



SECTION 1.02 Annexation of Other Property. During the Development Period only Declarant may annex additional real property in to and make same a part of the Subdivision. Thereafter, the Owners may annex additional real property into and make same a part of the Subdivision by amendment of this Declaration. Any such annexation must be evidenced by filing of, and is effective from the date of filing of, the amendment evidencing the annexation in the Official Public Records of Real Property of Harris County, Texas.

## Article II Definitions

Unless the context otherwise prohibits and in addition to other defined terms set forth herein, the following words and substantive provisions regarding same when used in this Declaration shall apply, mean and refer to the following:

SECTION 2.01 "Architectural Control Committee" or "ACC" means the committee established pursuant to **Article III** of this Declaration which will act as the governing authority of the Association.

SECTION 2.02 "Architectural Guidelines" means minimum construction standards, including acceptable exterior materials, colors, finishes and similar standards, landscaping requirements and limitations and any other procedural, aesthetic, environmental and architectural policies and procedures from time to time adopted by the Architectural Control Committee in accordance with **Article III** hereof, regardless of nomenclature or manner of designation, and may include Rules and Regulations.

SECTION 2.03 "Association" means WESTHEIMER CORT HOMEOWNERS' ASSOCIATION, a Texas unincorporated nonprofit association established as provided in **Article III** hereof for the purposes contemplated by this Declaration and other Governing Documents, and its successors and assigns.

SECTION 2.04 "Community Properties" means all common areas so designated herein or by the Plat which are intended for the common use of Owners, including without limitation (i) "Landscape Reserve "A" as so designated on the Initial Plat, SAVE, EXCEPT AND EXCLUDING the east thirty-five feet (35') of said Reserve "A", (ii) the private street designated on the Initial Plat as "16' Shared Driveway", said private street being herein sometimes referred to as the "Shared Drive", (iii) all Subdivision Facilities, and (iv) all other properties, real or personal, conveyed to or dedicated to the use of, or otherwise acquired by the Association for the common use, enjoyment or benefit of, the Association, together with all improvements thereon and appurtenances thereto.

SECTION 2.05 "Declarant" means O'CONNOR VENTURES, INC., a Texas corporation, and its successors and assigns.

SECTION 2.06 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements for WESTHEIMER CORT, and all lawful amendments thereto.

SECTION 2.07 "Development Period" means the period of time beginning on the date of recordation of this Declaration in the Official Public Records of Real Property of Harris County, Texas, and ending on the earlier occurrence of either of the following events:

2.07.1 five (5) years after the date of filing of this Declaration in the Official Public Records of Real Property of Harris County, Texas; or

2.07.2 upon the date of filing in the Official Public Records of Real Property of Harris County, Texas of Declarant's notice of termination of the Development Period, provided that at any time prior to complete termination of the Development Period Declarant may file one or more statements of limited termination of the Development Period to apply only to the specific functions, rights and/or responsibilities as stated therein.

SECTION 2.08 "Governing Documents" means all documents and applicable provisions thereof regarding the use, maintenance, repair, replacement, modification or appearance of any properties within the Subdivision, including each Lot, or any rights, responsibilities or obligations of any Owners pertaining thereto or to the ACC, including without limitation this Declaration, Rules and Regulations, Architectural Guidelines, Bylaws of the ACC, if any, all written decisions and resolutions of the ACC, and all lawful amendments to any of the foregoing.

SECTION 2.09 "Lot" means any of the numbered plots of land shown on the Plat upon which a single family residence is, or may be, built. The term "Lot" does not include Community Properties.

SECTION 2.10 "Meeting of Owners" means a meeting of the Owners called and conducted as follows: DURING THE DEVELOPMENT PERIOD ONLY DECLARANT MAY CALL A MEETING OF OWNERS. Thereafter a Meeting of Owners may be called by any member of the ACC and must be called upon receipt by any member of the ACC of a written request for a Meeting of Owners signed by the Owners of not less than fifty percent of the Lots then contained in the Subdivision. Any request for a Meeting of Owners must state a proper purpose or purposes of the meeting. After the first Meeting of Owners is held as provided in **Section 3.01**, an annual Meeting of Owners must be called and conducted by the ACC during the month in which the first Meeting of Owners is held. All Meetings of Owners will be held on such date, at such time and at such place in Harris County, Texas as determined by Declarant as to the first Meeting of Owners and by the ACC thereafter. Not less than ten nor more than forty-five days written notice of each Meeting of Owners must be given by Declarant during the Development Period and by the ACC thereafter to the Owners of all Lots. The notice must state the date, time, place and purpose(s) of the Meeting of Owners. If at any applicable time the ACC has not been formed or has ceased to function, or if the ACC fails to act within thirty days after receipt of a proper request for a Meeting of Owners, then a Meeting of Owners may be called upon written notice as aforesaid signed by the Owners of not less than fifty percent of the Lots then contained in the Subdivision. Except as provided in **Section 3.01.2** regarding the first Meeting of Owners, the Chairperson (or Vice Chairperson in the absence of the Chairperson) and the Secretary of the ACC shall act as the chairperson and secretary, respectively, for each Meeting of Owners; or, in the absence of any of the foregoing ACC officers, then the Owners shall elect a chairperson and/or secretary as the first order

of business. The secretary shall prepare minutes of the meeting and sign same, and shall mail a true and correct copy of the minutes to the Owners of all Lots within a reasonable time after conducting of the meeting. All costs of preparation and mailing of any notices and any other documents or materials regarding, and all other costs pertaining to calling or conducting of, a Meeting of Owners will be paid from the ACC Fund. Each Owner may vote at any Meeting of Owners in person or by proxy. The presence at any Meeting of Owners of the Owners of not less than fifty percent of the Lots then contained within the Subdivision, in person or by proxy, and whether or not in good standing, constitutes a quorum. The vote at any Meeting of Owners of a majority of the votes entitled to be cast shall be the act or acts of the Meeting of Owners unless a vote by the Owners of a greater percentage of Lots is specifically required herein or under other provisions of the Governing Documents. Any Meeting of Owners may also be held by telephone conference, if feasible, or as otherwise provided by Section 6.002 of the Texas Business Organizations Code, or the Members may act by written consent as permitted by Sections 6.201-6.205 of the Texas Business Organizations Code. The foregoing does not apply to or in any manner preclude Declarant from calling and conducting any other meetings with Owners during the Development Period for informational and any other purposes which do not involve binding votes by Owners.

SECTION 2.11 "Member" means every Person who is an Owner and holds a membership in the Association. Every Member which is not a natural person must designate a representative of such entity who is a natural person as provided in **Section 3.01.3**.

SECTION 2.12 "Owner" means, whether one or more Persons:

2.12.1 the owner according to the Official Public Records of Real Property of Harris County, Texas, whether one or more Persons, of the fee simple title to a Lot, including any mortgagee or other lien holder who acquires such ownership through judicial or non-judicial foreclosure or proceedings in lieu thereof, but excluding any Person holding a lien or other encumbrance, easement, mineral interest or royalty interest burdening title or otherwise having an interest merely as security for the performance of an obligation; and

2.12.2 as to an executory contract for conveyance until fee simple legal title is conveyed of record to the purchaser and notwithstanding any provisions in the contract to the contrary (i) the seller if the contract or notice thereof is not filed of record in which case the purchaser will be deemed a lessee and not an Owner or Member for purposes of the Governing Documents, and (ii) the seller and the purchaser if the contract is filed of record in which case the seller and purchaser are deemed to be joint Owners ("filed of record" herein meaning filed in the Official Public Records of Real Property of Harris County, Texas).

SECTION 2.13 "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), ACC, trust, or other entity.

SECTION 2.14 "Plat" means the map or plat of the Subdivision as described in Section 1.01, and any maps or plats covering properties hereafter made a part of the Subdivision as provided in **Article I**, if any, hereafter filed in the Map Records of Harris County, Texas, and all lawful modifications, amendments and/or replats of any of the foregoing.

SECTION 2.15 "Prevailing Community Standards" means those standards of aesthetics, environment, appearance, color, architectural design and style, maintenance, conduct and usage generally prevailing in the Subdivision as reasonably determined by the ACC at any given pertinent time and from time to time, including as to each particular Regulated Modification and each other matter or circumstance considered as of the date of the evaluation (i) prevailing standards as to harmony and compatibility with surrounding aesthetics, appearance and patterns of maintenance and use, harmony and compatibility with surrounding buildings, structures and other improvements, and harmony and compatibility with surrounding grades, topography, finished ground elevations, locations, colors, finishes, styles, workmanship, type and quality of materials and designs, and (ii) compliance with this Declaration and other applicable Governing Documents, and with applicable governmental laws, ordinances and regulations.

SECTION 2.16 "Regulated Modification" means (without implication that any particular matter is permitted or prohibited by this Declaration and without limitation as to **Article III** hereof) the commencement, placement, construction, reconstruction or erection on, below or above the surface of any Lot of any building, structure, improvement, thing or device, and any modification or alteration thereof or any addition thereto, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography, or any other Prevailing Community Standards as of the date of establishment of the Regulated Modification.

SECTION 2.17 "Related Parties" means and applies as follows:

2.17.1 Owners and Tenants. Tenants of each Owner are Related Parties of that Owner, and with respect to each such Owner and each such tenant, Related Parties of each include (i) their respective family and other household members (including in particular but without limitation all children and other dependents), (ii) their respective guests, invitees, servants, agents, representatives and employees, and (iii) all other Persons over which each has a right of control or under the circumstances could exercise or obtain a right of control.

2.17.2 Association, ACC and Declarant. Related Parties of the Association, ACC and Declarant include their respective officers, directors, partners, co-venturers, committee members, servants, agents, representatives and employees regarding all acts or omissions related to any of the foregoing representative capacities.

SECTION 2.18 "Rules and Regulations" means the policies and procedures from time to time adopted by the ACC regulating the maintenance, operation, use or occupancy of the Subdivision, including the Lots and Community Properties, in accordance with **Article V** hereof, regardless of nomenclature or manner of designation, and may include Architectural Guidelines.

SECTION 2.19 "Subdivision" means the residential community as more particularly described in **Section 1.01** hereof, and any other real property subjected to this Declaration as herein provided from time to time.

SECTION 2.20 "Subdivision Facilities" means all facilities and services built, installed, maintained, operated or provided by or through the Association, if any, for the general benefit of the Subdivision, including without limitation all other perimeter fencing which encloses the Subdivision, all Subdivision entry and other identification monuments, any patrol or security access limiting type services, structures or devices specifically obtained and maintained by the Association for such purposes, including without limitation any controlled access gates, guardhouses and related structures or devices, any Subdivision Facilities as set forth in **Section 7.05.2**, and any other facilities or services as from time to time so designated by Declarant during the Development Period or the ACC thereafter.

SECTION 2.21 "Townhouse" means each single family residence which is contained within a residential building which contains two or more single family residences.

**Article III**  
**Association; Architectural Control Committee**

SECTION 3.01 Organization; ACC Fund.

3.01.1 Establishment of Association.

(a) Organization. The Association is hereby established as a Texas unincorporated nonprofit association pursuant to Chapter 252 of the Texas Business Organizations Code. The Association has full power, authority and standing to enforce all provisions of the Governing Documents. The principal purposes of the Association are the collection, expenditure and management of the funds and financial affairs of the Association, enforcement of all provisions of the Governing Documents, providing for maintenance, preservation and architectural control within the Subdivision, the providing of such Subdivision Facilities as herein permitted or required, and all other acts and undertakings reasonably incident to any of the foregoing or in furtherance thereof as determined in the sole good faith opinions of the ACC or Members.

(b) Powers. The Association has full right power and authority to manage the affairs of the Association and enforce all provisions of this Declaration and all other Governing Documents, including without limitation (i) to exercise all powers available to a Texas unincorporated nonprofit association, and, to the fullest extent allowed by law, to exercise all powers of a Texas nonprofit corporation, (ii) to exercise all powers of a property owners association pursuant to Section 204.010 of the Texas Property Code, and (iii) to exercise all implied powers incident to the foregoing or necessary or proper to the Association's express powers or purposes, subject however to any limitations expressly stated herein or in other Governing Documents. Without limitation of the foregoing, the Association is hereby expressly authorized (x) to acquire (by gift, deed, lease or otherwise), own, hold, improve, operate, maintain, sell, lease, convey, dedicate for public use, otherwise dispose of and/or alienate real and personal property as the Association may deem necessary or appropriate and/or as provided in this Declaration and other Governing Documents (y) subject to prior approval by the Owners of not less than seventy-five percent (75%) of the Lots at a Meeting of Members, to borrow money, and to mortgage, pledge, deed in trust or otherwise encumber, alienate or hypothecate any or all of the Association's real or personal property

as security for money borrowed or debts incurred to conduct the lawful affairs of the Association, and (z) to compromise and settle any and all claims, demands, liabilities and causes of action whatsoever held by or asserted against the Association upon such term and conditions as the ACC may determine, and the decisions of the ACC as to any of the foregoing is final and conclusive.

### 3.01.2 Architectural Control Committee

(a) General. The Association acts through the Architectural Control Committee (herein sometimes referred to as the "ACC") which manages the affairs of the Association as specified in this Declaration and other Governing Documents. DECLARANT WILL ACT AS THE ACC (AND AS THE DESIGNATED REPRESENTATIVE OF THE ACC) DURING THE DEVELOPMENT PERIOD. Thereafter the ACC will be composed of three persons, each of whom must be an Owner. Nominations for election may be made by Declarant regarding the first Meeting of Owners or the ACC thereafter. In either case such nominees must be listed in the notice of the Meeting of Owners at which the nominee(s) will stand for election. Nominations may also be made from the floor.

(b) ACC Offices. The ACC shall elect from among its committee members a Chairperson, a Vice Chairperson and a Secretary. Such ACC officers shall be elected at an annual organizational meeting of the ACC to be held as soon as practical after each annual Meeting of Owners. Each ACC officer shall hold office until the next annual Meeting of Owners and until his or her successor is elected and qualified unless he or she shall sooner resign or be removed or otherwise become disqualified to serve. The duties of the ACC officers are as follows:

(1) Chairperson. The Chairperson shall preside over all meetings of the ACC and all Meetings of Owners, shall see that orders and resolutions of the ACC are carried out; shall sign as Chairperson all leases, mortgages, deeds and other written instruments and shall co-sign with any other ACC officer all checks and promissory notes which have been first approved by the ACC unless the ACC has authorized the signature(s) by any one or another ACC officer or officers; and, subject to advice of the ACC, has general supervision, direction, and control of the affairs of the Association; and shall discharge such other duties as may be required by the ACC. The Chairperson shall also act as the treasurer of the Association and as such shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the ACC; keep proper books of account; and keep accurate books and records of the fiscal affairs of the Association, and report on and make the same available for inspection by Members of the Association as required by the ACC, this Declaration, or other Governing Documents.

(2) Vice Chairperson. The Vice Chairperson shall act in the place and stead of the Chairperson in the event of the absence or inability or refusal of the Chairperson to act, and shall exercise and discharge such other duties as may be required by the ACC. In the latter regard the ACC may by unanimous vote designate the Vice Chairperson to act as the treasurer of the Association in lieu of, and otherwise as above provided regarding, the Chairperson.

(3) Secretary. The Secretary shall record the votes and keep the minutes of all Meetings of Owners and proceedings of the ACC; give notice of meetings of the ACC

and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the ACC.

(c) Notices; Meetings of ACC; Vacancies; Removal; Compensation. Within a reasonable time after each Meeting of Owners to elect members of the ACC, written notice must be given to all Owners stating the name and mailing address of each member of the ACC who was elected at the meeting and all other then members of the ACC. Meetings of the ACC, including the annual organizational meeting for election of ACC officers as above provided, may be called at any time by the Chairperson, or by the Vice Chairperson and Secretary, upon any reasonable notice, verbal or written, to be held at any reasonable location. A majority of the number of ACC committee members constitutes a quorum for the transaction of business at any meeting. Every act or decision done or made by a majority of the ACC committee members present in person or by proxy at a meeting at which a quorum is present is the act of the ACC. Meetings of the ACC may also be held by telephone conference or as otherwise permitted by Section 6.002 of the Texas Business Organizations Code, or the ACC may act by written consent as permitted by Sections 6.201-6.205 of the Texas Business Organizations Code. Any member of the ACC may be removed at a Meeting of Owners called for such purpose by affirmative vote of the Owners of a majority of all Lots then contained in the Subdivision, and in such event the Owners at such Meeting of Owners shall also elect one or more individuals to fill the unexpired term(s) of the member(s) so removed. Any other vacancies on the ACC will be filled by majority vote of the remaining members or by the remaining member of the ACC, or, in the event of a deadlock, by the Owners present at a Meeting of Owners called for such purpose which meeting must be called promptly after any deadlock occurs. No member of the ACC is entitled to compensation for services performed; provided, the ACC may employ one or more architects, engineers, attorneys or other consultants, as approved by the ACC, to assist the ACC in carrying out its duties, and members of the ACC may also be reimbursed for reasonable expenses in such manner and amounts as may be approved by the ACC or as otherwise set forth in the Governing Documents

(d) First Meeting of Owners; Election of ACC; Term of Office. Declarant shall call the first Meeting of Owners within a reasonable time after termination of the Development Period, or such earlier date as determined by Declarant. All Owners, whether Class A or Class B Members, are entitled to vote at the first Meeting of Owners. Declarant may appoint any persons to act as chairperson and secretary for the first Meeting of Owners, or, if Declarant does not do so, then the Owners shall elect the chairperson and secretary for the meeting as the first order of business of the meeting. The Owners shall otherwise conduct the first Meeting of Owners as provided in **Section 2.10**, and Declarant need not attend such meeting. At the first Meeting of Owners the Owners shall elect one committee member for a term of three years, one committee member for a term of two years and one committee member for a term of one year. Annually thereafter one committee member will be elected for a three year term to fill the expired term of such individual's predecessor. Subject to the foregoing, each elected member of the ACC will serve until the member's successor is elected and has qualified.

