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**AMENDED AND RESTATED
STONE CREEK RANCH
DECLARATION
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS**

ER 038 - 01 - 2067

Table of Contents

ARTICLE I DEFINITIONS 2

Section 1.01 Defined Terms..... 2

ARTICLE II PROPERTY 7

Section 2.01 Property Subject to Declaration..... 7

Section 2.02 Annexation of Property to this Declaration by Declarant..... 7

Section 2.03 Annexation of Property to this Declaration by Persons Other Than Declarant..... 7

Section 2.04 Supplemental Declarations..... 7

Section 2.05 De-Annexation, Removal and Withdrawal of Property..... 8

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION 8

Section 3.01 Membership..... 8

Section 3.02 Transfer..... 8

Section 3.03 Voting Rights..... 8

Section 3.04 Turnover Procedure..... 9

Section 3.05 Quorum, Notice and Voting Requirements..... 9

Section 3.06 Additional Voting Provisions..... 10

ARTICLE IV ASSESSMENTS 11

Section 4.01 Covenants for Assessments..... 11

Section 4.02 Purpose of Assessments..... 11

Section 4.03 Regular Assessments..... 12

Section 4.04 Special Assessments..... 13

Section 4.05 Declarant Exemption..... 13

Section 4.06 Individual Assessments..... 13

Section 4.07 Vote Required for Increase in Rate of Regular Assessments..... 14

Section 4.08 Vote Required for Special Assessment..... 14

Section 4.09 Due Dates and Dates of Commencement of Regular Assessments and Due Date of Special Assessments and Individual Assessments..... 14

Section 4.10 No Offsets..... 14

Section 4.11 Reserves..... 15

Section 4.12 Nonpayment of Assessment..... 15

Section 4.13 Exempt Property..... 16

ER 038 - 01 - 2068

Section 4.14 Estoppel Information from Board of Directors with Respect to Assessments..... 17

Section 4.15 Working Capital Fund..... 17

Section 4.16 Working Capital Fee..... 17

Section 4.17 Declarant Subsidy..... 17

ARTICLE V GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION 18

Section 5.01 Powers and Duties..... 18

Section 5.02 Contracts Terminable..... 20

Section 5.03 Use of Recreational Facilities..... 20

Section 5.04 Recreational Director..... 21

ARTICLE VI PROPERTY RIGHTS IN THE COMMON AREA 21

Section 6.01 Member’s Easements of Enjoyment..... 21

Section 6.02 Title to the Common Area..... 21

Section 6.03 Extent of Members’ Easements..... 21

ARTICLE VII INSURANCE; REPAIR AND RESTORATION 22

Section 7.01 Insurance..... 22

Section 7.02 Insurance Proceeds..... 23

Section 7.03 Insufficient Proceeds..... 23

Section 7.04 Mortgagee Protection..... 23

Section 7.05 Destruction of Improvements on Individual Lots..... 24

ARTICLE VIII USE AND MAINTENANCE OF COMMON AREA 24

Section 8.01 Restricted Actions by Owners..... 24

Section 8.02 Damage to the Common Area..... 24

Section 8.03 Rules of the Board..... 24

Section 8.04 Suspension of Right to Use Common Area and/or Right to Vote..... 24

Section 8.05 Maintenance of Common Area..... 24

ARTICLE IX USE OF LOTS AND PROTECTIVE COVENANTS 25

Section 9.01 Single-Family Use; Residence..... 25

Section 9.02 Restrictions on Resubdivision..... 25

Section 9.03 Uses Specifically Prohibited..... 25

ARTICLE X MAINTENANCE OF LOTS 28

Section 10.01 Duty of Maintenance..... 28

Section 10.02 Enforcement 29

ARTICLE XI CONSTRUCTION OF IMPROVEMENTS 30

Section 11.01 General Standards. 30

Section 11.02 Garage Required. 30

Section 11.03 Driveways. 30

Section 11.04 Construction Specifically Regulated. 30

Section 11.05 Minimum Floor Area. 32

Section 11.06 Approved Materials for Exteriors. 32

Section 11.07 Side, Front and Rear Setback Restrictions. 32

Section 11.08 Waiver of Front Setback Requirements. 33

Section 11.09 Fences and Walls. 33

Section 11.10 Sidewalks, Walkways and Stone Creek Ranch Columns. 33

Section 11.12 Landscaping/Fencing Plans. 34

Section 11.13 Declarant Approval. 34

ARTICLE XII ARCHITECTURAL REVIEW COMMITTEE 35

Section 12.01 Architectural Review Committee. 35

Section 12.02 Basis of Approval. 35

Section 12.03 Definition of “Improvements”. 36

Section 12.04 Preliminary Plan Submissions. 36

Section 12.05 Plan Submissions. 36

Section 12.06 Approval Procedure. 37

Section 12.07 Design Guidelines. 38

Section 12.08 Variances. 38

Section 12.09 Nonconforming and Unapproved Improvements. 39

Section 12.10 No Liability. 39

Section 12.11 Notice of Noncompliance or Noncompletion. 39

Section 12.12 Appointment and Designation. 39

Section 12.13 Review Fee. 39

Section 12.14 Inspection. 39

Section 12.15 Governmental Authorities. 40

Section 12.16 No Liability for Design Defects. 40

ARTICLE XIII EXCULPATORY PROVISIONS 40

Section 13.01 DISCLOSURES.....	40
Section 13.02 DISCLAIMER.....	42
Section 13.03 WAIVER AND INDEMNITY.....	42
ARTICLE XIV MORTGAGEE PROTECTION	42
Section 14.01 Priority of Mortgage.....	42
Section 14.02 Financial Information.....	43
ARTICLE XV EASEMENTS	43
Section 15.01 Easements.....	43
Section 15.02 Ingress and Egress by the Association.....	43
Section 15.03 Easements for Encroachment.....	44
Section 15.04 Easement for Drainage.....	44
Section 15.05 Future Utility Easements and Agreements.....	44
ARTICLE XVI GENERAL PROVISIONS	44
Section 16.01 Duration.....	44
Section 16.02 Amendments.....	45
Section 16.03 Enforcement.....	45
Section 16.04 Termination of Responsibility of Declarant.....	45
Section 16.05 Owners' Compliance.....	45
Section 16.06 Severability.....	45
Section 16.07 Headings.....	45
Section 16.08 Notices to Members.....	45
Section 16.09 Compliance and Correction.....	46
Section 16.10 Use of Words "Stone Creek" or "Stone Creek Ranch".....	46
Section 16.11 Condemnation.....	46
Section 16.12 Association Maintenance of Common Area.....	46
Section 16.13 Prohibition Concerning Certain Signs.....	46
Section 16.14 Security Services.....	46
Section 16.15 Electric Aggregation Services.....	46
Section 16.16 Addresses.....	47
ARTICLE XVII MISCELLENEOUS	47
Section 17.01 Appointment of Architectural Control Committee, Board and Officers of the Association; Declarant as Member.....	47

Section 17.02 ARC Approval Not Required..... 47
Section 17.03 Common Area..... 47
Section 17.04 Declarant Activities..... 48

AMENDED AND RESTATED

STONE CREEK RANCH

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DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDED AND RESTATED STONE CREEK RANCH DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as the "Declaration") is made and executed to be effective as of the 31st day of October, 2012, by **BECKER ROAD LP**, a Texas limited partnership ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the fee simple title owner of the real property in Harris County, Texas, which is described on **Exhibit "A"** attached hereto and incorporated herein by reference; and

WHEREAS, on October 26, 2012, Declarant filed for record that certain Stone Creek Ranch Declaration of Covenants, Conditions and Restrictions under County Clerk's File No. 20120497762 in the Official Public Records of Real Property of Harris County, Texas, encumbering that certain real property located in Harris County, Texas, described on **Exhibit "A"** attached hereto ("Original Declaration"); and

WHEREAS, as of the filing this Declaration, Declarant is the owner of said real property located in Harris County, Texas, described on **Exhibit "A"** attached hereto; and

WHEREAS, Declarant desires to amend and restate the Original Declaration in its entirety by the filing of this Declaration in the Official Public Records of Real Property of Harris County, Texas; and

WHEREAS, Declarant desires to create a residential community known as Stone Creek Ranch on the land described on **Exhibit "A"** and such other land that, from time to time during the Term, are annexed to and made subject to this Declaration pursuant to the terms of any Supplemental Declaration made and recorded in accordance with the provisions of Article II of this Declaration (collectively, the "Land"); and

WHEREAS, Declarant desires to enter into this Declaration to provide for the efficient preservation of the values and amenities of the Property and for the maintenance of open spaces and other common facilities, and accordingly, Declarant desires to impose upon the Property the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration and to create a non-profit corporation to which, among other matters, the powers of maintaining and administering the Common Area in accordance with the terms of this Declaration will be delegated and assigned; and

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof. Notwithstanding anything to the contrary contained in this Declaration, the Original

Stone Creek Ranch Declaration

Declaration or any other document of record, this Declaration amends and restates the Original Declaration in its entirety.

ARTICLE I DEFINITIONS

Section 1.01 Defined Terms. The following words and phrases, when used in this Declaration, shall have, unless the content shall otherwise prohibit, the meanings set forth above. Terms with initial capital letters are defined terms; underlined print in quotations marks (e.g., "Land") indicates the definition of a term; a defined term has the same meaning throughout this Declaration, may appear in this Declaration before its definition, and applies to the plural of and all grammatical variations of the term also shown with initial capital letters:

- A. "Affiliate" shall mean, with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such specified Person.
- B. "Applicable Law" shall mean, collectively, all laws, statutes, codes, ordinances, rules, regulations and orders of Governmental Authorities from time to time in effect.
- C. "Approved Materials" shall mean and refer to the "Approved Materials", as such term is defined in Section 11.06 hereof.
- D. "ARC Standards" shall mean the standards adopted by the ARC regarding architectural and related matters including without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which may be required for use within the Property.
- E. "Architectural Review Committee" shall mean and refer to that committee composed of not more than three (3) members appointed in the manner set forth in this Declaration, which committee is appointed to provide for architectural control and design within the Property and to have and exercise such other powers and/or duties as are more specifically set forth in this Declaration.
- F. "Assessments" shall have the meaning ascribed to same in Section 4.01 of this Declaration.
- G. "Association" shall mean and refer to the Stone Creek Ranch Community Association, Inc. The Association shall be the entity responsible for (i) collecting and disbursing the Assessments and charges hereinafter created, (ii) enforcing the covenants and restrictions hereinafter set forth, (iii) establishing and directing the enforcement of the architectural controls by and through the Architectural Review Committee, and (iv) maintaining and administering the community properties and facilities as set forth herein.
- H. "Board" shall mean and refer to the Board of Directors of the Association.
- I. "Builder" shall mean and refer to any Person who constructs or is constructing one or more Residences on developed Lots or any other Person regularly engaged in the construction business designated by Declarant as a Builder. Notwithstanding anything to the contrary contained herein, each Lot owned by a Builder shall be exempt from liability for Assessments until the date Lot Turnover of such Lot occurs.

J. "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be duly amended from time to time during the Term.

K. "Certificate of Formation" shall mean and refer to the Certificate of Formation of the Association, as the same may be duly amended from time to time during the Term.

L. "Common Area" shall mean and refer (i) to such real property and the improvements thereon, owned, controlled, and/or maintained by the Association for the common use and enjoyment of the Owners, and not otherwise comprising Lots, including, without limitation, the clubhouse and related facilities and amenities, easements, paths, ponds, and parks, if any, and (ii) to all easements and areas granted to the Association for the common use, enjoyment and benefit of the Members, which Common Area is specifically reserved for such purpose and described as "Common Area" in any Supplemental Declaration. Any real property or interest in real property which Declarant shall convey to the Association and designated "Common Area" shall be accepted in writing by the Association and shall be conveyed free and clear of all liens and encumbrances, except the lien for current ad valorem taxes (which taxes shall be assumed by the Association), and all matters previously filed of record in the Records concerning the conveyed real property, including, but not limited to, the covenants, conditions, restrictions, easements, liens and charges of this Declaration. As of the Effective Date there is no "Common Area"; however, certain real property or easements may be conveyed and/or designated as such at a later date by Declarant or the Association.

M. "Construction Regulations" shall mean and refer to the Stone Creek Ranch Construction Regulations promulgated or adopted by the Architectural Review Committee, as same may be revised and/or amended by the Architectural Review Committee from time to time.

N. "Control" (including the terms "Controlled by" and "under common Control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including, without limitation, the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

O. "County" shall mean and refer to Harris County, Texas.

P. "County Clerk" shall mean and refer the Clerk of Harris County, Texas.

Q. "Declarant" shall mean and refer to Becker Road, LP as provided above, and also includes any parties succeeding to such position in accordance with the terms hereof.

R. "Declarant Membership Waiver" shall mean and refer to a written instrument, if any, signed and acknowledged by Declarant waiving in writing in Declarant's sole and exclusive discretion its right to Class B Membership under this Declaration.

S. "Declarant Subsidy" shall have the meaning ascribed to same in Section 4.17 of this Declaration.

T. "Declaration" shall mean and refer to this Amended and Restated Stone Creek Ranch Declaration of Covenants, Conditions and Restrictions, and any amendments, annexations and supplements thereof made from time to time in accordance with the terms of this Declaration.

U. “Design Guidelines” shall mean and refer to the Design Guidelines that are described in Section 12.07 herein, as the same may be promulgated, revised and/or amended pursuant to said Section 12.07 from time to time during the Term.

V. “Development Period” shall mean the period of time beginning on the date of recordation of this Declaration in the Records and ending on the earlier to occur of the following:

(1) The date which is ten (10) years after the date of recordation of this Declaration in the Records;

(2) The date, if any, that Declarant files a Declarant Membership Waiver in the Records; and

(3) The date of conveyance by Declarant of the last Lot owned by Declarant.

W. “Director” shall mean a director duly appointed to the Board.

X. “Drilling Site” shall mean a 3-acre tract of land, more or less, located within the Property, or in the vicinity of the Property, which Declarant may in Declarant’s sole and exclusive discretion designate from time to time as a drilling site or production tract for the development and/or production of oil, gas and other minerals; provided, however, the Drilling Site shall not include any Lots.

Y. “Effective Date” shall mean and refer to the date upon which this Declaration is filed in the Records.

Z. “Enforcement Policy” shall mean the enforcement policy promulgated or adopted by the Board establishing the methods and procedures for the enforcement of the Governing Documents against any violating Owner or Owners, as such enforcement policy may be revoked, modified or amended by the Board from time to time.

AA. “Exempt Lot” shall mean any Lot which is exempt from the Regular Assessments, charges and liens created in this Declaration pursuant to Section 4.13(A).

BB. “Exterior Living Elements” shall mean, collectively, decks and deck railing; porches, patios, porte-cocheres and enclosed or defined entry areas; pools, spas, hot tubs and related pumps and other equipment; storage areas including wood storage areas; storage sheds and garden buildings; freestanding structures for shade, gardening and ornamentation, including gazebos, arbors and trellises; outdoor living accessories (e.g., built-in BBQs, outdoor kitchens, fireplaces, heaters, trash receptacles, yard ornaments and exterior decorations (including but not limited to, birdhouses, fountains, sculptures, statues, lawn ornamentation, flags, banners and similar items), and permanently-installed tables, benches and other furniture; outdoor equipment (e.g., antennae and satellite dishes); recreational areas, surfaces and installations (e.g. basketball goals and play equipment); screens, trash enclosures, walls, decorative walls, fences, gates and planters; and similar exterior improvements.

CC. “FHA” shall mean and refer to the Federal Housing Administration, or any successor agency or authority thereto.

DD. “Firearm” shall mean any gun, pistol, rifle, shotgun, air gun, pellet gun or BB gun, or any

other weapon which is designed to, or may, expel a shot or other projectile by the action of an explosive.

EE. “Front Public Street” shall mean the Public Street contiguous to the front property line of a Lot as determined by the Architectural Review Committee.

FF. “Governing Documents” shall refer to this Declaration, the Bylaws, the Certificate of Formation, the Design Guidelines, the Construction Regulations, and the Rules and Regulations as promulgated by the Board, Architectural Review Committee, or other authorized Association body, as same may be supplemented or amended from time to time.

GG. “Governmental Authority” means any supranational, national, state, municipal or local government, political subdivision or other governmental department, court, commission, board, bureau, agency, instrumentality, or other authority thereof, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority, whether domestic or foreign, including without limitation any and all municipal utility districts having jurisdiction over the Property or any portion thereof.

