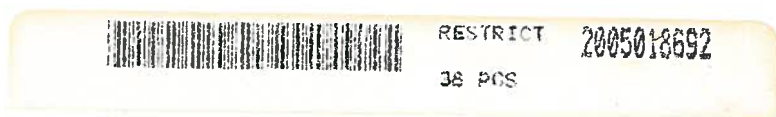


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**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS**

**FOR**

**RIVERWAY ESTATES SUBDIVISION**

**A RESIDENTIAL SUBDIVISION IN FORT BEND COUNTY, TEXAS**

STATE OF TEXAS           §  
                                      §           **KNOW ALL BY THESE PRESENTS THAT:**  
COUNTY OF FORT BEND   §

This Declaration of Covenants, Conditions, and Restrictions (the "Declaration") is made as of the date set forth below by **Ranna & Company, L.L.C., a Texas Limited Liability Company**, (hereinafter referred to as "Declarant").

WITNESSETH;

**WHEREAS**, Declarant is the owner of all that certain real property known as **Riverway Estates Subdivision** a subdivision located in Fort Bend County, Texas, as more particularly described in **Section 1.01**; and

**WHEREAS**, it is the desire of the Declarant to file this Declaration of Covenants, Conditions and Restrictions for Riverway Estates Subdivision, in order to promote the health, safety and welfare of the Owners, in order to establish and preserve the uniform plan of the subdivision and enhance the property values of the present and future owners of lots in said subdivision:

**NOW THEREFORE**, the Declarant with respect to Riverway Estates Subdivision hereby adopts the following Declaration of Covenants, Conditions and Restrictions for Riverway Estates Subdivision. This Declaration of Covenants, Conditions and Restrictions for Riverway Estates Subdivision, shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein or any part thereof, and shall inure to the benefit of each owner thereof and shall be amended as set forth hereafter:

**Article I**

**Property Subject to This Declaration**

**SECTION 1.01**       **Property Subject to Declaration.** The real property which, by the recording of the Declaration, will be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is that certain real property located in Fort Bend County, Texas, more particularly described as follow, to wit:

All that certain tract or parcel of land platted as **RIVERWAY ESTATES SUBDIVISION**, according to the map or plat thereof recorded on November 23, 2004, under Fort Bend County Clerk's File Number 2004143061 of the Real Property Records of Fort Bend County, Texas, and being a 12.53 acre subdivision out of the William Hodge Survey, A-196 and Brown and Belknap League, A-15 of Fort Bend County, Texas.

**SECTION 1.02 Annexation of other Property.** Only the real property described in **Section 1.01** is initially made subject to this Declaration. Additional real property may be annexed by Declarant during the Development Period as provided in **Section 9.10**. Any other real property may be annexed only upon approval by Owners of a majority of all Lots then contained within the Subdivision obtained in the same manner as required for amendment of this Declaration.

## **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 apply, mean and refer to the following:

**SECTION 2.01** "Architectural Control Committee" or "ACC " means the committee established pursuant to **Article VI** of this Declaration.

**SECTION 2.02** "Association" means **RIVERWAY ESTATES COMMUNITY ASSOCIATION, INC.**, a Texas non-profit corporation, to be incorporated for the purposes contemplated by this Declaration, and its successors (by merger, consolidation or otherwise) and assigns.

**SECTION 2.03** "Board" or "Board of Directors" means the Board of Directors of the Association.

**SECTION 2.04** "Bylaws" means the Bylaws of the Association, as from time to time amended in accordance with applicable provisions of the Bylaws.

**SECTION 2.05** "Community Properties" means all properties, real or personal, conveyed to, dedicated to the use of, or otherwise acquired by the Association for the common use and enjoyment of the Members of the Association, together with all improvements thereon and appurtenances thereto.

**SECTION 2.06** "Declarant" means **Ranna & Company, L.L.C.**, a Texas Limited Liability Company, and its successors and assigns if such successors or assigns:

2.06.1 acquire all the undeveloped or developed but previously unoccupied

or unsold Lots within the Subdivision from Declarant for purposes of development and resale; or

2.06.2 are expressly designated in writings by Declarant as a successor or assign of Declarant hereunder, in whole or part.

**SECTION 2.07** "Development Period" means the period of time beginning on the date of filing of this Declaration in the Real Property Records of Fort Bend County, Texas and ending on the earlier occurrence of either of the following events:

2.07.1 fifteen years after the date of filing of this Declaration in the Real Property Records of Fort Bend County, Texas; or

2.07.2 upon recordation of Declarant's statement in the Real Property Records of Fort Bend County, Texas, that the Development Period has ended or has been terminated by Declarant.

2.07.3 **Under Section 2.07.2**, Declarant may terminate the Development Period only as to certain rights or responsibilities of Declarant under this Declaration while retaining all others, or terminate the Development Period as to certain sections, Lots or other areas of the Subdivision only or otherwise phase out, modify or terminate Declarant's rights or responsibilities under this Declaration.

**SECTION 2.08** "Governing Documents" means all documents and applicable provisions thereof as set forth in this Declaration, the Bylaws and Articles of Incorporation of the Association, Rules and Regulations, Architectural Guidelines, all written decisions and resolutions of the ACC and Board and any lawful amendments to any of the foregoing.

**SECTION 2.09** "Lot" means:

2.09.1 any of the numbered lots shown on the Plat covering the real property described in **Section 1.01**; and

2.09.2 a building site upon which one single family residence is or may be constructed as described by reference to any map or plat or by metes and bounds description, and which is contained within real property subjected to this Declaration pursuant to **Section 1.02**.

2.09.3 The term "Lot" does not include Community Properties, and does not include commercial reserves so designated by a Plat, if any.

**SECTION 2.10** "Owner" means the Person who holds title to a lot according to the Real Property Records of Fort Bend County, Texas, whether one or more Persons, including any mortgagee or 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.

**SECTION 2.11** "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other entity.

**SECTION 2.12** "Plat" means:

2.12.1 the map or plat of the Subdivision described in **Section 1.01**; and

2.12.2 any other map, plat or other designation of real property subjected to this Declaration as provided in **Section 1.02** which is filed in the Map or Plat (or other appropriate Real Property) Records of Fort Bend County, Texas.

**SECTION 2.13** "Regulated Modification" means the placement, construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, improvement, thing or device, and any usage thereof, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the Subdivision as of the date of establishment of the Regulated Modification, excluding any such matters or activities conducted by the Association as to Community Properties, but including by way of illustration and not of limitation:

2.13.1 any building, garage, porch, shed, greenhouse, bathhouse, coup or cage, covered or uncovered patio, swimming pool, clothes lines, radio or television antenna, fence, wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters (including any mobile home) or any other temporary or permanent modification or alteration;

2.13.2 an excavation, fill, ditch, diversion, dam, drainage system or other thing or device which affects or alters the flow of surface or subsurface waters to, from, upon or across any Lot or any other portion of the Subdivision, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel to, from, upon, under or across any Lot or other portion of the Subdivision;

2.13.3 any change in the grade of any Lot or other portion of the Subdivision, and any similar disturbance to the surface of the land within the Subdivision; and

2.13.4 any erosion control system or devices permitted or required as to any Lot or other portion of the Subdivision.

**SECTION 2.14** "Subdivision" means **Riverway Estates Subdivision**, a residential subdivision in Fort Bend County, Texas as more particularly described in **Section 1.01** and any other real property subjected to this Declaration as herein provided from time to time.

### **Article III**

#### **RESERVATIONS, EXCEPTIONS AND DEDICATIONS**

**SECTION 3.01** Incorporation of Easements. The Plat described in **Section 1.01** dedicates (and subsequent Plats, if any, may dedicate) for use as such, subject to the limitations set forth therein, the streets and easements shown thereon, and such Plat further establishes certain restrictions applicable to the Subdivision, including, without limitations, certain minimum setback lines. All dedications, limitations, restrictions and reservations shown on the Plat are incorporated herein and made a part hereof as if fully set forth herein, and are to be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Declarant, conveying any property located within the Subdivision, or any part thereof, whether specifically referred to therein or not.

**SECTION 3.02** Reservation of Easements. In addition to the provisions of **Section 4.15** and without limitation thereof, Declarant hereby reserves the easements and right-of-way as shown on the Plat for the purpose of construction, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, water lines, sewer lines, drainage or any other utility Declarant sees fit to install on, in, across, or under the Subdivision.

#### **SECTION 3.03**      Utilities Access and Other Services.

3.03.1 Services. A blanket easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, to garbage and trash collection services, to water, sewage, electrical, gas and other utility services, to the United States Post Office, and to the Association, and to the officers, directors, agents and employees of all of the foregoing, to enter upon any portion of the Subdivision or any Lot for purposes of and in connection with the performance of all work or other activities incident to providing the service or as to rights or responsibilities of the Association as set forth in this Declaration or other Governing Documents. Except in the case of an emergency as determined in the sole opinion of Declarant or the Board, this blanket easement shall be exercised by or on behalf of the Association only during reasonable hours and only after giving of at least three days written notice.