(e) Owners Acting as ACC. If at any time after the Development Period the ACC ceases to function, unless and until the ACC is re-established, all rights, duties, and responsibilities of the ACC shall vest in the Owners. The Owners may act as the ACC at any

Meeting of Owners. The ACC may be re-established at any Meeting of Owners, with ACC members to be elected in the same manner as at the first Meeting of Owners called by Declarant.

(f) Designation of ACC Representative. One person who is an Owner may be designated to act as the ACC in which case the designated representative shall have all rights and responsibilities of the ACC. The designation may be made by unanimous vote of the then members of the ACC, or by vote of the Owners at a Meeting of Owners. The designated representative shall serve until the earlier of the representative's resignation, expiration of such term as may be specified in the original designation, or vote to terminate the term of the representative by the then ACC or by the Owners at a Meeting of Owners. Written notice must be given to the Owners of all Lots as to designation of an ACC representative and termination of the representative's term of office.

(g) TRANSFER OF DECLARANT CONTROL. FULL AND SOLE RESPONSIBILITY FOR MANAGEMENT, MAINTENANCE, OPERATION AND CONTROL OF THE SUBDIVISION, THE ASSOCIATION AND THE ACC AS HEREIN PROVIDED VESTS IN THE ASSOCIATION AND OWNERS ON THE EARLIER TO OCCUR OF TERMINATION OF THE DEVELOPMENT PERIOD OR THE DAY FOLLOWING THE DATE SET BY DECLARANT FOR THE FIRST MEETING OF OWNERS TO ELECT MEMBERS OF THE ACC AS SET FORTH IN THE NOTICE TO OWNERS OF SAID MEETING NOTWITHSTANDING FAILURE OF THE OWNERS TO ELECT ANY OR ALL MEMBERS OF THE ACC.

3.01.3 Membership.

(a) Owners as Members. Every Owner must be and is a Member of the Association, and as such is subject to and shall have such rights, responsibilities and obligations as set forth in this Declaration and other applicable Governing Documents. The Association is entitled to rely on the Official Public Records of Real Property of Harris County, Texas in determining such status as an Owner, and may require submission to the ACC of appropriate certified copies of such records as a condition precedent to recognition of status as an Owner. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate any Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Memberships shall be appurtenant to and may not be separated from ownership of any Lot, and shall automatically pass with the title to the Lot.

(b) When Member Required to Designate Representative; Effect. Each Member which is not a natural person is required to designate one natural person to act on such Member's behalf as herein provided. The designation must be by written and dated notice stating (i) the name, contact address and telephone number of the designating entity and of the designated representative, and (ii) the effective date of such designation which effective date may not be earlier than midnight of the dated of receipt of the notice by the Association. The Association is not required to recognize any person as being authorized to represent or act on behalf of any Member which is not a natural person until such designation has been received by the Association. A designation as aforesaid fully authorizes the designated representative to bind the designating entity as to all

matters, decisions and actions of the designated representative whether or not such authority is expressly stated in the written designation; provided, the ACC may require any designated representative to show authority to act in such manner as the ACC may reasonably require. Any designated representative may be changed from time to time in the same manner as required for original designation. In the event of conflict between designations, the most currently dated designation will control. Any such representative may serve as a committee member of the ACC. The foregoing does not apply to Declarant during the Development Period who may act through any officer or employee as Declarant may direct.

3.01.4 Voting Rights of Members.

(a) Development Period. During the Development Period there will be two classes of membership entitled to voting rights in the Association which are as follows:

(i) Class A: All Members of the Association other than the Declarant are Class A Members. DURING THE DEVELOPMENT PERIOD, CLASS A MEMBERS HAVE NO VOTING RIGHTS WHATSOEVER EXCEPT AS OTHERWISE HEREIN EXPRESSLY PROVIDED.

(ii) Class B: Class B Members are Declarant. DURING THE DEVELOPMENT PERIOD DECLARANT SHALL HAVE ONE VOTE FOR EACH LOT OWNED AND SHALL ADDITIONALLY HAVE ONE "AT LARGE" VOTE.

(b) Post-Development Period. Upon termination of the Development Period, Declarant's one "at large" vote will automatically terminate and any remaining Class B membership will automatically convert to Class A membership. Thereafter there will be only one class of voting membership, and the Owner of each Lot, whether one or more, will be entitled to one vote on each matter coming before the membership.

(c) Multiple Owners. When more than one Person holds an ownership interest in a Lot, all such Persons are Members, but in no event will they be entitled to more than one vote with respect to each particular Lot owned. The single vote, approval, or consent of such joint Owners must be cast or given in accordance with the decision of a majority, or if such joint Owners cannot reach a majority decision, then none of the joint Owners will be permitted to vote, approve, or consent as to any such matter upon which a majority decision cannot be reached. The vote, approval or consent of any single Owner from among such joint Owners is conclusively presumed to be cast or given in accordance with the decision of the majority of the joint Owners and with their full authority.

(d) Good Standing. A Member is *not* in good standing during any period during which the Member's voting rights have been suspended, including any period during which any assessments are owed to the Association.

(e) Cumulative Voting Prohibited. Cumulative voting is prohibited as to any matter placed before the membership for a vote, including election of ACC committee members.

(f) Suspension of Voting Rights. Voting rights of any Member may or will be suspended for breach of the Governing Documents as provided herein or in other Governing Documents, including without limitation, suspension as provided in **Section 3.02.11**.

SECTION 3.02      ACC Fund.

3.02.1 Establishment. There is hereby established an ACC Fund into which will be paid annual assessments, special assessments and specific assessments for the discharge of the functions and duties of the Association and ACC, including maintenance, repair and replacement of all Community Properties, and for such other purposes and as otherwise herein provided. Each Owner of a Lot, by acquisition of any right, title or interest therein or acceptance of an executory contract of conveyance, or a deed or other instrument of conveyance therefore, whether or not so expressed therein, covenants and agrees to pay to the ACC annual assessments, special assessments and specific assessments, as set forth herein.

3.02.2 Purpose of ACC Fund. The ACC Fund must be used exclusively for the purpose of promoting the recreation, welfare, common benefit and enjoyment of the Owners and occupants of the Subdivision, including the maintenance of all Community Properties (including any maintenance required by any governmental entity), the discharge of all obligations of the Association and ACC pursuant to this Declaration and other Governing Documents, and the payment of all shared costs incident to any of the foregoing and the doing of any other thing necessary or desirable in the opinion of the ACC for accomplishment of any of the foregoing, including the establishment and maintenance of reserves for repairs, maintenance, taxes, insurance, and other charges, and the expenditure of funds for the benefit of other properties within the vicinity of the Subdivision if in the judgement of the ACC the Subdivision will benefit thereby. The judgement of the ACC in establishing any assessments and in the collection, management and expenditure of the ACC Fund is final and conclusive.

3.02.3 Personal Obligation; Transferees. In addition to the assessment lien herein established, each assessment is the personal obligation of each Owner of the Lot charged therewith at the time liability for the assessment accrued notwithstanding any subsequent transfer of ownership. Except as provided in **Sections 3.02.4 and 3.02.10**, each Owner's transferee, whether by purchase, gift, devise or otherwise, and whether voluntary or by operation of law, is also jointly and severally liable for payment of all unpaid assessments owed to the ACC at the time of transfer without prejudice to the rights of the transferee to recover from the transferor the amounts paid by said transferee.

3.02.4 Statement of Assessments. Any transferee (or prospective transferee upon presentment of an executed earnest money contract or other writing satisfactory to the ACC) shall be entitled to a statement from the Association setting forth all assessments due as of the date of the written request. The request must be in writing, must be addressed to the Association and must be delivered by registered or certified mail, return receipt requested, or by personal delivery with receipt acknowledged in writing. The ACC may set a reasonable charge for providing a statement of indebtedness, the payment of which is a condition precedent to the Association's obligation to provide same. Except for fraud or misrepresentation, if the Association fails to respond to a proper

written request for a statement of indebtedness within ten business days after receipt of the request by the Association, and upon submission of a properly executed registered or certified mail return receipt or delivery receipt evidencing receipt of the request by the Association, upon transfer the transferee is not liable for, nor shall the Lot transferred be subject to a lien for, any unpaid assessments against the Lot accruing prior to the date of the written request.

3.02.5 Uniform Rates for Regular and Special Assessments. Except as hereafter provided regarding Declarant and builder rates, regular and special assessments on all Lots must be fixed at a uniform rate, and must be determined on a per Lot basis.

3.02.6 Initial Base Rate and Subsequent Computation of Annual Assessments.

(a) Pre-Transfer of Control. Until the date of transfer of responsibility for management, maintenance, operation and control of the Association, the ACC and the Subdivision as provided in **Section 8.01.4**, Declarant will contribute to the ACC Fund such amount or amounts, if any, as required in Declarant's sole opinion to pay for maintenance of Subdivision Facilities. Without limitation of the foregoing, Declarant's obligation as aforesaid shall not include or extend to any costs or expenses (i) for obtaining or maintaining of any insurance on behalf of the Association or any Owner, (ii) or which any governmental authority or similar entity requires the Association to incur as provided in **Section 4.01(b)**, if any, (iii) or for any capital expenditures (determined in accordance with generally accepted accounting principals), (iv) or for any amounts paid or to be paid to capital, contingency or other reserves, or any prepaid items, inventory or similar expenses attributable to periods after transfer of control.

(b) Post-Transfer of Control. From and after the date of transfer of responsibility for management, maintenance, operation and control of the Association, the ACC and the Subdivision as provided in **Section 8.01.4** the amount of the annual assessment per Lot per year shall be set by, and may be adjusted from time to time by, the ACC based on the funds determined by the ACC to be necessary and adequate to provide for the discharge of the functions and duties of the ACC pursuant to this Declaration, including funding of adequate reserves. The initial amount of annual assessment per Lot per year shall be pro-rated based on the number of full months remaining in the calendar year after the date of setting of the amount by the ACC, and will be due and payable by such date as set by the ACC, provided that said due date shall not be less than thirty days after mailing of written notice to the Owners of all Lots of the amount of the initial annual assessment per Lot per year and due date for payment of same. Thereafter, annual assessments shall be due and payable, in advance, on the first day of January of each calendar year. The ACC must give written notice to the Owners of all Lots of any change in the amount of annual assessments at least thirty days prior to the effective date of the change.

(c) Notice Regarding Post-Transfer of Control Assessments. After transfer of Declarant control, the Association will be required to assume payment for any services or amenities previously provided by Declarant which the Association chooses to continue (such as, for example, entry way landscaping), to pay other operating expenses of the ACC, and to fund sufficient reserves (including, for example, with regard to obtaining and maintaining of insurance, and to maintenance of the limited access gate system and the Shared Drive). ACCORDINGLY,

NOTICE IS HEREBY GIVEN THAT AFTER TRANSFER OF CONTROL OWNERS WILL BE IN ALL PROBABILITY REQUIRED TO PAY ANNUAL ASSESSMENTS AS DETERMINED BY THE ACC.

3.02.7 No Waiver or Release. Notwithstanding anything to the contrary herein, the omission or failure for any reason of the ACC to mail or deliver a notice of annual assessment or due date for payment thereof does not constitute a waiver, modification or release of an Owner's obligation to pay assessments as otherwise herein provided.

3.02.8 Special Assessments. DURING THE DEVELOPMENT PERIOD, DECLARANT IS ENTITLED TO IMPOSE SPECIAL ASSESSMENTS AS PROVIDED IN SECTION 3.02.12. Thereafter, at any time and from time to time the Owners may approve a special assessment to defray any expenses or to replace any reserves, in whole or in part, at a Meeting of Owners called for such purpose. In like manner the Owners shall also determine the due date(s) and manner of payment as to each special assessment which may include payment in installments. Such approval shall be by vote of the Owners of a majority of the Lots present in person or by proxy at a meeting called for such purpose.

3.02.9 Specific Assessments.

(a) Types. Specific assessments must be assessed against individual Lots and the Owner(s) thereof at the time liability for same accrues as follows:

(1) Interest. Interest compounded monthly from the due date at the rate of the lesser of eighteen percent (18%) per annum or the maximum legal rate will be charged on all delinquent assessments, annual, special or specific.

(2) Late Charges. A late charge in the amount of TWENTY DOLLARS (\$20.00), or such other reasonable amount as from time to time determined by the ACC, is hereby imposed as to any annual, special or specific assessment which is not paid in full within thirty days after payment of same is due.

(3) Compliance Costs. All expenses reasonably attributable to or incurred by reason of a breach or violation of or to obtain compliance with any provisions of this Declaration or other Governing Documents must be assessed against the Owner who occasioned the incurrence of such expenses, including reasonable attorney's fees whether incurred prior to, during the pendency of or after successful completion of any actions in a court of competent jurisdiction.

(4) Other Obligations. All other monetary obligations established by or pursuant to this Declaration or other Governing Documents which are intended to apply to one or several but not all Lots must be assessed against the applicable Owner(s). Such charges may include without limitation reasonable charges for: (i) providing a statement of assessments or indebtedness, including resale certificates; (ii) transfer fees to reflect changes of ownership, tenancy or occupancy on the records of the ACC; (iii) charges for processing of applications for architectural approval,

including as provided in this Article; and (iv) any other charges otherwise permitted or authorized by law.

(b) Payment; Waiver. Specific assessments are due and payable immediately upon the occurrence of the event giving rise to liability for payment of same. Failure of the Association to impose or collect any specific assessment is not grounds for any action against the Association, the ACC, or any of their Related Parties, and does not constitute a waiver of the Association's right to exercise its authority to collect any specific assessments in the future. For good cause shown as determined in the sole opinion of the ACC, the ACC may waive, wholly or partially, imposition of any specific assessment; provided, any such waiver is conditioned upon payment in full of all remaining monetary obligations then owed to the Association or receipt of written commitment that same will be paid within a specified period of time.

### 3.02.10 Lien for Assessments.

(a) All sums assessed against any Lot pursuant to this Declaration, whether by annual, special or specific assessment as provided herein, are secured by a continuing lien on such Lot in favor of the Association. The recordation of this Declaration constitutes record notice and perfection of the continuing lien, effective from the date of recordation of this Declaration. The continuing lien is superior to all other liens or encumbrances on each Lot except: (i) a lien for real property taxes and other governmental assessments or charges on a Lot; (ii) a lien securing payment of purchase money for a Lot or work and materials used in constructing improvements thereon; (iii) an extension of credit (commonly known as a home equity loan) or reverse mortgage made in accordance with and pursuant to Sections 50(a)(6) or 50(a)(7), Article XVI, of the Texas Constitution, as amended; and (iv) such other mortgages, deeds of trust, liens or other encumbrances to which the Association from time to time by written agreement specifically and expressly agree, subject to such terms and conditions as set forth in the applicable written agreement.

(b) Each Owner, by acquisition of any Lot within the Subdivision or any right, title or interest therein, expressly grants to and vests in the Association (i) the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt; (ii) the right and power to foreclose the Association's continuing lien for assessments by all methods available for the enforcement of a mortgage, deed of trust or any other contractual lien, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale; and (iii) a continuing power of sale in connection with the non-judicial foreclosure of the Association's continuing lien for assessment as herein provided.

(c) The ACC may appoint, in writing, from time to time, a committee member, or an agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of and as the agent of the Association, including without limitation to deliver and file the notices required by Section 51.002 of the Texas Property Code (as amended), and to conduct the sale and to otherwise comply with said statute. The ACC may from time to time, remove any such Trustee and appoint a successor or substitute Trustee without further formality than an appointment and designation in writing. Except as otherwise provided by this Declaration, the Association will

exercise its power of sale pursuant to Section 51.002 of the Texas Property Code (as amended). The Association had the right and power to bid on any Lot at any foreclosure sale, either judicial or non-judicial, and to acquire, hold, lease, mortgage, or convey the same.

3.02.11 Effect of Nonpayment of Assessments; Enforcement. Any assessments which are not paid by the due date are delinquent. Except to the extent otherwise expressly agreed in writing by the ACC, if any assessments are not paid by the due date, then:

(a) late charges, interest from the due date, and all compliance costs (including reasonable attorney's fees), all as set forth in Section 3.02.9, shall be added to and included in the amount of such assessment; and

(b) all voting rights of the Owner and all rights to use of recreational facilities, if any, by the Owner, their tenants and their respective Related Parties will be automatically suspended until all assessments (including all specific assessments) are paid in full; and

(c) the Association may notify any credit bureau and/or any mortgagee or other lienholder with respect to the applicable Lot as to any default under the Governing Documents, including delinquency in payment of assessments and any other monetary amounts due to the Association; and

(d) upon not less than thirty days written notice and opportunity to be heard, the Association may suspend any and all services provided to a Lot, the Owner of which is delinquent in payment of any assessments used, in whole or in part, to pay the cost of the service; and

(e) the Association may exercise any other rights and remedies and institute and prosecute such other proceedings as it deems necessary to collect all amounts due, including filing of suit to obtain a personal judgment and/or to foreclose the Association's continuing lien.

3.02.12 Declarant Authority and Exemption as to Assessments.

(a) NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, DECLARANT IS EXEMPT FROM PAYMENT OF ANY ANNUAL OR SPECIAL ASSESSMENTS UNTIL THE FIRST DAY OF JANUARY FOLLOWING TERMINATION OF THE DEVELOPMENT PERIOD. DURING THE DEVELOPMENT PERIOD DECLARANT MAY ALSO EXEMPT ANY "AUTHORIZED BUILDER" (AS DEFINED IN SECTION 8.01.2) FROM PAYMENT OF ANNUAL OR SPECIAL ASSESSMENTS, IN WHOLE OR IN PART. IN THE EVENT OF RE-ACQUISITION OF OWNERSHIP OF ANY LOT BY DECLARANT, THE RATE OF ASSESSMENT THEN APPLICABLE TO DECLARANT SHALL AGAIN APPLY IN ACCORDANCE WITH THIS SECTION. The forgoing shall also apply to any Lot used by Declarant or an Authorized Builder for a model residence or other development, marketing or sales purposes regardless of whether record title remains in Declarant or an Authorized Builder (such as, for example but without limitation, in the case of the sale of a resident to an Owner and lease back to

Declarant for use as a model). In such cases, completion of the initial sale as provided in **Section 8.01.2** shall not be deemed to have occurred until the first day of the month following termination of any such use of the Lot by Declarant or an Authorized Builder.