HH. “Lienholder” shall mean the holder of a mortgage lien, either on any Residence and/or any Lot.

II. “Lot” shall mean and refer to each lot as depicted on any Plat together with all improvements thereon expressly excluding (1) the Common Area, and (2) any real property deeded to a Governmental Authority.

JJ. “Lot Turnover” shall pertain to a Lot owned by a Builder which is sufficiently complete for the commencement of construction of a Residence thereon, and shall mean and refer to Declarant’s approval of the commencement of construction on such Lot.

KK. “Manager” shall mean any Person engaged as an independent contractor for the management of Association and the performance all or any part of the duties and responsibilities of the Association.

LL. “Member” shall mean every Person who holds membership in the Association. Declarant and each Owner shall be a Member in the Association, and all references herein to “membership” shall refer to a Person’s Member status.

MM. “Owner” shall mean the record owner, other than Declarant, whether one (1) or more Persons, of the fee simple title to any Lot on which there is or will be built a Residence, but not including any Person having an interest merely as security for the performance of an obligation; however, the term “Owner” shall include any Lienholder who acquires fee simple title to any Lot which is part of the Property, through deed in lieu of foreclosure or through judicial or nonjudicial foreclosure or other foreclosure proceeding.

NN. “Payment Plan Policy” shall mean the payment plan policy promulgated or adopted by the Board establishing the rules, methods and procedures governing any payment plan available to an Owner to allow such Owner to make monthly payments for delinquent amounts owed to the Association, as such Payment Plan Policy may be revoked, modified or amended by the Board from time to time.

OO. “Person” shall mean any individual, corporation, partnership, limited partnership, limited

liability company, limited company, joint venture, trust, unincorporated or governmental organization or any agency or political subdivision thereof.

PP. “Plat” shall mean and refer to the recorded subdivision map or plat of all or part of the Property reflecting the location and size of any Lots and the location of streets, easements, and other matters relating thereto, as the same may be replatted or amended from time to time.

QQ. “Property” shall mean, collectively, the Land and any and all improvements thereon.

RR. “Public Street” shall mean a public street right-of-way.

SS. “Records” shall mean the Official Public Records of Real Property of Harris County, Texas.

TT. “Recreational Vehicle” shall mean machinery, marine craft, boat, motorcycle, any type of trailer, or any hovercraft, aircraft, recreational vehicle, pick-up camper, motor home, camper body or similar vehicle or equipment.

UU. “Reimbursement Agreement” shall mean and refer to the agreement, if any, by and between Declarant and the Association, made to give effect to the terms of Section 4.05 below should Declarant develop additional improvements and amenities other than those initially developed.

VV. “Residence” shall mean and refer to any “Residence,” as such term is defined in Section 9.01(B) herein.

WW. “Rules and Regulations” shall mean, collectively, rules and regulations promulgated from time to time by the Board, the Architectural Review Committee, or other authorized Association body as contemplated under this Declaration, as same may be supplemented or amended from time to time.

XX. “Stone Creek Column” shall mean the stone-clad signature column for Stone Creek Ranch complying with the Stone Creek Column community-wide standard specified from time to time in the Design Guidelines.

YY. “Substantial Completion” of an improvement shall mean all of the following have occurred with respect to such improvement: (i) the construction of such improvement has been substantially completed in accordance with the plans therefor and with Applicable Law except for minor punch list items; and (ii) all applicable Governmental Authorities have completed final inspections of such improvement and have given a final approvals of such improvement as may be customary in the locale of the Property.

ZZ. “Supplemental Declaration” shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions that (i) is made and entered into for the purpose of annexing real property into this Declaration and extending the plan of this Declaration to such real property, and/or (ii) reserves specific portions of the Property as “Common Area”, which instrument is made and recorded pursuant to the provisions of Article II of this Declaration.

AAA. “Term” shall mean and refer to the term of this Declaration, as described in Section 16.01 herein.

**ARTICLE II
PROPERTY**

Section 2.01 Property Subject to Declaration. The Property and all rights, titles and interests therein shall be owned, held, transferred, leased, sold conveyed, and/or occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration which shall run with the land and shall be binding upon all parties having any right, title, or interest in or to the Property, or any part thereof, and their heirs, successors, representatives and assigns. The covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration are covenants running with the Property at law as well as in equity.

Section 2.02 Annexation of Property to this Declaration by Declarant. Declarant hereby reserves the right to, in Declarant's sole discretion, annex real property to this Declaration and make such real property subject to this Declaration, whether or not such real property is adjacent to and/or contiguous with the then existing Property. Property to be annexed need not be the subject of a final, recorded subdivision plat in the Records at the time such annexation is effective. Such annexation shall be accomplished without the approval, assent or vote of the Owners, the Association, its Members or the Board; provided, however, that Declarant shall execute a Supplemental Declaration covering such portions of the real property that it intends to annex and make subject hereto, and shall file such Supplemental Declaration for record in the Records; provided, further, however, that no Supplemental Declaration shall be so executed and recorded by Declarant pursuant to this Section 2.02 unless Declarant owns all or any portion of the then existing Property subject to this Declaration. The execution and recordation by Declarant of any such Supplemental Declaration shall constitute and effectuate the annexation of the real property that is covered thereby to this Declaration, thus making such real property subject to this Declaration, and to the functions, powers and jurisdiction of the Association. Thereafter, said annexed real property shall be a part of the Property, and all of the Owners of said annexed real property shall automatically become Members of the Association. Although Declarant shall have the right to annex additional property to this Declaration as provided hereinabove, Declarant shall not be obligated to annex any such Property. No additional property shall be annexed and made subject to this Declaration, or to the functions, powers and jurisdiction of the Association, unless and until a Supplemental Declaration covering the applicable portion of the additional property shall have been executed by Declarant and filed of record in the Records in accordance with the terms and provisions of this Section 2.02.

Section 2.03 Annexation of Property to this Declaration by Persons Other Than Declarant. Upon approval by the Board and Declarant (so long as Declarant is the Class B Member), any Person (other than Declarant) which owns and desires to annex any tract of real property (whether or not such tract and real property is adjacent to and/or contiguous with the then-current Property) into the plan of this Declaration, as well as to the functions, powers, and jurisdiction of the Association, shall execute and file for record in the Records, a Supplemental Declaration that so provides for such annexation.

Section 2.04 Supplemental Declarations. The annexations authorized by this Declaration shall be accomplished by executing and filing of record in the Records a Supplemental Declaration with respect to the real property which is to be annexed to the plan and scheme of this Declaration. Any such Supplemental Declaration may contain such additions, deletions and/or modifications of the covenants, conditions, restrictions, easements, liens and charges contained in this Declaration as may be necessary or desirable to reflect the different character, if any, of such annexed real property and as are not substantially inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration revoke, modify or add to the covenants, conditions, restrictions, easements, liens or charges established by this Declaration, as the same relate to and affect that portion of the Property previously subject to this Declaration. Further, the rate of Assessments for and method of

determining the assessed valuation of the annexed real property shall not result in Assessments substantially less than that affecting the portion of the Property previously made subject hereto. Any annexation made pursuant to this Declaration, when made, shall automatically extend to the real property so added the functions, powers and jurisdiction of the Association.

Section 2.05 De-Annexation, Removal and Withdrawal of Property. Subject to any limitations imposed by Applicable Law, Declarant hereby reserves the right to amend this Declaration at any time and from time to time prior to the twentieth (20th) anniversary of the Effective Date, without prior notice and without the consent of any Owner, the Association, its Members or the Directors, or any other party, for the purpose of de-annexing, removing and withdrawing any portion of the Property then owned by Declarant and/or its Affiliates, and/or the Association, from the purview and control of this Declaration, the Association, and the covenants, conditions, restrictions, terms, charges and liens herein. The foregoing right, if exercised, may be exercised by Declarant in its sole discretion either because such subject portion of the Property was originally annexed hereto in error, or because of any change whatsoever in Declarant's, or its Affiliate's or the Association's intended use of such subject portion of the Property.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 3.01 Membership. Each and every Owner shall automatically be a Member of the Association without the necessity of any further action on such Owner's part, subject to the terms and provisions of this Declaration, the Certificate of Formation, the Bylaws and the Rules and Regulations. The covenants, conditions, restrictions, easements, liens or charges set forth in this Declaration are binding upon all Owners. The membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of the Property. The ownership of a Lot shall be the sole qualification for being a Member; provided, however, that a Member's privileges in the Common Area may be regulated or suspended as provided in this Declaration, the Bylaws and/or the Rules and Regulations. No Person shall be a Member by reason of ownership of any park, public land, road, easement, right-of-way or mineral interest. In addition, any Person that holds an interest in and to all or any part of the Property merely as security for the performance of an obligation shall not be a Member.

Section 3.02 Transfer. Membership of an Owner in the Association may not be severed from or in any way transferred, pledged, mortgaged or alienated, except upon the sale or assignment of said Owner's interest in a Lot, and then only to the purchaser or assignee in its capacity as the new Owner thereof. Such membership shall not be severed by the encumbrance by an Owner of any Lot. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void and of no further force or effect, and will not be reflected upon the books and records of the Association. Any transfer of the fee-simple title to any Lot shall automatically operate to transfer the membership to the new Owner thereof. In the event that an Owner should fail or refuse to transfer the membership in the Association registered in such Owner's name to the transferee of such Owner's interest in any Lot, the Association shall have the right to record the transfer upon the books and records of the Association.

Section 3.03 Voting Rights. The Association shall have two (2) classes of voting membership: Class A and Class B. All votes shall be cast in the manner provided in the Bylaws. When more than one Person holds an interest in any Lot, the vote for such Lot shall be exercised as such Persons determine, but in no event shall more than the number of votes hereinafter designated be cast with respect to any such Lot, nor shall split votes be permitted with respect to such Lot. The two (2) classes of voting memberships and voting rights related thereto are as follows:

ER 038 - 01 - 2080

A. Class A. Class A Members shall be all Owners of Lots, except the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot owned; there shall be only one (1) vote per Lot.

B. Class B. The sole Class B Member shall be Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot which is owned by Declarant. The Class B Membership shall cease and terminate on the conveyance by Declarant of the last Lot owned by Declarant, or such earlier date, if any, that Declarant files a Declarant Membership Waiver in the Records.

Upon termination of the Class B membership, Declarant shall be a Class A Member entitled to one Class A vote for each Lot, if any, which Declarant owns; provided, however, notwithstanding anything contained in this Declaration or any of the other Governing Documents to the contrary, Declarant shall continue to appoint the members of the Architectural Review Committee and to enforce the Design Guidelines and/or to grant variances from the requirements of the Design Guidelines for so long as Declarant owns any part of the Property. Declarant hereby reserves and retains full and exclusive authority to assess and receive payment of the Architectural Review Committee fees as authorized by Section 12.13.

Section 3.04 Turnover Procedure. Upon termination of the Class B membership, except for Declarant's right to appoint the members of the Architectural Review Committee and to enforce the Design Guidelines and/or to grant variances from the requirements of the Design Guidelines, Declarant shall cause control of the Association to be turned over to the general membership of the Association ("Turnover"). Within sixty (60) days after the termination of the Class B membership, the President of the Association shall call a special meeting of the Board. At such meeting, the Board shall set a date for a subsequent meeting of the Board at which Turnover will occur ("Turnover Meeting"), which meeting shall be at least sixty (60) but no more than one hundred twenty (120) days after the special meeting. The Board shall provide at least thirty (30) days' notice to the Members of the date and location of the Turnover Meeting. Prior to the Turnover Meeting, a representative of Declarant, a representative of the Manager, if any, and one or more of then-existing resident members of the Board, if any, shall meet as necessary to cause the turnover of all records associated with the existence, maintenance and operation of the Association. At the Turnover Meeting, the then-existing Directors appointed by Declarant shall submit their written resignations and new Directors shall be elected, as necessary, to fill the Board in accordance with the Bylaws; provided, however, that pursuant to the Bylaws, except as may be limited or prohibited by Applicable Law, Declarant shall have the right to appoint at least one (1) member of the Board as long as Declarant owns at least one Lot. On or before the Turnover Meeting, at Declarant's option, Declarant shall convey to the Association title to all remaining Common Area pursuant to Section 6.02 of this Declaration. From and after the date of Turnover (i.e., the date Declarant causes control of the Association to be turned over to the general membership of the Association) ("Turnover Date"), Declarant shall have no further responsibility related to or in connection with the management of the Association or the operations of the Board or any other matters associated with the Property except that, so long as Declarant owns all or any part of the Property, Declarant shall have the right to continue to appoint the members of the Architectural Review Committee and enforce the Design Guidelines. In that regard, at and as of the Turnover Meeting, the Association shall execute and deliver to Declarant a general release, in form acceptable to Declarant, releasing Declarant from all claims, causes of action, losses, costs, expenses, damages and liabilities associated with the development, construction, operation, and maintenance of the Property.

Section 3.05 Quorum, Notice and Voting Requirements. Quorum, Notice and Voting Requirements are provided in the Bylaws to which reference is here made. Except as specifically set forth in this Declaration, notice, voting and quorum requirements for all action to be taken by the Association shall be consistent with the Certificate of Formation and the Bylaws.

Section 3.06 Additional Voting Provisions.

A. During the Development Period, Declarant shall have the complete, exclusive and unfettered right and privilege from time to time to amend, change, revise, modify or delete any of the covenants, conditions, restrictions, easements, liens or charges contained in this Declaration, and each and every Director, Owner and Member specifically and affirmatively authorizes and empowers Declarant, from time to time, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions to any of the covenants, conditions, restrictions, easements, liens or charges contained in this Declaration as Declarant (in its sole and absolute discretion) shall deem reasonable and appropriate.

B. After the Development Period, so long as Declarant owns any part of the Property, Declarant shall have the complete, exclusive and unfettered right and privilege from time to time to amend, change, revise, modify or delete any of the covenants, conditions, restrictions, easements, liens or charges contained in this Declaration if such amendment, change, revision, modification or deletion (1) is necessary to bring any provision of this Declaration into compliance with any Applicable Law, or (2) has no material adverse effect upon any right of any Owner (except that Declarant may waive any material adverse effect upon any right of Declarant). Each and every Director, Owner and Member specifically and affirmatively authorizes and empowers Declarant, from time to time, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions to any of the covenants, conditions, restrictions, easements, liens or charges contained in this Declaration.

C. From and after the Turnover Date but subject to the provisions of Section 3.06(D) below, unless prohibited by Applicable Law, this Declaration may be amended or changed upon the express written consent of the Board, without the approval of any Owner or Member, other than amendments of a "material nature" (as defined below).

D. From and after the Turnover Date, amendments to the Declaration made pursuant to Section 3.06(C) above which are of a "material nature" must be approved by at least a majority of the votes of the Members present and qualified to vote at a duly called meeting at which a quorum is present or, in the alternative, by written consent of such Members if such written consent is provided in the Bylaws. A substantive change to any provision dealing with or governing any of the following items will be considered an amendment of a "material nature":

- (1) Voting rights for any Member or Director;
- (2) Assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the Common Area;
- (4) Insurance or fidelity bonds;
- (5) Rights to use of the Common Area;
- (6) Boundaries of any Lot covered by the Declaration;
- (7) The interests in the Common Area;
- (8) Convertibility of Lots into Common Area or of Common Area into Lots;

- (9) Imposition of any right of first refusal or similar restriction on the right of an Owner of a Lot to sell, transfer, or otherwise convey such Lot, but in no event shall any such right or restriction be imposed by the Association; and
- (10) Responsibility for maintenance and repair of the Common Area.

D. Notwithstanding anything contained herein to the contrary, as long as Declarant owns any Property, all amendments to this Declaration must be approved by Declarant.

ARTICLE IV ASSESSMENTS

Section 4.01 Covenants for Assessments.

A. Each Owner of any Lot that is not an Exempt Lot by its acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document (and Builder to the extent not exempt as provided in Section 4.13 below) shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of such Lot) to pay to the Association (or to any entity or collection agency designated by the Association (1) "Regular Assessments" or charges (as specified in Section 4.03 herein), such Regular Assessments to be fixed, established and collected from time to time as herein provided, (2) "Special Assessments" for capital improvements and other purposes (as specified in Section 4.04 herein), such Special Assessments to be fixed, established and collected from time to time as herein provided, and (3) "Individual Assessments" levied against an individual Owner to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of such individual Owner and not caused by ordinary wear and tear (as specified in Section 4.06 herein), such Individual Assessments to be fixed, established and collected from time to time as herein provided.

