding in accord with the Texas Rules of Evidence and/or Civil Procedure shall be a proper basis for a court to refuse to confirm any arbitration award; and if the confirmation or refusal to confirm is appealed, shall be a proper basis for a Court of Appeals to affirm a trial court's refusal to confirm an award. Likewise, material failure of the arbitrator to conduct the proceeding in accord with the Texas Rules of Evidence and/or Civil Procedure shall also be a proper basis for a Court of Appeals to overrule a trial court's confirmation of an award.

(e) Any provisional remedy that would be available from a court, including injunctive relief to maintain the status quo, shall be available from the arbitrator pending final determination of all Disputes, and any order of the arbitrator may be confirmed by a court in accord with Civil Practice and Remedies Code Section 171.087 as if it were an award of the arbitrator.

(f) Each party will bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proof, unless the arbitrator decides otherwise. The parties will bear the costs of arbitration equally, unless the arbitrator decides otherwise. To the extent permitted by applicable law, the arbitrator has the power to award recovery of all costs, expenses and fees (including pre-award expenses, witness fees, attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party.

(g) To the extent not inconsistent with any provision in this Declaration, the parties agree that the Texas Arbitration Act, contained in Chapter 171 of the Texas Civil Practice and Remedies Code shall apply to any arbitration under the Declaration. In the event of any inconsistency between this Declaration and the Texas Arbitration Act, this Declaration shall govern.

**Section 10.06 Developer's Rights of Inspection.** At any time during the existence of any Dispute which has not been finally resolved in writing, whether prior to or after the Control Transfer Date, Developer and its designated representatives may make such inspections and conduct such surveys, tests and examinations as reasonably necessary to fully determine or confirm to Developer's satisfaction the nature, extent and possible cause of all Disputes, the nature and extent of repairs and other work involved and any other matters reasonably related to the Disputes.

**Section 10.07 MEMBERS' AND OWNERS' IRREVOCABLE POWER OF ATTORNEY.** EACH MEMBER AND EACH OWNER HEREBY IRREVOCABLY APPOINTS THE BOARD OF DIRECTORS OF THE ASSOCIATION AS THEIR ATTORNEY-IN-FACT TO ACT IN THEIR PLACE AND STEAD REGARDING ALL PROVISIONS OF THIS ARTICLE 10 AND ARE BOUND IN ALL RESPECTS AS TO ALL ACTIONS, OMISSIONS, AGREEMENTS AND DECISIONS OF THE BOARD OF DIRECTORS RELATING THERETO AND THE RESULTS OF ANY BINDING ARBITRATION REGARDING SAME.

**Section 10.08 WHEN DISPUTE NOTICE MUST BE GIVEN.** COMPLIANCE AS CONDITION PRECEDENT. THE GIVING OF THE DISPUTE NOTICES AND SUBSTANTIAL COMPLIANCE WITH ALL OTHER APPLICABLE PROVISIONS OF THIS ARTICLE X ARE CONDITIONS PRECEDENT TO THE RIGHT TO BRING SUIT PERTAINING TO ANY DISPUTE. FURTHER,

(a) THE ASSOCIATION, AND THE COMMITTEE AND THEIR RESPECTIVE MEMBERS, OFFICERS AND DIRECTORS MUST SUBMIT ALL DISPUTE NOTICES PERTAINING TO ANY ACT OR ACTION OF THE DEVELOPER PRIOR TO OR INCLUDING THE CONTROL TRANSFER DATE NOT LATER THAN ONE HUNDRED FIFTY (150) DAYS AFTER THE CONTROL TRANSFER DATE. ANY DISPUTES AGAINST THE DEVELOPER NOT SUBMITTED BY THE ASSOCIATION OR THE COMMITTEE WITHIN THIS PERIOD ARE HEREBY AGREED TO BE WAIVED.


(b) EACH OWNER AND MEMBER MUST SUBMIT ALL DISPUTE NOTICES AGAINST THE DEVELOPER, ASSOCIATION OR COMMITTEE, IF ANY, NOT LATER THAN ONE HUNDRED FIFTY DAYS AFTER ANY APPLICABLE CAUSE OF ACTION ACCRUES, REGARDLESS OF WHETHER THE CAUSE OF ACTION ACCRUES PRIOR TO OR AFTER THE CONTROL TRANSFER DATE. ANY DISPUTES NOT SUBMITTED BY AN OWNER OR MEMBER WITHIN THIS PERIOD ARE HEREBY AGREED TO BE WAIVED.

**Section 10.09 Remedial Measures.** At any time during the existence of any Dispute which has not been finally resolved in writing, whether prior to or after the Control Transfer Date, Developer may take all actions which in Developer's sole opinion are necessary or appropriate to address, correct, cure or otherwise deal with the asserted Dispute. For such purposes Developer may utilize any easements established by the Declaration, or by any Plat or otherwise, without the consent of or compensation of any kind to the Association, or any Owner, or any other person or entity. Except in case of an Emergency, Developer shall give at least ten days written notice to any party which will be directly affected by activities undertaken by Developer pursuant to the foregoing setting forth the general nature of activities to be undertaken. NO ACTION OR INACTION BY DEVELOPER PURSUANT TO THE FOREGOING SHALL EVER BE DEEMED AN ADMISSION OF LIABILITY, ASSUMPTION OF RESPONSIBILITY OR ACKNOWLEDGMENT OF VALIDITY IN ANY RESPECT AS TO ANY DISPUTE.

**Section 10.10 TWO YEAR MAXIMUM LIMITATIONS PERIOD.** IN ADDITION TO THE PROVISIONS OF SECTION 10.08, ANY SUIT REGARDING ANY DISPUTE AGAINST THE DEVELOPER OR COMMITTEE MUST BE FILED IN A COURT OF COMPETENT JURISDICTION NOT LATER THAN TWO YEARS AFTER THE DAY THE CAUSE OF ACTION ACCRUES.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand as of this 16 day of Nov., 2015.

MAGNOLIA RESERVE, LLC

By:   
CHRIS WREN, Authorized Agent

STATE OF TEXAS §  
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the 16 day of November, 2015, by Chris Wren, Authorized Agent of MAGNOLIA RESERVE, LLC, in the capacity therein stated.



  
Notary Public, State of Texas

**AFTER RECORDING, RETURN DOCUMENTS TO:**  
MAGNOLIA RESERVE, LLC  
3440 Riley Fuzzell Road, Suite 150  
Spring, TX 77386