(b) During the Development Period Declarant is entitled to establish all Association budgets and to set and change the annual rate of regular assessment and/or to impose special assessments without the joinder, vote or consent of any Owner or any other Person, and without further formality than giving of notice thereof to the Owners.

(c) Declarant may advance funds to the Association or directly pay for costs and expenses of the Association in which case Declarant shall be entitled to reimbursement from the ACC Fund, without interest.

**SECTION 3.03**      Architectural Control Function and Powers.

3.03.1 Submission of Plans Required. No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Lot or within any part of the Subdivision unless and until complete plans and specifications covering all aspects of the Regulated Modification have been submitted to and approved in writing by the ACC as to compliance with applicable Architectural Review Criteria as set forth in **Section 3.03.3**. One complete set of plans and specifications must be submitted with each request for approval unless a greater number is required by applicable Architectural Guidelines. Any plans and specifications to be submitted must specify, as applicable and in such detail and form as the ACC may reasonably require:

(a) the location upon the Lot or within the Subdivision where the Regulated Modification will occur or be placed;

(b) the dimensions, nature, kind, shape, height, and color scheme of and all materials to be used in connection with the Regulated Modification;

(c) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking and landscaping details;

(d) intended uses; and

(e) such other information, plans or specifications as may from time to time be required by applicable Architectural Guidelines, or in specific instances as may be requested or required by the ACC, which in the sole opinion of the ACC is reasonably necessary to fairly and fully evaluate all aspects of the proposed Regulated Modification.

3.03.2 Architectural Guidelines. The ACC may, from time to time, adopt, modify and delete such reasonable Architectural Guidelines applicable to the Subdivision, including Lots and Community Properties, as it deems appropriate to maintain or reasonably enhance Prevailing Community Standards of the Subdivision at the time of adoption.

0090-60-670 PR

RP 029-03-0601

3.03.3 Architectural Review Criteria. The ACC must evaluate all submitted applications for ACC approval on the individual merits of the particular application, and based on evaluation of the compatibility of the proposed Regulated Modification with Prevailing Community Standards (including compliance with this Declaration and all other applicable Governing Documents) as of the date of submission of an application. The ACC must also use reasonable efforts to achieve consistency in the approval or disapproval of specific types of Regulated Modifications. To this end, consideration will be given to (but the ACC is not bound by) similar applications for architectural approval and the decisions and actions of the ACC with regard thereto.

3.03.4 Responses. The ACC shall have full and complete authority to approve, conditionally approve or disapprove any request for ACC approval in accordance with **Section 3.03.3**, and its judgment shall be final and conclusive. In the event the ACC fails to approve or disapprove a properly submitted and completed request for ACC approval within thirty days from the date such request is received by the ACC, then ACC approval will not be required but the applicant must otherwise fully comply with all other applicable provisions of this Declaration and other governing documents.

**SECTION 3.04** Variances. The ACC may grant specific variances to Architectural Guidelines and to the architectural and use restrictions set forth in **Articles V and VI** of this Declaration. A variance may be granted only with respect to specific instances upon written request therefor, is not binding with respect to any other request for a variance whether or not similar in nature, and does not constitute a waiver, modification or repeal of any of the provisions of this Declaration or other Governing Documents except for the limited purpose of and to the extent of the specific variance expressly granted. A variance may be granted only upon specific findings (a) that the variance is necessary due to unusual circumstances which are reasonably beyond the control of the applicant to mitigate or rectify, or in other circumstances, such as due to topography or natural obstructions, as to which the ACC determines a variance will result in a material enhancement to the applicant's Lot and/or to the Subdivision, and (b) that the granting of a specific variance will not materially and adversely affect the architectural, aesthetic or environmental integrity of the Subdivision or the scheme of development therein. **WHETHER OR NOT SO STATED IN A VARIANCE AND NOTWITHSTANDING ANYTHING IN A VARIANCE TO THE CONTRARY, A VARIANCE SHALL EXTEND ONLY FOR THE PERIOD OF TIME DURING WHICH AND TO THE EXTENT THAT THE CIRCUMSTANCES THAT FORMED THE BASIS THEREFOR CONTINUE TO EXIST. THE ACC RETAINS FULL AUTHORITY AS TO ANY VARIANCE AT ANY TIME TO TERMINATE OR MODIFY SAME IN ACCORDANCE WITH ANY SUCH CHANGE IN CIRCUMSTANCES.** The good faith determinations of the ACC that the conditions for granting of a variance have or have not been met and as to any change in circumstances as aforesaid are final. In the event the ACC fails to approve or disapprove any request for a variance within thirty days after receipt of same, the request shall be deemed to be denied without prejudice to the right of the applicant to again request a variance.

**SECTION 3.05** Association Books and Records.

3.05.1 Maintenance. The Association shall keep correct and complete books and records of accounts for at least three years after the end of each calendar year (which shall also be

the Association's fiscal year). The Association shall also keep minutes of the proceedings of the ACC and of the Members at any Meeting of Owners.

3.05.2 Inspection by Members of Books and Records. Subject to protection of privileged and confidential communication, rules for inspection and other exclusions as from time to time established by the ACC, every Member of the Association, on written demand stating the purpose of the demand, has the right to examine and copy, in person or by agent, accountant, or attorney, at any reasonable time, for any proper purpose, the books and records of the Association relevant to that purpose, at the expense of the Member.

SECTION 3.06 Limitation of Liability; Indemnification. Except for intentional and willful misconduct, or knowing violation of the law, no member of the ACC or any of its Related Parties are liable to any Member or any other Person for any act or omission by or on behalf of the ACC within the scope of its purposes. The ACC shall indemnify and keep indemnified, and hold harmless, any current or former member of the ACC to the fullest extent necessary to accomplishment of the foregoing and to the fullest extent otherwise allowed by law, and as to any of the foregoing shall hold any such member harmless from and against all claims, demands, suits, judgments, court costs, attorney's fees attachments and all other legal action. If Chapter 84 of the Texas Civil Practice and Remedies Code or any other applicable statute, state or federal, is construed or amended to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this Section 3.06, then liability will be eliminated or limited and rights to indemnification will be expanded to the fullest extent permitted by such construction or amendment. Any repeal, amendment or modification of this Section 3.06 may not adversely affect any rights or protection existing at the time of the amendment.

#### Article IV

#### Maintenance, Insurance and Casualty Losses

SECTION 4.01 Association Maintenance Responsibilities.

4.01.1 General.

(a) The Association will maintain, repair and replace the Community Properties, including all Subdivision Facilities, and keep same in good repair. This maintenance includes, without limitation, operation, management, maintenance, repair and replacement of all landscaping and improvements situated on the Community Properties, if any.

(b) The Association shall maintain such other properties, real or personal, and such other facilities, services and improvements as may be required by governmental authorities, including the City of Houston, Texas, any municipal utility districts or other utility providers, any special tax and development districts, and any other similar entities, such maintenance to be in accordance with applicable contracts, agreements, ordinances, rules, regulations and decisions of such authorities. Declarant is specifically authorized to enter any such contracts or agreements on behalf of the Association, and to bind the Association thereto, at any time prior to termination of the Development Period, and Declarant may amend this Declaration at any time prior to or after

termination of the Development Period to the extent it deems necessary by reason of any such contract or agreement.

(c) Each Owner, their tenants, and their respective Related Parties are expressly prohibited from doing anything which could or does cause damage to or increase costs of operation, management, maintenance, repair or replacement obligations regarding the Community Properties, or any other areas maintained by the Association. Regardless of availability of insurance coverage, the ACC may charge to each responsible Owner, as a specific assessment, all increased costs of operation, management, maintenance, repair or replacement and all other damages resulting, directly or indirectly, from the acts or omissions of an Owner, their tenants, or their respective Related Parties in violation of the foregoing provisions.

4.01.2 Notice Regarding Lot One (1). NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF TO THE CONTRARY, ELECTRICITY FOR THE LIMITED ACCESS GATE SYSTEM WILL BE CONNECTED TO OR THROUGH LOT ONE (1) AS DESIGNATED ON THE INITIAL PLAT. THE OWNER OF SAID LOT ONE (1) MUST TIMELY PAY ALL CHARGES FOR SAID ELECTRICITY. THE FOREGOING DOES NOT APPLY TO ANY MAINTENANCE, REPAIR OR REPLACEMENT COSTS OR EXPENSES AS TO THE LIMITED ACCESS GATE SYSTEM OTHER THAN CHARGES FOR ELECTRICITY, AND ANY OTHER CHARGES SHALL BE PAID AS A COMMON EXPENSE BY THE ASSOCIATION. THE OWNERS OF A MAJORITY OF THE LOTS MAY ALSO AGREE TO A BASIS FOR REIMBURSEMENT TO THE OWNER OF LOT ONE (1) FOR ALL OTHER OWNERS' PRO RATA SHARE OF COSTS OF ELECTRICITY AS AFORESAID, AND ANY SUCH AGREEMENT MAY BE FILED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS IN WHICH EVENT THIS DECLARATION SHALL BE DEEMED AMENDED AS PROVIDED IN SAID AGREEMENT.

SECTION 4.02 Owner Maintenance Responsibilities.

4.02.1 General; Interior Maintenance. All maintenance of each Lot and all improvements thereon is the sole responsibility of the Owner thereof. Each Owner must maintain their Lot and all improvements thereon at all times in such manner as to obtain and maintain Prevailing Community Standards on a continuing basis as may be more specifically determined by this Declaration and other Governing Documents, including as determined from time to time by duly adopted Architectural Guidelines and Rules and Regulations. Without limitation of the foregoing, each Owner must maintain, at each Owner's sole cost and expense, the interior of the Owner's residence and garage, including all fixtures, equipment, appliances, things and devices located therein. MAINTENANCE WHICH AFFECTS THE EXTERIOR APPEARANCE OF A RESIDENCE OR GARAGE IS SUBJECT TO APPLICABLE PROVISIONS OF ARTICLE III REGARDING ARCHITECTURAL CONTROL COMMITTEE APPROVAL.

4.02.2 Residences and Other Improvements. Each Owner shall maintain the exterior of each Owner's residence, garage, and all other buildings, structures, fences, walls, recreational equipment and improvements located upon each Owner's Lot, in an attractive, sound and well maintained condition, including proper maintenance and repair as needed of paint, bricks, siding,

roofs, rain gutters, downspouts, exterior walls, driveways, parking areas and all other exterior portions of the Owner's residence and garage. Without limitation of the foregoing, each Owner shall provide proper repair and maintenance as and when needed as follows (the term "residence" includes garage, as applicable):

(a) The exterior paint on each Owner's residence must be maintained so that no portion thereof peels, scales or cracks excessively, and all painted portions remain neat and free of mildew and discoloration. NO CHANGE IN THE EXTERIOR COLOR SCHEME OF A RESIDENCE AS ORIGINALLY CONSTRUCTED IS PERMITTED WITHOUT PRIOR WRITTEN APPROVAL FROM THE ACC.

(b) The windows must be maintained so that no caulking thereon is chipped or cracked and no window panes are cracked or broken.

(c) All exterior doors, including garage doors, must be maintained, repaired, replaced and/or repainted as needed to prevent an unkept or unsightly appearance and such as to maintain same in proper working condition, including replacement as needed of damaged or dented garage door panels and any cracked or broken glass in any door.

(d) The exterior woodwork on each Owner's residence, and all windowsills, door jams and thresholds, framing, hinges, latches and locks, must be maintained so that it remains whole, sound, neat and fully operational.

(e) The roof on each Owner's residence must be maintained to prevent sagging, to prevent leaks, so that all shingles are properly secured, curled or damaged shingles are replaced and no worn areas or holes are permitted to remain, and such that the structural integrity and exterior appearance of the roof is maintained. The appearance of the roof shall not be changed by any such maintenance without the express written approval of the ACC.

(f) The rain gutters and downspouts on each Owner's residence, if any, must be maintained so that all are properly painted or treated to prevent rust and corrosion, are properly secured to roof, eaves, gables or exterior walls (as the case may be), are maintained without holes, and are promptly repaired or replaced if dented or otherwise damaged.

(g) All concrete areas on each Owner's Lot, including sidewalks and driveway, must be maintained so that all cracks are appropriately patched or surfaced as they appear, expansion joints are maintained, repaired or replaced, as needed, and oil, grease and other stains are removed as they appear, and all such areas must be kept free of weeds, grass or other vegetation.

(h) All fences or walls erected on each Owner's Lot must be maintained to prevent any listing or leaning, so that all broken or damaged members and all holes and cracks are repaired as they appear and so that no portion thereof is permitted to rot or decay. PAINTING OR STAINING OF WOODEN FENCES IS PROHIBITED UNLESS APPROVED IN WRITING BY THE ACC.

(i) All recreational equipment, which may be installed if and only if approved by the Architectural Control Committee, must be maintained to prevent any unsightly or unkept condition, including for example but without limitation, proper maintenance of swing sets to prevent rust and corrosion, and proper maintenance of basketball goals to prevent rust and corrosion and by replacement as needed of torn or worn nets.

(j) No Owner or their tenant will allow any condition to exist or fail or neglect to provide any maintenance which adversely affects any adjoining or adjacent Lot, any Community Properties, or any improvements on any such Lot or the Community Properties.

4.02.3 Utilities. The Owner of each Lot must maintain in proper working order, and on a continuing basis, all sanitary sewer lines and facilities, drainage or storm water lines and facilities, water pipelines, water sprinkler system, water meters and related water lines and facilities, electrical and gas lines, meters and facilities, telephone and any other telecommunication lines, devices or facilities, and all other facilities, utilities and services which service each Lot (the "Owner Utilities"), regardless of the location of the Owner Utilities, save and except to the extent maintenance of any Owner Utilities is provided and actually performed by any governmental entity or utility company. Utilities which service more than one Lot must be maintained, repaired and replaced by all of the Owners of the multiple Lots served, pro rata, or in such other proportions as determined by the ACC upon written request when the circumstances clearly demonstrate that a different manner of allocation is required.

4.02.4 Landscaping. All grass, shrubbery, trees, flower beds, vegetation and all other landscaping, either natural or artificial, on each Lot which is not maintained by the ACC must be maintained at all times in accordance with the seasons as reasonably necessary to obtain and maintain on a consistent and continuing basis Prevailing Community Standards, including as reasonably necessary to maintain on a consistent and continuing basis a sanitary, healthful and attractive condition and appearance and to eliminate any condition which may create any unsanitary condition or become a harborage for rodents, vermin or other pests. In any case where a Lot is located adjacent to a street but the Lot line does not extend to the street curb, the Owner shall maintain all landscaping between the Owner's Lot line and the street curb unless the ACC is otherwise required hereby or otherwise elects to maintain said area.

4.02.5 Right of Entry and Inspection; Owner's Default. In the event the ACC determines that (i) an Owner may have or has failed or refused to discharge properly the Owner's maintenance obligations as provided in this Article, or (ii) the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder may have or has been caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective Related Parties, then the ACC may conduct inspections of any affected Lot, the exterior of the residence and all other buildings thereon, and all other structures and improvements thereon (a "Compliance Inspection") and/or perform the repair, replacement or maintenance (the "Required Work") in accordance with this Section. The ACC must give written notice of intent to conduct a Compliance Inspection and/or to perform Required Work. The notice may be given in any manner permitted by Section 7.02.2. Except in the case of an emergency, the notice shall give the applicable Owner ten days to schedule a Compliance Inspection and/or perform Required Work (or to

029-03-0605

commence and thereafter proceed with diligence to completion of Required Work which cannot be reasonably completed in ten days), failing which the ACC may proceed without further notice. In the case of an emergency the ACC may proceed immediately with any Required Work required to abate the emergency but shall thereafter proceed as aforesaid. All costs and expenses of conducting a Compliance Inspection as to which a violation is determined to exist and all costs and expenses of Required Work performed by the ACC shall be assessed against the applicable Lot and the Owner thereof as a specific assessment which must be paid within ten days after notice of same is given to the applicable Owner. The good faith determination by the ACC as to the need for a Compliance Inspection and as to all aspects of Required Work is final and conclusive, and extends to any thing or condition as to such Lot or which adversely affects any other Lot or Community Properties. The Association, the ACC and their Related Parties are not liable for trespass or any other tort or claim for damages in connection with any actions or failure to act pursuant to this Section.

4.02.6 Dispute Resolution Among Owners. Any disputes among Owners regarding any rights or responsibilities pursuant to this Article may be submitted in writing to the ACC. The ACC also has full authority to direct submission of any dispute to the ACC in writing. After notice and opportunity to be heard, the ACC has full authority to resolve all such disputes, and its decisions as to same are final. The ACC's authority includes without limitation the right and authority (i) to direct the completion of any maintenance, repair or replacement and to allocate costs thereof among the disputing Owners, (ii) to authorize one of the disputing Owners or a third party to control the completion of the maintenance, repair or replacement, (iii) to order the disputing Owners to mediation or arbitration through a county dispute resolution center or similar organization or under the Rules of the American Arbitration Association, and (iv) to allocate among the disputing Owners all costs of the maintenance, repair or replacement and all costs (including attorney's fees) incurred in the dispute resolution process. Each disputing Owner must pay their allocated share of compliance costs (including attorney's fees) within thirty days after receipt of a statement for payment thereof. A final costs statement may be submitted by the ACC or may be submitted by disputing Owners to the ACC for resolution as above provided. If any Owner fails to pay their allocated costs as aforesaid, all such costs shall automatically be assessed as a specific assessment against the defaulting Owner as provided in Section 5.06. If one Owner has prepaid allocated costs of another and the prepaid sum is later collected by the Association, that sum (without interest if any) will be reimbursed to the Owner who prepaid same. All rights and remedies under this Section are cumulative.