B. Each and all of the assessments ("Assessments") described hereinabove in this Section 4.01, together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, (1) shall be a charge on the land and shall be a continuing lien upon each Lot against which each such Assessment is made, and (2) shall additionally be the personal obligation of the Owner of such Lot against which such Assessment is made at the time when the Assessment fell due.

C. Unless otherwise determined by the Board, the amounts of Regular Assessments and Special Assessments levied by the Association with respect to the Lots located in the Property shall be determined by applying a uniform rate of assessment to all Lots located in the Property. No Owner may exempt himself from liability for any Assessment or waive or otherwise escape liability for the Assessments for nonuse of the Common Area, or abandonment of its Lot. The personal obligation to pay any such Assessment, together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall pass to the successors-in-title of such Owner whether or not expressly assumed in writing by such successors; provided, however, that such personal obligation to pay Assessments and other costs and charges shall not pass to Lienholders who succeed to the title of such Owner.

Section 4.02 Purpose of Assessments. The Assessments levied by the Association shall be used, in part, for the purpose of, (1) promoting the recreation, comfort, health, safety and welfare of the

Members, the users and/or the residents of the Property, (2) managing the Common Area, (3) enhancing the quality of life in the Property and the value of the Property, (4) improving, repairing, replacing, enhancing and maintaining the properties, services and facilities devoted to the purpose and related to the use and enjoyment of the Property, (5) paying taxes on the Common Area, and insurance in connection with the Common Area, (6) paying the cost of labor and any equipment (including the expense of leasing any equipment), (7) creating, funding and fulfilling the purpose of any reserves provided herein or otherwise deemed appropriate by the Board, (8) carrying out the powers and duties of the Board as set forth herein, (9) carrying out the powers and duties of the Architectural Review Committee and the Board, and (10) carrying out the purposes of the Association as stated in the Declaration, the Certificate of Formation, and the Bylaws.

Section 4.03 Regular Assessments.

A. Each Member shall pay to the Association, a Regular Assessment as set forth in this Section 4.03. The amount and commencement date of the first Regular Assessments shall be established by the Board, and subject to the provisions set forth in Section 4.07 hereof, may be adjusted annually by the Board at least thirty (30) days in advance of the effective date of any such change. The maximum Regular Assessment for the calendar year 2012 shall be Five Hundred Fifty Dollars (\$550.00) per Lot. The rate of Regular Assessments may be increased in the manner set forth in Section 4.07 herein. Furthermore, the Board may, after consideration of current maintenance, operational and other costs and the future needs of the Association, fix the actual Regular Assessments for any year at a lesser amount. Notwithstanding anything contained herein to the contrary, any "surplus" from any fiscal year may only be used (1) for purposes set forth in the current budget covering the period during which the surplus was created, (2) for reimbursing Declarant for any Declarant Subsidies; (3) for setting up reserves for capital improvements and/or replacements and/or for normal operating expenses for the next budget period(s), and/or (4) for reducing future Regular Assessments to be levied against the Members of the Association for the remainder of the current or next fiscal year. Each Owner, including without limitation all Builders required to pay Regular Assessments under this Declaration, shall pay the annual Regular Assessment in advance on or before January 1 of each calendar year. Not later than thirty (30) days prior to the beginning of the fiscal year of the Association, the Board shall estimate the total expenses to be incurred by the Association for the forthcoming fiscal year. The Board shall then determine, in a manner consistent with the terms and provisions of the Declaration, the amount of the Regular Assessment to be paid by each Member for such purpose. Written notice of the Regular Assessment to be paid by each Member shall be sent to every Member and each Member shall thereafter pay to the Association its Regular Assessment in installments as established pursuant hereto.

B. Notwithstanding the terms and provisions of Section 4.03(A) above, during the ownership of a Lot by a Builder, in lieu of payment of the annual Regular Assessment for such Lot pursuant to Section 4.03(A) above, such Builder shall pay one-half of the Regular Assessment ("Modified Regular Assessment") in advance on or before January 1 of each calendar year. The obligation to pay the Modified Regular Assessment for a Lot shall commence upon the date a deed conveying the Lot to a Builder is filed in the Records, and shall end upon the date a deed conveying the Lot from such Builder to a third party is filed in the Records. Modified Regular Assessments shall be pro-rated for any period of Lot ownership which is less than a full calendar quarter.

C. Upon each transfer and conveyance of any Lot by a Builder to a Class A Member, the Class A Member shall be required to pay to the Association, as a condition to membership in the Association, a one-time assessment (the "Initial Membership Fee") equal to fifty percent (50%) of

the annual Regular Assessment then in effect for such Lot. Such Initial Membership Fee shall be applied by the Association to the repayment of any Declarant Subsidies and/or to other expenses of the Association. Furthermore, such Initial Membership Fee shall be deemed to be an Assessment for all purposes herein, and shall be secured by a lien on any Lot against which it has been assessed.

Section 4.04 Special Assessments.

A. In addition to the Regular Assessments authorized by Section 4.03 herein, the Association may levy in any calendar year a Special Assessment (herein so-called) for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or for maintenance of such Common Area and improvements therein, or for carrying out other purposes of the Association; provided, however, that any such Special Assessment levied by the Association shall have the affirmative majority approval of the Members as provided in Section 4.08 below. Notwithstanding anything herein contained to the contrary, the Association shall levy such a Special Assessment upon the request of Declarant subject to the affirmative majority approval of the Members as provided in Section 4.08 below.

B. All amounts collected by the Association may only be used for the purposes assessed and shall be deposited by the Board in a separate bank account to be held in trust by the Association for such purpose. Said funds shall not be commingled with any other funds of the Association unless and until the assessed purposes have been satisfied in full at which time such excess amounts shall be transferred to the operating account of the Association.

Section 4.05 Declarant Exemption. Declarant shall not be required to pay any Regular Assessment or Special Assessment with respect to portions of the Property owned by Declarant or designated as Common Area.

Section 4.06 Individual Assessments. The Board shall have the power to levy individual assessments against a particular Lot as follows:

A. To cover costs incurred in bringing a Lot into compliance with the provisions of the Declaration and other Governing Documents;

B. Reimbursement to the Association for repairs to any Common Area or any improvements thereto occasioned by the willful or negligent acts of such Owner(s) and not the result of ordinary wear and tear;

C. To cover the costs of providing benefits, items or services not provided to all Lots, such as additional landscape maintenance, pest control service, security and transportation services; such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred;

D. For payment of fines, penalties or other charges imposed against an individual or separate Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or the Rules and Regulations;

E. For attorneys' fees incurred in the enforcement of the Declaration and the Rules and Regulations; and

F. For any other cost or expense authorized by the Declaration or other Governing Documents.

All amounts collected by the Association as Individual Assessments shall belong to and be used for the purposes for which assessed until the assessed purposes have been satisfied in full at which time such excess amounts shall be transferred to the operating account of the Association. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association, Board, or any their officers or members, and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Notwithstanding anything herein contained to the contrary, upon the request of Declarant, the Board shall levy an Individual Assessment against one or more Lots designated by Declarant consistent with the terms and provisions of this Section 4.06.

Section 4.07 Vote Required for Increase in Rate of Regular Assessments. The amount of the Regular Assessments may be increased annually by a majority vote of the Board of the Association, provided that any such annual increase does not exceed the amount (the "Maximum Increase Amount"), which equal to twenty percent (20%) of the previous year's Regular Assessment amount. If any annual increase would exceed the Maximum Increase Amount, then the excess portion of such annual increase must be approved by at least a majority of the votes of the Members present and qualified to vote at a duly called meeting at which a quorum is present or, in the alternative, by written consent of such Members if such written consent is provided in the Bylaws.

Section 4.08 Vote Required for Special Assessment. Any Special Assessments levied by the Association in accordance with Section 4.04 herein must be approved by an affirmative majority of the votes of the Members in attendance and voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present.

Section 4.09 Due Dates and Dates of Commencement of Regular Assessments and Due Date of Special Assessments and Individual Assessments.

A. The Regular Assessments provided for in this Declaration shall commence as to any given Lot on the date when title thereto has been transferred by Declarant to any Person other than an Affiliate of Declarant, and such Regular Assessments or any installment thereof (if payable in installments) shall be considered delinquent if not paid within thirty (30) days thereafter. The first Regular Assessment hereunder shall be made for the balance of the Assessment Period, as defined in this Section 4.09 in which such Regular Assessment is levied. The amount of the Regular Assessment which may be levied for the number of days remaining in the Assessment Period of the first Regular Assessment hereunder shall be an amount which bears the same relationship to the Regular Assessment provided for in Section 4.03 as the remaining number of days in that Assessment Period bear to one hundred eighty (180). The Assessment Period shall mean the quarterly Regular Assessment to become due and payable on January 1, April 1, July 1, and October 1 of each year.

B. The due date and the date of delinquency of any Special Assessment or Individual Assessment under Sections 4.04 or 4.06 herein, respectively, shall be fixed by the Board.

Section 4.10 No Offsets. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason.

Section 4.11 Reserves. The Regular Assessments shall, as determined by the Board, include reasonable amounts as determined by the Board to be collected as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Area. All amounts collected as reserves, whether pursuant to this Section 4.11 or otherwise, shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association unless and until the purpose of the reserves has been satisfied in full as determined by the Board, at which time such excess amounts shall be transferred to the operating account of the Association. Assessments collected as reserves shall not be considered to be advance payments of Regular Assessments.

Section 4.12 Nonpayment of Assessment.

A. Any Assessment provided for in this Declaration which is not paid in full when due shall be considered delinquent and subject to collection procedures thirty (30) days after the date due as specified in the notice of such Assessment ("Delinquency Date"). To the extent, if any, permitted by Applicable Law, the Association shall have the right to reject partial payment of an Assessment and demand full payment thereof. If any Assessment or part thereof is not paid within ten (10) days after the due date, the unpaid amount of such Assessment shall bear interest until paid in full at a rate equal to the lesser of eighteen percent (18%) per annum or the maximum lawful rate applicable thereto.

B. The unpaid amount of any Assessment not paid by the Delinquency Date, together with the interest thereon as provided in Section 4.12(A) herein and the cost of collection thereof, including reasonable attorneys' fees as herein provided, shall thereupon become a continuing lien and charge on the Lot of the non-paying Owner covered by such Assessment, which lien and charge shall bind such Lot in the hands of such Owner and its heirs, executors, administrators, devisees, personal representatives, successors and assigns. The aforesaid lien shall be superior to all other liens and charges against the said real property, except only for tax liens and the lien of any bona fide mortgage or deed of trust now or hereafter placed upon said real property subject to an Assessment and which mortgage or deed of trust is recorded prior to recordation of written notice of the past due Assessment. Any sale of such Lot shall not relieve the Owner of such real property from liability for any Assessment thereafter becoming due or from the lien of any such subsequent Assessment. The Association shall have the power to subordinate the lien securing the payment of any Assessment rendered by the Association to any other lien. Such power shall be entirely discretionary with the Association. As hereinbefore stated, the personal obligation of the Owner, at the time of such Assessment, to pay such Assessment shall remain the personal obligation of such Owner and shall additionally pass to such Owner's successors in title whether or not expressly assumed by them in writing, as set forth in Section 4.01 hereinabove. The lien for the unpaid Assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect.

C. To evidence the aforesaid lien, the Association shall prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, and a description of the Lot covered by such lien. Such notice shall be executed by one of the officers of the Association and shall be recorded in the Records.

D. The lien securing the payment of the Assessments shall attach to the Lot belonging to such non-paying Owner with the priority set forth in this Section 4.12 or such other priority as may be provided by Applicable Law. Each Owner, by its acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be

deemed to have granted to the Association the power of sale and right to foreclose said lien securing the payment of the Assessments by expedited foreclosure or, at the Association's option, any other judicial or non-judicial foreclosure permitted by Applicable Law. Subsequent to the recording of a notice of the lien as provided in this Section 4.12, the Association may institute an action at law against the Owner or Owners personally obligated to pay the Assessment and/or pursuant to the power of sale which is hereby conferred, proceed with expedited foreclosure of the aforesaid lien or, at the Association's option, any other judicial or non-judicial foreclosure of the aforesaid lien as may be permitted by Applicable Law. In any foreclosure proceeding, the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. In the event an action at law is instituted against the Owner or the Owners personally obligated to pay the Assessment, there shall be added to the amount of any such Assessment the interest provided in this Section 4.12, the costs of preparing and filing the complaint in such action, and the reasonable attorneys' fees incurred in connection with such action, and, in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided in this Section 4.12 and reasonable attorneys' fees to be fixed by the court, together with the costs of the action. Notwithstanding anything herein contained to the contrary, each Owner, by its acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to have vested in the Association or its assigns the power of sale hereby conferred, and the right and power to bring all actions at law or equity, including, without limitation, the right to proceed with an expedited foreclosure or, at the Association's option, any other judicial or non-judicial foreclosure as may be permitted under Applicable Law, against such Owner or other Owners, for the collection of such delinquent Assessments. Upon the written request of any mortgagee holding a prior lien on any part of the Property, the Association shall report to said mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the Delinquency Date of such Assessment.

Section 4.13 Exempt Property.

A. The following real property subject to the Declaration shall be exempt from the Regular Assessments, charges and liens created in this Declaration:

- (1) any portion of the Property dedicated and accepted by any Governmental Authority, public utilities or otherwise devoted to public use, including, but not limited to, any and all property owned by any school district or any flood control district;
- (2) Common Area;
- (3) Lots owned by Declarant or any Affiliate of Declarant; and
- (4) any portion of the Property owned by any non-profit organization and restricted for use as a private school or church; provided, however, that the exemption of such organizations and the portions of the Property owned by same are subject to review and approval by the Board, such exemption being contingent upon approval by the Board.

B. Portions of the Property which are exempt from the Assessments, charges and liens created by this Declaration pursuant to Sections 4.13(A)(1), (3) and (4) hereinabove shall in any event be subject to provisions of this Declaration including, but not limited to, the Protective Covenants of Article IX, architectural review requirements of Article XI, and liability for Individual Assessments and Special Assessments as set forth herein, except as otherwise expressly provided in this Declaration.

Section 4.14 Estoppel Information from Board of Directors with Respect to Assessments.

A. The Board shall, upon demand at any time, furnish to any Owner liable for an Assessment, a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

B. A number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of the Declarations, compliance inspections, ownership record changes, and priority processing. Transfer-related fees are not refundable and shall not be regarded as a prepayment of or credit against Regular Assessments or Special Assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien, (ii) transfers to, from, or by the Association, and (iii) voluntary transfers by an Owner to one or more co-Owners, or to the Owner's spouse, child or parent. Transfer-related fees may be charged by the Association or by the Association's Manager, provided there is no duplication of fees. Transfer-related fees charged by or paid to a Manager must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association.

Section 4.15 Working Capital Fund. In the event that, after the final tract, lot, or parcel of the Property owned by Declarant has been sold for development, Declarant is holding Working Capital Fees that it has collected from the proceeds of sales of the Property or portions thereof, and Declarant has elected, in its sole and absolute discretion and with no obligation whatsoever, to contribute such monies to the Association, then such monies shall be used by the Association (A) first to reimburse Declarant Subsidies, (B) second to cover deficits, if any, from normal operations, and (C) third to make improvements to the Common Area, and for no other purposes.

Section 4.16 Working Capital Fee. For each transfer and conveyance of any Lot from a Builder to a Class A Member, a fee (the "Working Capital Fee") in the amount of One Hundred and No/100 Dollars (\$100.00) shall be due and payable to Declarant, or if Declarant no longer owns any portion of the Property, to the Association. Such Working Capital Fee paid to Declarant shall be applied by Declarant to such costs and expenses of Declarant related to the Property as Declarant shall determine in Declarant's sole discretion, and such Working Capital Fee paid to the Association shall be applied by the Association (A) first to reimbursement of Declarant Subsidies, (B) second to cover deficits, if any, from normal operations, and (C) third to make improvements to the Common Area, and for no other purposes.. Furthermore, such Working Capital Fee shall be deemed to be an Assessment for all purposes herein, and shall be secured by a lien on any Lot against which it has been assessed.