3.03.2 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 egress and regress to a common public way is maintained in accordance with applicable building codes and ordinances of the City of Houston, State of Texas.

**3.03.3 Changes and Additions.** At the sole election of the Board, 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 or other services, including, without limitation, to providers of gas, electricity, telephone, sanitary or storm, cable television and similar services and equipment, along, over, above, across and under the Subdivision and any Lot; provided, no such additional easement shall unreasonably interfere with any pre-existing building or other substantive and substantial rights of any Owner.

**SECTION 3.04 Limitation of Liability.** Except for intentional and willful misconduct, no Person (including Declarant) entitled to use or otherwise exercise any rights as to any easements herein referred to may be held liable for any damages or otherwise in connection with such usage or exercise of rights by them or their assigns, or their agents, employees or servants, including without limitation any damages to fences, trees, shrubbery, flowers, pavement, irrigation system, underground lines or any other part of any electrical, telephone, sanitary or storm, cable television and any other similar utility or other service lines or equipment, or other property of any Owner, the Association or any other Person situated within the Subdivision on any land covered by said easements.

**SECTION 3.05 Title to Easements and Appurtenances Not Conveyed.** Title to any Lot conveyed by contract, deed or other conveyance may not be held or construed in any event to include any right, title or interest as to any easement established, covered, contemplated or reserved 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; and no such contract, deed or other conveyance may be held or construed in any event to affect any right of Declarant or other easement owner to use, maintain or repair, or to sell or lease, any such easement or appurtenances thereto to any municipality or other governmental agency, or to any public or quasi-public service corporation, or to any other Person, and such right is hereby expressly reserved.

**SECTION 3.06 Easement Perpetual.** So long as reasonably necessary, all easements established, covered, referred to, contemplated by or reserved by this Declaration are perpetual in duration, and once established are not subject to amendments or termination otherwise applicable to this Declaration without the prior written consent of the owner(s) thereof.

#### **Article IV**

#### **ARCHITECTURAL AND USE RESTRICTIONS**

**SECTION 4.01 Land Use and Building Type.** All Lots will be known and described as Lots for residential purposes only (hereinafter sometimes referred to as "residential Lots"). No residential structure may be erected, altered, placed or permitted to remain on any residential Lot other than one single family dwelling not to exceed two and one-half stories in height and a detached or an attached garage for not less than two or more then

four cars. Garages may have front, side or rear entry. As used herein, the term "residential purposes" is to be construed to prohibit the use of any Lot for duplex houses, garage apartments, or apartment houses; and no Lot may be used for business or professional purposes of any kind, nor for any commercial or manufacturing purpose. Except as provided in **Section 4.11**, no building of any kind or character may ever be moved onto any Lot, it being the intention that only new construction may be placed and erected on any Lot.

**SECTION 4.02 Architectural Control.** No Regulated Modification may be erected, placed or maintained on any Lot except in accordance with **Article VI**.

**SECTION 4.03 Dwelling Size.** The ground floor of the main residential structure, exclusive of open porches and garage, must not be less than 1000 square feet for a one-story dwelling, nor may the ground floor area of the main residential structure of a one and one-half, a two or a two and one-half story dwelling be less than 900 square feet.

**SECTION 4.04     Type of Construction and Materials.**

4.04.1 Type of Construction. At least fifty one percent (51%) of the exterior wall area of all residences, excluding gables, and door and window openings, must be of masonry construction. "Masonry", as used herein, includes brick, brick veneer, stone, stone veneer, glass, stucco, concrete, Hardi Plank Concrete or other masonry type construction, or combination thereof. The remaining area must be of material approved by the ACC.

4.04.2 Driveways. On each Lot, the builder of the residence thereon must construct, during the construction of the main dwelling foundation, the driveway from the garage to the abutting street, including the portion of the driveway in the street right-of-way. The builder or Owner must repair at their own expense any damage occasioned by connecting the driveway to the street. All driveways must be reinforced aggregate concrete, or an optional but acceptable surfacing (such as brick, texture, or Bomainite, as approved by the ACC, and must in all other respects comply when constructed with applicable building codes and ordinances of City of Houston. Asphalt paving is prohibited.

4.04.3 Roof Material. Roofs may take a variety of forms as approved by the ACC. Gabled and hipped roofs are preferable. Mansard roofs and other "exotic" roof forms may not be used without prior written approval of the ACC. Roof materials may be standing seam metal, aluminum shingles, marble, clay tile, concrete slate, tar and gravel or membrane process (per ACC approval) or dimensional or architectural grade composition fiberglass or asphalt shingles in black blend or dark brown color range, or such other color as approved by the ACC. Any fiberglass or asphalt shingle roofs must have a covered valley unless an uncovered valley is approved by the ACC.

4.04.4 Fences.

(a) Fences are required on any lot. No fence or wall may be erected, constructed or maintained without prior written approval of the ACC and unless erected, constructed and maintained in accordance with this Section. No fence or wall may be erected, constructed or maintained on any Lot extending past the front of the main residence, and all fences or walls facing any street must be placed uniformly from the street to provide for a consistent and uniform alignment. The erection of a chain link fence is strictly prohibited. All fences must be wood, brick, wrought iron, brick and wrought iron, or brick and wood. Wood fences must be treated pine, cedar, redwood or cypress. Maximum fence or wall height for all Lots is six feet; provided, brick columns in brick and wrought iron or brick and wood fences may extend to seven feet in height; and provided further any entry, perimeter or other fencing constructed or maintained by Declarant or the Association may extend to a maximum height of eight feet (with columns, if applicable to nine feet). The provisions of this section do not apply to any Subdivision perimeter fences or walls erected by Declarant, or any fences or walls erected or maintained by the Association.

(b) General Rules of Law to Apply. Each fence which will serve and separate any two adjacent Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(c) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who are served by the wall or fence in equal proportions.

(d) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner served by the wall or fence may restore it, and other Owner or Owners served by the wall or fence shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such owner's successors-in-title.

(f) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.



**4.04.5 Time for Completion.** All exterior construction of the primary residential structure, garage, porches, and any other appurtenances or appendages of every kind and character on any Lot and all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work completed, all interior wall, ceilings, and doors completed and covered by pain, wallpaper, paneling, or the like, and all floors covered by wood, carpet, tile or other similar floor covering) must be completed not later than one year following the commencement of construction. For the purposes hereof, the term "commencement of construction" means the date on which the foundation forms are set.

**SECTION 4.05 Building Location.** Buildings may be constructed so as to have one outside wall abutting the side property line designated as the "zero setback line" for that Lot. To provide for uniformity and property utilization of the building area within the Lot, dwellings or appurtenant structures on the Lot shall not be less than six (6) feet from the dwelling or appurtenant structure on any contiguous Lot (s). No windows, doors or other openings may be placed in the wall built on or parallel to the zero setback line unless the wall is a minimum of three (3) feet from the zero setback line except that walks on the zero setback line may have openings if such wall faces located upon the zero setback line or use same as playing surface for any sport; nor shall the owner of any adjacent Lot alter in any manner, ie. structure, color, material or otherwise, a side wall or fence located upon a zero setback line without:

- (1) the written approval of the Architectural Control Committee, and
- (2) the written consent of the adjoining Lot Owners

For the purposes of this Declaration, eaves, steps and open porches shall not be considered as a part of the Building; provided, however, that this shall not be construed to permit any portion of a building on any Lot to encroach upon any Lot.

**SECTION 4.06      Lot Resubdivision or Combination.**

**4.06.1 Subdividing Prohibited.** No Lot as originally conveyed and no Lot as shown on the Plat may be subdivided or its boundaries changed except in conjunction with the combination of Lots.

**4.06.2 Lot Combinations.** Any Owner of one or more adjoining Lots (or portions thereof) may, with the prior written approval of the ACC, consolidate same or portions thereof into one building site for the purpose of constructing a single family residence and appurtenant improvements on the resulting composite site. Each such composite site will be regarded as one Lot for purposes of constructing one single family residence and appurtenant improvements thereon. Any approval by the ACC will be conditioned upon (whether or not stated therein) obtaining the abandonment or release of all affected utility and other easements applicable to the combined Lots prior to consolidation, and compliance with replatting requirements of applicable statutes and

ordinances of the City of Houston. Obligations for payment of assessments and voting rights will be determined, as to the composite site, based on the number of Lots per the Plat (or fractional parts thereof) combined. By way of illustration, if one and one-half (1½) Lots as designated by the Plat are combined, then thereafter the Owner of such composite site is required to pay regular assessments at the rate of one and one-half times the rate otherwise applicable to single Lots designated by the Plat and is entitled to one and one-half (1½) votes as the composite site.