SECTION 4.03 Casualty Losses - Association Responsibilities. Except as hereafter provided, in the event of damage by fire or other casualty to the Community Properties or regarding any other matters as to which the Association has an obligation to maintain pursuant to this Declaration or other Governing Documents, or if any governmental authority requires any repair, reconstruction or replacement as to same, the Association must perform all repairs, reconstruction or replacement necessitated thereby (the "Casualty Work"). The Casualty Work must be such as will substantially restore the Community Properties to its condition prior to the casualty or as required by the governmental authority. Any insurance proceeds payable as to the Casualty Work must be paid to the Association. Except for Casualty Work which is required by any governmental authority, the Owners may agree not to perform any Casualty Work. Any decision not to perform Casualty

0000-00-0000

Work must be approved at a Meeting of Owners by affirmative vote of the Owners of not less than seventy-five percent (75%) of all Lots then contained in the Subdivision.

SECTION 4.04 Casualty Losses - Owner Responsibilities.

4.04.1 Required Repair or Replacement. Whether or not insured, and unless completely razed or removed as permitted by the next subsection, all damage or destruction by fire or other casualty to all or any portion of any improvements on a Lot, including the residence and/or any appurtenant garage as originally constructed on a Lot, must be repaired or replaced by the Owner thereof within seventy-five days after such damage or destruction; or, where repairs or replacements cannot be completed within seventy-five days, they must be commenced within such period and completed within a reasonable time thereafter as determined by the ACC. For good cause shown, the ACC may extend the foregoing periods.

4.04.2 Other Casualty Losses. Whether or not insured, any building, structure, improvement and any other type of Regulated Modification which is damaged or destroyed and which is not repaired or replaced as provided by the above subsection must either be razed or removed in its entirety from the affected Lot and the Subdivision within forty-five days after such damage or destruction. This includes removal of any foundation as to any razed or removed building, structure or other improvement and such other restoration required such that after razing or removal Prevailing Community Standards are maintained. For good cause shown, the ACC may extend the foregoing periods.

4.04.3 ACC Approval Required. The provisions of **Article III** apply to all work and any other activities pursuant to the requirements of this Section.

SECTION 4.05 Owner Insurance.

4.05.1 General. The Owner of each Lot must maintain personal liability insurance and all-risk property and casualty insurance as required by this Section, and of such types and forms, in such amounts and with such deductibles, limits and other terms as from time to time established by applicable Rules and Regulations. The ACC is also specifically authorized by applicable Rules and Regulations to alter, amend, repeal or revise any provisions of this Section (including all subparts). **NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISIONS OF THIS SECTION, THIS DECLARATION OR ANY OTHER GOVERNING DOCUMENTS (I) OBTAINING OF LIABILITY AND PROPERTY INSURANCE REGARDING AND FOR EACH LOT AND ALL IMPROVEMENTS THEREON (INCLUDING RESIDENCES AND APPURTENANT STRUCTURES AND THE CONTENTS THEREOF) IS THE SOLE RESPONSIBILITY OF THE OWNER THEREOF, (II) DECLARANT, THE ASSOCIATION, THE ACC AND THEIR RELATED PARTIES MAKE NO REPRESENTATION WHATSOEVER THAT THE LIMITS OR FORMS OF INSURANCE REQUIRED BY THIS SECTION OR THAT COMPLIANCE IN ANY OTHER RESPECT WITH THE PROVISIONS HEREOF WILL BE ADEQUATE FOR ANY PURPOSE, AND (III) DECLARANT, THE ASSOCIATION, THE ACC AND THEIR RELATED PARTIES HAVE NO OBLIGATION WHATSOEVER TO CONFIRM COMPLIANCE BY ANY OWNER WITH ANY PROVISIONS OF THIS SECTION, OR TO ACT**

ON BEHALF OF ANY OWNER AS TO OBTAINING OF ANY INSURANCE OR OTHERWISE COMPLYING WITH ANY PROVISIONS OF THIS SECTION OR TO OTHERWISE ASSUME ANY RESPONSIBILITY REGARDING THE FOREGOING.

4.05.2 Required Coverage. At a minimum, the Owner of each Lot must obtain property insurance to insure the residential dwelling thereon, and all fixtures, equipment and other improvements pertaining thereto. Except as otherwise provided by applicable Rules and Regulations, the said dwelling coverage must be on a current replacement cost basis in an amount of not less than ninety percent (90%) of the insurable value against risks of loss or damage by fire and other hazards as are covered by standard extended all-risk coverage, with demolition endorsement (or equivalent), and must include coverage against (i) fire and lightning, (ii) smoke, (iii) windstorm, hurricane and hail, (iv) explosion, (v) aircraft and vehicles, (vi) vandalism, malicious mischief and theft, (vii) riot and civil commotion, (viii) collapse of building in whole or in part, (ix) accidental discharge, leakage or overflow of water or steam from within a plumbing, heating or air conditioning system or household appliance, (x) falling objects, (xi) freezing and (xii) flood insurance, if applicable.

4.05.3 Coverage Periods, Policy Provisions. Dwelling coverage as required by this Section must be obtained effective as of the date of acquisition of ownership by an Owner, and must remain continuously in effect through the date of acquisition of ownership by each succeeding Owner. Except as otherwise provided by applicable Rules and Regulations, each policy must to the extent obtainable (i) waive any rights of the insurer to subrogation against Declarant, the Association, the ACC and their Related Parties, (ii) provide primary coverage in the event of any other coverage under other insurance carried by Declarant, the Association, the ACC or their Related Parties, and (iii) upon written request by the Association, provide that the insurer may not cancel or refuse to renew the policy until at least thirty days written notice is given to the Association.

4.05.4 Proof of Coverage; Default. At any time the Association deems appropriate and upon not less than five business days written notice, the Association may require any Owner to provide to the ACC proof of insurance as required by this Section and any applicable Rules and Regulations in such manner and form as the ACC may require. Without limitation of the foregoing, the Association is specifically authorized to require submission to the ACC of a policy declaration signed by the insurer and setting forth the types of coverage, endorsements, deductibles and limits. If in the sole opinion of the ACC satisfactory proof of insurance is not provided, the Association may obtain (but has no obligation whatsoever to obtain) the required coverage on behalf of the Owner and assess as a specific assessment all premiums and all other costs and expenses related thereto to the defaulting Owner.

SECTION 4.06 Association Insurance. Except as provided in Section 3.02.6(a), to the extent reasonably available, the Association shall maintain property insurance on all insurable Community Properties insuring against all risk of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least eighty percent of the replacement cost or actual cost value of the insured property, comprehensive liability insurance, including medical payments insurance, libel, slander, false arrest and invasion of privacy coverage, and errors and omissions coverage, in amounts determined by the ACC and covering all occurrences commonly

insured against for death, bodily injury, and property damage, and such other insurance as the ACC deems appropriate. The ACC shall determine appropriate deductibles for all insurance policies. THE ASSOCIATION, THE ACC AND THEIR RELATED PARTIES ARE NOT LIABLE FOR FAILURE TO OBTAIN ANY INSURANCE COVERAGE OR TO OTHERWISE COMPLY WITH ANY OTHER PROVISIONS OF THIS **ARTICLE IV** REGARDING SAME IF SUCH FAILURE IS DUE TO UNAVAILABILITY OR TO EXCESSIVE COSTS AS DETERMINED IN THE SOLE GOOD FAITH OPINION OF THE ACC, OR FOR ANY OTHER REASON BEYOND THE REASONABLE CONTROL OF THE ACC. The ACC is specifically authorized from time to time to adopt and amend policies, procedures and any other Rules and Regulations to more fully effectuate the purposes and intent of the provisions of this **Article IV**.

SECTION 4.07 Agreement Relating to Common Walls and Other Shared Structural Components.

4.07.1 Irrevocable Agreement. Each Townhouse will share a wall or walls common to the adjacent Townhouse or Townhouses which separates each Townhouse (the "Common Wall"). Each Owner, by acceptance of an executory contract for conveyance, deed or other conveyance to a Lot, hereby irrevocably agrees each of the provisions of this Section shall govern the use, maintenance, repair, replacement and extension of any and all Common Walls.

4.07.2 Common Usage. Each Owner acknowledges and agrees that the adjoining Townhouse Owner has full right to use the Common Wall for the insertion of beams or otherwise for support and enclosure; provided, however, that such use may not injure the adjoining Townhouse or impair the Common Wall benefits of support and enclosure to which the adjoining Townhouse is entitled; and further provided that prior written notice of such use is given to the Owner by the adjoining Owner as provided in **Section 7.02.2**. To facilitate such use and for the purpose of erecting, extending, repairing or replacing the Common Wall as may be herein provided, each Owner is licensed by the adjoining Owner to enter upon the adjoining Owner's premises to make necessary excavations or to do all other work necessary to exercise the rights provided in the other provisions of this Article.

4.07.3 Extensions. Both the Owner and the adjoining Owner have the right to extend the Common Wall either horizontally or vertically, or both, and to make such extension of greater thickness of the Common Wall or any extension thereof already built; provided, however, such added thickness may not be placed upon the land of the other Owner without that Owner's consent in writing, and any such addition may not injure the adjoining Townhouse or impair the Common Wall benefits of support and enclosure to which the adjoining Townhouse is entitled; and provided further that prior approval of the ACC as herein provided is obtained. In the event the Common Wall is extended as herein provided, either Owner has the right to use the same for any proper purposes for which the extension may be made to the full extent of the length and height thereof and in the same manner that the Owner is entitled, under the provisions hereof, to use the Common Wall as originally constructed. In the event the Common Wall is extended as herein provided, the cost and expense of the extension must be borne by the Owner causing it to be made; provided, however, that should the adjoining Owner then use the extension or any portion thereof as a Common Wall, then that adjoining Owner must pay to the other Owner, fifty percent (50%) of the cost of the

RE 029-03-0609

extension or portion thereof used as a Common Wall.

4.07.4 Costs of Repair or Rebuilding. In the event that it becomes necessary to repair or rebuild the Common Wall or any portion thereof as constructed or extended, the cost of repairing or rebuilding the portions of the Common Wall used by both Owners at the time will be at the expense of both Owners in equal shares, and the cost of repairing or rebuilding any remaining portion will be wholly at the expense of the Owner who exclusively uses that portion.

4.07.5 Damage or Destruction. In the event the Common Wall is totally or partially destroyed by fire or other casualty, the Common Wall must be reconstructed either (i) at the expense of both Owners, in equal shares, in the event both intend to continue the use of the Common Wall, or (ii) at the expense of the Owner intending to continue use of the Common Wall if only one Owner will continue its use. Notwithstanding the foregoing or any other provisions of this Section, and irrespective of negligence or other fault, if the aforesaid casualty is caused by an instrumentality, facility or other agency within one Townhome or under the exclusive control of the Owner thereof, then the Common Wall must be reconstructed by and at the sole expense of that Owner.

4.07.6 Negligence; Weatherproofing. Notwithstanding any other provisions of this Section, an Owner who by their negligent or willful act causes damages to or destruction of a Common Wall or causes the Common Wall to be exposed to the elements must bear the whole cost of repair and replacement, including furnishing the necessary protection against such elements, and shall otherwise be liable for all damages resulting from same.

4.07.7 Other Shared Components. The Owner of each Townhouse is hereby required to share in the cost of maintenance, repair and replacement of any common roof or foundation, and such other shared components as determined by the ACC. Costs shall be shared, pro rata, based on the relative size of the foundation covered by each Townhouse or the relative size of the roof covering each Townhouse as to maintenance, repair or replacement of a shared foundation, and as to replacement (including re-shingling) of a shared roof. Costs for maintenance or repair of any portion of a roof which exclusively services only one Townhouse shall be paid by the Owner of the Townhouse so served. The affected Owners by agreement, or the ACC upon written request of any affected Owner, may vary the foregoing cost allocations when the circumstances clearly demonstrate a different manner of allocation is required, and may determine allocation of costs as to any other shared components. The ACC is also specifically authorized to adopted Architectural Guidelines regarding any shared components, and to resolve any disputes regarding same as provided in Section 4.02.6. The immediately preceding subsection regarding negligence and any other applicable provisions of this Section also apply to Townhouse shared components.

4.07.8 Duration. The duration of all provisions of this Section extends for a period of time equal to these covenants and restrictions and as long thereafter as reasonably necessary to the use and occupancy of each Townhouse, and constitutes an easement and a covenant running with the land; provided, however, that nothing herein contained shall be construed as a conveyance by either party of any rights in the fee of the land upon which a Common Wall may stand.

4.07.9 Extension of Owners' Access Easement. Notwithstanding any other provisions hereof to the contrary, the access easement as set forth in **Section 9.04** is hereby extended to entry to a Townhouse as is necessary to perform needed work as to the Common Wall and other shared structural components, subject however to (i) reasonable requirements by the Owner and/or occupant of the Townhouse being accessed to protect the privacy of the occupants and the contents of the Townhouse, and (ii) such other Rules and Regulations as from time to time adopted by the Board.

4.07.10 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability of adjacent owners for property damage due to negligence or willful acts or omissions apply to each Common Wall.

**Article V**  
**Use Restrictions**

SECTION 5.01 Residential Use; Group Homes; Treatment Facilities.

5.01.1 General. Each and every Lot is hereby restricted to single family residential use only. No residence may be occupied by more than one single family.

5.01.2 No Business, Professional, Commercial or Manufacturing Use. No business, professional, commercial or manufacturing use may be made of any Lot or any improvement located thereon, even though such business, professional, commercial or manufacturing use be subordinate or incident to use of the premises as a residence, and regardless of whether or not done for profit or remuneration. Notwithstanding the foregoing, a single family residence may be used for maintenance of a personal professional library, keeping of personal or professional records or accounts, or handling personal business or professional telephone calls, or for maintenance of one home office, but if and only if such business activity (i) does not involve use of any part of the applicable Lot, or residence or other building or improvement thereon, by any Person other than the Owner or the Owner's tenant (but not both), no on-site employees are otherwise permitted, and the public is not invited, permitted or allowed to enter the Lot to conduct any business thereon, (ii) is not detectable by sight, sound or smell from outside the residence, and there is no other external evidence thereof (including signs, advertising, or contacts in person at the residence with clients or customers), (iii) does not involve the storage of any equipment, materials or devices other than as consistent with operation of a small home office, and in all events which are not hazardous and do not constitute any type of threat to health or safety or other nuisance, (iv) complies with all applicable governmental ordinances (including zoning ordinances), and with any other governmental laws, rules, regulations and permitting or licensing requirements applicable to same, (v) is consistent with the residential character of the Subdivision, and (vi) does not cause any annoyance or unreasonable inconvenience to Owners or occupants of area Lots or any Community Properties.

5.01.3 Residential Use Only. Without limitation of the foregoing, as used in this Declaration the term "residential use" shall be construed to prohibit the use of any Lot or the residence thereon for apartment houses or other type of dwelling designed for multi-family dwelling,

or use for or operation of a boarding or rooming house or residence for transients, or the use of any permitted outbuilding as an apartment or residential living quarters.

5.01.4 Single Family Defined. As used in this Declaration the term "single family" means either: (i) husband and wife, their dependent children and their dependent parents, grandparents, grandchildren, brothers and sisters who are maintaining a common household and who are members of a single family related by blood, marriage or adoption; or (ii) one or more natural persons not so related but who are maintaining a common household in a single family residence on a nonprofit, noncommercial basis with a common kitchen and dining area; and (iii) the bona fide domestic servants of either. "Dependent children" and "dependent parents, grandparents, grandchildren, brothers and sisters" means such relatives who do not maintain a separate residence and are not able to maintain a separate residence.

5.01.5 Maximum Occupancy. In addition to the limitations above set forth, in no event may a single family residence be occupied by more persons than the product of the total number of bona fide bedrooms contained in the single family residence multiplied by two. The number of bona fide bedrooms is based on the single family residence as originally constructed, plus any additional bedroom(s) which may thereafter be added which have been specifically approved by the ACC for such use, if any.

5.01.6 Group Homes; Day-Care Center; Treatment Facilities. To the fullest extent allowed by law, no Lot or any part of the single family residence thereon may be used for the operation of a group home, half-way house, day-care center, rehabilitation center, treatment facility, or residence of unrelated individuals who are engaging in, undertaking, or participating in any group living, rehabilitation, treatment, therapy, or training with respect to previous or continuing criminal activities or convictions, alleged criminal activities, alcohol or drug dependency, physical or mental handicaps or illness, or other similar matters. The foregoing does not include a "community home" established and maintained pursuant to and in strict compliance with Chapter 123 of the Texas Health and Safety Code, and all applicable governmental licensing requirements, rules and regulations.

SECTION 5.02 Pets, Animals and Livestock. No animals, hogs, horses, livestock, reptiles, fish or poultry of any kind may be raised, bred, kept or maintained on any Lot at any time except "Permitted Pets" which are dogs, cats and other usual and customary household pets. Not more than two Permitted Pets are allowed per Lot unless authorized in writing by the ACC or applicable Rules and Regulations, and no Permitted Pets may be raised, bred, kept or maintained for commercial purposes. Subject to Section 5.04, the foregoing limitation on the number of Permitted Pets does not apply to hamsters, small birds, fish or other similar usual and customary household animals, birds or fish which are continuously kept completely within a residence, nor shall it apply to require the removal of any litter born to a Permitted Pet prior to the time that the animals in such litter are three months old. Notwithstanding the foregoing, the following are hereby excluded as Permitted Pets and shall not be allowed within any residence, upon any Lot or at any other place within the Subdivision: (i) any dog whose breed is known for and on any occasion has exhibited its viciousness or ill temper, in particular, the American Staffordshire Terrier, known as a "Pit Bull Terrier", and (ii) any animal of any kind that has venom or poisonous or capture mechanisms, or if

let loose would constitute vermin. All Permitted Pets must be kept on a leash or carried, and must otherwise be maintained under the control of their owner when outside the owner's residence or when not maintained in an enclosed yard from which the Permitted Pet cannot escape.

SECTION 5.03 Vehicles; Parking.