Section 4.17 Declarant Subsidy. Declarant may, but shall not be obligated to, pay from time to time a subsidy to the Association ("Declarant Subsidy") in order to reduce the total annual assessment which would otherwise be necessary to be levied against all Lots to cover the estimated expenses of the Association (including reserve contributions, if any). Declarant Subsidies, if any, shall be in an amount determined by Declarant in Declarant's sole and absolute discretion and shall be disclosed as a line item in the income portion of the Association's budget. Each Declarant Subsidy shall be treated as a loan from Declarant to the Association. Declarant and the Association shall agree at the time of the making of a Declarant Subsidy on the terms of such loan and manner of repayment.

Section 4.18 Payment Plans. Upon the written request of an Owner, such Owner shall be entitled to a written payment plan (“Payment Plan”) executed by such Owner and the Association, allowing such Owner to make monthly payments for delinquent amounts owed to the Association in accordance with the Payment Plan Policy; provided, however, an Owner who has defaulted on any Payment Plan within the then immediately preceding two (2) years is not entitled to a payment plan under this Section 4.18. Following any written request by an Owner under this Section 4.18, such Owner and the Association shall each use commercially reasonable efforts to complete such Owner’s Payment Plan within thirty (30) days after the Association’s receipt of such written request.

Section 4.19 Application of Payments. Payments made by or on behalf of an Owner for amounts owed to the Association shall be deemed made upon the date of receipt of the payment in immediately available funds by the Association or as applicable, the Manager. Payments will be applied to such Owner’s debt in the following order of priority: (i) any delinquent Assessment; (ii) any current Assessment, (iii) any attorney’s fees or third party collection costs incurred by the Association associated solely with Assessments or any other charge that could provide the basis for foreclosure under Section 4.12, (iv) any other attorney’s fees; (v) any fines assessed by the Association; and (vi) any other amount owed to the Association. If, at the time the Association receives a payment from an Owner, the Owner is in default under a Payment Plan executed by such Owner and the Association, then the Association is not required to apply the payment in the order of priority specified in the immediately preceding sentence, but instead such payment shall be applied in the order of priority determined by the Board in the Board’s sole and exclusive discretion, subject to Applicable Law; provided, however, a fine assessed by the Association may not be given priority over any other amount owed to the Association.

ARTICLE V GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 5.01 Powers and Duties. The affairs of the Association shall be conducted by the Board, and the Board shall be selected in accordance with the Certificate of Formation and the Bylaws. In addition to the powers and duties enumerated in the Certificate of Formation and the Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Board, for the mutual benefit of the Members of the Association, shall have the following powers and/or duties:

A. If, as and when the Board, in its sole discretion, deems necessary, the Board may take such action to enforce the terms and provisions of this Declaration and the Certificate of Formation and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, management services, and accounting services, the commencement of legal causes of action, the promulgation and enforcement of the Rules and Regulations which may include the establishment of a system of fines and/or penalties enforceable as Individual Assessments as provided in Section 4.06 herein, and to enjoin and/or seek legal damages from any Owner for violation of such Rules and Regulations.

B. The Board may acquire, maintain and otherwise manage all of the Common Area and all facilities, improvements and landscaping thereon, and all personal property acquired or owned by the Association.

C. The Board may execute all declarations of ownership for tax assessment purposes and may pay any and all real and personal property taxes and other charges or assessments assessed against the Common Area, unless the same are separately assessed to all or any of the Owners.

- D. The Board may obtain, for the benefit of the Common Area, all water, gas and electric services, refuse collections, landscape maintenance services and other services which, in the opinion of the Board, shall be necessary or proper.
- E. The Board may make such dedications and grant such easements, licenses, franchises or other rights which, in its opinion, are necessary for street, right-of-way, utility, sewer, drainage and other similar facilities or video services, cable television services, high-speed internet access services, security services, communication services and other similar services over the Common Area to serve the Property or any part thereof.
- F. The Board may contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.
- G. The Board may borrow funds to pay costs of operation, which borrowed funds may be secured by an assignment or pledge of its rights against Owners to the extent deemed advisable by the Board.
- H. The Board may enter into contracts for legal and accounting services, maintain one or more bank accounts, and generally may have the powers necessary or incidental to the operation and management of the Association and the Common Area.
- I. If, as and when the Board, in its sole discretion, deems necessary, the Board may take action to protect or defend the Common Area or any property of the Association from loss or damage by suit or otherwise.
- J. The Board may sue and defend in any court of law on behalf of the Association or one (1) or more Members thereof.
- K. The Board may establish and maintain a working capital and/or contingency fund in an amount to be determined by the Board of the Association.
- L. The Board may make reasonable rules and regulations for the operation and use of the Common Area and may amend the same from time to time.
- M. The Board may make available to each Owner, and any individual or entity holding a mortgage or deed of trust on any Lot, within one-hundred eighty (180) days after the end of each fiscal year, an unaudited annual report, which annual report shall contain a balance sheet, income statement and statement of sources and uses of funds.
- N. The Board may adjust the amount of, collect and use any insurance proceeds to repair damage or replace lost property owned by the Association, and, if the proceeds are insufficient to repair such damage or replace such lost property owned by the Association, the Board may assess the Members in proportionate amounts to cover the deficiency as set forth in Section 4.04 herein.
- O. The Board may provide services for the benefit of the Members, including but not limited to, security, entertainment, recreation, and education.
- P. The Board may maintain the landscaped areas of the Lots, all at the sole cost and expense of the Owners contracting with the Association for the provision of such services.

Q. The Board may delegate its powers and duties to committees, officers, or employees as provided in the Bylaws, employ a Manager or other Persons and contract with independent contractors or Managers who have the professional experience necessary to perform all or any part of the duties and responsibilities of the Association: provided, however, that any contract with a Person appointed as a Manager shall be terminable without cause on not more than ninety (90) days prior written notice by the Association and shall have a term of not more than one (1) year with successive one (1) year renewal periods upon the mutual agreement of the parties.

Section 5.02 Contracts Terminable. Prior to the date that Declarant is no longer empowered to appoint any Directors, the Board shall enter into no contracts or agreements unless the same are terminable by the Board upon no more than ninety (90) days prior written notice unless the contracts or agreements are approved by Declarant.

Section 5.03 Use of Recreational Facilities. Each Owner acknowledges that certain recreational facilities including, but not limited to, the clubhouse and related amenities, will be provided within the Common Area for the use and enjoyment of the Owners, their families, tenants, residents, their respective guests, and a limited number of non-resident social members (hereafter, in this Section 5.03, referred to as "User" or "Users" as the context dictates).

A. Each User hereby acknowledges that there are risks associated with the use of such recreational facilities and that **ALL USERS OF SUCH FACILITIES ASSUME AND AGREE TO BE SOLELY RESPONSIBLE FOR SUCH RISK.** Each Owner, by accepting a deed to a Lot, acknowledges that he or she has not relied upon the representations of Declarant or the Association with respect to the safety of any recreational facility or other Common Area within the Community.

B. The Association may, but shall not be obligated to, contract with, employ or otherwise provide, from time to time, a lifeguard or other monitoring personnel to be present at any recreational facility within the Community. Each User acknowledges that the presence of such personnel shall not create a duty on the part of Declarant or the Association to provide for, insure or guarantee the safety of any user of the facility. Each User agrees that neither the Association, the Board, any committee, nor Declarant shall be liable to such User or any Person claiming any loss or damage including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other wrong or entitlement to remedy based upon, due to, arising from or otherwise relating to the use of any recreational facility or other portions of the Common Area including, without limitation, any claim arising in whole or in part from the negligence of the Association of Declarant. **THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.**

C. Non-resident social memberships shall be made available to not more than thirty (30) non-resident members. Persons who are not Lot owners who wish to become non-resident members may apply to the Board for such membership in accordance with procedure promulgated by the Board. The applicant must be recommended to the Board by an Owner or Declarant, and approved by the Board in its sole discretion. The Board will also set the amount and terms of payment of initiation and/or regular fee for the non-resident membership and the terms and conditions of such membership. Fees will be payable to the Association and added to its general budget. Non-resident members will be subject to the Rules and Regulations pertaining to the recreational facilities but will not be liable for any other assessments or obligations under this Declaration or other rules promulgated hereunder.

D. The Board, in its discretion, can set a fee to be paid by guests of an Owner who are not in the Owner's immediate family for the use of the recreational facilities.

Section 5.04 Recreational Director. The Board may create and fund the position of "Recreational Director", whose role will be to provide leadership for the overall planning, development, implementation, and continuing evaluation of programs activities, and services to carry out the Association's mission of enhancing community relationships and atmosphere within the Stone Creek Ranch community. The Recreational Director may be a Member volunteer, employee, or independent contractor. The Recreational Director's specific responsibilities may include the following:

A. creating accessible opportunities for residents to participate in and volunteer their time and skills for community events and activities;

B. working with volunteers and staff members and cooperating with the Board to implement the Association's community building objectives;

C. coordinating, promoting, and facilitating community-wide cultural, artistic, musical, athletic, and social events and activities;

D. conducting governance educational programs and contracting for and coordinating continuing education programs and opportunities;

E. serving as an ombudsman within Stone Creek Ranch community by teaching and practicing "non-adversarial communication" and, when the need arises, mediating or otherwise intervening to resolve disputes and conflicts at the request of the parties involved; and

F. seeking out new opportunities for building community life and spirit while appreciating diversity.

The Recreational Director's responsibilities may also include those agreed upon by the Recreational Director and the Board. The Recreational Director will be employed or otherwise contracted for by the Association and at the election of the Board, the Recreational Director shall attend and participate in Board meetings but shall have not a vote.

**ARTICLE VI
PROPERTY RIGHTS IN THE COMMON AREA**

Section 6.01 Member's Easements of Enjoyment. Subject to the provisions of Section 6.03 of this Article, every Member and every tenant of every Member shall have a right and license of use and enjoyment in and to the Common Area. Such right and license shall be appurtenant to and shall pass with the title of every Lot; provided, however, that such right and license shall not give such Person the right to make alterations, additions or improvements to the Common Area.

Section 6.02 Title to the Common Area. Declarant shall dedicate and convey to the Association (at such time as any Common Area shall be designated as such by Declarant) fee simple title to those portions of the Common Area owned by Declarant, and such Common Area shall be accepted by the Association in writing.

Section 6.03 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

ER 038 - 01 - 2093

- A. the right of the Association to prescribe, modify, and rescind any or all of the Rules and Regulations governing the use, operation and maintenance of the Common Area;
- B. liens of mortgages placed against the Common Area with respect to monies borrowed by the Association for the purpose of improving the Common Area and related facilities;
- C. the right of the Association to enter into and execute contracts with third parties (including Declarant, or any Affiliate of Declarant, so long as such contracts do not provide for compensation to Declarant or its Affiliate which exceeds compensation which would be paid to an independent third party in an "arms-length" transaction for such services) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association;
- D. the right of the Association to take such steps as are reasonably necessary to protect the Common Area against judgment or foreclosure;
- E. the right of the Association to suspend the voting rights and right to use of the Common Area and recreational facilities by an Owner for any period during which an assessment levied under this Declaration against his or her Lot remains unpaid, and for a reasonable period for any infraction of its Rules and Regulations, subject to satisfaction of legal requirements as to notice and right to hearing as more fully provided in the Enforcement Policy; and
- F. the right of the Association to dedicate, grant easements over, or transfer any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board.

**ARTICLE VII
INSURANCE; REPAIR AND RESTORATION**

Section 7.01 Insurance.

- A. The Board or its duly-authorized agent shall have the authority, and shall use reasonable good faith efforts, to obtain insurance for all insurable improvements on the Common Area. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.
- B. The Board shall use reasonable good faith efforts to obtain a public liability policy applicable to the Common Area covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents and, if reasonably available, directors' and officers' liability insurance. Unless otherwise determined by the Board, the public liability policy shall have a combined single limit of at least One Million and No/100 Dollars (\$1,000,000.00).
- C. Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.
- D. All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subsection (2)

below. The Board shall use reasonable good faith efforts to cause such insurance to be governed by the provisions hereinafter set forth:

- (1) All policies shall be written with a company licensed to do business in Texas and holding a rating of A-VII or better in the Financial Category as established by A.M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.
- (2) All policies shall be for the benefit of the Owners and their mortgagees, as their interests may appear.
- (3) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.
- (4) All policies shall provide that such policy may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association (except such notice shall be ten (10) days' notice for non-payment of premium).

E. In addition to the other insurance required by this Section, the Board shall use reasonable good faith efforts to obtain workmen's compensation insurance, if and to the extent necessary to satisfy the requirements of Applicable Law, and a fidelity bond or bonds on Directors, officers, employees, and other Persons handling or responsible for the Association's funds. The Board shall use reasonable good faith efforts to ensure that the amount of fidelity coverage shall be at least equal to the sum of three (3) months Assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association. The Association shall also obtain steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of FNMA, FHLMC, FHA or VA.

Section 7.02 Insurance Proceeds. Proceeds of insurance shall be disbursed by the insurance carrier to the Association or contractors designated by the Association as the Board may direct. The Association shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required in this Article VII, remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of its property.

Section 7.03 Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a Special Assessment as provided for in Section 4.04 of this Declaration to cover the deficiency. If the insurance proceeds are insufficient to repair or replace any loss or damage for which an Owner is bound hereunder, such Owner shall, as its undivided responsibility and obligation, pay any excess costs of repair or replacement.

Section 7.04 Mortgagee Protection. There may be attached to all policies of insurance against loss or damage by fire and other hazards, a mortgagee's or lender's loss payable clause; provided, however, the Board shall use reasonable good faith efforts to cause the amounts payable under such clause to the mortgagee to be paid to the Association to hold for the payment of all costs of repair or replacement. The Association shall hold said monies or use reasonable good faith efforts to collect additional monies if the proceeds are insufficient to pay for the cost of all repairs or replacements, and shall use reasonable good faith efforts to ensure that all mechanics', materialmen's and similar liens

which may result from said repairs or replacements are satisfied.

Section 7.05 Destruction of Improvements on Individual Lots. In the event of destruction (total or partial) to the improvements on its individual Lot due to fire or any other cause, each Lot Owner covenants and agrees to commence all necessary repairs, reconstruction and/or removal of the damaged improvements within ninety (90) days after the date that the damage occurs and to complete such repair, reconstruction and/or removal to completion within a reasonable time from the commencement of such work. Repairs, reconstruction or complete removal of damaged improvements may be commenced more than ninety (90) days after the date of occurrence of damage if the delays in commencement are caused by factors beyond the reasonable control of the Owner of the damaged improvements. The Board shall not be obligated to enforce the covenants set forth in this Section 7.05.

ARTICLE VIII USE AND MAINTENANCE OF COMMON AREA

Section 8.01 Restricted Actions by Owners. No Owner shall permit anything to be done on or in the Common Area which would violate any Applicable Law or which would result in the cancellation of or increase in any insurance carried by the Association. No Owner shall destroy any part of the Common Area, or remove or carry away any material, item, goods or vegetation located upon or attached to the Common Area, or take any action which might result in the devaluation of the Common Area or any part thereof.

Section 8.02 Damage to the Common Area. Each Owner shall be liable to the Association for any damage to the Common Area caused by the negligence or willful misconduct of the Owner or its family, pets, invitees, tenants, agents or occupants.

Section 8.03 Rules of the Board. All Owners, tenants, occupants, invitees and agents shall abide by the Rules and Regulations adopted by the Board. The Board shall have the power to enforce compliance with said Rules and Regulations by all appropriate legal and equitable remedies, and any Owner determined by judicial action to have violated said Rules and Regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees. The Bylaws may also provide for disciplinary procedures which may, at the option of the Board, be implemented to enforce such Rules and Regulations and to impose penalties for failure to comply with such Rules and Regulations. The Enforcement Policy specifically provides procedures for the enforcement of said Rules and Regulations.

Section 8.04 Suspension of Right to Use Common Area and/or Right to Vote. The Board may suspend the right of any Owner, and its tenants, guests or licensees, to use any of the Common Area and/or may, if permitted by Applicable Law, suspend the right of any Owner to vote during any period of time that such Owner is in default in its obligations pursuant to this Declaration, the Bylaws or the Rules and Regulations, including, but not limited to, its obligations to pay Assessments or to comply with the architectural control provisions and covenants, conditions, restrictions, easements, liens or charges established by this Declaration. Such penalties shall be enforced in accordance with then Applicable Law including requirements for notice and hearing as more particularly provided the Enforcement Policy.

Section 8.05 Maintenance of Common Area. The Association shall be solely responsible for all maintenance, repair, replacement, and improvement of the Common Area, utilizing the Assessments for such purposes as herein provided. Declarant shall have no responsibility for maintenance, repair, replacement, or improvement of the Common Area after initial construction of any improvements thereon.