#### **SECTION 4.07      Maintenance Responsibilities; Annoyance or Nuisance.**

4.07.1 General Duties of Owners. Each Owner shall maintain their Lot and improvements thereon in a manner consistent with the standards of use, conduct, appearance and maintenance generally prevailing in the Subdivision from time to time and 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, residences must be periodically painted; roofs, gutters, trim, brick, windows, and doors of residences must be properly maintained; grass, flower beds, trees and all other vegetation must be mowed, edged, weeded, trimmed, pruned, irrigated, and otherwise maintained in accordance with the seasons; unsightly grease, oil or other stains must be removed from driveways and walkways; permitted Regulated Modifications such as swing sets, swimming pools, or other recreational equipment or devices must be properly maintained in appearance and in such manner as to avoid any unsightly, unsafe or unhealthy condition; all Lot fencing must be properly maintained, including maintenance as to appearance and as to repair or replacement of damaged or broken pickets or other components.

4.07.2 Annoyance or Nuisances. No noxious or offensive trade or activity may be carried on upon any Lot nor anything be done thereon which may be or become an annoyance or nuisance to any Owner, 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 hereof may be used for any illegal purposes.

4.07.3 Animals and Livestock. No hogs, horses, livestock or poultry of any kind may be raised, bred, or kept on any Lot. If consistent with its use as a residence, no more than two (2) each of dogs, cats or other usual household pets may be kept on a Lot. All such household pets must be kept on a leash or otherwise maintained under the control of their owner when not maintained in a secure and enclosed yard area, and otherwise leashed and maintained in accordance with applicable state law or the ordinances of the City of Houston. The Board may adopt Rules and Regulations otherwise defining or limiting animals to be included in or excluded from the meaning of 'usual household pets' or otherwise regulation such pets, and including authority to prohibit any type of animal or pet which in general or in particular instances is determined to present a threat to health or safety.

4.07.4 Unsightly or Unkempt Conditions. It is the 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. 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. There may not be maintained any plants or animals or device or thing of any sort whose activities or existence 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.

4.07.5 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. All trash and similar matter to be disposed of must be placed in paper or plastic bags tied or otherwise tightly secured, or as otherwise required by the City of Houston. All trash and similar matter must be stored or placed within a garage or an area adequately screened by planting or fencing from public view from any street adjacent to any Lot, or view from other Lots or Community Properties, except when placed for regular pickup as herein provided. Trash bags or trash receptacles may not be placed in public view prior to 7:00 p.m. on the night prior to the day trash is collected. Empty trash receptacles must be removed from public view by 9:00 p.m. on the day trash is collected. 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, ordinances 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.

4.07.6 Undeveloped Lots. The Owner of any Lot upon which a single family residence has not been constructed must maintain such Lot in a neat, sanitary and attractive condition, including without limitation, periodic removal of trash and debris therefrom and mowing of grass and other vegetation thereon as necessary to prevent growth to more than twelve inches in height.

4.07.7 Unoccupied Residences. Owners of unoccupied residences shall remain liable for full observance and performance of all provisions of this Declaration and other Governing Documents, including without limitation (i) proper maintenance of the Lot and all improvements thereon, and (ii) securing of the unoccupied residence, including fastening of windows and locking of all entry and garage doors, and maintenance of appropriate curtains or other permitted window covers in order to prevent unauthorized entry or use.

4.07.8 Maintenance Of Utilities. 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.

4.07.9 Vehicles.

(a) No vehicle designed primarily for commercial use, no boat or other water craft, mobile home, recreational vehicle, camper, trailer, boat rigging, tractor, truck larger than a three-quarter ton pickup, bus, no unused vehicle, no 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 good faith opinion of the Board, shall be parked or kept at anytime within the Subdivision, or on any driveway or upon any Lot, unless such vehicle is stored completely within an enclosed garage.

(b) No person shall be permitted to perform work on any vehicle within the Subdivision, or on any street in front or along the side or back of any driveway or any other part of a Lot, 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 within a garage.

(c) No vehicle of any kind shall be parked, stored or otherwise permitted to remain overnight upon any street in the Subdivision or upon any Community Properties, No more than two permitted vehicles may be parked or stored simultaneously upon the driveway of each Lot. No Owner or resident is permitted to park or store any vehicle on the Lot of another Owner or resident. The foregoing does not apply to occasional and temporary parking by a guest in the street in front of or on the driveway of the Owner or resident the guest is visiting, subject however to all Rules and Regulations the Board may adopt regarding same.

(d) As used in this Section, an activity is conclusively deemed not to be "temporary" if it exceeds twenty-four hours in duration. 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 shall not prejudice the right of the Board to otherwise establish a violation. This Section does not apply to any vehicle completely stored within a garage. The Board may grant reasonable exceptions to this Section upon receipt of written request from an Owner or their tenant or through its duly adopted Rules and Regulations, and the Board may otherwise reasonably regulate all matters concerning vehicular traffic, and parking or storage of and any work on any vehicles.

4.07.10 Default. The Association at all times has the right (but not the obligation), upon notice and opportunity to be heard, to perform all maintenance, to abate

or cure any condition, nuisance, annoyance, or to take all other actions deemed necessary as a result of violation of this **Section 4.07**, and to assess all costs thereof (including attorney's fees) to the Owner responsible for same as a specific assessment. Such right includes without limitation towing of vehicles, performing necessary maintenance and repair, removal of prohibited trash or other matter or material, cure of any unsightly, unsafe or unhealthy condition, removal of any unauthorized pet or any permitted pet deemed in the sole opinion of the Board to be an annoyance or nuisance, and securing of unoccupied residences with notice to the Owner if locks are changed. The Association, and its officers, directors, agents and employees, and all Persons acting upon the directive of any of the foregoing, have a continuing right to access, enter and perform all activities upon each Lot and all improvements thereon to the fullest extent reasonably necessary to accomplishment of any of the foregoing without liability for trespass or otherwise. In the event of an emergency the right of access and entry will be immediate, but notice and opportunity to be heard must be given as soon as practical thereafter. The opinion of the Board or any officer or authorized agent of the Association that a violation has occurred, that an emergency exists and as to all actions taken in response thereto is final and conclusive so long as made in good faith. All rights of the Association under this Section are cumulative and non-exclusive.

**SECTION 4.08 Antennas.** No external television, radio or other electronic antenna, satellite dish system, microwave antenna or similar device may be placed or permitted to be maintained or remain on any Lot, or the residence, building or other improvement thereon, or upon any other portion of the Subdivision, unless and until the same has been approved by the ACC; provided, the foregoing items may be wholly concealed in the attic space of a residence.

**SECTION 4.09      Leases.**

4.09.1 **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:

(a) must be in writing; and

(b) shall be 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 the terms and conditions of the Governing Documents will be a default under the lease and grounds for termination of the lease and eviction by the Owner or by the Association at the sole cost and expense of the Owner.

4.09.2 **Joint and Several Liability.** 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 thereof, and/or all fines and assessments imposed thereby.

4.09.3 Surrender of Use of Community Properties by Lessor(s). During all periods of time during which a Lot is occupied by lessee(s), the lessor(s) automatically surrenders all of lessors' rights as an Owner to the use of all of the Community Properties unto such lessee(s), including without limitation all rights of use of recreational facilities. The provisions of this Section do not impair the voting rights of the lessor(s), the right to inspect the leased premises or to exercise any other rights or remedies customarily reserved for the protection of lessor(s).

**SECTION 4.10 Mineral Production**. Except as otherwise expressly required by law, no drilling, development operations, refining, quarrying or mining operations of any kind are permitted upon any Lot, nor are oil wells, tanks, tunnels, mineral excavation or shafts permitted upon any Lot; and no derrick or other structure designed for use in boring for oil or natural gas are permitted upon any Lot.

**SECTION 4.11 Temporary Structures; Sales Office**. Temporary buildings or structures are not permitted on any Lot; provided, the Board may permit (and may not unreasonably withhold or delay approval for) temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences at such locations as the Board may direct, and may authorize usage of garages as sales offices during the Development period. At the time of the sale of a residence, any garage appurtenant to any residence used for sales purposes must have been reconverted to a garage.

**SECTION 4.12      Signs**.

(a) No signs, billboards, posters 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 or the residence, or within the Subdivision without the prior written consent of the ACC except as otherwise provided in this Section.

(b) No sign is permitted which is vulgar, obscene or otherwise patently offensive or unsightly to persons of ordinary sensibilities. No sign is permitted to be larger than six square feet. No sign may be illuminated. No sign may be placed on any Lot closer than fifteen feet from any street or any side or back Lot line. No Owner (or their tenants, guest or invitees) is permitted to place any sign on another Owner's Lot or upon Community Properties.

(c) 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, and (ii) "political signs" whereby such Owner is promoting a political candidate, party or issue,

provide the same shall be immediately removed on the day after the election with respect to the political candidate, party or issue. The ACC may reasonably regulate the number of permitted political signs and in relationship thereto their sign and location, either in advance or after placement or more than one such sign upon a particular Lot. All for sale, for rent and political signs must also comply with subsection (b) of this Section. The ACC may (but is not obligated to) allow builders within the Subdivision to construct and maintain such signs, billboards and advertising devices as are customary in connection with the sale of newly constructed residential dwellings.

**SECTION 4.13 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 nine feet above a street are permitted on any corner Lot within the triangular area formed by the two boundary lines thereof abutting the street and a line connecting them at points twenty-five feet from their intersection, or within the triangular area formed by the boundary line abutting a street, the edge line of any driveway pavement and line connecting them at points ten feet from their intersection. Parking of any vehicle, trailer or boat is not permitted at any time within twenty-five feet (25') of any intersecting streets.