5.03.1 Prohibited Vehicles; Covers Prohibited. No boat, mobile home, trailer, boat rigging, truck larger than a three-quarter ton pick-up, recreational vehicle, bus, unused vehicle, inoperable vehicle of any kind (including any vehicle requiring same which does not have both a current and valid license plate and current and valid state inspection sticker), and no unsightly vehicle as determined in the sole opinion of the ACC, may be parked, stored or kept at anytime within the Subdivision, or on any driveway or upon any Lot unless such vehicle is stored completely within a garage. Use of vehicle covers of any kind (except for vehicles parked completely in a garage) is prohibited.

5.03.2 Prohibited Parking - General. No vehicle of any kind may be parked, stored or otherwise permitted to remain at any time (i) on grass or any other similar portion of any Lot or any other place within the Subdivision not intended customarily for use for parking of vehicles, or (ii) in a slanted or diagonal manner across any driveway or other designated parking space, or in any other manner other than as is customary for the type of parking space being used, or (iii) in such manner as to obstruct or impede sidewalk, driveway or street access or usage, or in such manner that any part of the vehicle extends in to any part of any street or common drive. No Owner or resident is permitted to park or store any vehicle on the Lot of another Owner or resident.

5.03.3 PARKING.

(a) OCCUPANT VEHICLES. IN THIS SECTION (AND THIS DECLARATION), "OCCUPANT VEHICLES" MEANS ANY PERMITTED VEHICLES AS TO EACH LOT WHICH ARE OWNED AND/OR OPERATED BY (I) ANY SINGLE FAMILY MEMBER OF THE RESIDENTS OF EACH LOT, AND (II) ANY OTHER PERSON VISITING OR STAYING AT THE LOT WHO PARKS THE VEHICLE WITHIN THE SUBDIVISION AT ANY TIME MORE THAN THREE DAYS IN ANY WEEK OR MORE THAN FIVE DAYS IN ANY CONSECUTIVE THIRTY DAY PERIOD. OCCUPANT VEHICLES MAY BE PARKED ONLY IN THE GARAGE OF THE RESIDENCE AT WHICH THE OPERATOR THEREOF RESIDES, OR UPON THE PRIVATE DRIVEWAY TO THE GARAGE FOR SAID RESIDENCE, IF ANY. PARKING UPON A PRIVATE DRIVEWAY AS AFORESAID IS PERMITTED ONLY IF THE DRIVEWAY IS OF SUFFICIENT SIZE THAT THE ENTIRE OCCUPANT VEHICLE CAN BE PARKED WHOLLY WITHIN THE PRIVATE DRIVEWAY. IN ADDITION, AT LEAST ONE OCCUPANT VEHICLE MUST BE PARKED IN THE GARAGE BEFORE ANOTHER OCCUPANT VEHICLE IS PARKED UPON THE PRIVATE DRIVEWAY. PARKING OF OCCUPANT VEHICLES AT ANY TIME AT ANY LOCATION IN THE SUBDIVISION EXCEPT IN ACCORDANCE WITH THE FOREGOING, INCLUDING PARKING OF OCCUPANT VEHICLES UPON ANY STREET OR SHARED DRIVE (AS DEFINED IN SECTION 2.04) OR WITHIN ANY DESIGNATED GUEST PARKING AREA WITHIN THE SUBDIVISION IS STRICTLY PROHIBITED. THE ACC MAY (BUT IS NOT OBLIGATED TO)

ADOPT RULES AND REGULATIONS TO PERMIT PARKING OF OCCUPANT VEHICLES UPON A STREET OR SHARED DRIVE WITHIN THE SUBDIVISION TO THE EXTENT IT DEEMS APPROPRIATE IN GENERAL AND/OR IN INDIVIDUAL CASES TO ACCOMMODATE UNUSUAL CIRCUMSTANCES OR ALLEVIATE UNDUE HARDSHIP.

(b) GUEST PARKING. GUESTS MAY PARK IN ANY DESIGNATED GUEST PARKING AREA, OR IN THE DRIVEWAY OF THE LOT THE GUEST IS VISITING, IF ANY AND IF OF SUFFICIENT SIZE, OR AS OTHERWISE PERMITTED BY APPLICABLE RULES AND REGULATIONS, BOTH AS ABOVE PROVIDED REGARDING OCCUPANT VEHICLES. IF DRIVEWAY PARKING AS AFORESAID IS NOT AVAILABLE AND OTHER GUEST PARKING IS NOT AVAILABLE OR PERMITTED BY APPLICABLE RULES AND REGULATIONS, THEN THE GUEST MUST PARK OUTSIDE OF THE SUBDIVISION.

(c) ASSIGNED PARKING; NOTICE OF LIMITED PARKING. DECLARANT DURING THE DEVELOPMENT PERIOD, AND THE ACC BY ADOPTION OF APPLICABLE RULES AND REGULATIONS THEREAFTER, MAY DESIGNATE SPECIFIC AREAS WITHIN THE SUBDIVISION AS MAY BE AVAILABLE, IF ANY, AS ADDITIONAL PARKING AREAS FOR RESIDENTS OR AS GUEST PARKING, BUT NEITHER SHALL HAVE ANY OBLIGATION WHATSOEVER TO PROVIDE FOR ANY SUCH PARKING AREAS. ACCORDINGLY, NO SUCH PARKING MAY EVER BE AVAILABLE WITHIN THE SUBDIVISION, AND ANY DESIGNATION OF PARKING AREAS MAY BE CHANGED FROM TIME TO TIME AND AT ANY TIME BY DECLARANT OR THE ACC, AS APPLICABLE, AS EITHER IN THEIR SOLE DISCRETION MAY DETERMINE. IN ALL EVENTS, AVAILABLE PARKING WITHIN THE SUBDIVISION FOR OCCUPANT VEHICLES AND/OR GUESTS IS EXTREMELY LIMITED, AND PARKING ON AREA PUBLIC STREETS MAY ALSO BE LIMITED OR UNAVAILABLE. SEE ALSO SECTION 6.01.2 REGARDING LIMITATION AS TO GARAGE SIZE. ANY SUCH LIMITATIONS SHALL NOT BE A BASIS FOR NON-COMPLIANCE WITH APPLICABLE PROVISIONS OF THIS DECLARATION OR ANY OTHER GOVERNING DOCUMENTS (INCLUDING APPLICABLE RULES AND REGULATIONS), AND SHALL NOT BE A BASIS FOR ANY CLAIM WHATSOEVER AGAINST DECLARANT OR THE ASSOCIATION, OR ANY OF THEIR RELATED PARTIES.

(d) TEMPORARY PARKING. TEMPORARY PARKING UPON ANY STREET OR SHARED DRIVE IN THE SUBDIVISION IS PERMITTED BY OCCUPANT VEHICLES, GUESTS AND INVITEES, AND BY PICK-UP OR DELIVERY SERVICES, BUT SOLELY FOR PURPOSES OF LOADING AND UNLOADING OF PASSENGERS AND CARGO, AND SUBJECT TO SUCH RULES AND REGULATIONS AS FROM TIME TO TIME PROMULGATED BY THE ACC AND OTHER APPLICABLE ORDINANCES AND LAWS (SUCH AS PROHIBITIONS AGAINST PARKING IN FIRE LANES, OR IN SUCH MANNER AS TO BLOCK ENTRY TO OR EXIT FROM THE SUBDIVISION). "TEMPORARY" MEANS ONLY FOR SO LONG A PERIOD OF TIME AS IS REASONABLY NECESSARY TO COMPLETE LOADING, UNLOADING, PICK-UP OR DELIVERY, WITH SUCH ACTIVITY COMMENCED PROMPTLY AFTER THE VEHICLE IS PARKED. ANY PARKING IN EXCESS OF TWENTY MINUTES IS PRESUMED NOT TO BE TEMPORARY. PICK-UP OR DELIVERIES REQUIRING LONGER THAN TWENTY MINUTES (SUCH AS MOVING IN OR

OUT OF A RESIDENCE) SHALL BE COORDINATED WITH THE ASSOCIATION, SHALL BE CONDUCTED IN SUCH MANNER AS TO MINIMIZE INTERFERENCE WITH TRAFFIC AND PEDESTRIAN INGRESS AND EGRESS, AND SHALL OTHERWISE BE CONDUCTED IN ACCORDANCE WITH DIRECTIVES OF THE ASSOCIATION AND APPLICABLE RULES AND REGULATIONS.

(e) SHARED DRIVE PARKING AND OBSTRUCTION. IF PARKING OF OCCUPANT OR GUEST VEHICLES IS AT ANY TIME ALLOWED ON ANY STREET OR SHARED DRIVE (AS DEFINED IN SECTION 2.04), EACH AS ABOVE PROVIDED, THE VEHICLES MUST BE PARKED ALONG THE SIDE OF THE STREET OR SHARED DRIVE IN FRONT OF, AND ON THE SAME SIDE OF THE STREET OR SHARED DRIVE OF, THE LOT AT WHICH THE OPERATOR OF THE OCCUPANT VEHICLE RESIDES OR WHICH THE GUEST IS VISITING, OR AS CLOSE THERETO AS CIRCUMSTANCES PERMIT. NO OBJECT, THING OR DEVICE SHALL BE PLACED, STORED OR MAINTAINED WITHIN OR UPON ANY STREET OR SHARED DRIVE (OTHER THAN PARKING OF VEHICLES AS HEREIN PERMITTED), AND NO ACTIVITIES ARE PERMITTED THEREON WHICH WOULD IMPEDE OR IMPAIR IT'S INTENDED USE SOLELY FOR PURPOSES OF PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS. WITHOUT LIMITATION OF THE FOREGOING, NO TOYS, BARBEQUE OR OTHER COOKING EQUIPMENT, OR ANY RECREATIONAL EQUIPMENT SHALL BE PLACED, MAINTAINED OR STORED WITHIN OR UPON ANY SHARED DRIVE, NOR SHALL ANY LOITERING, PLAYING OR GATHERINGS BE PERMITTED THEREIN OR THEREON.

(f) RESPONSIBILITIES OF OWNERS AND TENANTS. OWNERS AND THEIR TENANTS MUST OBTAIN FULL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION (INCLUDING RULES AND REGULATIONS ADOPTED PURSUANT TO THIS DECLARATION) BY THEIR RESPECTIVE RELATED PARTIES, AND EACH IS JOINTLY AND SEVERALLY LIABLE FOR ALL VIOLATIONS BY THEIR RESPECTIVE RELATED PARTIES.

5.03.4 Repair of Vehicles. No work on any vehicle within the Subdivision, including on any street or Shared Drive, or on any Community Properties, or on any Lot, may be performed at any time other than temporary emergency repairs or other work required in order to promptly remove an inoperable or disabled vehicle from the Subdivision or to and completely within a garage.

5.03.5 Vehicle Defined. As used in this Section, "vehicle" means a device in, on, or by which a person or property may be transported, including an operable or inoperable automobile, truck, motorcycle, recreational vehicle, trailer, and such other devices as from time to time specified by applicable Rules and Regulations.

5.03.6 Presumptive Violations. Repairs or other work extending over a period exceeding eight hours is conclusively presumed not to be "temporary". Any vehicle is conclusively presumed to be "unused" or "inoperable" if the vehicle has not been operated outside the Subdivision for seven or more consecutive days or the vehicle has not been operated outside the Subdivision more than twice in any fourteen day period. The provisions hereof do not prejudice the right of the

Association to otherwise establish a violation. The foregoing provisions do not apply to any vehicle completely stored within a garage.

5.03.7 Towing. The ACC or its designated representative may cause any vehicle which is parked, stored or maintained in violation of this Declaration or other Governing Documents, or in violation of any ordinance, statute or other governmental regulation, to be removed from the Subdivision to any vehicle storage facility within Harris County, Texas at the sole cost and expense of the Person owning such vehicle (whether or not such Person is an Owner) and/or the Owner as to whom such Person is a tenant, visitor, guest, invitee or other Related Party. Any such removal may be in accordance with any applicable statute or ordinance, including Chapter 684 of the Texas Transportation Code, as amended.

5.03.8 LIMITATION OF LIABILITY. DECLARANT, THE ASSOCIATION, ACC THEIR RELATED PARTIES, AND ANY PERSON REMOVING ANY VEHICLE AS HEREIN PROVIDED (THE "INDEMNITEES") HAVE NO LIABILITY WHATSOEVER IN CONSEQUENCE OF REMOVAL OF ANY VEHICLE AS HEREIN PROVIDED. THE PERSON OWNING EACH TOWED VEHICLE (WHETHER OR NOT SUCH PERSON IS AN OWNER) AND THE OWNER AND OWNER'S TENANT AS TO WHOM SUCH PERSON IS A VISITOR, GUEST, INVITEE, OR OTHER RELATED PARTY, SHALL HOLD ALL SUCH INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LIABILITIES OR DAMAGES ARISING, DIRECTLY OR INDIRECTLY, AS RESULT OF SUCH REMOVAL. THE PROVISIONS HEREOF ARE CUMULATIVE OF THE PROVISIONS OF SECTION 3.06.

SECTION 5.04 Nuisance, Unsightly or Unkempt Conditions.

5.04.1 General. It is the continuing responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No Lot may be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition, or that will be obnoxious to the eye. No hobbies or activities which will cause disorderly, unsightly, or unkempt conditions, including without limitation the assembly or disassembly of or repair work on motor vehicles or other mechanical devices, may be performed within the Subdivision. There may not be maintained any plants, animals, devices, thing, use or activities of any sort which in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the residents of the Subdivision.

5.04.2 Nuisance or Annoyance. No substance, thing, or material may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive trade or activity may be carried on upon any Lot, nor may anything be done thereon tending to cause embarrassment, discomfort, annoyance, or a nuisance to any residents of the Subdivision or to any Person using any property adjacent to the Lot. No spirituous, vinous, malt, medicated bitters, alcohol, drugs or other intoxicants may be sold or offered for sale on any part of any Lot or any other place within the Subdivision. No Lot or any part thereof may be used for any immoral or illegal purposes.

UNOFFICIAL COPY

5.04.3 Pollutants; Hazardous Materials. Without limitation of any other provisions of this Section, no Owner or tenant, and Related Parties of either, shall dump grass clippings, leaves or other debris, detergents, petroleum products, fertilizers, or other pollutants or potentially hazardous or toxic substances, in any sewer system, water system, drainage ditch, stream, pond or lake within the Subdivision, or do any thing or maintain or permit any condition in violation of applicable environmental, toxic or hazardous waste or similar laws, rules or regulations. Storage of gasoline, heating or other fuels, or of any hazardous or toxic materials upon any Lot is strictly prohibited (except that up to five gallons of fuel may be stored upon a Lot for emergency purposes and operation of lawn mowers and similar tools or equipment if properly kept and stored in a safe and non-hazardous manner). THE FOREGOING DOES NOT PLACE UPON DECLARANT, THE ASSOCIATION, THE ACC OR ANY OF THEIR RELATED PARTIES ANY OBLIGATION FOR ENFORCEMENT OF ANY APPLICABLE ENVIRONMENTAL, TOXIC OR HAZARDOUS WASTE OR SIMILAR LAWS, RULES OR REGULATIONS.

5.04.4 Sound Devices; Excessive Noise. No exterior speaker, horn, whistle, bell or other sound device shall be located, placed or used upon any Lot or improvement thereon. The foregoing shall not apply to fire or security devices used exclusively for such purpose; provided, such devices must be installed such as not to be visible from any street and otherwise in as inconspicuous a manner as possible. No stereo, television, speaker, horn, whistle, bell or other sound device shall be operated within, and no other sound emitting activity (such as practice of a band, excessively loud social gatherings and similar activities) shall be conducted within a residence, garage or other structure which is audible outside the Lot lines of the applicable residence, garage or other structure, or which is otherwise an annoyance or nuisance to any other residents as determined in the sole opinion of the ACC.

5.04.5 Authority to Cure. Upon the good faith determination of the ACC that a violation of this Section exists, the ACC may after written notice, take such actions as it deems necessary to abate the violation at the sole cost and expense of the violating Owner and, if applicable, their tenant and without liability for trespass or otherwise.

SECTION 5.05 Disposal of Trash. No trash, rubbish, garbage, manure, debris or offensive material of any kind may be kept or allowed to remain on any Lot, nor may any Lot be used or maintained as a dumping ground for such materials. No incinerator may be maintained on any portion of the Subdivision, and disposal of any materials by incineration within the Subdivision is strictly prohibited. All trash and similar matter to be disposed of must be placed in cans or similar receptacles with tight fitting lids or plastic bags tied or otherwise tightly secured, and must be placed in an area adequately screened by planting or fencing from public view or within a garage except when placed for regular pickup as herein provided. Equipment used for the temporary storage and/or disposal of such material prior to removal must be kept in a clean and sanitary condition, and must comply with all applicable federal, state, county, municipal or other governmental laws and regulations. All such prohibited matter must be removed from each Lot at regular intervals if not removed or removable by a regular garbage and sanitation service. Trash and garbage for pickup by a regular service must be placed in such area or areas as the ACC may from time to time direct, or as the applicable garbage and sanitation service or provider may require; provided trash and garbage may not be placed for pickup earlier than eight (8) hours prior to a scheduled pickup day, and all

receptacles therefor and any remaining trash and garbage must be removed from the pickup site by midnight of the pickup day. Any of the foregoing provisions may be modified, added to or deleted by applicable Rules and Regulations.

SECTION 5.06 Firearms and Fireworks Prohibited. The use of firearms in the Subdivision is strictly prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and small or large firearms of all types. Fireworks of any type are strictly prohibited at any place within the subdivision.

SECTION 5.07 Leases.

5.07.1 Restrictions. No Lot may be leased other than for use as a single family residence as herein provided and defined. No Owner may lease a Lot and attendant use of the residence and improvements thereon for transient or hotel purposes. No Owner may lease less than an entire Lot and attendant use of the residence and improvements thereon. All leases: (i) must be in writing; and (ii) are specifically subject in all respects to all provisions of this Declaration and all other Governing Documents (whether or not expressly stated in the lease), and any failure by lessee to comply with this Declaration or any other Governing Documents will be a default under the lease.