**ARTICLE IX
USE OF LOTS AND PROTECTIVE COVENANTS**

Section 9.01 Single-Family Use; Residence.

A. Each Lot, including the improvements located thereon, shall be used and occupied only for a Single-Family Use. No Owner or other occupant shall use or occupy such Owner's Lot and/or Residence, or permit the same or any part thereof to be used or occupied, for any purpose other than a Single-Family Use. As used herein, the term "Single-Family Use" shall mean the use of a Lot and the Residence thereon for the sole purpose of housing only one (1) family consisting of individual Persons related by blood, adoption or marriage, or no more than four (4) unrelated individual Persons living and cooking together or in the same Residence as a single housekeeping unit; provided, however, that nothing contained herein shall prevent occasional temporary occupancy by guests of the family or occupancy by full-time domestic servants or medical assistants employed by the family. Accordingly, except as otherwise expressly provided herein, no building or structure intended for or adapted to commercial, business or professional purposes, nor any apartment house, duplex, double house, lodging house, rooming house, dormitory, church, school, hospital, sanatorium, guest house, servant's quarters or multiple-family dwelling, shall be erected, placed, permitted or maintained on any Lot.

B. Except on the Common Area, no building or structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) Residence. For purposes of this Declaration, the term "Residence" shall mean a free-standing single-family residential housing structure that (1) does not exceed two (2) stories in height, (2) has no more than one (1) "in-the-ground" pool and no more than one (1) private garage (provided, however, the Architectural Review Committee may allow additional garages if, due to the size of the Lot and attendant circumstances, the Committee deems it appropriate), and (3) has only those appurtenant sidewalks, driveways, curbs, fences and storage or mechanical buildings that are not otherwise prohibited in this Declaration. "Residence" expressly includes any single-family attached or detached housing; provided, however, such term shall not include pre-fabricated housing or mobile homes.

Section 9.02 Restrictions on Resubdivision. Except for the subdivision and platting contemplated or undertaken by Declarant, and any replatting thereof undertaken by Declarant, none of the Lots shall be divided into smaller Lots.

Section 9.03 Uses Specifically Prohibited.

A. No Recreational Vehicle shall be parked overnight in the driveway or front yard of any Residence or on any Public Street in the Property. Provided a Recreational Vehicle is fully operational and has all current licenses and permits necessary or appropriate for use on public thoroughfares or waterways, it may be parked or stored (i) within the enclosed garage of a Residence if the Recreational Vehicle fits within a typical standard sized garage approved by the Architectural Review Committee, or (ii) on the side or rear yard of a Lot if the Recreational Vehicle is completely screened from the view of adjoining Lots, the Common Area and Public Streets. Oversized garages for Recreational Vehicles are not permitted. Parking restrictions relating to Public Streets will be enforced in accordance with Applicable Law and to the extent not prohibited by Applicable Law.

B. Trucks with tonnage in excess of one (1) ton and any vehicle with painted or affixed

advertisement shall not be permitted to park overnight within the Property except those used by Declarant or a Builder during and directly related to the development of the Property or construction of improvements on a Lot in the Property.

C. No vehicle of any size which transports dangerous, flammable, hazardous, corrosive or explosive cargo may pass through or be kept in the Property at any time.

D. Except to the extent expressly permitted hereby, no vehicles or similar equipment shall be parked or stored in any area visible from any Public Street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (with tonnage not in excess of one (1) ton) and pick-up trucks with attached bed campers (with tonnage not in excess of one (1) ton) that are in operating condition with current license plates and inspection stickers and in daily use as motor vehicles on the streets and highways of the State of Texas.

E. No manufacturing, industrial, oil or gas drilling, oil or gas development, smelting, refining, water drilling, quarrying or mining operations of any kind shall be permitted in the Property (other than the Drilling Site), nor shall oil or gas wells, tanks, tunnels, pipelines (other than natural gas lines installed and maintained by a utility company generally serving the public and the Residences in the Property), mineral excavations or shafts be permitted upon or in any part of the Property (other than the Drilling Site). No derrick or other structure, equipment or machinery designed for use in quarrying or boring for oil, natural gas or other minerals or water shall be erected, maintained or permitted within the Property (other than the Drilling Site).

F. No animals of any kind shall be raised, bred or kept on any land in the Property except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the residents of any Residence constructed on a Lot. Animals are not to be raised, bred or kept for commercial purposes or for fur, clothing or food. Without limiting the foregoing, it is the general purpose of these provisions to restrict the use of the Property so that no Person shall permanently or temporarily quarter in the Property live cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks, snakes or any other reptiles, mammals or animals (domesticated, household or otherwise) that may interfere with or threaten the quietude, health or safety of the community. No more than four (4) domesticated household pets will be permitted on each Lot. Each pet must be (a) controlled by a line or leash not more than six (6) feet in length, held by an individual who is capable of controlling or governing such pet, or (b) confined on the Owner's backyard of the Lot inside a fenced area or a structure preventing the escape or release of the pet, or within the Residence. All Lots and Residences shall be kept clean and free of pet waste and debris, and Owners shall be required to collect and dispose of the waste of such Owner's pets deposited on any Lot or the Common Area. All animals shall be properly tagged for identification and shall be properly vaccinated, bathed and otherwise kept clean to avoid health or safety risks and concerns.

G. No portion of the Property shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind including, without limitation, broken or rusted equipment, disassembled, incomplete or inoperable cars or Vehicles or Equipment and discarded appliances and furniture. Trash, garbage or other waste shall not be kept on any Lot or anywhere in the Property except completely within well-maintained sanitary containers and only in reasonable quantities and until the next regularly scheduled pick-up or removal of such items, or five (5) days, whichever occurs first. All equipment and containers for the storage or other disposal of such material shall be kept in clean and sanitary condition. No incinerators may be erected or maintained in the Property. Materials incident to construction of improvements may be stored on a Lot during construction so long as construction progresses on such Lot without

unreasonable or unusual delay.

H. No garage or other out-building (except for sales offices and construction trailers owned and used by Declarant or Builder on a Lot in accordance with the provisions of Section 9.03(M) below) shall be occupied by any Owner, tenant or other Person on a Lot prior to the erection and completion of a Residence on such Lot.

I. Except as provided in Sections 9.03(M) and (N) below and in this Section 9.03(I), no Lot, Residence or improvement shall be used for business, professional, commercial or manufacturing purposes of any kind. Except in connection with the activities of Declarant and Builders described in Sections 9.03(M) and (N) below, no activity, whether for profit or not, shall be conducted in the Property which is not related to Single-Family Use purposes or the development, marketing, construction or sale of the Property and Lots or Residences thereon. No noxious or offensive activity shall be undertaken within the Property, nor shall anything be done which is or may become an annoyance or nuisance to the residents of the Property. Nothing in this Section 9.03(I) shall prohibit an Owner's use of a Residence for quiet, inoffensive activities such as tutoring or giving art or music lessons or operating a home office for a business, so long as such activities do not violate the restrictions set forth above and do not materially increase the number of cars parked on the Public Street or interfere with adjoining Owners' use and enjoyment of their Lots, Residences and yards.

J. The drying of clothes in public view is prohibited. The Owners and occupants of any Lots at the intersections of Public Streets or adjacent to parks, playgrounds or other facilities where rear areas are visible to public view shall construct a suitable enclosure to screen from public view equipment which is incident to normal Residences, such as yard equipment, lawn furniture, pool filtration or garden equipment and stored materials, all subject to and in accordance with the Design Guidelines.

K. Except within fireplaces in the main dwelling and except for outdoor cooking in safe and sanitary barbecue grills, no burning of anything shall be permitted.

L. No use shall be made of a Lot which could be violative of any deed restrictions, other encumbrances of record, development or building restrictions or Applicable Law, all as such may be applicable from time to time. Furthermore, no use shall be conducted which shall conflict with FHA or VA regulations (if applicable) or any regulation or ordinance of any other applicable Governmental Authority.

M. Notwithstanding anything contained herein to the contrary, Declarant or a Builder may temporarily use a Residence, garage or trailer as a sales, marketing or construction office for the sole purpose of (i) enabling Declarant to develop, construct, market and sell its Lots and Residences, or (ii) enabling a Builder to construct, market and/or sell such Builder's Residences until such Builder's last Residence is sold; provided, however, unless otherwise permitted by Declarant, a sales, marketing or construction trailer or office may only be constructed and used by or on behalf of a Builder if such Builder owns at least five (5) Lots in the Property at the time the trailer or office is constructed or created. Any permitted sales, marketing or construction trailers or offices shall be subject to the approval of the Architectural Review Committee.

N. Notwithstanding anything contained in this Declaration to the contrary, Declarant, the Architectural Review Committee, the Association or an Affiliate of Declarant may construct, or cause to be constructed, a club house and/or related amenities ("Amenities") in any portion of the Property for the use of all Owners and Residents of the Lots and their families and guests.

Without limiting the foregoing, the Amenities may include, without limitation, swimming and other recreational and clubhouse facilities deemed desirable by Declarant, the Architectural Review Committee or the Board, as applicable. If constructed, operation of the Amenities shall be managed by the Association or such other entity as Declarant or, after Turnover, the Board may designate from time to time.

O. No air conditioning apparatus or evaporation cooler shall be attached to any front wall or window of a Residence.

P. No Residence or Lot shall be used for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Residence rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established by Declarant or with Declarant's prior written approval. Nor shall less than all of a Residence be leased or subleased (no rooming houses).

Q. The public display or discharge of a Firearm within the Property, except for a peace officer in carrying out his or her official duties, is strictly prohibited. Hunting of any kind, or by any method, including but not limited to Firearms, traps, snares, bow arrows or manually propelled missiles, is strictly prohibited. The sale or use of fireworks of any kind whatsoever within the Property is strictly prohibited except by written permit granted by the Board. Any such permit shall specify the areas for such activities and require that such activities be conducted in accordance with the terms and conditions of the permit and all Applicable Law.

ARTICLE X MAINTENANCE OF LOTS

Section 10.01 Duty of Maintenance. Owners and occupants (including lessees) of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep the Lot so owned or occupied, including buildings, improvements, grounds or drainage easements or other rights-of-way incident thereto, and vacant land, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance shall include, but not be limited to, the following:

- A. Prompt removal of all litter, trash, refuse and waste;
- B. Lawn mowing on a regular basis;
- C. Tree and shrub pruning on a regular basis;
- D. Watering landscaped areas on a regular basis;
- E. Keeping exterior lighting and maintenance facilities in working order;
- F. Keeping lawn and garden areas alive, free of weeds, and attractive;
- G. Keeping parking areas, driveways, sidewalks and roads in good repair;
- H. Complying with all government health and police requirements;
- I. Timely repair of exterior damage to improvements;
- J. Cleaning of abutting waterways and landscaped areas lying between public right-of-way

lines and Lot lines, unless such Public Streets, waterways or landscaped areas are expressly designated to be Common Area maintained by applicable Governmental Authorities or the Association;

K. If applicable, striping of parking areas and repainting of improvements;

L. Keeping all fences located on such Lot (or owned by such Owner) in good condition and repair; and

M. Complying with the Design Guidelines.

Section 10.02 Enforcement.

A. If, in the opinion of Declarant or the Association, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then Declarant or the Association may give such Person written notice of such failure and such Person must within ten (10) days after receiving such notice, perform the care or make arrangements with Declarant or the Association, whichever applies, for making the repairs and maintenance required. Should any such Person fail to fulfill this duty and responsibility within such period, then Declarant or the Association, whichever applies, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owners and occupants (including lessees) of any part of the Property on which such work is performed shall jointly and severally be liable for the cost of such work (such costs constituting an Individual Assessment as specified in Section 4.06 hereof) and shall promptly reimburse Declarant or the Association, whichever applies, for such cost. If such Owner or occupants shall fail to reimburse Declarant or the Association, whichever applies, within thirty (30) days after receipt of a statement for such work from Declarant or the Association, whichever applies, then said indebtedness shall be a debt of all of said Persons jointly and severally, and shall constitute a lien against that portion of the Property on which said work was performed. Such lien shall have the same attributes as the lien for Assessments as set forth in this Declaration, and Declarant or the Association, whichever applies, shall have identical powers and rights in all respects, including, but not limited to, the right of foreclosure.

B. The decision to pursue enforcement action in a particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

- (1) the Association's position is not strong enough to justify taking any or further action;
- (2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with Applicable Law;
- (3) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources; or
- (4) that it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or

rule. Absent clear evidence that the Board's decision is arbitrary or capricious the decision of the Board shall be binding and final on all parties subject to these restrictions.

C. The procedure for enforcement is more particularly provided in the Enforcement Policy. Notwithstanding the provisions of this Section 10.02, in event of conflict between the terms hereof and the Enforcement Policy the provisions of the Enforcement Policy shall govern. The Board shall have the right and authority to modify the terms of the Enforcement Policy from time to time as they, in their discretion, deem necessary for the betterment of the Association or to comply with changes in Applicable Law.

ARTICLE XI CONSTRUCTION OF IMPROVEMENTS

Section 11.01 General Standards. All construction in the Property shall be in accordance with the Design Guidelines and other standards developed pursuant to this Declaration, unless otherwise approved by Declarant or the Architectural Review Committee as provided in this Declaration.

Section 11.02 Garage Required. Each Residence shall have a private garage suitable for parking at the same time not less than two (2), nor more than four (4), standard size automobiles and, unless otherwise permitted by Declarant or the Architectural Review Committee, each garage shall open to the front, side or rear of the Lot, shall conform in appearance, design and materials to the main housing structure and shall be connected thereto by a roof, screen or other architectural element, or be part thereof. No garage shall be enclosed or otherwise altered to prevent the parking of at least two (2) conventional automobiles completely within such garage unless an additional garage is constructed which meets the standards of this Article XI, is in compliance with Applicable Law and is approved by Declarant or the Architectural Review Committee. Enclosure of garages by Declarant or a Builder for temporary marketing, sales, construction or office purposes is permitted hereby, provided such enclosures and offices are architecturally compatible with the remainder of the Residence and this Declaration and are used in accordance with the provisions of Section 9.03(M) hereof. If any garage is so enclosed by Declarant or a Builder, such garage shall be converted to use solely for the parking of automobiles as described above prior to the sale or lease of such Residence to the occupying Owner.

Section 11.03 Driveways. All driveways shall be surfaced with concrete or similar substance approved by Declarant or the Architectural Review Committee.

Section 11.04 Construction Specifically Regulated.

A. No temporary dwelling, shop, trailer or mobile home of any kind nor any improvement of a temporary character shall be permitted on any Lot except in compliance with the Design Guidelines and except that Declarant and any Builder may have temporary dwellings, trailers or improvements (such as a sales office and/or construction trailer) on a given Lot in accordance with the provisions of Section 9.03(M) hereof. No building material of any kind or character shall be placed or stored upon the Lot until the Owner thereof is ready to commence construction of improvements thereon, and then such material shall be placed only within the property lines of the Lot upon which the improvements are to be erected.

B. No structure of a temporary character, such as a trailer, tent, shack, barn or other out-building, shall be used on any land at any time as a dwelling house; provided, however, that Declarant or any Builder may maintain and occupy model houses, sales offices and construction trailers in accordance with the provisions of Section 9.03(M) hereof.