**SECTION 4.14 Rules and Regulations.** The Board is hereby specifically authorized to promulgate, 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 Board may from time to time deem beneficial to the Subdivision. Rules and Regulations are of equal dignity with and are enforceable in the same manner as the provisions of this Declaration; provided; (i) Rules and Regulations may not be enacted retroactively (except that if any activity is subsequently covered by Rules and Regulations and such activity cases after enactment of the Rules and Regulations covering same, then the Rules and Regulations will apply to the activity thereafter); (ii) Rules and Regulations may not be incompatible with the provisions of this Declaration; and (iii) Rules and Regulations will become effective upon adoption by the Board of Directors of the Association.

**SECTION 4.15 Underground Electrical Service.** An underground electric distribution system will be installed in that part of the Subdivision, designated herein as the "Underground Residential Subdivision", which underground service area embraces all of the Lots in the Subdivision, pursuant to an agreement or agreements heretofore or hereafter entered between one or more electrical companies (the "Company") and Delcarant. This electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers junction boxes, and such other appurtenances as shall be necessary to make underground service available. In the event that there are constructed within the Underground Residential Subdivision structures containing multiple dwelling units such as townhouses, duplexes or apartments, then the underground service area embraces all of the dwelling units involved. The Owner of each Lot containing a single dwelling unit, or in the case of a multiple dwelling unit structure, the owner/developer, shall at his or its own cost, furnish, install, own

and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of Company's metering at the structure to the point of attachment at such Company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the Company at a point designated by such Company at the property line of each Lot. The Company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has granted or will grant, either by designation on the Plat of the Subdivision or by separate instrument, necessary easements to the Company providing for the installation, maintenance and operation of its electric distribution system and has also granted or will grant to the various Owners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various Owners to permit installation, repair and maintenance of each Owner's owned, and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit, cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the Company furnishing service) for the location and installation of the meter of such Company for each dwelling unit involved. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the know as single phase, 120/240 volt three wire, 60 cycle, alternating current.

The Company has installed (or will install) the underground electric distribution system in the Underground Residential Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Underground Residential Subdivision is being developed for residential dwelling units, including homes, and if permitted by the restrictions applicable to such Subdivision, townhouses, duplexes and apartment structures, all of which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent and all of which multiple dwelling unit structures are wired so as to provide for separate metering to each dwelling unit. Should the plans of the developer or owners in the Underground Residential Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless (a) the developer has paid to the Company an amount representing the excess in cost, for the entire Underground Residential Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the owner of each affected lot, or the applicant for service to any mobile home, shall pay to the Company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by Company to be necessary.



The provisions of the two preceding paragraphs also apply to any future residential development in Reserve(s) shown on the Plat of the Subdivision, as such Plat exists at the execution of the agreement for underground electric service between the Company and developer or thereafter. Specifically, but not by way of limitation, if an owner in a former Reserve undertakes some action which would have invoked the above per front lot foot payment if such action had been undertaken in the Underground Residential Subdivision, such owner or applicant for service shall pay the electric company \$1.75 per front lot foot, unless the developer has paid the electric company as above described. The provisions of the two preceding paragraphs do not apply to any future nonresidential development in such Reserve(s).

## **Article V**

### **Riverway Estates Community Association, Inc.**

**SECTION 5.01**      **Organization.** Riverway Estates Community Association, Inc., (the "Association") has been organized and formed pursuant to this Declaration as a non-profit corporation under the laws of the State of Texas. 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 maintenance of Community Properties as herein permitted or required, the general overall supervision of all of the affairs and well-being of the Subdivision, the promotion of the health, safety and welfare of the residents and Owners of Lots within the Subdivision and all other acts and undertakings reasonably incident to any of the foregoing or in furtherance thereof as determined in the opinions of the Board of Directors or Members.

### **SECTION 5.02**      **Membership.**

**5.02.1 Owners as Members.** Every Person who is the owner of a fee simple title interest in any Lot that is subject to this Declaration is deemed to be a member of the Association. The Association is entitled to rely on the Real Property Records of Fort Bend County, Texas in determining the owner(s) of each Lot, or such other reasonable evidence of ownership (including but not limited to copies of deeds, contracts or tax records) as determined in the sole opinion of the Board. 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, may have more than one membership per Lot. Memberships are appurtenant to and may not be separated from ownership of any Lot, and automatically pass with the title to the Lot.

**5.02.2 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, such designation to be made in such manner as determined by the

Board. A designation as aforesaid fully authorizes the designated representative to bind the designating party as to all matters. Any such representative may serve as a Director.

### **SECTION 5.03      Voting Rights of Members.**

5.03.1 Development Period. During the Development Period there will be two classes of membership entitled to voting rights in the Association which shall be as follows:

(a) Class A: All Members in the Association, other than the Declarant, are Class A Members, and for each Lot owned Class A Members will be entitled to one vote on each matter coming before the Members (unless their voting rights have been suspended as herein provided).

(b) Class B: Class B Members are those individuals or entities who are herein defined as "Declarant", and for each Lot Owned they shall be entitled to five votes on each matter coming before the Members.

5.03.2 Post-Development Period. Upon termination of the Development Period, any remaining Class B membership will automatically convert to Class A membership. Thereafter there will be only one class of voting membership, and such Members will be entitled to one vote for each Lot owned on each matter coming before the Members.

5.03.3 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 of such joint Owners must be cast 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 as to any such matter upon which a majority decision cannot be reached. Any individual Owner from among such joint Owners will be conclusively presumed to be acting in accordance with the decision of the majority in voting either in person or by proxy unless another joint Owner is voting to the contrary in person or by proxy.

5.03.4 Cumulative Voting Prohibited. Cumulative voting is not permitted as to any matter placed before the membership for a vote, including election of Directors.

5.03.5 Suspension of Voting Rights. Voting rights of any member may be suspended for branch of the Governing Documents as provided in such Governing Documents.

**SECTION 5.04      Inspection by Members of Books and Records.** Subject to exclusions, protection of privileged and confidential communication and rules for inspection as set forth in the Bylaws, 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 but this

right shall at all times be consistent with the provisions of the Texas Non Profit Corporation Act.

**SECTION 5.05 Insurance; Limitation of Liability; Indemnification.**

**5.05.1 Insurance.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance obtained by the Association shall not cover improvements on the Lots. This insurance for the Common Property shall cover loss of damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Each Lot Owner should obtain insurance for all insurable improvements on the Lot (with the same type of coverage described above) and for the contents of such Lot.

The Board shall obtain a liability insurance applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and directors' and officers' liability insurance for each of the directors and officers of the Association and as otherwise provided in the policy. Owners shall obtain liability insurance applicable to their individual Lots.

Premiums for all insurance which it is the obligation of the Association to provide for the benefit of the Association shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

In addition to the other insurance required by this Section, the Board shall obtain, if and to the extent necessary, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgement. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association.

**5.05.2 General.** Except for intentional and willful misconduct, knowing violation of the law, or as otherwise required by the Texas Non-Profit Corporation Act (including Article 1396-2.22A thereof, as amended), no Director will be liable to the Association or its Members, and the Association is not liable to any Member, for monetary damages or otherwise for: (i) any act or omission of an officer or Director within their official capacity; or (ii) any act or omission of the Association within the scope of its purposes. The Association will indemnify and keep indemnified, and hold harmless, and current or former officer or Director to the fullest extent necessary to accomplishment of the foregoing and to the fullest extent otherwise allowed by law, and hold any such officer or Director harmless from and against all claims, demands, suits, judgements, court costs, attorney's

fees attachments and all other legal action as contemplated thereby. All provisions of this Section also apply to all Association Committees and Members thereof ( current or former), including the Architectural Control Committee, and to Declarant and its directors, officers, partners, agents and employees.

**5.05.3 Security Services.** The Association may from time to time provide Subdivision facilities, devices or services intended to or which may have the affect of limiting or controlling Subdivision access, or providing patrol services or otherwise monitoring activities within the Subdivision (including Community Properties), and may from time to time provide information through newsletters or otherwise regarding or relating thereto (all such matters and all activities, facilities, services or devices of a similar nature or incident thereto herein referred to as "Security Services"). Without limitation of **Section 5.05.1**, each Owner or Member and their tenants, family, guests and invitees, covenant and agree with respect to any and all Security Services provided directly or indirectly by the Association as follows:

(a) Security is the sole responsibility of local law enforcement agencies and individual Owners and Members, their tenants, and their respective guest and invitees. Security Services may be provided at the sole discretion of the Board of Directors, The providing of any Security Services at any time does in no way prevent the Board from thereafter discontinuing, or from temporarily or permanently modifying, terminating or removing, any Security Services, in whole or in part.

(b) Any third party providers of Security Services will be independent contractors, the acts or omissions of which may not be imputed to the Association or its officers, Directors, committee members, agents or employees.