5.07.2 Default. In the event of default under any lease due to violation of this Declaration or any other Governing Documents, the Association may (but has no obligation to) initiate any proceedings, actions or litigation under the lease to enforce compliance or to terminate the lease and/or for eviction. With regard to the foregoing, each Owner hereby irrevocably appoints the Association or its designated representative as their attorney-in-fact, agrees to indemnification in regard thereto to the fullest extent herein provided (including as set forth in Section 3.06) and agrees to be solely responsible for all costs thereof (including as provided in Section 3.02.9). NO PROCEEDINGS, ACTION OR LITIGATION UNDER THIS SECTION OR ANY OTHER PROVISIONS OF THIS DECLARATION OR ANY OTHER GOVERNING DOCUMENTS SHALL EVER BE CONSTRUED AS AN ASSUMPTION BY THE ACC OR ITS RELATED PARTIES OF ANY OBLIGATION WHATSOEVER UNDER ANY LEASE OR REGARDING ANY LEASEHOLD INTEREST, INCLUDING WITHOUT LIMITATION, ANY OBLIGATION REGARDING SECURITY DEPOSITS, MAINTENANCE AND ANY OTHER OBLIGATIONS PURSUANT TO TITLE 8 OF THE TEXAS PROPERTY CODE, ALL SUCH OBLIGATIONS BEING HEREBY EXPRESSLY DISCLAIMED.

5.07.3 Joint and Several Liabilities. Lessor(s) and lessee(s) are jointly and severally liable for the observance and performance of all of the terms and provisions of this Declaration and all other Governing Documents, including without limitation joint and several liability for all damages, costs and expenses resulting from any violation, by either, or by their respective Related Parties, all fines and assessments imposed hereby and with respect to all other rights and remedies regarding enforcement of this Declaration and all other Governing Documents.

SECTION 5.08 Garage Usage. No portion of any garage may be diverted to any use other than the parking of vehicles and other generally accepted and customary usage of a garage. In particular but not in limitation of the foregoing, no portion of any garage may be used as a residence

or a game room, or for any similar use as living quarters. Garage doors must be kept in a closed position when the garage area is not being actively used.

SECTION 5.09 Mineral Production. No drilling, development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

SECTION 5.10 Rules and Regulations. The ACC is hereby specifically authorized to promulgate, amend, modify and delete such reasonable Rules and Regulations applicable to the operation, use and occupancy of the Subdivision, including all Lots and Community Properties, as the ACC may from time to time deem beneficial to the Subdivision, including without limitation, Rules and Regulations for imposition of fines for violations of this Declaration or other Governing Documents.

## Article VI Architectural Restrictions

### SECTION 6.01 Type of Residence.

6.01.1 Single Family Residence. No building other than one single family residence not to exceed three stories which is to be occupied as a residence by one single family, an appurtenant garage and such outbuildings if and as may be approved in writing by the ACC may be constructed, placed or permitted to remain on each Lot. Without limitation of the foregoing, the term "single family residence" shall be construed to prohibit garage apartments, apartment houses, and any other multi-family dwelling, but shall not prohibit any Townhouse as herein provided.

6.01.2 Garages and Garage Doors. All single family residences must have an enclosed attached or detached minimum two car parking garage. Each such garage must contain a minimum of three hundred fifty (350) square feet of interior floor space. GARAGES MAY NOT BE OF SUFFICIENT SIZE TO PERMIT PARKING THEREIN OF TWO LARGE VEHICLES SUCH AS TWO SUV'S. ANY SUCH LACK OF PARKING SIZE SHALL NOT BE A BASIS FOR EXEMPTION FROM APPLICABLE PARKING RESTRICTIONS OR RULES AND REGULATIONS. The garage must be architecturally similar and compatible to the appurtenant residence, including as to roof line and appearance. Except for porte-cocheres, carports on Lots are prohibited. All garages must be enclosed with permanent walls and their fronts enclosed with standard type overhead doors customarily used in the building industry which garage doors must be maintained in good working order at all times. ANY REPLACEMENT GARAGE DOOR MUST BE OF EQUAL OR BETTER QUALITY AND SUBSTANTIALLY THE SAME DESIGN AS THE GARAGE DOOR FOR THE GARAGE AS ORIGINALLY CONSTRUCTED, AND MUST BE PAINTED TO MATCH THE COLOR SCHEME OF THE RESIDENCE AS ORIGINALLY CONSTRUCTED OR A SUBSEQUENT COLOR SCHEME WHICH HAS BEEN APPROVED IN WRITING BY THE ACC. Except for interior modifications of a garage wholly consistent with its use as a garage and which do not alter the use or exterior appearance of the garage as originally constructed, no modification of the interior or exterior of any garage as originally constructed is

UNOFFICIAL COPY

permitted without prior written approval of the ACC. GARAGE DOORS MUST BE KEPT CLOSED AT ALL TIMES EXCEPT FOR ENTRY AND EXIT OF VEHICLES OR DURING BRIEF PERIODS WHEN THE GARAGE IS BEING ACTIVELY USED FOR CUSTOMARY PURPOSES.

6.01.3 New Construction and Continued Maintenance Required. All residences, buildings and structures must be of new construction, and no residence, building or structure may be moved from another location to any Lot without prior written approval of the ACC. All residences, buildings and structures must be kept in good repair, must be painted (as applicable) when necessary to preserve their attractiveness and must otherwise be maintained in such manner as to obtain and maintain Prevailing Community Standards.

6.01.4 Tents, Mobile Homes and Temporary Structures Prohibited. No tent, shack, mobile home, or other structure of a temporary nature shall be placed upon any Lot or elsewhere in the Subdivision. The foregoing prohibition does not apply to restrict the construction or installation of a single utility or similar outbuilding to be permanently located on a Lot, provided it receives the prior written approval of the ACC. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the ACC.

SECTION 6.02 Living Area Requirements. All single family residences, exclusive of porches, patios and garages, must contain not less than two-thousand (2,000) square feet.

SECTION 6.03 Location of Residence. No single family residence may be located upon any Lot except in accordance with building setback lines shown on any applicable Plat, or as established by this Declaration or applicable governmental requirements. Subject to the foregoing, no part of any residence, garage or other structure shall be located nearer than three feet from any boundary line of any Lot; provided, however, Declarant and only Declarant may locate or approve location of (i) one or more walls of a single family residence or garage on or within one foot of any side Lot line (a "Zero Lot Line"), and/or (ii) two or more Townhouses within a single residential building such that the Common Wall separating the Townhouses is located on a common interior side boundary line of adjacent Lots. In such event all provisions of this Declaration and other Governing Documents applicable to Common Walls apply. For the purposes of this Section, eaves, roof overhangs, steps, fireplaces, chimneys, bay windows, unroofed terraces and similar architectural detail which is a part of a permitted residence or garage shall not be considered as part of a residence or garage. Unless otherwise approved in writing by the ACC, each main residence must face the front building line.

SECTION 6.04 Drainage Easements and Devices. During the Development Period Declarant (and any builder so authorized by Declarant) is hereby specifically authorized to excavate as necessary for and to establish, construct and maintain drainage swales, erosion control systems and such other things and devices (herein referred to as "Drainage Devices") upon, over, across or under any part of the Subdivision, including any Lot, as Declarant deems appropriate to properly maintain and control water drainage and erosion. All Drainage Devices shall remain unobstructed, and shall be properly maintained by and at the sole cost of the Owner of each Lot to which same pertains or, when any Drainage Device serves more than one Lot (such as in the case of guttering on residences

connected to a common line), then maintenance and the costs thereof shall be shared pro rata by all of the Owners to which same pertains. Each Owner must refrain from permitting any construction, grading and any other work, act or activity upon such Owner's Lot which would obstruct, alter, divert, impede or impair the proper functioning of any Drainage Device. In addition, each Owner must perform such work, act or activities and install and maintain such Drainage Devices (i) as is reasonably necessary to prevent so far as practical drainage from the Owner's Lot to any other Lot, other than drainage along established swales and along drainage patterns as established during initial construction or by the ACC thereafter, and (ii) as needed to maintain so far as practical positive drainage away from the foundation of the residence located upon the Owner's Lot. Without limitation of the foregoing, no Owner may place or permit placement of any flower bed or other landscaping, or any other structure or thing along or near any Lot line which would obstruct, alter, divert, impede, or impair drainage along any Lot line within any swale or otherwise within drainage patterns as established during initial construction or by the ACC thereafter. To obtain and maintain proper drainage, including as required by this Section, and/or as changing circumstances may require, the ACC is hereby specifically authorized to require any Owner to construct, install and maintain such gutters and/or downspouts, drains, drainage lines and any other Drainage Devices as the ACC determines, and/or to remove any obstruction, thing or device or cease any activity, either upon initial construction of any residence or other improvement, or at any time thereafter that circumstances reasonably require.

SECTION 6.05 Lot Resubdivision or Combination. Unless approved by Declarant in writing, no Lot as originally conveyed by Declarant to any Person, including a builder, may thereafter be subdivided or combined with any Lot, or the boundaries thereof otherwise changed.

SECTION 6.06 Lot Line Fences or Walls. No Lot line fencing or walls may be constructed, placed or maintained on any Lot without prior written approval of the ACC. Ownership of all Lot line fencing or walls passes with title to the Lot. All Lot line fencing or walls must be continuously maintained in a neat and attractive condition, in good repair and otherwise as to obtain and maintain Prevailing Community Standards. The obligation for and cost of maintenance and repair shall be the joint responsibility of adjoining Owners in the case of shared Lot line fencing or walls, and otherwise the responsibility of the Owner upon whose Lot the fencing or wall is located.

SECTION 6.07 Antennas and Satellite Dish Systems.

6.07.1 General Rule. Except as otherwise expressly approved by the ACC in writing, or as otherwise expressly permitted by applicable architectural guidelines or by law, no antenna or satellite dish system of any kind is permitted upon any Lot, or the residence or other improvement thereon, except one dish antenna, one meter or less in diameter or diagonal measurement which is designed to receive direct broadcast satellite or to receive or transmit "fixed wireless signals" (as defined by the Federal Communications Commission), and one television antenna to the extent necessary for reception of local television broadcasts, either or both of which must be installed so as not to be visible from any street.

6.07.2 Prohibited Antenna. In no event shall any antenna, "dish" or other device be used for transmitting electronic signals of any kind except as to fixed wireless signal transmission as above provided. Antenna and similar devices of any type used for citizen band ("CB") radio, amateur ("HAM") radio, AM/FM radio, or Digital Audio Radio Service ("DARS"), are prohibited and shall not be erected, placed or permitted to remain on any Lot, on any improvement located on any Lot, or elsewhere in the Subdivision. Without limitation as to the authority of the ACC to grant variances, the ACC is specifically authorized to (but shall not in any event be required to) grant variances as to prohibited antenna, and the ACC may condition granting of any such variance upon placement of the applicable antenna in the attic of a residence.

SECTION 6.08 Signs.

6.08.1 General. No signs, billboards, posters, banners, pennants or advertising devices of any kind, including without limitation business, professional, promotional or institutional signs, are permitted on any Lot, or upon any residence, or within any residence if visible from the exterior of the residence, or within the Subdivision without the prior written consent of the ACC except as otherwise provided in this Section. The ACC may remove or cause to be removed any sign, billboard, poster, banner, pennant or advertising device of any kind which is not approved as aforesaid or is otherwise prohibited under this Declaration or other Governing Documents and may dispose of same as debris without liability for trespass, conversion or otherwise.

6.08.2 Prohibited Signs. No sign is permitted which is vulgar, obscene or otherwise patently offensive to persons of ordinary sensibilities. Permitted signs must be professionally printed and prepared, and must be properly installed and maintained, to avoid unsightly appearance. The good faith determination of the ACC as to any of the foregoing is final. No sign is permitted to be larger than four square feet. No sign may be illuminated. No sign may be placed on any Lot closer than ten feet from any street or any side or back Lot line, or within any traffic sight line area as defined in **Section 6.09**. No Owner, Owner's tenant or their Related Parties, is permitted to place any sign on another Owner's Lot or upon any Community Properties. Distressed, foreclosures and bankruptcy references are specifically prohibited.

6.08.3 Permitted Signs. To the extent required by law or in any event upon prior approval of the ACC, but subject to applicable provisions of **Section 6.08.2**, each Owner is permitted to place upon (and only upon) such Owner's Lot (i) one sign advertising the particular Lot on which the sign is located for sale or for rent, but only during periods of time when the Lot is in fact for sale or for rent, (ii) security service signs as provided by a professional security service company, and (iii) political signs to the extent permitted by Section 202.009 of the Texas Property Code ("Political Signs")' No Political Sign is permitted earlier than the 90<sup>th</sup> day before the date of the election to which the sign relates, and each Political Sign must be removed in its entirety by the 10<sup>th</sup> day after the election date. No more than one Political Sign for each candidate or ballot item may be displayed per Lot. Each Political Sign must be ground-mounted. No Political Sign may (i) contain roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component; (ii) be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object; (iii) include the painting of architectural surfaces; (iv) threaten the public health or safety; (v) be larger than four

2290-03-0622

feet by six feet; (vi) violate a law; (vii) contain language, graphics, or any display that would be offensive to the ordinary person; or (viii) be accompanied by music or other sounds or by streamers or be otherwise distracting to motorists. THE ASSOCIATION MAY REMOVE ANY SIGN DISPLAYED IN VIOLATION OF THIS SECTION AND DISPOSE OF SAME AS TRASH WITHOUT LIABILITY OF ANY KIND.

SECTION 6.09 Traffic Sight Line Areas. No fence, wall, hedge, tree, shrub planting or any other thing or device which obstructs sight lines at elevations between two and eight feet (2' & 8') above a street shall be permitted on any corner Lot within the triangular area formed by the two (2) boundary lines thereof abutting the street and a line connecting them at points twenty-five feet (25') from their intersection, or within the triangular area formed by the boundary line abutting a street, the edge line of any driveway pavement (including the Shared Drive as defined in Section 2.03) and a line connecting them at points ten feet (10') from their intersection.

SECTION 6.10 Utility, Lighting and Energy Facilities.

6.10.1 Maintenance Of Utilities Required. All utility services intended to be provided to each single family residence as originally constructed, including without limitation water, sewage, electric and gas services, must be maintained by the Owner at all times when a residence is occupied.

6.10.2 Private Utility Lines. All electrical, telephone and other utility lines and facilities which are located on a Lot and which are not owned and maintained by a governmental entity or a utility company must be installed underground unless otherwise approved in writing by the ACC, and must be maintained at all times by the Owner of the Lot upon which same is located.

6.10.3 Air Conditioners. Except as approved by the ACC, no window, wall or exterior roof mounted type air conditioners or heating units, or any part thereof, and no air conditioners or heating units, or any part thereof, which is visible from any street will be permitted.

6.10.4 Exterior Lighting. Excepting customary Christmas lighting, any exterior lighting of a residence or Lot must be approved by the ACC in accordance with Article III. No exterior lighting (including Christmas lighting) may be directed outside property lines of the Lot upon which same is located. All lighting fixtures (except Christmas lighting) must be compatible in style and design to the residence where located. Christmas lighting and related decorations and ornamentation may be displayed between November 15 and January 10, and the ACC may in particular instances or through Architectural Guidelines permit other holiday lighting, decorations and ornamentation (all of which for purposes of this Section are referred to as "Christmas Lighting"); provided, the ACC is authorized to fully regulate all Christmas Lighting in particular instances or by Architectural Guidelines to avoid any annoyance, nuisance, safety hazard or unsightly condition or appearance as determined in the sole opinion of the ACC.

**Article VII**  
**Easements**

SECTION 7.01 Easements for Encroachment and Overhang. In the event of encroachment by any building, structure or other improvement, including without limitation, any portion of any roadway, walkway, parking area, driveway, water line, sewer line, utility line, sprinkler system, building steps, fences, fireplaces, chimneys, bay windows and similar architectural details, paving, driveway approaches and inturns, decking, footings, piers, piles, grade beams and similar improvements, which encroachment originates during original construction or results at any time from settling or shifting, on or into any adjoining Lot or on or into the Community Properties, not more than thirty inches (30") from any point on the common lot line ("Encroachment"), it shall be deemed that the Owner of the Lot encroached upon (or into) or the ACC (as the case may be) has granted a perpetual easement for continuing maintenance and use of such encroaching improvements, and for maintenance, repair or replacement thereof if performed in substantial compliance with the original construction, over, above, under, and upon the adjoining, encroached upon Lot (or Community Property) for a distance co-existent with the Encroachment. An "Encroachment" as aforesaid includes, without limitation, overhead encroachments and overhangs of walls, roofs or other part of any building or structure, and encroachments which are completely underground. In addition, any such Encroachment is permitted to extend over any otherwise applicable setback line up to thirty inches (30") when the Encroachment originates during original construction or results at any time from settling or shifting as aforesaid. The term "original construction" as used in this Section means construction, placement or modification of improvements which occurs through "completion of the initial sale" of a Lot as that phrase is defined in Section 8.01.

SECTION 7.02 Owners' Access Easement.

7.02.1 Defined. Each Lot and the Community Properties are subject to a non-exclusive access easement for the construction, maintenance, repair and replacement of improvements located upon any adjacent Lot (the "Accessing Lot") for usage by an Accessing Lot Owner or occupant, or their agents or employees. The Lot or Community Properties being accessed is herein referred to as the "Easement Lot". This access easement area on the Easement Lot (the "Access Area") consists of a strip of land abutting the nearest boundary line of the Accessing Lot of not less than three feet nor more than six feet, as may be reasonably required, and to such additional area as may be approved in writing by the ACC upon written request stating a reasonable necessity for same, provided that the Access Area shall not in any event extend past the exterior wall of any residence or garage, or the foundation of either. THIS ACCESS EASEMENT AREA MAY BE UTILIZED ONLY WHEN AND TO THE EXTENT SAID CONSTRUCTION, MAINTENANCE, REPAIR OR REPLACEMENT CANNOT BE REASONABLY CONDUCTED WITHIN THE BOUNDARIES OF THE ACCESSING LOT. Except in the case of an Emergency, in no event will such easement extend to any part of the single family residence garage, or other building located on the Easement Lot.