- C. No individual water supply system (which is not part of the public water supply system serving the entire Property) shall be permitted.
- D. No individual sewage disposal system (which is not part of the public sewage disposal system) shall be permitted.
- E. All antennas, dishes or other equipment for receiving or sending audio or video messages or transmissions shall be located to the rear of the main housing structure on the Lot, wholly within the Lot and limited to two (2) total devices (whether antennae and/or satellite dishes) per Lot. Satellite dishes larger than 42 inches in diameter are not permitted. Enforcement of this restriction will be subject to 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any related or successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.
- F. No fence (except as may otherwise be permitted herein), wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Public Street right-of-way lines and a line connecting them at points ten (10) feet from the intersection of the Public Street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the Public Street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within ten (10) feet from the intersection of a Public Street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.
- G. Except for children's playhouses, dog houses, storage sheds, garden buildings, greenhouses, gazebos and buildings for storage of lawn and pool maintenance equipment in compliance with the Design Guidelines or otherwise approved by Declarant or the Architectural Review Committee, no building previously constructed elsewhere shall be moved onto any Lot, it being intended that only new construction be placed and erected thereon.
- H. Within platted easements on each Lot, no permanent structures, paving (other than driveways, sidewalks and flatwork installed in compliance with Applicable Law and the remaining provisions of this Section 11.04), plantings or materials shall be placed or permitted to remain which may damage or materially interfere with the installation, operation and maintenance of utilities or change, obstruct or retard the flow of water through or within drainage channels and/or easements.
- I. After Declarant has developed the Lots, the general grading, slope and drainage plan of a Lot may not be altered, nor may any dams, berms, channels, swales, or retaining walls be constructed or excavated, without the prior approval of Declarant (or the Architectural Review Committee), and other appropriate Governmental Authorities having authority to grant such approval. Unless otherwise approved by the Architectural Review Committee, surface water from each Lot must drain to the Public Street(s) abutting such Lot. No Lot is permitted to drain into any lake of the Property.
- J. No sign of any kind shall be displayed to the public view on or in front of any Lot or on any vehicle on or in front of any Lot, except for (1) one (1) professional sign of not more than two (2) square feet, (2) one (1) sign of not more than five (5) square feet, advertising the Lot and improvements thereon for rent or sale, (3) signs of any size used or installed by Declarant or any Builder to advertise the land or Lots and improvements thereon during the development,

construction and sales period, and (4) internal locator signs installed by or with the permission of Declarant or the Board. Any such signs must conform to the requirements of Section 11.12 hereof (if applicable) and may not (i) describe the condition of any Residence or Lot, (ii) describe, malign or refer to the reputation, character, building practices or business operations of Declarant, any Builder, any other Owner, or any Affiliate of any of the foregoing, and (iii) discourage or otherwise impact or attempt to impact anyone's decision to acquire a Lot or Residence. Declarant, the Association and their respective agents shall have the right to remove all signs, billboards or other advertising structures including, without limitation, private sale (such as "garage" sale) signs, political signs (except to the extent allowed by Applicable Law), or signs that do not comply with this Section 11.04, and in so doing shall not be subjected to any liability for trespass or any other liability in connection with such removal.

K. No containers for trash disposal may be visible more than twelve (12) hours prior to collection or later than twelve (12) hours after collection.

L. All exterior mechanical equipment, including, without limitation, heating, air conditioning and ventilation ("HVAC") equipment, shall be located and screened in compliance with the Design Guidelines or otherwise in a manner approved by Declarant or the Architectural Review Committee. Without limiting the foregoing, no window air conditioning units shall be permitted in any Residence on any Lot.

M. All construction shall comply at all times with this Declaration and all other applicable deed restrictions, encumbrances of record in the Records, development restrictions, building codes, FHA and VA requirements and regulations (if applicable) and all other Applicable Law.

N. The pitch, constituent materials, and colors of all roof surfaces on all buildings shall be governed by the Design Guidelines. In addition, the placement of rooftop equipment and accessories, as well as the color and constituent materials thereof, shall also be subject to the Design Guidelines. Flashing, gutters and downspouts shall be painted as required in the Design Guidelines. Any solar equipment and skylights shall be incorporated into the structure and building mass as required in the Design Guidelines.

Section 11.05 Minimum Floor Area. Minimum Floor Area for the buildings constructed on any Lot shall be as is specified in the Design Guidelines.

Section 11.06 Approved Materials for Exteriors. "Approved Materials" (herein so-called) for exteriors of buildings, as well as the coverage ratios for the same, shall be as is set forth in the Design Guidelines.

Section 11.07 Side, Front and Rear Setback Restrictions. No building shall be located on any Lot nearer to the front or rear Lot line or nearer to the side Lot line than the minimum setback lines shown on the Plat. No building, structure, or any part thereof, including bay windows, Exterior Living Elements and the like, but excluding eaves and gutters, shall be constructed, installed, or maintained on a Lot closer to a Lot property line or Public Street than described below:

- A. For all Lots, a minimum building setback of 20 feet from any front or rear property line.
- B. For corner Lots, a minimum side yard building setback of 10 feet from the Public Street.
- C. For corner Lots, a minimum side yard building setback of 5 feet from any Lot property line contiguous to another Lot, with the minimum distance between building structures on a

corner Lot and Lots contiguous to such corner Lot being 10 feet.

D. For all Lots other than a corner Lot, a minimum side yard building setback of 5 feet, with the minimum distance between building structures on contiguous Lots being 10 feet.

E. In violation of the Design Guidelines.

The front, rear and side property lines of each Lot shall be determined by the Architectural Review Committee in its sole discretion; provided, however, if only one Lot property line is contiguous to a Public Street, such contiguous Lot property line shall be deemed to be the front property line.

Section 11.08 Waiver of Front Setback Requirements. With the prior written approval of Declarant or the Architectural Review Committee and applicable Governmental Authorities (if required), any building may be located closer to the front property line of a Lot than provided in Section 11.07 where, in the opinion of Declarant or the Architectural Review Committee, the proposed location of the building will add to the appearance and value of the Lot and will not substantially detract from the appearance of the adjoining Lots and Residences.

Section 11.09 Fences and Walls. Any fence or wall to be constructed on any Lot shall be designed, located and constructed of materials prescribed in the Design Guidelines and/or in this Declaration. Without limiting the foregoing, the location and type of any fence or wall must be approved by Declarant or the Architectural Review Committee and must be constructed of masonry, brick, wood or other material approved by Declarant or the Architectural Review Committee and must comply with Applicable Law and all provisions of this Declaration. Except as approved by Declarant or the Architectural Review Committee or as otherwise set forth herein, (i) no fence or wall shall be permitted to extend nearer to the front Public Street than ten (10) feet from any front (i.e., street-facing) corner of the Residence, (ii) all portions of fences shall comply with any Applicable Law governing height standards for fences, and (iii) no structural supports of any fence shall be visible from any public right-of-way. "Wrought iron" fences shall be permitted if approved by the Architectural Review Committee or Declarant.

Section 11.10 Sidewalks, Walkways and Stone Creek Ranch Columns. Concurrently with the construction of a Residence on a Lot, the Builder constructing such Residence shall construct:

A. A sidewalk ("Continuous Sidewalk") on the Lot along the Front Public Street, and in the case of a corner Lot, along the Front Public Street and the Public Street adjoining the side yard, all subject to and in accordance with the requirements of the Design Guidelines. Typically, the Continuous Sidewalk will meander along the Public Street. Continuous Sidewalks constructed at a Public Street corner shall be constructed with handicapped ramps. All sidewalks, including all Continuous Sidewalks, shall conform to all applicable FHA and VA specifications and regulations, and Applicable Law, including, to the extent applicable to sidewalks within the Property, the Americans with Disabilities Act and Texas Accessibility Standards;

B. A walkway from the front door of the Residence to the Continuous Sidewalk described in Section 11.10(A) above, or to the primary driveway on the Lot. Said walkway shall be designed and constructed in accordance with the Design Guidelines.

C. Certain fencing along the entire length of all Lot property lines which adjoin or are contiguous to the boundary of any Stone Creek lake or drainage easement ("Lake Property Line") as required under the Design Guidelines ("Lake Fencing"). Stone Creek Columns shall be constructed in the Lake Fencing at intervals specified in the Design Guidelines.

D. Certain fencing on each Lot property line which adjoins or is contiguous to the perimeter boundaries of the Property as and to the extent required under the Design Guidelines (“Perimeter Fencing”). Lots requiring Perimeter Fencing shall be identified by the Architectural Review Committee from time to time and the Perimeter Fencing requirements will be specified in the Design Guidelines. Stone Creek Columns shall be constructed in line with the Perimeter Fencing at intervals specified in the Design Guidelines.

E. A Stone Creek Column in line with each side setback on all Lots facing or contiguous to Cary Douglas Drive, Hargrove Road or Dunham Lake Drive. The front face of each such Stone Creek Column shall be aligned with the furthest projection of the front elevation of the Residence. Such Stone Creek Column may be free-standing or may be connected to the Residence by a wing-wall spanning from the side exterior of the Residence to the Stone Creek Column, as may be approved by the Architectural Review Committee. Notwithstanding the foregoing, the Architectural Review Committee has the discretionary right to modify the Stone Creek Columns requirements for any corner Lot.

F. Certain interior fencing along all Lot property lines which do not contain Lake Fencing, Open Space Fencing, or Perimeter Fencing as required under the Design Guidelines.

Section 11.11 **Mailboxes**. Any mailboxes permitted by the Design Guidelines shall be constructed of a material and design as required by the Design Guidelines. All mailboxes, including any individual mailbox constructed on a Lot and any substation post office boxes constructed at one or more central locations within the Property, shall comply with all requirements and specifications of the United States Postal Service.

Section 11.12 Landscaping/Fencing Plans. Any Person (other than Declarant) including, without limitation, any Builders owning Lots and planning to landscape or fence areas in the Property (other than individual Lots), shall prepare and submit to the Architectural Review Committee for approval, pursuant to the procedures set forth in Article XII herein, a landscaping/fencing plan for such areas prior to undertaking any such landscaping or fencing. Without limiting the requirement to obtain approval as noted above, such plan shall be compatible with the existing landscaping or fencing improvements and treatments, if any, and shall be in compliance with the terms and provisions hereof. Prior to Substantial Completion of a Residence on a Lot, there shall be planted upon such Lot the minimum number of trees of the species permitted, in compliance with the Design Guidelines. Each Owner shall be required to maintain the trees on such Owner’s Lot, and re-plant as necessary trees of the species permitted, in compliance with the Design Guidelines such that at all times on and after Substantial Completion of a Residence on a Lot there shall be located upon such Lot the minimum number of trees of the species permitted, in compliance with the Design Guidelines in effect at the time of said Substantial Completion.

Section 11.13 Declarant Approval.

A. Prior to the formation of the Architectural Review Committee and during any periods of time after such formation that the Architectural Review Committee no longer exists, all consents and approvals reserved to the Architectural Review Committee shall be made solely by Declarant. Furthermore, during the period that the Architectural Review Committee exists and prior to the date upon which Declarant has conveyed all of its Lots, any decisions reserved to the Architectural Review Committee shall be subject to the approval of Declarant, and if Declarant and Architectural Review Committee disagree with respect to any decision, the decision of Declarant shall control until (1) the Class B Membership converts into the Class A Membership, and (2) Declarant no longer owns any Lots subject to this Declaration. As provided in Section

3.03(A) above, Declarant shall continue to appoint the members of the Architectural Review Committee until Declarant no longer own any portion of the Property.

B. All consents, approvals and actions reserved to Declarant may be made and provided by the Architectural Review Committee or the Association only after the (1) Declarant has relinquished its duties hereunder to the Architectural Review Committee or Association and sold or otherwise disposed of all its interest in all of its Lots and other real property in the Property, or (2) Declarant expressly elects in writing not to exercise such rights, easements and authority.

ARTICLE XII ARCHITECTURAL REVIEW COMMITTEE

Section 12.01 Architectural Review Committee.

A. The Architectural Review Committee shall be composed of not more than three (3) individuals initially selected and appointed by Declarant. After Declarant has sold 100% of their Lots and owns no part of the Property, the Architectural Review Committee will be selected and appointed by the Board in accordance with the procedure set forth herein below. The Architectural Review Committee shall function as the representative of the Owners of the Lots for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of "first-class" single-family developments.

B. Prior to the date on which Declarant no longer owns any portion of the Property, Declarant shall have the power to change the membership of the Architectural Review Committee with or without cause, notwithstanding any of the foregoing provisions to the contrary.

C. Each member of the Architectural Review Committee shall act reasonably and in good faith in performing its duties and obligations under this Article XII.

Section 12.02 Basis of Approval.

A. No building, structure, parking structure, parking lot, fence, wall or other Improvement of any kind or nature shall be erected, placed or altered on any Lot until all respective plans and specifications and a respective site plan have been submitted to, and approved in writing by, the Architectural Review Committee, or a majority of its members, as to:

- (1) quality of workmanship and materials and the proper facing of main elevation with respect to nearby Public Streets;
- (2) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (3) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon;
- (4) drainage arrangements; and
- (5) the other standards set forth in this Declaration (and any amendments thereto) to accomplish the purposes and goals of the plan of the Property, including, but not limited to, the purposes and goals of the Design Guidelines.

B. The Architectural Review Committee is authorized and empowered to consider and review any and all aspects of construction, construction of other Improvements, and location, quality and quantity of landscaping on the Lots, which may, in the reasonable opinion of the Architectural Review Committee, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Property. Also, the Architectural Review Committee is permitted to consider technological advances in design and materials, and any comparable or alternative techniques, methods or materials may or may not be permitted in accordance with the reasonable opinion of the Architectural Review Committee. The Architectural Review Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of the restrictions and covenants described in Article IX herein.

C. Any Improvements constructed in accordance with plans and specifications approved by the Architectural Review Committee in accordance with its then-applicable standards and requirements shall not be required to be changed because such standards are thereafter amended. The Architectural Review Committee shall review and act upon submitted plans and specifications in accordance with the applicable time periods specified in Sections 12.04 and 12.06 herein.

Section 12.03 Definition of "Improvements". The term "Improvements" shall mean and include all buildings and roofed structures, parking areas, loading areas, fences, walls, poles, driveways, ponds, lakes, swimming pools, tennis courts, signs, changes in any exterior color or shape (including fence color), glazing or reglazing of exterior windows with mirrored or reflective glass, street, drainage, utilities, roads, alley paths, and any new construction or exterior improvement significantly altering the appearance of any of the foregoing. It does not include Public Streets, utilities, garden shrubs or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. It does include both original improvements and all later changes and improvements.

Section 12.04 Preliminary Plan Submissions. The Architectural Review Committee is authorized and empowered to and shall consider, review and comment on prototype plans and specifications for Residences submitted in duplicate on an informal basis to assist Builders in complying with applicable covenants and restrictions and to assist in the completion of feasibility studies undertaken by such Persons. Exterior materials and colors including brick colors must be included as part of the prototype plans submitted to the Architectural Review Committee for approval. If such prototype plans and specifications are approved by the Architectural Review Committee, one set thereof will be retained by the Architectural Review Committee, and one complete set of plans will be marked "Approved" and returned to the Builder or its designated representative. If not approved or otherwise found not to be in compliance with this Declaration, one set of such prototype plans and specifications shall be marked "Disapproved", and returned accompanied by a statement of items found not to be acceptable or otherwise not in compliance with this Declaration and/or the Design Guidelines. The Architectural Review Committee's approval or disapproval, as required herein, shall be in writing. If the Architectural Review Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date of submission, approval of the matters submitted shall be presumed. Approvals of prototype plans and specifications shall be binding upon the Architectural Review Committee, and such prototype plans need not be submitted for each Lot upon which a residential structure conforming to such prototype plans is to be built; provided, however, that additional plans and specifications as provided in Section 12.05 and in the Design Guidelines shall be required to be submitted.

Section 12.05 Plan Submissions. Final plans and specifications shall be submitted in duplicate to the Architectural Review Committee prior to the construction of any Improvements on a Lot,

which plans and specifications shall include, to the extent applicable to the proposed Improvements as determined by the Architectural Review Committee, the following:

- A. Exterior elevations of all proposed buildings and structures;
- B. A description of exterior materials, colors, textures and shapes of all buildings and structures;
- C. Parking areas and driveway plans;
- D. Dimensional floor plans of all enclosed spaces;
- E. Such other matters as may be required by any Governmental Authority having jurisdiction over the Property;
- F. Signs, including size, shape, color, content location, materials and illumination; and
- G. Any other data or information requested or deemed reasonably necessary by the Architectural Review Committee.

Additional plans and specifications may be required under the Design Guidelines. Platting, and the planning of drainage and streets, naming of streets, utilities, and common area improvements are excluded from plan submission under this Section.

The Architectural Review Committee may defer the date for submission of any of the matters described in Section 12.05 (A)-(H) by notice in writing to the Person requesting such deferral of the submission date.

Section 12.06 Approval Procedure.

A. The Architectural Review Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications will be retained by the Architectural Review Committee, one complete set of plans will be marked "Approved" and returned to the Lot Owner or its designated representative. If not approved or otherwise found not to be in compliance with this Declaration, one set of such plans and specifications shall be marked "Disapproved", accompanied by a statement of items found not to be acceptable or otherwise not in compliance with this Declaration and/or the Design Guidelines. The Architectural Review Committee's approval or disapproval, as required herein, shall be in writing. If the Architectural Review Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date of submission, approval of the matters submitted shall be presumed. Any material modification or changes to the approved set of plans and specifications must again be submitted to the Architectural Review Committee for its inspection and approval.