(c) Providing of any Security Services may never be construed as an undertaking by the Association to provide personal security or as a guarantee or warranty that the presence of any Security service will in any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause.

(d) The Association and its officers, Directors, Committee members, agents and employees will not be liable for, and each Owner of Member, their tenants, and their respective guests and invitees, indemnify, keep indemnified and hold the Association and its officers, Directors, Committee members, agents and employees harmless at all times from, any injury, loss or damages whatsoever, including without limitation and injury or damages caused by theft, burglary, trespass, assault, vandalism or any other crime, to any Person or property arising, directly or indirectly, from the providing or failure to provide any Security Services, or the discontinuation, modification, disruption, defect, malfunction, operation, repair, replacement or use of any Security Services.

**5.05.4 Liability Arising From Conduct of Owners.** Each owner, and each Owner's tenants, shall indemnify and keep indemnified, and hold harmless, the Association, and

its officers, Directors, servants, agents and employees from and against all claims, damages, suits, judgments, court cost, attorney's fees, attachments and all other Legal actions caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or the family, guest, invitees, servants, agents or employees of either.

**5.05.5 Subsequent Statutory Authority.** If the Texas Non-Profit Corporation Act, Texas Miscellaneous Corporation Laws Act, Chapter 84 of the Texas Civil Practice and Remedies Code or any other applicable statute, state or federal, is construed or amended subsequently to the filing of this Declaration to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this **Section 5.05**, then liability shall be eliminated or limited and right to indemnification expanded to the fullest extent permitted by such construction or amendment.

**5.05.6 No Impairment.** No amendment, repeal or modification of this Declaration may adversely affect any rights or protection existing at the time of such amendment, repeal or modification afforded or contemplated by this **Section 5.05**.

## **Article VI**

### **Architectural Control Committee**

**SECTION 6.01 Organization.** There is hereby established an Architectural Control Committee (herein sometimes referred to as the "ACC"). The ACC will be composed of either: (i) all members of the Board of Directors; or (ii) an executive committee of the Board of Directors formed and designated as the ACC by resolution adopted by the Board of Directors or a managing agent on behalf of the Declarant during the Development Period as set forth herein. The ACC may designate any one of its members to act in its stead.

**SECTION 6.02 Submission of Plans Required.** No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Lot or any part of the Subdivision, except during the Development Period as set forth in **Section 9.02**, unless and until complete plans and specification have been submitted to and approved in writing by the ACC as to compliance with applicable Architectural Review Criteria as set forth in **Section 6.03**. Two complete sets of plans and specifications must be submitted with each request for approval. Any plans and specification to be submitted must specify, 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 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.

**6.02.2 Architectural Guidelines.** The ACC may, from time to time, promulgate, modify and delete such reasonable Architectural Guidelines applicable to the Subdivision, including Lots and Community Properties, as it may deem appropriate to maintain the architectural, environmental or aesthetic standards of the Subdivision generally prevailing at the time of adoption. This authority includes, but is not limited to, the right to specify specific procedural guidelines for submission of requests for, and plans, specifications and other information necessary to obtain ACC approval to commence, erect, construct or maintain any Regulated Modification, and procedural requirements for the conducting of all activities necessary to accomplish same.

**6.02.3 Variances.** The Board may grant specific variances to Architectural Guidelines and to the architectural and use restrictions set forth in of this Declaration upon specific findings of compliance with the grounds for granting of a variance as set forth hereafter. 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 and to the extent of the specific variance expressly granted. A variance may be granted only upon specific findings that:

(a) the variance is necessary due to unusual circumstances not occasioned by the conduct of the applicant for the variance, and which are reasonably beyond the control of the applicant and the Association to mitigate or rectify; and

(b) the applicant for a variance has acted in good faith in seeking a variance or in his failure to otherwise comply with the provisions of this Declaration or other Governing Documents; and

(c) 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.

**SECTION 6.03 Architectural Review Criteria.** The ACC shall evaluate all submitted applications for ACC approval on the individual merits of the particular application. Judgements and decisions of the ACC will be based on the following criteria applied in accordance with the aesthetics, environment or architectural appearance or standards generally prevailing in the Subdivision as of the date of submission of an application:

6.03.1 Compliance With Governing Documents and Governmental Laws. The proposed Regulated Modification must substantially comply with applicable provisions of the Governing Documents (including applicable Architectural Guidelines and Rules and Regulations), and governmental laws, ordinances and regulations.

6.03.2 Harmony and Compatibility. The Regulated Modification must relate favorably to its surroundings and the Subdivision in terms of harmony, compatibility and conformity with surrounding buildings, structures, grades, topography, location, color, workmanship, materials, usage and design.

6.03.3 Precedence for Approval or Disapproval. The ACC shall use all reasonable efforts to achieve consistency in the approval or disapproval of specific types of Regulated Modifications. To this end, consideration will be given to similar applications for architectural approval, and the decisions and actions of the ACC with regard thereto.

**SECTION 6.04** Failure to Respond. If the ACC has not sent written notice from the ACC approving, conditionally approving or disapproving a request for approval or a request for a variance within forty-five days after the application was originally received by the ACC, approval thereof will be deemed denied.

**SECTION 6.05** Records of Architectural Control Committee. The ACC is not required to maintain records of any of its meetings. The ACC must keep and maintain records evidencing the final decision(s) of the ACC regarding all requests for approval and requests for variance for not less than four years after the dates of such records. The ACC must maintain a record of all current Architectural Guidelines, and must provide copies to Owners upon written request and at the Owner's expense.

**SECTION 6.06** Liability of Architectural Control Committee. Except as provided in **Section 5.05**, neither the Association nor the ACC, nor any officer, Director, member, subcommittee, employee or agent of either, is liable to any Owner, Member or any other Person for any actions or failure to act or in connection with any approval, conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgement, negligence, malfeasance, or nonfeasance. NO approval or conditional approval of an application or related plans or specification and no publication of Architectural Guidelines may never be construed as representing or implying that, or as a warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship or suitability for any purpose of the Regulated Modification. The provisions hereof are cumulative of the provisions of **Section 5.05**.

**Article VII**  
**Maintenance Fund**

**SECTION 7.01 Obligation for Payments to Maintenance Fund.**

7.01.1 Establishment of Maintenance Fund. There is hereby established a Maintenance Fund into which will be paid all assessments as provided for herein. The Board is responsible for the collection, management, control and expenditure of the Maintenance Fund which must be deposited in accounts specifically designated for the Association as from time to time designated by the Board.

7.01.2 Types and Obligation for Payment of Assessments. Each owner of a Lot, by acquisition of any rights, title or interest herein or acceptance of a contract for purchase, thereof, or a deed or other instrument of conveyance therefore, whether or not so expressed therein covenants and agrees to pay to the Association regular or annual assessments, special assessments and specific assessments, all as herein set forth.

7.01.3 Purpose of Maintenance Fund. The Maintenance Fund will be used exclusively for the purpose of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Subdivision, including the maintenance of all Community Properties, the discharge of all obligations of the Association pursuant to this Declaration and other Governing Documents, and the doing of any other thing necessary or desirable in the opinion of the Board 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 Board the Subdivision will benefit thereby. The judgment of the Board in establish any assessments and in the collection, management and expenditure of the Maintenance Fund is final and conclusive so long as exercised in good faith.

7.01.4 Personal Obligation: Transferees. In addition to the assessment lien herein established, all assessments are and remain the personal obligation of all Owners of each Lot at the time liability for the assessment accrued notwithstanding and subsequent transfer of the Lot. Except as provided in **Sections 7.01.5 and 7.06.3**, each Owner's transferee, whether by purchase, gift, devise or otherwise, and whether voluntary or by operation of law, is jointly and severally liable for payment of all unpaid assessments owed to the Association at the time of transfer without prejudice to the rights of the transferee to recover from the transferor the amounts paid by said transferee; and the transferor and transferee shall be jointly and severally liable for all costs of collection including attorney's fees), whether incurred prior to or after the transfer.

7.01.5 Statement of Assessments. Upon written request any transferee (or prospective transferee upon presentment of an earnest money contract or other writing satisfactory to the Board) shall be entitled to a statement from the Association setting forth all assessments due as of the date of the written request. The Board 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. The Association must respond to proper written request for a statement of indebtedness within ten business days after receipt of the request by the Association. Except for fraud, misrepresentation or a bona fide error, the Association is bound by its written response.

## **SECTION 7.02 Administration of Maintenance Fund.**

**7.02.1 Assessment and Payment.** Regular annual assessments are deemed to be assessed on a monthly basis regardless of when same are due and payable. Except as otherwise determined by the Board, regular annual assessments are due and payable annually, in advance, on or before the first (1<sup>st</sup>) day of January of each calendar year. The Board may elect to collect regular annual assessments on a semi-annual, quarterly or monthly basis in which case such assessments are due and payable, in advance, on or before the (1<sup>st</sup>) day of the applicable period.