7.02.2 Notice; Duration. Prior to use of the Access Area, the Owner or occupant of the Accessing Lot must give written notice of intent to utilize the Access Area stating therein the

nature of intended use and the duration of such usage. Such notice must be delivered to the Owner or occupant of the Easement Lot by regular or certified mail or personal delivery, or by attaching same to the front door of the residence located upon the Easement Lot. If by mail, such notice must be given at least ten days prior to use of the Access Area; and if by personal delivery or affixing to the front door, such notice must be given at least seven days prior to use of the Access Area. In case of emergency the Accessing Lot Owner or occupant may commence and continue usage of the Access Area without giving the foregoing notice for so long as is reasonably necessary to control the emergency and complete work necessitated thereby, but must proceed with giving of the required notice as soon as practical after commencement of usage.

7.02.3 Usage. Usage of the Access Area is limited to the minimum reasonable amount of time and area required to complete necessary work to preserve, protect, construct, maintain, repair, and replace the residence or other structures and improvements located on the Accessing Lot. Work during the usage period must be conducted in such manner as to minimize so far as reasonably possible inconveniences and disruptions to the Easement Lot and its occupants. Except in case of emergency or unless otherwise authorized by the Owner or occupant of the Easement Lot, work during the usage period may not be conducted during legal holidays or any Sunday and must otherwise be confined to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturdays.

7.02.4 ACC Approval of Access Area Improvements. No structure or improvements other than grass, and customary, non-exotic flower and shrubbery beds, may be placed within the Access Area at any time without the prior written approval of the ACC. The ACC may not approve any such structures or improvements which would substantially interfere with, or be unduly burdensome to, or which would cause excessive expense to any potential Accessing Lot if access becomes necessary as herein provided.

7.02.5 Restoration. Promptly after completion of usage of an Access Area, the Accessing Lot Owner or occupant must thoroughly clean the Access Area and repair and restore same to substantially the same condition that existed at the time of commencement of usage; provided, such obligation for restoration does not apply to any structures or improvements which have been placed in the Access Area without written ACC approval. At the time of receipt of notice, the Easement Lot Owner or occupant must promptly notify the Accessing Lot Owner or occupant as provided in **Section 7.02.2** of any structures or improvements within the Access Area which have been approved by the ACC.

SECTION 7.03 Association and ACC Blanket Access Easement. The Association, the ACC and their Related Parties have a continuing non-exclusive easement upon, over, under and across each Lot, and as to the exterior of the residence and garage thereon, and as to the exterior and interior of any other improvement thereon, to the extent reasonably necessary for the performance of any of the functions or duties of the Association or ACC or exercise of any of their rights under this Declaration. Prior to exercise of such easement rights written notice must be given to the Owner or occupant of the affected Lot stating the expected date of commencement of usage, the nature of the intended use and anticipated duration of such usage. The notice may be given in any manner as permitted by **Section 7.02.2**. In case of an emergency the right of entry and usage shall be immediate

UNOFFICIAL COPY

without notice, but in such case notice as aforesaid shall be given as reasonable soon as practicable.

SECTION 7.04 Egress/Regress to Public Way Required. All single family residences shall be constructed, and thereafter same and related improvements shall be maintained, such that a continuous and unobstructed means of ingress, egress and regress to a common public way is maintained in accordance with applicable building codes and ordinances.

SECTION 7.05 Governmental Functions, Utilities and Other Services.

7.05.1 Governmental Functions; Removal of Obstructions. Blanket non-exclusive easements and rights-of-way are hereby granted to all applicable governmental authorities, to all police, fire protection, ambulance and other emergency vehicles, to garbage and trash collection vehicles and other service vehicles, to the United States Post Office and similar services, and to the respective agents and employees of all of the foregoing, for access, ingress and egress upon, over and across any portion of each Lot and throughout the Subdivision for purposes of the performance of any official business without liability of any kind. APPLICABLE GOVERNMENTAL AUTHORITIES AS AFORESAID ARE ALSO SPECIFICALLY AUTHORIZED TO REMOVE OBSTRUCTIONS IF NECESSARY FOR EMERGENCY AND SERVICE VEHICLE ACCESS, AND TO ASSESS THE COST OF REMOVAL TO THE OWNER OF THE OBSTRUCTION.

7.05.2 Certain Subdivision Facilities. During the Development Period, Declarant may establish within the Subdivision (including upon any Lot) such easements as Declarant may determine for the placement and maintenance of (i) mail box banks, water banks, master water meters and/or electrical banks designed to serve two or more single family residences, including entry, access and exit areas as to same, (ii) Subdivision entry and/or other identification signs and/or monuments, and (iii) patrol or security access limiting type structures or devices obtained for maintenance by the ACC for such purposes, including without limitation controlled access gates, guardhouses and related structures or devices. PERMANENT EASEMENTS SHALL BE DEEMED TO HAVE BEEN ESTABLISHED BY DECLARANT AS TO ANY SUCH SUBDIVISION FACILITIES PLACED OR CONSTRUCTED UPON ANY LOT OR COMMUNITY PROPERTIES BY DECLARANT DURING THE DEVELOPMENT PERIOD. AS TO EACH SUCH SUBDIVISION FACILITY, THE AFORESAID EASEMENT SHALL EXTEND TO THE AREA OF LAND COVERED BY THE SUBDIVISION FACILITIES, TOGETHER WITH REASONABLE WORKING SPACE AND NECESSARY RIGHTS OF INGRESS, EGRESS AND REGRESS FOR PURPOSES OF THE INSTALLATION, MAINTENANCE, OPERATION, REPAIR AND REPLACEMENT OF THE FACILITY. Declarant may, but is not required to, file a formal easement or easements covering any such Subdivision Facilities in the Official Public Records of Real Property of Harris County, Texas either during or after termination of the Development Period, and the ACC may do so at any time after termination of the Development Period.

7.05.3 A/C Condensing Units. Declarant may approve placement of air conditioner condensing units and related pads, wiring, conduits and devices (an "A/C Unit") along the Zero Lot Line of a residence in such manner that the A/C Unit encroaches on an adjoining Lot, adjoining reserve subject to Association control or adjoining Community Properties, to a distance of not more

than thirty-six inches (36"). In such case, it shall be deemed that the Owner of the encroached upon property, including the Association, has granted a perpetual easement for continuing maintenance of the A/C Unit(s) thereon, and for maintenance, repair and replacement of the A/C Unit(s) in substantial compliance with the original installation of the A/C Unit(s). The A/C Unit(s) may also be enclosed by property line fencing around the part(s) of the A/C Unit(s) which extend over the Lot line in such manner as may be approved by Declarant or the ACC. Declarant or the ACC may also prohibit fencing along the common boundary line along which one or more A/C Units encroach, and/or limit fencing to enclosure at the front and back of the residence sharing the common boundary line (with gates).

7.05.4 Other Easements. The Association shall have the right to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public, quasi-public or private utility purposes, including, without limitation, gas, electricity, telephone, sanitary or storm, cable television and similar services, along, over, above, across and under the Subdivision and any Lot; provided, such additional easements shall not be located in such manner as to encroach upon the footprint or foundation of any then existing building (including any residence) or any swimming pool. Any such easement shall not be effective unless and until notice thereof is filed in the Official Public Records of Real Property of Harris County, Texas.

SECTION 7.06 Egress/Regress to Public Way Required. All single family residences shall be constructed, and thereafter same and related improvements shall be maintained, such that a continuous and unobstructed means of ingress, egress and regress to a common public way is maintained in accordance with applicable building codes and ordinances of the City.

SECTION 7.07 Reciprocal Street Easements. The Owner of each Lot in the Subdivision irrevocably grants to each other Owner of a Lot in the Subdivision, and to Declarant, the Association, the ACC and their Related Parties, reciprocal, perpetual, and non-exclusive rights-of-way and roadway easements for purposes of ingress, egress, passage, and travel by vehicles and pedestrians over and across each and all private streets located within the Subdivision, including the Shared Drive as defined in **Section 2.04** which is specifically included within the meaning of the term "private street(s)". In addition, each said Owner hereby grants perpetual easements to Declarant, the Association and their Related Parties for, and irrevocably designates the Association as their agent in fact for, purposes of (i) installation, maintenance, repair, or replacement of all private streets and all other improvements incident thereto as determined in the sole opinion of Declarant and/or the Board, and (ii) regulation of all aspects of usage of all private streets by Owners, their tenants, their Related Parties, and all other Persons, in accordance with applicable Governing Documents, and in connection therewith each Owner agrees that no other easements or rights of usage of any kind may be granted by any Owner in, upon, under, over or across any private street without the prior written consent of Declarant or the Association. Each Owner hereby additionally grants to Declarant, the Association and the ACC a secondary easement not to exceed four feet from each side of any private street, and as to as much additional surface of each Owner's Lot per **Section 9.04**, as reasonably necessary for the installation, maintenance, repair, or replacement of a any private street and related improvements.

SECTION 7.08 Easements Perpetual and Not Conveyed. Title to any Lot conveyed by contract, deed or other conveyance is subject to all easements of record and as otherwise established by this Declaration, and may not be held or construed in any event to include the title to any easement established by this Declaration, including but not limited to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way or any pipes, lines, poles, or conduits on or in any utility facility, service equipment or appurtenances thereto. Easement rights established by or obtained pursuant to this Declaration may not, once established or obtained, be adversely effected by any amendment of this Declaration. The foregoing does not limit subsequent abandonment or other modification of easement rights in accordance with applicable instruments covering any easement, by consent or agreement of the affected parties, or as otherwise provided by law.

**Article VIII**  
**General Provisions**

SECTION 8.01 Development Period.

8.01.1 Application. Notwithstanding any other provisions of this Declaration or any other Governing Documents to the contrary, the provisions of this **Section 8.01** apply during the Development Period (and thereafter as herein provided).

8.01.2 Architectural Control/Builder Approval.

(a) ACC Approval Not Required. Declarant is not required to obtain ACC approval or otherwise comply with any provisions of **Article III** hereof until completion of the initial sale of each Lot, whether or not the initial sale occurs during or after the Development Period.

(b) Declarant's ACC Authority As To Initial Development of Lots. NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, DECLARANT HEREBY RESERVES AND RETAINS FULL AND EXCLUSIVE AUTHORITY OF THE ACC AS TO EACH LOT, AND THE RIGHT TO ENGAGE IN ANY AND ALL DEVELOPMENT AND SALES ACTIVITIES REGARDING EACH LOT, UNTIL COMPLETION OF THE INITIAL SALE OF EACH LOT, WHETHER OR NOT COMPLETION OF THE INITIAL SALE OCCURS DURING OR AFTER THE DEVELOPMENT PERIOD. DECLARANT'S AUTHORITY INCLUDES WITHOUT LIMITATION THE RIGHT TO ASSESS AND RECEIVE PAYMENT OF ARCHITECTURAL REVIEW FEES AS AUTHORIZED BY **SECTION 3.02.9.**

(c) Approval of Builder ("Authorized Builder") By Declarant Required. During the Development Period no builders are permitted to construct any residence or appurtenant improvements upon any Lot or otherwise conduct any developmental and/or sales activities within the Subdivision other than those builders (if any, and whether one or more) which have been approved in advance in writing by Declarant (said approved builder or builders sometimes herein referred to as an "Authorized Builder"). Declarant's approval of any builder does not pass to any successor builder, and may not be otherwise transferred or assigned. Declarant's right to approve (or disapprove) any builder during the Development Period may be assigned only to another "Declarant"

029-03-0620

COPY

as so designated in accordance with applicable provisions of this Declaration.

(d) "Completion of the Initial Sale" of Lot Defined. As used in this Declaration and as to each Lot, "completion of the initial sale" means and occurs upon substantial completion of the construction of a single family residence and related improvements upon the Lot and the sale of the Lot to a Person other than Declarant or a builder for use and occupancy of the Lot for a single family residence.

8.01.3 First Meeting of Owners; "Owner ACC Members"; "First Meeting Date".

(a) Declarant shall call the first meeting of Owners within a reasonable time after termination of the Development Period, or such earlier date as determined by Declarant. Declarant shall set the place, the time and the date (the "First Meeting Date") of the first meeting of Owners, and notice thereof must be given to all Owners. Notwithstanding any other provisions hereof or of any other Governing Documents, any notices of or relating to the first meeting of Owners may be mailed by regular mail to the street address of each Lot and may be addressed to "Association Member" or similar generic term. There is no duty by any Person giving any such notice to confirm ownership or any other mailing address. All Owners, whether Class A or Class B Members, are entitled to vote at the first meeting of Owners. Declarant may appoint any persons to act as a chairperson and secretary for the first meeting of Owners, or, if Declarant does not do so, then the Owners shall elect the chairperson and/or secretary, as applicable, for the meeting as the first order of business of the meeting. The Owners shall otherwise conduct the first meeting of Owners as provided in **Section 2.10** hereof, and Declarant need not attend such meeting. The sole purpose of the first meeting is to conduct the election of all members of the ACC ("Owner ACC Members") unless Declarant designates one or more other purposes in the notice of the meeting. All costs to call, notice and conduct the first Meeting of Owners shall be paid from the ACC Fund. At the first Meeting of Owners, the Owners shall elect three Owner ACC Members, one for a term of two years and two for a term of one year. The candidate receiving the largest number of votes shall be elected for the two year term.

(b) If one or more but less than all Owner ACC Members are elected at the first meeting of Owners, then the Owner ACC Members who have been elected, through less than a quorum, may appoint as many Owner ACC Members as needed to fill all remaining committee positions. If no Owner ACC Member is elected at the first Meeting of Owners by Class A Members, then at any time until the expiration of ninety days after the First Meeting Date Declarant may appoint one Owner ACC Member who may in turn appoint all remaining Owner ACC Members. If no Owner ACC Member is elected or appointed as aforesaid, then after expiration of the aforesaid ninety day period any Owner may call, notice and conduct an alternate first Meeting of Owners for the purpose of electing Owner ACC Members.

(c) Until expiration of two years following the date of transfer of Declarant control as hereafter provided, Declarant must be (i) provided with true and correct copies of any and all notices given to Owners or Members and all other documents provided with same at the same time any such notice and/or other document is given to Owners or Members, and (ii) given written notice of the name, mailing address, home, work and facsimile telephone numbers, and

electronic transmission (e-mail) address of each Owner ACC Member who is elected or appointed by Class A Members or by Owner ACC Members within thirty days after any applicable election or appointment.

(d) IF THE CLASS A MEMBERS FAIL TO ELECT AND DECLARANT DOES NOT APPOINT AT LEAST ONE OWNER ACC MEMBER NOT LATER THAN TWO YEARS PLUS ONE DAY AFTER THE FIRST MEETING DATE, THEN (i) ALL FUNDS REMAINING IN THE ACC FUND, IF ANY, WILL BE DEEMED ABANDONED AND EXCLUSIVE OWNERSHIP THEREOF SHALL BE AUTOMATICALLY TRANSFERRED TO DECLARANT, AND (ii) ANY BOOKS AND RECORDS OF THE ASSOCIATION OR ACC IN THE POSSESSION OR CONTROL OF DECLARANT OR DECLARANT'S RELATED PARTIES MAY BE DESTROYED.

8.01.4 Transfer of Declarant Control; Effect.

(a) THE DATE OF TRANSFER OF DECLARANT CONTROL IS THE DATE OF OCCURRENCE OF THE EARLIER OF (1) ELECTION BY CLASS A MEMBERS OR APPOINTMENT BY DECLARANT OF AT LEAST ONE OWNER ACC MEMBER, OR (2) NINETY DAYS AFTER THE "FIRST MEETING DATE" (AS DEFINED IN SECTION 8.01.3).

(b) ON THE DATE OF TRANSFER OF DECLARANT CONTROL (1) ALL ACC MEMBERS AND OFFICERS THERETOFORE APPOINTED OR ELECTED BY DECLARANT (OTHER THAN OWNER ACC MEMBERS) ARE AUTOMATICALLY REMOVED FROM OFFICE AND FULLY RELIEVED THEREAFTER FROM ANY FURTHER RIGHTS, DUTIES, LIABILITIES AND RESPONSIBILITIES REGARDING THE ASSOCIATION, THE ACC OR THE SUBDIVISION, AND (2) THE ASSOCIATION AND ITS MEMBERS BECOME WHOLLY AND SOLELY RESPONSIBLE FOR THE MANAGEMENT, MAINTENANCE AND OPERATION OF THE ASSOCIATION AND ACC, AND OF THE SUBDIVISION, INCLUDING WITHOUT LIMITATION FULL AND SOLE ASSUMPTION BY THE ASSOCIATION OF ALL MAINTENANCE RESPONSIBILITIES OF THE ASSOCIATION.