B. Any Owner may request in writing that that the Architectural Review Committee issue a certificate of compliance certifying that there are no known violations of the Declaration, Design Guidelines or other Governing Documents. The Association shall either grant or deny such written request within thirty (30) days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

C. The Architectural Review Committee is authorized and empowered to consider and review any and all aspects of construction, construction of other Improvements and the location, quality and quantity of landscaping on the Lots, which may, in the reasonable opinion of the Architectural Review Committee, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Property. Also, the Architectural Review Committee is permitted to consider technological advances in design and materials, and any comparable or alternative techniques, methods or materials may or may not be permitted in accordance with the reasonable opinion of the Architectural Review Committee.

D. All Improvements approved by the Architectural Review Committee shall be diligently commenced after obtaining all necessary governmental approvals therefor, and thereafter shall be diligently pursued to completion.

Section 12.07 Design Guidelines. The Architectural Review Committee may, from time to time during the Term, issue, supplement, withdraw and/or amend the Design Guidelines, in whole or in part. The Design Guidelines are intended to be explanatory and illustrative of the general intent of the development of the Property and are intended to be used as a guide to assist the Architectural Review Committee in reviewing plans and specifications. In any event, such Design Guidelines shall not be binding upon the Architectural Review Committee and shall not constitute, in every event, the basis for approval or disapproval of plans and specifications and materials submitted to the Architectural Review Committee for approval. Declarant shall have the sole and full authority to amend the Design Guidelines as long as it owns any portion of the Property, unless Declarant has previously assigned such right to the Association by written instrument. Thereafter, the Association shall have the authority to amend the Design Guidelines. Any amendments to the Design Guidelines shall be prospective only and shall not apply or require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and, Declarant, or the Association, as appropriate, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon location and unique characteristics. The Design Guidelines, and future amendments and additions thereto, may be recorded in the Records separate and apart from this Declaration.

Section 12.08 Variances. Upon submission of a written request for same, the Architectural Review Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install improvements which are in variance from this Declaration or the architectural standards which are provided in this Declaration generally, or in Article IX herein and/or which may be promulgated in the future, or which are in variance from the Design Guidelines. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community. Written requests for variances shall be deemed to be disapproved if the Architectural Review Committee has not expressly given its written approval of such request within thirty (30) days of the submission of such request. No member of the Architectural Review Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Review Committee's right to strictly enforce the terms and conditions of this Declaration and/or the architectural standards provided hereunder against any other Owner. For so long as Declarant owns any part of the Property, Declarant may from time to time in its sole discretion grant variances from the requirements of this Declaration or the architectural standards which are provided in this Declaration generally or in Article IX herein, and/or which may be promulgated in the future, or from the

requirements of the Design Guidelines.

Section 12.09 Nonconforming and Unapproved Improvements.

A. The Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvement) if such Improvements were commenced or constructed in violation of this Article XII. In addition, the Association may cause, but has no obligation to cause, such restoration, demolition and removal, and it may levy the amount of the cost thereof and/or a fine equal to \$100.00 for each violation as an Individual Assessment against the Owner and the Lot upon which such Improvements were commenced or constructed.

B. No action will be taken by the Association with respect to nonconforming or unapproved Improvements until the completion of the review and appeal process, if the violating Owner elects by written notice to the Association, as more fully provided in the Enforcement Policy.

Section 12.10 No Liability. None of Declarant, the Association, the Architectural Review Committee, the Board, the officers, members, employees and/or agents of any of them, and/or the Directors, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications, and every Owner of any of said property, hereby (1) agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, the officers, members, employees and/or agents of any of them, and/or the Directors to recover any such damages, (2) releases, remises, and quitclaims all claims, demands and causes of action arising out of or in connection with any related judgment, negligence or nonfeasance, and (3) waives the provisions of any Applicable Law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

Section 12.11 Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained herein, after the expiration of one (1) year from the date of Substantial Completion of construction of any Improvement within the Property, said improvements shall be deemed to be in compliance with all provisions of this Article XII, unless (i) actual notice of noncompliance and noncompletion, executed by the Architectural Review Committee or its designated representatives, shall appear of record in the Records, or (ii) legal proceedings shall be instituted to enforce compliance herewith or completion thereof. Alterations or repairs to a Lot shall not entitle the Architectural Review Committee to review for compliance any Improvements substantially completed more than one (1) year prior to such more recent Improvements, alterations or repairs which are subject to review.

Section 12.12 Appointment and Designation. The Architectural Review Committee may, from time to time, by the vote or written consent of a majority of its members, delegate any of its rights or responsibilities hereunder to one or more representatives or subcommittees which shall have full authority to act on behalf of said Architectural Review Committee in all matters delegated.

Section 12.13 Review Fee. Any plans and specifications shall be submitted in duplicate, in writing, for approval, together with such fees as set by the Architectural Review Committee and contained in the Design Guidelines.

Section 12.14 Inspection. After telephonic notice to the Owner, any member or agent of the Architectural Review Committee may from time to time at any reasonable hour or hours enter and inspect

any property subject to the jurisdiction of said Architectural Review Committee to confirm improvement or maintenance in compliance with the provisions hereof.

Section 12.15 Governmental Authorities. All future Owners and their successors and assigns, by their acceptance of title to their respective Lots, and the Association, shall be bound by and subject to Applicable Law. No Improvements or any addition or change to or alteration thereof shall be constructed, erected, placed, altered or maintained on any of the Property, including the Common Area, if the same is in violation of any Applicable Law. Notwithstanding anything to the contrary herein contained, Declarant, the Association, the Architectural Review Committee and their respective officers, directors, agents and employees, including the Directors, shall have no obligation to enforce or to report the violation of any Applicable Law.

Section 12.16 No Liability for Design Defects. Plans and specifications are not reviewed and approved for engineering or structural design or quality of materials, and by reviewing and approving such plans and specifications, none of the Architectural Review Committee, the members thereof, the Association, the Board, Declarant or their respective agents assumes any liability or responsibility for engineering or structural design or quality of materials or any other matter related to such plans and specifications, nor for any defect in any structure constructed on the basis of such plans and specifications.

ARTICLE XIII EXCULPATORY PROVISIONS

Section 13.01 DISCLOSURES. EACH OWNER (HEREINAFTER REFERRED TO IN THIS SECTION 13.01 AS THE "INDEMNITOR"), BY ACCEPTANCE OF TITLE TO ITS RESPECTIVE LOT(S), HEREBY ACKNOWLEDGES AND AGREES THAT:

A. DUE TO THE TOPOGRAPHY OF INDEMNITOR'S LOT(S) AND THE PROPERTY, WATER MAY, AT TIMES, FLOW THROUGH AND OVER PORTIONS OF ITS LOT(S) FROM ADJACENT AND SURROUNDING LOTS IN ORDER TO ACHIEVE POSITIVE DRAINAGE AWAY FROM ALL APPLICABLE LOTS. NO ADVERSE ACTION MAY BE TAKEN BY INDEMNITOR TO THE DETRIMENT OF SUCH POSITIVE DRAINAGE ON INDEMNITOR'S LOT(S) OR ANY ADJACENT LOT.

B. INDEMNITOR'S LOT(S) MAY HAVE "BACK-TO-FRONT" OR "FRONT-TO-BACK" DRAINAGE. THERE MAY BE A SWALE OR SWALES OVER VARIOUS PORTIONS OF INDEMNITOR'S LOT(S) DUE TO SUCH DRAINAGE SITUATION. THE DEPTH AND WIDTH OF ANY SWALES WILL VARY DEPENDING ON THE ELEVATIONS OF INDEMNITOR'S LOT(S) AND ADJACENT LOTS. THE FRONT AND THE REAR PORTIONS OF INDEMNITOR'S LOT(S) WILL NOT BE LEVEL AND NO ADJUSTMENTS TO THE DEPTH OR SEVERITY OF ANY SWALES SHOULD BE MADE DUE TO COSMETIC OR AESTHETIC CONCERNS. AFTER INDEMNITOR'S PURCHASE OF ITS LOT(S), ANY ALTERATIONS MADE TO ANY SWALES MAY IMPACT THE DRAINAGE AS WELL AS ANY FOUNDATION WARRANTY THAT INDEMNITOR MAY HOLD.

C. INDEMNITOR'S LOT(S) FALL(S) UNDER THE JURISDICTION OF THE ASSOCIATION WHICH REQUIRES MANDATORY AFFILIATION THEREWITH, INCLUDING THE PAYMENT OF ASSESSMENTS (WHICH

WILL BE PAYABLE ON A QUARTERLY BASIS) PURSUANT THERETO. INDEMNITOR WILL ALSO INCUR AN INITIAL MEMBERSHIP FEE, A WORKING CAPITAL FEE AND A TRANSFER FEES PURSUANT TO THE DECLARATION. INDEMNITOR UNDERSTANDS THAT IT SHOULD REVIEW THE DECLARATION FOR MORE DETAILED INFORMATION REGARDING DUES, ASSESSMENTS AND USE RESTRICTIONS.

D. AS OF THE EFFECTIVE DATE, EACH LOT MAY BE SERVICED BY FOR ELECTRICAL SERVICE AND TELEPHONE SERVICE BY SERVICE PROVIDERS SELECTED BY DECLARANT, ALTHOUGH OTHER SERVICE PROVIDERS MAY UTILIZE THE UTILITY EASEMENTS AND/OR PUBLIC RIGHTS-OF-WAY LOCATED THROUGHOUT THE PROPERTY. NATURAL GAS SERVICE WILL NOT BE PROVIDED TO LOTS. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT DECLARANT MAY CHANGE AND/OR DESIGNATE ALTERNATIVE SERVICE PROVIDERS FOR ANY OR ALL OF THE UTILITIES REFERENCED ABOVE.

E. INDEMNITOR UNDERSTANDS AND AGREES THAT DECLARANT HAS NO RESPONSIBILITY AS TO THE PRESENT CONDITION OR FUTURE MAINTENANCE OF ANY TREES ON INDEMNITOR'S LOT(S). FURTHERMORE, INDEMNITOR UNDERSTANDS THAT DECLARANT MAKES NO ASSURANCES, IMPLIED OR STATED, IN REGARD TO THE SURVIVAL OF ANY TREES DURING THE CONSTRUCTION PROCESS OF BUILDING AND COMPLETING A RESIDENCE ON INDEMNITOR'S LOT. INDEMNITOR ALSO ACKNOWLEDGES THAT DECLARANT HAS NO LIABILITY CONCERNING TREES EITHER DURING CONSTRUCTION OR AFTER A RESIDENCE IS PURCHASED AND OCCUPIED ON INDEMNITOR'S LOT. INDEMNITOR UNDERSTANDS FURTHER THAT IT ASSUMES ALL RESPONSIBILITY FOR THE MAINTENANCE AND THE CONDITION OF ANY TREES ON ITS LOT(S).

F. ANY MODIFICATIONS OR ADDITIONS TO INDEMNITOR'S RESIDENCE OR ANY STRUCTURE ON ITS LOT(S) REQUIRES THE PRIOR SUBMITTAL TO, AND THE APPROVAL BY, THE ARCHITECTURAL REVIEW COMMITTEE OF PLANS AND SPECIFICATIONS RELATING THERETO PURSUANT TO THIS DECLARATION. IT IS ALSO UNDERSTOOD THAT FAILURE TO SO COMPLY MAY RESULT IN THE IMPOSITION OF FINES AGAINST THE INDEMNITOR AND/OR THE REMOVAL OF SUCH MODIFICATIONS OR ADDITIONS AT INDEMNITOR'S EXPENSE.

G. INDEMNITOR UNDERSTANDS THAT THERE IS NO PRESCRIBED TIME FOR THE CONSTRUCTION OR MARKETING BY DECLARANT AND/OR ANY OWNER OF A RESIDENCE ON ANY LOT INCLUDING THE INDEMNITOR'S LOT(S). INDEMNITOR UNDERSTANDS THAT DECLARANT MAKES NO ASSURANCES REGARDING ANY ESTABLISHED PERIOD OF TIME DURING WHICH LOTS NEAR THE MODEL HOMES OR TRAILERS OF ANY BUILDER WILL REMAIN VACANT, SINCE THE USE OF SUCH HOMES OR TRAILERS IS OF AN INDETERMINATE LENGTH OF TIME.

H. INDEMNITOR SHOULD DIRECT ANY ISSUES, CONCERNS OR QUESTIONS REGARDING THE COMMON AREA, AND/OR THE

ASSOCIATION, TO THE OFFICERS OF THE ASSOCIATION, OR THE MANAGER, IF ANY, WHOSE NAME CAN BE OBTAINED BY CONTACTING THE ASSOCIATION IF SUCH A MANAGER HAS BEEN APPOINTED.

I. NEITHER DECLARANT NOR THE ASSOCIATION IS PROVIDING CABLE SERVICES TO THE LOTS AND THERE IS NO CURRENT PLAN TO DO SO. IN THE FUTURE, THE ASSOCIATION MAY ELECT, BUT IS NOT OBLIGATED, TO CONTRACT FOR BASIC CABLE TELEVISION SERVICE FOR ALL RESIDENCES WITHIN THE SUBDIVISION, AND IN SUCH EVENT BASIC CABLE SERVICE WILL BE PROVIDED TO ALL RESIDENCES AND THE COST OF THE BASIC CABLE SERVICE WILL BE INCLUDED IN EACH MEMBER'S ASSESSMENTS. IN SUCH EVENT, ANY ADDITIONAL SERVICES SUCH AS PREMIUM CHANNELS MAY BE PURCHASED DIRECTLY FROM THE CABLE PROVIDER. NONUSE OF CABLE TV SERVICE WILL NOT REDUCE ANY MEMBER'S ASSESSMENTS.

Section 13.02 DISCLAIMER. DECLARANT HEREBY DISCLAIMS ANY AND ALL LIABILITIES AND OBLIGATIONS TO INDEMNITOR AND ALL OTHER PERSONS IN CONNECTION WITH ANY OF THE MATTERS DESCRIBED AND/OR DISCLOSED IN SECTION 13.01 HEREIN, AS WELL AS ANY AND ALL INJURIES TO PERSONS AND/OR DAMAGES TO PROPERTY THAT MAY OCCUR IN CONNECTION WITH ANY ONE OR MORE OF SUCH MATTERS.

Section 13.03 WAIVER AND INDEMNITY. INDEMNITOR AND EACH PERSON HEREAFTER ACQUIRING AND OWNING ANY LOT(S), FOR AND ON BEHALF OF THEMSELVES AND THEIR RESPECTIVE HEIRS, SUCCESSORS, ASSIGNS AND INVITEES, ARE IRREVOCABLY AND UNCONDITIONALLY DEEMED (A) TO FULLY AND FINALLY WAIVE, AS TO DECLARANT, ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, LOSSES, COSTS, EXPENSES, ETC. SUFFERED AND/OR INCURRED IN CONNECTION WITH ANY OF THE MATTERS DESCRIBED AND/OR DISCLOSED IN SECTION 13.01 AND (B) TO INDEMNIFY AND TO HOLD HARMLESS DECLARANT FROM AND AGAINST THE FAILURE OR REFUSAL OF INDEMNITOR TO COMPLY WITH ANY ONE OR MORE OF THE FOREGOING WAIVERS.

ARTICLE XIV
MORTGAGEE PROTECTION

Section 14.01 Priority of Mortgage. Notwithstanding any other provision of this Declaration to the contrary, it is hereby provided that a breach of any of the conditions contained in this Declaration by any Owner or any enforcement thereof, including foreclosure, by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to a Lot or any part thereof. Any lien which the Association may have on any Lot for the payment of Assessments attributable to such Lot will be subordinate to the lien or equivalent security interest of any mortgage on the Lot recorded prior to the date on which any such Assessments became due and prior to the date in which written notice of such Assessments was recorded in the appropriate real property records of the County; provided, however, that such subordination shall apply only to Assessments which have been due and payable prior to a sale or transfer of such Lot pursuant to foreclosure or any proceeding in lieu of foreclosure, even if the action to collect such Assessments is instituted after the date of such sale or transfer of such Real Lot pursuant to foreclosure or any proceeding in lieu of foreclosure.

ER 038 - 01 - 2114

Section 14.02 Financial Information. Upon written request to the Association, any institutional lender holding a first mortgage is entitled (A) to inspect the books and records of the Association during normal business hours, and (B) to receive an annual financial statement of the Association.