**7.02.2 Effect of Foreclosure or Bankruptcy.** In the event of foreclosure of a first mortgage or first deed of trust or in the event of a discharge in bankruptcy, the purchaser at foreclosure or the owner discharged in bankruptcy is liable for unpaid regular annual assessments assessed on a monthly basis from and after the first (1<sup>st</sup>) day of the month following the month in which foreclosure occurred or the bankruptcy was filed, and all assessments and any installments for assessments (regular, special or specific) over a period of time which become due and payable after said date. The foregoing applies regardless of whether assessments are payable annually, semi-annually, quarterly or monthly.

**7.02.3 Uniform Rate.** Except as provided in **Section 7.02.4**, regular and special assessments on all Lots must be fixed at a uniform rate, and must be determined on a per Lot basis.

### **7.02.4 Declarant and Builder Rates.**

(a) Declarant is obligated to pay assessments (regular, special or specific) only as provided in **Section 9.08**.

(b) Until the "conversion Date", the Owner of any unimproved Lot shall pay one-half of the full rate of the base rate of regular assessments (the "Builder Rate"), but such Owner must otherwise pay special or specific assessments at the full applicable rate. The Builder Rate will apply from the first (1<sup>st</sup>) day of the month after transfer or conveyance of a Lot by Declarant and until occurrence of the "Conversion Date" which will be the first (1<sup>st</sup>) day of the month following the occurrence of transfer or conveyance of the Lot to an entity other than the Declarant.

**7.02.5 Application of Payments.** All payments made by or on behalf of an Owner for assessments (regular, special or specific) will be deemed made upon the date of receipt

of the payment by the Association or its designated representative. All payments received, including payments received in consequence of judicial or non-judicial foreclosure, will be applied (i) first to payment of all specific assessments owed to the Association with application to be made in inverse order of the specific assessments listed in **Section 7.05.1**, (ii) then to payment of all special assessments; and (iii) finally to payment of all regular assessments. Application within each category will be on a first in, first out basis.

### **SECTION 7.03 Base Rate and Subsequent Computation.**

**7.03.1 Initial Base Rate.** The initial base rate of the regular assessment per Lot, effective from the date of filing of this Declaration in the Real Property Records of Fort Bend County, Texas and from month to month thereafter unless modified as herein provided, shall be **Three Hundred and No/100 Dollars (\$300.00)** per Lot per year, assessed at the rate of **Twenty Five and No/100 Dollars (\$25.00)** per Lot per month.

**7.03.2 Subsequent Computation.** The regular assessment per Lot as specified by **Section 7.03.1** may be adjusted from time to time as follows:

(a) The Board shall adopt a budget at least annually to determine sums necessary and adequate to provide for the expenses of the Association for at least the succeeding twelve month period (including funding of capital, contingency and other reserves). The Board shall set the base annual rate of regular assessments based on the budget, and determine whether regular base annual assessments will be payable annually, semi-annually, quarterly or monthly. If any change is made in the amount of the annual rate of base regular assessment or the due date(s) for payment of same, a written and dated "notice of change" setting forth such determinations must be sent to all Owners. All changes in the amount of the base annual rate of regular assessment or the due date(s) for payment are effective on the first (1<sup>st</sup>) day of the month following the end of the last period for which regular annual assessments were due and payable.

(b) Any change in the amount of the annual rate of the base rate of the regular assessment in excess of twenty percent (20%) of the rate for the prior year may be disapproved at a special meeting of the Members, to be called upon the written and signed petition of the Owners of not less than twenty percent (20%) of the Lots then contained in the Subdivision and the vote to disapprove of the Owners of at least a majority of the Lots then contained in the Subdivision, voting in person or by proxy at the special meeting. All petitions to disapprove must be submitted to the Association within thirty days after the date of the notice of change given in accordance with **Section 7.03.2(a)**. If a petition to disapprove is properly submitted, the Board shall call and conduct the special meeting within ninety days after giving of the notice of change. The Board is required to call and conduct only one special meeting to consider disapproval. The disapproval fails if at that meeting either a quorum is not present, in person or by proxy, or Owners of a majority of Lots do not vote to disapprove.

(c) If a proposed change in the annual rate of regular assessment is disapproved under **Section 7.03.2 (b)**, notice of that fact must be given to Owners within thirty days after the meeting is conducted. If as a result of the disapproval Owners are entitled to a refund, the refund must be sent with the notice (without interest, and subject to the Association's right in lieu of payment of the refund to off-set the amount of the refund against any amounts then due as to particular Owners). If as a result of the disapproval additional amounts are due, Owners must be advised in the notice of the amount and their obligation for payment of same within thirty days of the date of the notice. **The obligation for payment of assessments in accordance with a notice of change given under Section 7.03.2(a) is not suspended by any action under Section 7.03.2(b).** If, for example, regular annual assessments are increased by notice of change dated December 15, effective January 1, such assessments in the amount set forth in the notice of additional amounts due as provided in this subsection).

**7.03.3 No Waiver or Release.** Notwithstanding anything to the contrary herein, the omission or failure for any reason of the Board to determine an annual rate of regular assessment or to mail or deliver any notice of an annual rate of regular assessment or due date or dates for payment thereof will not be deemed a waiver, modification or release of an Owner's obligation to pay assessments as otherwise herein provided. Once established, an annual rate of regular assessments and the due date or dates for payment thereof will continue in effect, and the Owner(s) of each Lot shall be obligated to pay such regular assessments accordingly unless and until a new annual rate of regular assessment is established as herein provided.

**SECTION 7.04 Special Assessments.** In addition to the other assessments authorized herein, the Board may levy special assessments at any time during each fiscal year for purposes of defraying, in whole or in part, costs of capital improvements, and expenses not anticipated by the budget then in effect, or to replace part or all of any contingency, capital or other reserve fund. So long as the total amount of special assessments allocable to each Lot in any one fiscal year does not exceed the greater of (i) One Hundred Dollars (\$100.00) or (ii) twenty-five percent (25%) of the then applicable annual rate of regular assessments per Lot, the Board may impose the special assessment without a vote or approval of any Owner. Special assessments allocable to each Lot exceeding the foregoing limitation will be effective only if approved by the Owners of a majority of the Lots then contained within the Subdivision. Special assessments are payable as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

#### **SECTION 7.05 Specific Assessments.**

**7.05.1 Types.** Specific assessments will be assessed against individual Lots and the Owner(s) thereafter at the time liability for same accrues as follows:

(a) Interest. Interest from the due date at eighteen percent (18%) per annum is hereby imposed on all delinquent assessments, regular, special or specific, which are not paid in full within thirty days after the due date.

(b) Late Charges. A late charge in the amount of **TWENTY FIVE DOLLARS (\$25.00)**, or such other reasonable amount as from time to time determined by the Board, is hereby imposed as to any regular, special or specific assessment which is not paid in full within thirty days after payment of same is due.

(c) Compliance Cost. All expenses incurred by reason of a breach or violation of or to obtain compliance with any provisions of this Declaration or other Governing Documents may be assessed against the Owner of the Lot 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.

(d) Foreclosure of Assessment Lien. In the event of foreclosure of the Association's assessment lien as herein provided, the Owner is required to pay to the Association a reasonable rental as determined by the Board for the use of the Lot and improvements thereon during the period of foreclosure, and the Board shall be entitled to a receiver to collect same. The "period of foreclosure" commences on the date of posting of the Lot for foreclosure in the event of non-judicial foreclosure, or on the date of entry of judgement granting foreclosure in the event of judicial foreclosure. The "period of foreclosure" continues through the first (1<sup>st</sup>) day of the month following the date of acquisition of actual possession of the Lot by the purchaser at the foreclosure sale.

(e) Other Obligations. All other monetary obligations established by or pursuant to this Declaration or other Governing Documents which are intended to apply to one(1) or several, but not all Lots, will be assessed against the Owner(s) of the Lot(s) to which same applies. Such charges may include, without limitation, reasonable charges as the Board may by resolution from time to time determine for; (i) providing a statement of assessments or indebtedness; (ii) transfer fees to reflect changes of ownership, tenancy or occupancy on the records of the Association; (iii) fines for any violation of any provisions of the Governing charges for processing of applications for architectural approval; (v) admission or usage fees applicable to Community Properties of Subdivision Facilities; and (vi) maintenance, repair or replacement costs or expenses incurred by the Association as set forth in **Section 6.02**.

7.05.2 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 may not be grounds for any action against the Association, or any Director, officer, agent or employee thereof, and do 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 discretion of the Board, the Board may waive, wholly or partially, imposition of any specific assessment; provided, and 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.

## **SECTION 7.06 Lien for Assessments.**

**7.06.1 Establishment of Lien.** All sums assessed against any Lot pursuant to this Declaration, whether by regular, special or specific assessment as provided herein, are secured by a continuing lien on such Lot in favor of the Association as continued, ratified and confirmed herein as originally established in the original Declaration of Covenants, Conditions and Restrictions for Riverway Estates Subdivision..

**7.06.2 Perfection of Lien.** The recordation of the original Declaration constituted record notice and perfection of the Association's continuing lien, effective from the date of recordation of the original Declaration. No further recordation of a claim of lien or other notice of any type or kind whatsoever is required to establish or perfect such lien. To further evidence such lien, the Association may, but is not required to, prepare and file in the Real Property Records of Fort Bend County, Texas, written notice of default in payment of assessments in such form as the Association may direct.