8.01.5 Community Properties; Landscaping.

(a) During the Development Period Declarant may provide and construct such Community Properties as Declarant may desire. ONCE PROVIDED OR CONSTRUCTED, ALL COSTS AND EXPENSES OF THE OPERATION, MANAGEMENT, MAINTENANCE, REPAIR AND REPLACEMENT OF COMMUNITY PROPERTIES, INCLUDING ALL COSTS AND EXPENSES OF INSURANCE THEREON AND ALL AD VALOREM TAXES AND OTHER ASSESSMENTS IN THE NATURE OF PROPERTY TAXES COVERING OR FAIRLY ALLOCABLE THERETO, WILL BE PAID BY THE ASSOCIATION (EITHER DIRECTLY OR BY REIMBURSEMENT TO DECLARANT) REGARDLESS OF WHETHER OR NOT TITLE HAS BEEN TRANSFERRED OR CONVEYED TO THE ASSOCIATION AND REGARDLESS OF WHETHER OR NOT ANY APPLICABLE CONTRACT, AGREEMENT OR OTHER ARRANGEMENT FOR OPERATION, MANAGEMENT, MAINTENANCE, REPAIR OR REPLACEMENT IS IN THE NAME OF, IS PROCURED THROUGH OR HAS BEEN

029-03-0630

TRANSFERRED OR ASSIGNED TO THE ASSOCIATION. The Association will also pay as aforesaid all costs and expenses, regardless of type and including procurement, as to service type Subdivision Facilities such as any patrol, or any garbage or recycling services

(b) WITHOUT LIMITATION OF THE FOREGOING, IT IS EXPRESSLY STIPULATED AND AGREED REGARDING ANY AND ALL LANDSCAPING, WHETHER NATURAL OR PRE-EXISTING PRIOR TO INITIATION OF DEVELOPMENT OR AT ANY TIME DURING DEVELOPMENT PLACED OR PLANTED WITHIN THE SUBDIVISION, INCLUDING UPON ANY LOT OR COMMUNITY PROPERTIES THAT (I) DECLARANT DOES NOT REPRESENT, GUARANTEE OR WARRANT THE VIABILITY, VITALITY OR CONTINUATION OF ANY LANDSCAPING, OR THAT ANY PARTICULAR TYPE, QUALITY OR QUANTITY OF LANDSCAPING WILL BE MAINTAINED EVEN IF FROM TIME TO TIME PROVIDED (SUCH AS FOR EXAMPLE SEASONAL PLANTING AT ENTRY AREAS OR AROUND MODEL HOMES), AND (II) IF PROVIDED, AND FROM AND AFTER THE TIME ANY TYPE OF LANDSCAPING IS PROVIDED, ALL COSTS AND EXPENSES OF MAINTENANCE OR REPLACEMENT THEREOF, AND ALL RISK OF LOSS THEREOF, SHALL BE THE SOLE RESPONSIBILITY OF THE OWNER OF THE LOT UPON WHICH ANY SUCH LANDSCAPING IS LOCATED, AND OTHERWISE THE SOLE RESPONSIBILITY OF THE ASSOCIATION AS TO LANDSCAPING AT ANY OTHER LOCATION WITHIN THE SUBDIVISION.

(c) Declarant may transfer, convey or assign any or all Community Properties to the Association during the Development Period, and must do so within a reasonable time after termination of the Development Period. THE ASSOCIATION IS OBLIGATED TO ACCEPT ANY CONVEYANCE AND ANY OTHER TRANSFER OF OWNERSHIP OF ANY COMMUNITY PROPERTIES (AS SO DESIGNATED BY DECLARANT DURING THE DEVELOPMENT PERIOD), REGARDLESS OF WHETHER THE CONVEYANCE OR OTHER TRANSFER OCCURS DURING OR AFTER THE DEVELOPMENT PERIOD. THE ASSOCIATION'S ACCEPTANCE AS AFORESAID IS CONCLUSIVELY ESTABLISHED UPON FILING OF THE APPLICABLE INSTRUMENT OF CONVEYANCE OR OTHER TRANSFER IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS, OR AS OF THE DATE OF DELIVERY OF SAID INSTRUMENT TO THE ASSOCIATION.

(d) ANY RIGHT, TITLE OR INTEREST TO ALL COMMUNITY PROPERTIES, REAL OR PERSONAL, 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.

#### 8.01.6 Easements.

(a) Declarant and any Authorized Builder as so designated by Declarant,

1500-03-0031

and their agents or employees (including any contractor or subcontractor) are entitled during the Development Period to use and exercise all easements set forth in this Declaration for, and Declarant may grant or exercise such additional easements for ingress, egress and usage as is reasonably necessary for, construction of single family residences, providing and development of utilities, Community Properties and/or Subdivision Facilities and any and all other developmental activities.

(b) In addition to the general easement as provided in the preceding subsection, until completion of the initial sale (as defined in **Section 8.01.2** hereof) of all Lots, Declarant and any Authorized Builder shall have a temporary construction easement upon, under, over, across and above each Lot and all Community Properties for purposes of installation, construction and completion of the residence, garage and any other structures or improvements upon any adjacent Lot or Community Properties and the conducting of any other development and sales activities in relation thereto, provided that this easement shall not extend in any manner to the interior of any residence or garage and may not be utilized in such manner as to block ingress or egress as to same, and provided further that Declarant or any Authorized Builder utilizing this easement shall restore any parts of the Lot or Community Properties affected by such usage to as nearly as practicable the same condition it was prior to such usage promptly upon completion of such usage.

8.01.7 Development and Sales Activities. Declarant, and any builder so authorized by Declarant, have the right to transact any business and conduct any activities reasonably necessary for all construction within, and all development of, the Subdivision, and for the sale or rental of Lots and single family residences and any other improvements to be constructed within the Subdivision (all such construction, development, sales and all related business and activities herein referred to as "Development Activities"), including without limitation as follows:

(a) Until completion of the initial sale (as provided in **Section 8.01.2**) of all Lots owned by Declarant or a builder, whether or not the initial sale of all Lots occurs during or after the Development Period, Declarant (and any authorized builder) have the right to (i) maintain models, to have, place and maintain sales and promotional signs, flags, banners and similar promotional devices within the Subdivision, to conduct from time to time an "open house" and similar events for realtors and other persons which may include without limitation leaving limited access gates (if any) open as hereafter provided, and to use for development, sales and/or promotional purposes all or any part of any Community Properties and any Lot, or residence or other improvements located thereon, which is owned by Declarant or a builder, and (ii) TO LEAVE LIMITED ACCESS GATES, IF ANY, OPEN FOR ANY PERIODS OF TIME (OR AT ALL TIMES) AND OTHERWISE PROVIDE FOR OR PERMIT ACCESS TO THE SUBDIVISION TO ANY PERSONNEL INVOLVED IN ANY DEVELOPMENT ACTIVITIES, TO PROSPECTIVE PURCHASERS, TO REALTORS AND TO OTHER PERSONS AS DECLARANT REASONABLY DETERMINES IS NECESSARY OR CONVENIENT TO ACCOMMODATE ANY DEVELOPMENT ACTIVITIES.

(b) Declarant (and any authorized builder) may or will be required during the Development Period to, and are hereby specifically authorized to, engage in construction activities upon multiple Lots or Community Properties, to store equipment or materials on multiple

Lots or Community Properties, to create accumulations of trash and debris, and to otherwise engage in activities and create conditions related to development of the Subdivision, including the construction and sale of residences and any other improvements in the Subdivision.

(c) Declarant may establish any reasonable regulations as to Owners and tenants, as to the Association and ACC, as to any Related Parties of any of the foregoing, and as to any other Person, which Declarant deems appropriate to avoid hindrance or interference with any Development Activities, including limiting or denying access to areas of the Subdivision, designating temporary dumping sites, permitting of parking of vehicles owned or operated by construction workers or otherwise being utilized for Development Activities at any location within the Subdivision (except upon any part of any Lot occupied by an Owner other than Declarant), regardless of whether or not such parking would otherwise be prohibited by this Declaration or other Governing Documents, maintenance of metal buildings or structures and use of Community Properties and/or Subdivision Facilities in connection with any Developmental Activities.

(d) ABSENT INTENTIONAL AND WILLFUL MISCONDUCT, DECLARANT AND ANY AUTHORIZED BUILDER ARE NOT LIABLE TO ANY OWNER OR TENANT, OR TO THE ASSOCIATION OR ACC, OR TO ANY RELATED PARTIES OF ANY OF THE FOREGOING, OR TO ANY OTHER PERSON FOR ANY CONSEQUENCES OF THE REASONABLE CONDUCTING OF ANY DEVELOPMENT ACTIVITIES.

8.01.8 Amendment of Governing Documents or Plat; Designation of Community Properties; Annexation. During the Development Period Declarant reserves the sole and exclusive right, without joinder or consent of, and without notice of any kind to, any Owner or other Person, to (i) amend, modify, revise or repeal, from time to time and at any time, this Declaration and any other Governing Documents, (ii) prepare, amend, modify, revise or repeal any Plat covering or to cover the Subdivision, (iii) designate, construct or expand the Community Properties, and to modify, discontinue, redesignate or in any other manner change the Community Properties, and (iv) annex and subject any other property to the scheme of this Declaration provided any such annexation is not inconsistent with the scheme of development contemplated hereby. During the Development Period, no other properties may be annexed or subjected to the scheme of this Declaration without the written consent of Declarant. Any such amendment, modification, revision, repeal or annexation shall be effective from and after filing of notice thereof in the Official Public Records of Real Property of Harris County, Texas except to the extent expressly otherwise provided in the notice.

8.01.9 Binding Arbitration; Limitations. Declarant may, by written request, whether made before or after institution of any legal action, require that any Dispute (as hereafter defined) be submitted to binding arbitration to be conducted in Harris County, Texas in accordance with the Construction Industry Arbitration Rules (or substantial equivalent) of the American Arbitration Association. "Dispute" means any claim, demand, action or cause of action, and all rights and remedies regarding same, claimed or asserted by the Association, the ACC or any Owner, or by their Related Parties, against or adverse to Declarant, or to any Related Party of Declarant, regarding (i) this Declaration or any other Governing Documents, and/or (ii) any of Declarant's development and/or sales activities within or regarding the Subdivision, including the construction of any residence or other improvement. The decision(s) of the arbitrator shall be final and binding, and

judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The initial cost of such arbitration shall be borne equally by the parties, but the cost of such proceeding, including, without limitation, expert witness fees and reasonable attorneys fees, shall be awarded to the prevailing party. NOTICE OF ANY DISPUTE MUST BE GIVEN TO DECLARANT NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER, AND SUIT REGARDING ANY DISPUTE MUST BE FILED IN A COURT OF COMPETENT JURISDICTION NOT LATER THAN TWO YEARS PLUS ONE DAY AFTER, THE DATE ANY CAUSE OF ACTION REGARDING THE DISPUTE ACCRUES.

8.01.10 NO IMPAIRMENT OF DECLARANT'S RIGHTS. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS DECLARATION TO THE CONTRARY, NO PROVISIONS OF THIS SECTION 8.01, AND NO OTHER RIGHTS OR LIMITATIONS OF LIABILITY APPLICABLE TO DECLARANT PURSUANT TO THIS DECLARATION, MAY BE AMENDED, MODIFIED, CHANGED OR TERMINATED EITHER DURING OR AFTER TERMINATION OF THE DEVELOPMENT PERIOD WITHOUT THE PRIOR WRITTEN CONSENT OF DECLARANT.

SECTION 8.02      Enforcement.

8.02.1 Right to Enforce. The Association, its successors and assigns, and any Owner have the right to enforce observance and performance of all restrictions, covenants, conditions and easements set forth in this Declaration and in other Governing Documents, and in order to prevent a breach thereof or to enforce the observance or performance thereof have the right, in addition to all legal remedies, to an injunction either prohibitive or mandatory.

8.02.2 Obligation for Payment of Costs and Expenses Resulting from Violations. Each Owner and tenant of an Owner found to have committed, or who is responsible for, a violation or violations of any of the provisions of this Declaration or any other Governing Documents, is jointly and severally liable for payment to the Association for, and to indemnify and to hold and save harmless the Association, the ACC and their Related Parties from, any and all claims, liabilities, damages, loss, costs, expenses, suits and judgments of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, incurred or attributable to any such violation(s), and must pay over to the Association all sums of money which the Association or its representatives may pay or become liable to pay as a consequence, directly or indirectly, of such violation(s). All such sums are assessed as a specific assessment, and are secured by the continuing lien established by Section 3.02 hereof. All such sums are due and payable upon demand by the Association or its representative without the necessity of any other or further notice of any act, fact or information concerning the Association's rights or such Owner's or their tenant's liabilities under this Section; provided, in the case of indemnification the demand shall contain a statement setting forth the Association's payment or liability to pay the claim with sufficient detail to identify the basis for the payment or liability to pay.

8.02.3 Filing of Notices of Non-Compliance. At any time the Association determines there exists any noncompliance with any provisions of this Declaration or other Governing Documents, the Association may at its option direct that a Notice of Noncompliance be filed in the

RP 029-03-0634

Official Public Records of Real Property of Harris County, Texas covering the affected Lot or Lots and the Owner(s) thereof at the sole cost and expense of such Owner(s). All such costs and expenses are due and payable upon demand, are deemed a specific assessment applicable to the affected Lot(s) and are secured by the Association's continuing assessment lien.

8.02.4 No Estoppel, Waiver or Liability. Failure of Declarant, the Association, the ACC or any Owner to enforce any of the provisions of this Declaration or any other Governing Documents will in no event be deemed a waiver of the right to do so thereafter (including without limitation as to the same or similar violation whether occurring prior or subsequent thereto). No liability may attach to the Association, the ACC or any of their Related Parties for failure to enforce any provisions of this Declaration or any other Governing Documents.

SECTION 8.03 Term. Subject to the provisions of **Sections 8.01 and 8.04**, these covenants, conditions, restrictions, reservations, easements, liens and charges run with the land and are binding upon and inure to the benefit of the Association, the ACC, all Owners, their respective legal representatives, heirs, executors and administrators, predecessors, successors and assigns, and all Persons claiming under them for a period of twenty years from the date this Declaration is filed in the Official Public Records of Real Property of Harris County, Texas, after which time said covenants, conditions, restrictions, reservations, easements, liens and charges will be automatically extended for successive periods of ten years each.

SECTION 8.04 Amendment By Owners; "Amendment" Defined. Subject to the provisions of **Section 8.01** and except as otherwise expressly herein provided, the Owners of seventy-five percent (75%) of the total number of Lots then contained within the Subdivision always have the power and authority to amend this Declaration, in whole or in part, at any time and from time to time. The Owner's approval of any amendment of this Declaration may be obtained (i) by execution of the amending instrument or a consent thereto by any Owner of each Lot so approving, (ii) by affirmative vote, in person or by proxy, at a Meeting of Owners called for consideration of any such amendment, or (iii) by any combination of the foregoing. In this Declaration and all other Governing Documents the terms "amend", "amendment" or substantial equivalent mean and refer to any change, modification, revision or termination of any provisions of this Declaration or other Governing Documents. Any lawful amendment of this Declaration will be effective from and after filing of the amending instrument in the Official Public Records of Real Property of Harris County, Texas, or such later date as may be stated in the amending instrument.

SECTION 8.05 Notices. Unless otherwise expressly provided herein, all notices or other communications permitted or required under this Declaration **MUST BE IN WRITING AND MUST BE PROPERLY DATED AND SIGNED, AND ARE DEEMED PROPERLY GIVEN IF BUT ONLY IF GIVEN IN ACCORDANCE WITH THIS SECTION.** Notice to Declarant and to the Association or ACC during the Development Period must be given by personal delivery, or by certified mail, return receipt requested, to Declarant's registered agent at Declarant's registered office. Notice to the Association or ACC after termination of the Development Period, to an Owner, or to an Owner's tenant must be given by personal delivery, or by certified mail, return receipt requested (i) to any member of the ACC in the same manner as next provided for notice to the member of the ACC as an Owner (and any member of the ACC receiving any notice shall promptly

RR 029-03-0636

deliver copies thereof to all other members of the ACC), (ii) to the Owner's Lot address, or to the Owner's alternate address according to the records of the Association, if any, or (iii) to an Owner's tenant at the tenant's Lot address. Personal delivery to an Owner or Tenant includes posting of the notice on the front door of the Owner's residence (except as to an Owner who has given proper notice of an alternate mailing address). Refusal to accept delivery of any notice shall be deemed actual notice and actual knowledge of the material refused. NOTICE OF CHANGE OF MAILING ADDRESS OR OWNERSHIP, OR OF LEASING OR OTHER CHANGE OF OCCUPANCY, MUST BE GIVEN TO THE ACC WITHIN THIRTY DAYS AFTER COMPLETION OF THE SALE, COMMENCEMENT OF THE LEASE, OR CHANGE OF OCCUPANCY, AS APPLICABLE, ANY SUCH NOTICE TO BE EFFECTIVE ONLY UPON ACTUAL RECEIPT OF SAME BY THE ACC.

SECTION 8.06 Effective Date. This Declaration is effective from and after the date of filing of same in the Official Public Records of Real Property of Harris County, Texas.

IN WITNESS WHEREOF, the undersigned has executed this Declaration to be effective as above stated.

EXECUTED this 13 day of Sept., 2006.

O'CONNOR VENTURES, INC.  
a Texas corporation  
"Declarant"

By:   
T. MICHAEL O'CONNOR, President

10K

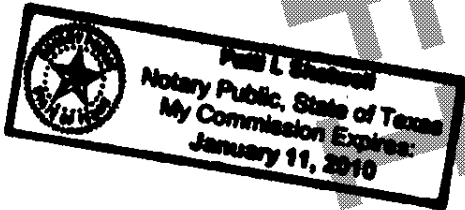
UNOFFICIAL COPY

DECLARANT'S ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 13<sup>th</sup> day of SEPTEMBER 2006, by T. MICHAEL O'CONNOR, as President of O'CONNOR VENTURES, INC., a Texas corporation, on behalf of the corporation.



*Patti L. Shorwell*  
Notary Public, State of Texas  
Name: PATTI L. SHORWELL  
My Commission Expires: 1-11-2010

FP 029-03-0637

**MORTGAGE/LIENHOLDER CONSENT**

The undersigned mortgagee/lienholder,, being the owner and holder of an existing mortgage or lien upon and against the land and property described as the Subdivision in the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Westheimer Cort, as such mortgagee and lienholder, does hereby consent to said Declaration as if the same had been recorded prior to the creation of such lien.

This consent will not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof.

EXECUTED this 14 day of September, 2006.

FILED

06 SEP 21 PM 12: 23

*Brenda B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

Prosperity Bank  
(Print Name of Mortgagee/Lienholder)

By: *John Rebeles Jr.*  
Name: John Rebeles Jr.  
Title: President, Sugar Land Banking Center

STATE OF TEXAS  
COUNTY OF ~~HARRIS~~ Fort Bend

This instrument was acknowledged before me on the 14 day of September 2006, by John Rebeles, Jr., President, of Prosperity Bank, a commercial banking corporation, on behalf of said bank.



*Laura Turner*  
Notary Public, State of Texas  
Name: Laura Turner  
My Commission Expires: Nov. 17, 2009

FAWP\wb\ba\MGB\Westheimer CA\Corp\Docs\Restrict.wpd

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 on

SEP 21 2006

RECORDER'S MEMORANDUM:  
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.



*Brenda B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

RP 029-03-0633