ARTICLE XV EASEMENTS

Section 15.01 Easements. For the benefit of Declarant, the Association and its and their respective successors and assigns, easements, licenses, franchises or other similar permits for installation, use, operation, maintenance, repair and removal of utilities, public rights-of-way and drainage facilities and floodway easements and video services, cable television services, high-speed Internet services, security services, communication services, fire protection services and other similar services over, under and across the Property are hereby reserved as specifically set forth on recorded Pats of the Property, or any portions thereof, or as set forth in other applicable documents of record in the Records. In addition, for the benefit of Declarant, the Association and its and their respective successors and assigns, Declarant hereby reserves easements for installation, use, operation, maintenance, repair and removal of utilities and drainage facilities and video services, cable television services, high-speed internet services, security services, communication services, fire protection services and other similar services, such easements to be located between the Public Streets and building set-back lines from such Public Streets, such easements in no event to exceed fifteen feet (15') in width as measured from the right-of-way line of such Public Streets. In any event, such fifteen foot (15') easements shall be contiguous to the right-of-way lines of such Public Streets. For the benefit of Declarant, the Association and its and their respective successors and assigns, full right of ingress and egress at all times over the Property is hereby reserved to the extent reasonably necessary for the installation, operation, maintenance, repair and/or removal of any utility or drainage facility or other services, as aforesaid, contained within any of the aforesaid easements. Further, for the benefit of Declarant, the Association and its and their respective successors and assigns, full right of ingress and egress at all times over the Property is hereby reserved as may be reasonably required to remove any obstruction that may be placed in such easements without the approval of Declarant, the Association, or the owner of the relevant easement, where such unauthorized obstruction would constitute interference with the use of such easement or with the installation, use, operation, maintenance, repair, or removal of such utility or other services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant and the Association shall have the right to assign and convey, in whole or in part, any of the easements granted or reserved hereunder to one or more public utility companies, quasi-public service companies, authorized providers of the aforesaid services (including, but not limited to, cable television services and high-speed internet access services) or relevant Governmental Authorities. All utilities and other improvements installed within and pursuant to the aforesaid easements shall be installed underground unless otherwise approved in writing by the Owner(s) of the Lot(s) upon which above-ground utilities or other improvements are to be installed. For the benefit of Declarant, the Association and its and their respective successors and assigns, full rights of ingress and egress at all times over the Property are hereby reserved for the installation, operation, maintenance, or service, together with the right to remove any obstruction that may be placed in the aforesaid easements that would constitute interference with the use of the aforesaid easements, or with the installation, use, operation, maintenance, repair or removal of such utility, improvement or service.

Section 15.02 Ingress and Egress by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot for the maintenance and repair of each Lot in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, however, that any such entry by the Association upon any Lot shall be made only after reasonable notice to the Owner thereof (except that no notice shall be required in the event of an emergency), any entry shall be made with as little inconvenience to the Owner thereof as

practical, and any damage caused thereby shall be repaired by the Association at the expense of such Association.

Section 15.03 Easements for Encroachment. There shall be reciprocal appurtenant easements for encroachment between each Lot and the portion or portions of the Common Area adjacent thereto and between adjacent Lots due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area, or between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner or the Association.

Section 15.04 Easement for Drainage. Each Owner, by its acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to have granted, created and conveyed unto the Association, the Owners of adjacent Lots and Declarant, a perpetual drainage easement over, through, under and across such Owner's Lot for the purpose of permitting runoff and/or storm water to drain from the Common Area and/or adjacent Lots over, through, under and across such Owner's Lot. Nothing herein shall entitle an Owner to change the volume, speed, or course of flow of such surface waters after the improvement of such Owner's Lot has been substantially completed except as may be permitted pursuant to Section 11.04(J).

Section 15.05 Future Utility Easements and Agreements. Declarant reserves the right for itself and its designee (so long as Declarant or said designee owns a Lot) and for the Board, without joinder or consent of any Person whatsoever, to grant such additional easements including, but not limited to, reclaimed and potable water and sewage systems, irrigation, wells and pumps, cable television, television antennas, telecommunications systems, electric, gas, water, fire and police protection, telephone or other utility easement, or to relocate any existing utility easement in any portion of the Property as Declarant, its designee, or the Board shall deem necessary or desirable for the proper operation and maintenance of the Property or any portion thereof, or for general health and welfare of the Owners, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with access or use of any Lot for permitted purposes. Such easements shall be located between the Public Streets and building set-back lines from such Public Streets, such easements in no event to exceed fifteen feet (15') in width as measured from the right-of-way line of such Public Streets. In any event, such fifteen foot (15') easements shall be contiguous to the right-of-way lines of such Public Streets. In addition, Declarant reserves the right, for itself and its designee (so long as Declarant or said designee owns a Lot) without the joinder or consent of any Person whatsoever, to enter into license, marketing, shared facilities or other agreements with utility providers, operators or owners for the provision of any such utilities to the Property or any portion thereof. Declarant shall be entitled to receive and continue to receive all royalties, fees, compensation, or other revenues provided in such license, marketing, share facilities or other agreements entered into by Declarant, whether accruing or paid prior to or after the Development Period or the Turnover Date and the Association shall not be entitled thereto.

ARTICLE XVI GENERAL PROVISIONS

Section 16.01 Duration. The covenants, conditions and restrictions, terms, and provisions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or any Owner, and their respective legal representatives,

heirs, successors and assigns, for a term (the "Term") of thirty (30) years after the Effective Date; provided, however, upon expiration of said 30-year period, the Term shall be deemed automatically extended for successive periods of ten (10) years each unless an instrument agreeing to terminate this Declaration, signed by the Members entitled to cast at least sixty-seven percent (67%) of the votes of the Association in the aggregate, has been recorded in the Records within the twelve (12) months immediately preceding the beginning of a ten (10) year extension period, in which case this Declaration shall terminate at the end of the original 30-year Term or the applicable ten (10) year extension period.

Section 16.02 Amendments. Any and all amendments to this Declaration as provided herein, shall be recorded in the Records.

Section 16.03 Enforcement. Enforcement of the terms and provisions hereof shall be by any proceeding at law or in equity against any Person violating or attempting to violate them, or to recover damages, or to enforce any lien created by the terms and provisions hereof, and failure by the Association, Architectural Review Committee or Declarant to enforce any term or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Architectural Review Committee, Declarant, any Owner and/or the Association shall have the right, but not the obligation, to enforce the terms and provisions herein in accordance with the provisions set forth within this Declaration and the Enforcement Policy.

Section 16.04 Termination of Responsibility of Declarant. If Declarant should convey all of its right, title and interest in and to the Property and assign its rights as Declarant herein to any partnership(s), individual(s) or corporation(s), then, and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership(s), individual(s), or corporation(s) shall be obligated to perform all of such duties and obligations of Declarant.

Section 16.05 Owners' Compliance. Each Owner, tenant or occupant of any Lot shall comply with the provisions of this Declaration, and to the extent they are not in conflict with this Declaration, each Owner, tenant, or occupant of a Lot shall comply with the decisions and resolutions of the Association or its duly authorized representatives. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, damages and/or fines, and/or to sue for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established herein shall be deemed to be binding on all Owners, and their respective successors and assigns.

Section 16.06 Severability. Invalidation of any one or more of the terms and provisions herein by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 16.07 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 16.08 Notices to Members. Except as hereinafter set forth, any notice required to be given to any Member under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, and addressed to the last known address of the Person who appears as a Member on the records of the Association at the time of such mailing. In the event that there are multiple Members with respect to a single Lot, the Association shall be obligated to send notice to only one (1) of the multiple Members. Notice to one shall be deemed to be notice to all. Multiple Members may designate one (1) of their group as the Person entitled to notice by so notifying the Association in writing of such Person and the address thereof, but if no such Person is so designated, the Association may notify any one (1) of such multiple Members. Notices of past due

Assessments, of the intention to institute the punitive provisions hereof, of sanctions to be imposed hereunder or of any violations of this Declaration, shall be sent to the affected Person by certified mail, return receipt requested and addressed as aforesaid.

Section 16.09 Compliance and Correction. Declarant intends that the documents creating and governing the Association and/or this Declaration may be amended to comply (if not in compliance) with all requirements of the Federal Home Loan Mortgage Corporation (“FHLMC”), Federal National Mortgage Association (“FNMA”), Veteran’s Administration (“VA”) and Federal Housing Authority (“FHA”) pertaining to the purchase or guaranty by FHLMC, FNMA, VA or FHA of conventional loans. Declarant and all Owners therefore agree that, notwithstanding anything to the contrary contained herein or in the Certificate of Formation and/or the Bylaws, in the event that (i) this Declaration, the Bylaws, the Certificate of Formation and/or any other documents or instruments governing of creating the Association do not comply with the FHLMC, FNMA, VA or FHA requirements, (ii) there is any need to clarify the role and responsibilities of the Association whether with regard to Assessments and/or the determination, levying, and/or collection thereof, or any other matter relating to such roles and responsibilities, and/or (iii) if there are clerical errors to be corrected or if there are matters to be clarified, as determined by Declarant in its sole discretion, then, in any of such events, Declarant shall have the power, in its sole discretion (on behalf of the Association, and each and every Owner and Member), and without the joinder of any other party, to amend the terms of this Declaration, the Bylaws, the Certificate of Formation and/or any other documents or instruments governing or creating same and/or to enter into any agreement with FHLMC (or its designee), FNMA (or its designee), FHA (or its designee) or VA (or its designee) reasonably required by FNMA, FHLMC, FHA or VA, to allow the Property, the Association, the Declaration and/or any other related documents to comply with such requirements. Declarant is not obligated, however, to make such amendments.

Section 16.10 Use of Words “Stone Creek” or “Stone Creek Ranch”. No Owner, any tenant or licensee of any Owner or occupant of any Lot shall use the words “Stone Creek” or “Stone Creek Ranch”, or any combination or derivative thereof in the name of any building or any business or enterprise or in any printed or promotional material without the prior written consent of Declarant.

Section 16.11 Condemnation. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, agreements and settlements with the condemning authority or the court. The award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners.

Section 16.12 Association Maintenance of Common Area. The Association shall be responsible for maintenance of the Common Area. The Association shall be entitled to levy and collect the Assessments provided elsewhere herein, as the case may be, to the extent necessary to defray all costs of such maintenance.

Section 16.13 Prohibition Concerning Certain Signs. Absent the express written consent of Declarant thereto, no signs shall be placed and/or constructed in (A) the rights-of-way and/or medians of any thoroughfares, and/or collector roads located within the boundaries of the Property, or (B) any Common Area.

Section 16.14 Security Services. Declarant or the Association is hereby authorized, in its sole discretion, for and on behalf of itself and the Owners to contract for security services within the Property. The costs of such services may be paid directly to such service provider(s) by the Association. If so, such costs will be reimbursed to the Association as a portion of the Regular Assessments paid by each Owner.

Section 16.15 Electric Aggregation Services. Declarant or the Association is hereby

authorized, in its sole discretion, for and on behalf of itself and the Association, to contract with aggregation service provider(s) to facilitate competitive bids from retail electric and/or natural gas providers for any and all or any portions of the Property, including, without limitation, Lots, and Common Area.

Section 16.16 Addresses. Any notices or correspondence to an Owner shall be addressed to the street address of the Lot. Any notices or correspondence to Declarant or the Architectural Review Committee shall initially be addressed to Declarant or the Architectural Review Committee, whichever applies, at the address of Declarant, or to such other address as is specified by Declarant or the Architectural Review Committee, whichever applies, pursuant to an instrument recorded in the Records.

ARTICLE XVII MISCELLEANEOUS

Section 17.01 Appointment of Architectural Control Committee, Board and Officers of the Association; Declarant as Member. So long as Declarant owns all or any part of the Property, Declarant shall have the right to continue to appoint and remove the members Architectural Review Committee and enforce the Design Guidelines and in all other respects exercise all rights and authority of the Architectural Review Committee as set forth in this Declaration and all other Governing Documents. Prior to the Turnover Date, subject to any applicable restrictions or limitations imposed by Applicable Law, Declarant, or a Person or Persons appointed by Declarant, may (A) appoint and remove any and all Directors and any and all officers of the Association, and (b) in all other respects exercise all rights and authority of the Association as set forth in this Declaration and all other Governing Documents. If and only if then required under Applicable Law, on or before the one hundred and twentieth (120th) day after the date seventy-five percent (75.0%) of the Lots are conveyed to Owners other than Declarant, at least one-third (1/3) of the Directors must be elected by Owners other than the Declarant. Without limitation of the foregoing, any provisions of this Declaration or any other Governing Document regarding qualifications for Directors, officers of the Association or members of the Architectural Review Committee members shall be inapplicable to Declarant appointees during the Development Period.

Section 17.02 ARC Approval Not Required. Declarant is not required to obtain Architectural Review Committee approval or otherwise comply with any provisions of Article XII with respect to any Lot owned by Declarant or an Affiliate of Declarant, whether or not such sale occurs during or after the Development Period.

Section 17.03 Common Area.

(A) AT ANY TIME DURING THE DEVELOPMENT PERIOD, REGARDLESS OF DESIGNATION OF COMMON AREA BY ANY PLAT OR OTHERWISE, DECLARANT MAY DESIGNATE COMMON AREA AND MODIFY, DISCONTINUE, REDESIGNATE OR IN ANY OTHER MANNER CHANGE THE COMMON AREA.

(B) ANY RIGHT, TITLE, OR INTEREST TO ANY COMMON AREA WILL BE TRANSFERRED, CONVEYED, OR ASSIGNED TO THE ASSOCIATION ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS, AND, EXCEPT FOR SPECIAL WARRANTY OF TITLE BY THROUGH OR UNDER DECLARANT, WITHOUT ANY COVENANT, WARRANTY, GUARANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW. IN ADDITION, ANY TITLE INSURANCE RELATING THE TRANSFER OR CONVEYANCE OF ANY COMMON AREA SHALL BE THE SOLE EXPENSE OF THE ASSOCIATION.

Section 17.04 Declarant Activities. During the Development Period, Declarant has the right to transact any business reasonably necessary to development of the Property, and to consummate the sale of Lots and other portions of the Property, and in connection therewith to maintain or permit others to maintain model homes, have signs, use without charge any part of the Property not a Lot under construction by an Owner or a Lot occupied by an Owner, and to use without charge any portion of the Common Area.

[END OF TEXT. SIGNATURE PAGE FOLLOWS.]

ER 038 - 01 - 2120


**SIGNATURE PAGE
TO
AMENDED AND RESTATED
STONE CREEK RANCH
DECLARATION
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS**

IN WITNESS WHEREOF, the undersigned executes this Declaration as of the Effective Date.

BECKER ROAD LP, a Texas limited partnership

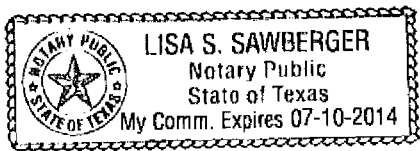
By: Dunham Enterprises, LLC, General Partner

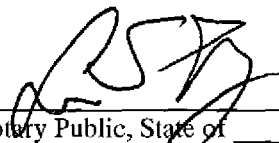
2OR

By: 
Archie W. Dunham, President

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 31 day of October, 2012 by Archie W. Dunham, President of Dunham Enterprises, LLC, General Partner of Becker Road LP, a Texas limited partnership, on behalf of said limited partnership.




Notary Public, State of _____

My commission expires: _____

(NOTARY SEAL)

Exhibit "A" Legal Description of the Property

ER 038 - 01 - 2121

EXHIBIT "A"

Legal Description of the Property

All of Stone Creek Ranch Sec. 1, a subdivision of 48.63 acres of land located in Harris County, Texas, according to the map or plat thereof recorded under File No. 20070741751 of the Map Records of the County Clerk of Harris County, Texas; and

D

All of Stone Creek Ranch Sec. 2, a subdivision of 17.71 acres of land located in Harris County, Texas, according to the map or plat thereof recorded under File No. 20070741752 of the Map Records of the County Clerk of Harris County, Texas; and

All of Stone Creek Ranch Sec. 3, a subdivision of 35.42 acres of land located in Harris County, Texas, according to the map or plat thereof recorded under File No. 20070741753 of the Map Records of the County Clerk of Harris County, Texas.

ER 038 - 01 - 2122

ER 038 - 01 - 2123

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Pages 57
11/01/2012 15:40:11 PM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
STAN STANART
COUNTY CLERK
Fees 236.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Stan Stanart

COUNTY CLERK
HARRIS COUNTY, TEXAS