**7.06.3 Priority of Lien.** The Association's continuing lien is superior to all other liens or encumbrances on each Lot except:

(a) a first mortgage or deed of trust covering a Lot and any other lien covering a Lot for work and materials used in constructing improvements thereon, but only as to assessments (regular, special or specific) the obligation for payment of which accrues from or after the date and such first lien or improvement lien is duly recorded in the Real Property Records of Fort Bend County, Texas and only to the extent of unpaid sums secured by such first lien or improvement lien; and

(b) liens for real estate taxes and other governmental assessments or charges; and

(c) such other mortgages, deeds of trust, liens or other encumbrances to which the Board may from time to time by written agreement specifically agree.

**7.06.4 Effect of Foreclosure or Bankruptcy.** Sale or transfer of a Lot does not affect the Association's lien; provided, in the event of sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a superior lien to the extent provided in **Section 7.06.3** or discharge of an Owner in bankruptcy, the Association's lien will be extinguished only to the extent same secures payment of unpaid regular annual assessments assessed on a monthly basis up to the last day of the month in which the foreclosure occurred or the bankruptcy was filed, and any installments for assessments (regular, special or specific)

over a period of time which were due and payable prior to the first day of the month following the month in which the foreclosure occurred or the bankruptcy was filed. Foreclosure of a superior lien does not relieve the former Owner of the Lot from the personal obligation for payment of assessments due up to the date of foreclosure. Foreclosure of a superior lien or discharge in bankruptcy will not relieve the affected Lot or any Owner thereof subsequent to the date of foreclosure of filing of bankruptcy from liability for payment of assessments except as provided in **Section 7.02.2**.

**7.06.5 Other Liens.** Except as provided in **Sections 7.06.3** and **7.06.4**, all other Persons acquiring liens or encumbrances on any Lot are deemed to consent that such liens or encumbrances will be inferior to the Association's lien for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

### **SECTION 7.07 Effect of Nonpayment of Assessments.**

**7.07.1 General.** Any assessments (regular, special or specific which are not paid when due are delinquent. Except to the extent otherwise expressly agreed in writing by the Board, if any assessments are not paid within thirty days after the due date, then:

(a) late charges, interest from the due date, and all costs of collection (including reasonable attorney's fees), all as set forth in **Section 7.05** will be added to and included in the amount of such assessment;

(b) all voting rights of the Owner will be automatically suspended until all assessments are paid in full; and

(c) all rights to usage of Community Properties, including all recreational facilities, and all services provided by the Association will be automatically suspended until all assessments are paid in full including all rights of the delinquent Owner, the Owner's tenants, and the guests and invitees of either.

**7.07.2 Action for Debt; Foreclosure.** Each Owner, by acquisition of any Lot within the Subdivision or any right, title or interest therein, expressly grants to and vest in the Association or its agents or representatives: (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 securing payment of 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 securing payment of assessments as herein provided. The Board may appoint, from time to time, an officer, agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of the Association, and 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 has the right and power to bid on any Lot at any Foreclosure sale, and to acquire, hold, lease, mortgage, or convey the same. The filing of suit to collect any sums due hereunder or to foreclose the Association's continuing lien securing payment of assessments may never be considered an election so as to preclude exercise of any other rights or remedies, including without limitation foreclosure under power of sale before or after a final judgment. After foreclosure, the prior Owner(s) will be mere tenants at sufferance of the purchaser(s) and the purchaser(s) may obtain immediate possession either pursuant to a judgment for foreclosure or by forcible detainer or eviction to be maintainable by the purchaser(s).

**SECTION 7.08 Assessments as Independent Covenant.** No Owner may become exempt or otherwise escape liability for the payment of assessments as provided for herein by waiver or for any other reason, including, by way of illustration but not limitation, by nonuse of any Community Properties, or abandonment of the Lot; and no diminution or abatement of assessments may be claimed or allowed by reason of any alleged actions or failure to act by the Association, or its officers, Director, agents or employees, the obligation to pay assessments being, and it is hereby expressly declared to be, a separate and independent covenant and contractual obligation on the part of each Owner.

## **Article VIII** **Enforcement**

**SECTION 8.01 Strict Compliance Required.** Each Owner and each Owner's tenants, by acquisition of any right, title or interest in any Lot, covenant and agree to be jointly and severally bound by and to strictly comply with this Declaration and all other Governing Documents as same may from time to time or at any time be hereafter amended. To the extent applicable this Declaration and all other Governing Documents also apply to all occupants, guests and invitees of any Lot, and all servants, agents and employees of Owners or their tenants or any of the foregoing.

**SECTION 8.02 Enforcement - General.** The Association, its successors and assigns, and any Owner has 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 has the right, in addition to all legal remedies, to an injunction either prohibitive or mandatory.

**SECTION 8.03 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 other Governing Documents, is jointly and severally liable for payment to the Association

for, and to indemnify the Association and to hold and save it harmless from, and all claims, liabilities, damages, loss, costs and expenses of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, incurred due to 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 will be assessed as a specific assessment, and are secured by the continuing lien established by **Article VII**. All such sums are due and payable upon demand by the Association or its representative upon presentment of a written statement setting forth the Association's payment or liability to pay such sums 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 tenant's liabilities under this Section.

## **Article IX**

### **Development Period**

**SECTION 9.01 Application.** Notwithstanding any other provisions of this Declaration to the contrary, the provisions of this Article apply until termination of the "Development Period" as defined in **Section 2.07**.

**SECTION 9.02 Appointment of Board and ACC; Authority of Association.** During the Development Period, Declarant is entitled to appoint all members of the Board of Directors and ACC and is entitled to remove and replace any of same, and in all other respects may exercise all rights and authority of the Association as set forth in this Declaration and all other Governing Documents. During the Development Period, the Declarant is not required to comply with the application process required in **Section 6.02**.

### **SECTION 9.04 Community Properties.**

9.04.1 **Designation or Change as to Community Properties.** Regardless of designation by the Plat, during the Development Period Declarant may designate Community Properties and at any time during the Development Period modify, discontinue, redesignate or in any other manner change the Community Properties.

9.04.0 **Conveyance of Community Properties.** Declarant may convey, transfer or assign any or all Community Properties to the Association during the Development Period, and shall do so within a reasonable time after termination of the Development Period. From and after the date of conveyance, transfer or assignment as aforesaid and in all events from and after the date of termination of the Development Period and thereafter, the Association will be solely liable and responsible for payment (by reimbursement to Declarant or direct payment) of all cost pertaining thereto, will be solely liable for damages or otherwise regarding the Community Properties and any usage thereof by any Person and must indemnify and hold Declarant harmless regarding same to the fullest extent provided herein as to the Association (including as provided in **Section 5.05**).



**SECTION 9.05 Easements.** Declarant and its agents or employees (including any builder, contractor or subcontractor subject to such limitations as Declarant may impose) are entitled during the Development Period to exercise all rights as to and to the usage of all easements referenced in this Declaration, to make changes in or additions to any such easements, and to grant or exercise such additional easements for ingress, egress and usage as is reasonably necessary to construction of single family residences, providing and Development of utilities and/or Community Properties, and conducting of any other developmental activities.

**SECTION 9.06 Sales Activities.** During the Development Period Declarant has the right to transact any business reasonably necessary to consummate the sale or rental of Lots and single family residences to be constructed thereon, and in connection therewith to maintain models, have signs and to use without charge any Community Properties.

**SECTION 9.07 Plat Amendments.** During the Development Period Declarant may prepare, amend or otherwise modify and Plat covering or to cover the Subdivision without the joinder or consent of any Owner or any other Person, subject however to requirements of applicable statutes of the State of Texas.

**SECTION 9.08 Payment of Assessments by Declarant During Development Period.** Notwithstanding anything to the contrary contained herein, at the option of Declarant, the Declarant shall not be required to pay the annual assessment for Lots that it owns, as long as the Declarant is attempting to sell those Lots. However, in such event, Declarant will contribute such sums as are needed by the Association to meet its operating expenses. For purposes of this paragraph, operating expenses are hereby defined as normal and customary day-to-day expenses specifically excluding any capital reserve contributions and/or capital expenditures. Should Declarant ever begin leasing its unsold Lots, other than short-term leases as part of a sales transaction, then Declarant shall commence paying annual assessments as to those leased Lots.

**SECTION 9.09 Notices to Declarant.** All notices or other communications to Declarant, as required or permitted by this Declaration, any other Governing Documents or otherwise, must be given to Declarant's registered agent at its registered office by certified mail, return receipt requested, or as otherwise directed by written notice of Declarant filed in the Real Property Records of Fort Bend County, Texas. Notices or other communications to Declarant are deemed given only upon actual receipt.

**SECTION 9.10 Amendment of Governing Documents; Annexation.** Subject to applicable statutory requirements of the State of Texas, during the Development Period Declarant reserves the sole and exclusive right from time to time and at any time (i) to amend this Declaration or any other Governing Documents, and (ii) to annex and subject any other property to the scheme of this Declaration without prior notice to, or the joinder of consent of, any Owner, mortgagee or any other Person. Declarant shall give notice of

filing of the amending instrument of other notice to Owners subject to an as provided in **Section 10.03.03**. Any such amendment or annexation will be accomplished by Declarant's execution of an amending instrument or other notice of the amendment of annexation and filing of same in the Real Property Records of Fort Bend County, Texas, and will be effective as provided in **Section 10.03.4** Declarant's execution will constitute certification as to substantial compliance as provided in, and such certification may not be challenged except as provided in, **Section 10.03.6**.

**SECTION 9.11 Limitation of Liability.** Without limitation of **Section 5.05**, the decisions of Declarant regarding all developmental activities, management and operation of the Association and all other activities undertaken by Declarant pursuant hereto are final and conclusive so long as made in good faith.

## **Article X**

### **General Provisions**

**SECTION 10.01 Notices to Association or ACC and Owners.** Unless otherwise expressly provided herein, all notices or other communications permitted or required under this Declaration must be in writing and will be deemed properly given if but only if given in accordance with the following:

10.01.1 **Notices to Association or ACC**. All notices or other communications to the Association or ACC during the Development Period must be given to Declarant as provided in **Section 9.09**. Thereafter, such notices or other communications must be given by (i) personal delivery acknowledged in writing, or (ii) certified or registered mail, return receipt requested, and by deposit in the United States mail, postage prepaid and properly addressed. Notices must be addressed to any member of the Board or ACC, to the Association's registered agent, or to the Association's Managing Agent as from time to time designated by the Board. Such notices or other communications will be deemed given only upon actual receipt. In the event Declarant, the Association or ACC disputes receipt of any notice or other communications, the original or a copy of the delivery acknowledgment or return receipt must be provided to the party disputing receipt failing which the notice or other communication will be conclusively deemed not to have been received.

10.01.2 **Notice to Owners**. All notices or other communications to any Owner will be deemed given upon personal delivery to or when deposited in the United States mail, postage prepaid and addressed to the street address of the Owner's Lot located within the Subdivision, or to the most current street address given by an Owner for purposes of notice as provided in **Section 10.01.3**. Where more than one Person is the Owner of a single Lot, the mailing of any notices or other communications as aforesaid to any single Owner constitutes notice given to all such Owners.

10.01.3 **Owner's Notice of Address Other Than Lot Address Required**. Any Owner may request any notices required or permitted hereby be mailed to an address other than

such Owner's Lot address by giving written and dated notice of the alternate address to the Association in the manner provided in **Section 10.01.1**; provided, after the Development Period such notice must be given to the Board **and**, if applicable, to the Association's Managing Agent. Any such request will be conclusively deemed not to have been received unless the Owner produces the original or copy of the properly signed and dated return receipt requests or delivery receipt acknowledgments. In the event of conflict in such requests by a single Owner or multiple Owners, the request last received will control.

10.01.4 Other Governing Documents. The foregoing provisions of this **Section 10.01** also apply to notices or other communications permitted or required by Governing Documents other than this Declaration except as otherwise expressly provided in such other Governing Documents, and provided that notice given in accordance herewith will be sufficient regardless of contrary provisions in other Governing Documents.

**SECTION 10.02 Term**. Subject to the provisions of **Section 10.03**, these covenants, conditions, restrictions, reservations, easements, liens and charges run with the land and are binding upon and inure to the benefit of Declarant, the Association, 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 Real Property Records of Fort Bend 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 10.03 Amendment**.

10.03.1 By Owners. Subject to applicable statutory requirements of the State of Texas, and except as otherwise expressly herein provided, Owners of a majority of Lots then contained within the Subdivision shall always have the power and authority to amend this Declaration, in whole or in part, at any time and from time to time. Whenever used in this Declaration or any other Governing Documents, the terms "amend", "amendment" or substantial equivalent mean and refer to any change, modification, revision or termination of any or all provisions of this Declaration or other Governing Documents.

10.03.2 By Association. Subject to applicable statutory requirements of the State of Texas, the Board of Directors, by amending instrument signed by the President or Secretary and filed in the Real Property Records of Fort Bend County, Texas, has the right in its sole judgement, from time to time and at any time, to amend this Declaration without joinder of any Owner or any other Person for the following purposes:

(a) to resolve or clarify any ambiguity or conflicts herein, or to correct any inadvertent misstatements, errors or omissions herein; or

(b) to conform this Declaration to the requirements of any lending institution or any reputable title insurance company to issue title insurance; provided, the Board has

no obligation whatsoever to amend this Declaration in accordance with any such requirements, and the Board may not so amend this Declaration if in the sole opinion of the Board any substantive and substantial rights of Owners would be adversely affected thereby; or

(c) to conform this Declaration to the requirements of any governmental agency, including the Federal Home Loan Mortgage Corporation, Federal National Mortgage Agency, Veterans Administration of Federal Housing Administration, the requirements of any governmental statute, rule or regulation, or the requirements of or to otherwise address the results of any judicial determination, and in this respect the Board shall so amend this Declaration to the extent required by law upon receipt of written notice and confirmation of such requirements and request for compliance.

**10.03.3 Method for Approval of Amendment by Owner.** The Owner's approval of any amendment of this Declaration as provided in **Section 10.03.1** may be obtained either (i) by Declarant at its sole discretion during the Development Period or (ii) by execution of the amending instrument or a written consent thereto by any Owner of each Lot so approving, or (iii) by affirmative vote, in person or by proxy, at any annual or special meeting called (in whole or in part) for consideration of any such amendment, or (iv) any combination of the foregoing. Written notice of any proposed amendment must be mailed or delivered to the Owners of each Lot not less than forty-five days prior to filing of the amending instrument in the Real Property Records of Fort Bend County, Texas, and if approved within a reasonable time after filing of the amending instrument. The notice must contain a verbatim statement of the proposed (and approved) amendment or a summary thereof. Absent proof of fraudulent intent, no such notice may be held ineffective due to the contents of the summary or on the basis the notice was mailed to an incorrect address. The provisions of **Section 5.03.3** regarding joint Owners applies to approval of any amendment; provided, and joint Owner may object to the approval of another joint Owner only by giving written notice of the objection to the Association within thirty days after giving of notice to Owners as aforesaid.

**10.03.4 Effective Date.** Any amendment of this Declaration will be effective from and after the date of filing of the amending instrument in the Real Property Records of Fort Bend County, Texas, or such later date as may be expressly stated in the filed amending instrument.

**10.03.5 No Impairment of Declarant's Rights.** No amendment of this Declaration may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant.

**10.03.6 Certification; Maximum Period to Challenge Validity.** The certification of the Association's President or Secretary as to substantial compliance with all prerequisites for amendment set forth in any instrument filed in the Real Property Records of Fort Bend County, Texas evidencing any such amendment is final and conclusive unless the contrary is proved by clear and convincing evidence in a suit filed in a court of competent jurisdiction within two years after filing of the applicable amending instrument.

**SECTION 10.04 Managing Agent.** The Board has the authority, from time to time and at any time, to retain, hire, employ or contract with any one or more Persons to provide management service to the Association, including discharge of such duties of the Board and/or any officers or committees of the Association, as the Board may specify (any such Person herein referred to as a "Managing Agent"). Any Managing Agent may be retained, hired, employed or contracted for on such terms and conditions as the Board in its sole judgement may determine; provided, the Board must retain the right in all cases as to any Managing Agent to remove the Managing Agent, with or without cause, upon not more than sixty days notice.

**SECTION 10.05 Conflicts In Governing Documents.** In the event of any conflict in the Governing Documents which cannot be reasonably reconciled after application of rules of interpretation as provide herein or by law, this Declaration will control over any other Governing Documents, and all other Governing Documents will control in the following order of priority: (i) Architectural Guidelines; (ii) Rules and Regulations; (iii) Articles of Incorporation; (iv) Bylaws; (v) Board and Member resolutions; and (vi) all others.

**SECTION 10.06 Interpretation.** The provisions hereof are to be liberally construed to give full effect to their intent and purposes. If this Declaration or any word, clause, sentence, paragraph, or other part thereof is susceptible to more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration and the scheme of development thereunder will govern. The captions of each Article and Section hereof as to the contents of each Article or Section to which they refer. Whenever used, the singular number includes the plural, the plural the singular, and the use of any gender is applicable to all genders.

**SECTION 10.07 Severability.** Wherever possible, each provision of this Declaration is to be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person, particular circumstance or property is prohibited or held invalid, such prohibition or invalidity does not extend beyond such Person, particular circumstance or property and will not affect any other provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**SECTION 10.08 Effective Date.** This Declaration is effective from the date of filing of same in the Real Property Records of Fort Bend County, Texas.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration on the 10 day of February, 2005.

RANNA & COMPANY, L.L.C.  
a Texas Limited Liability Company

By: *[Signature]*

Jamal Nikmard, Partner

THE STATE OF TEXAS      X  
   X  
COUNTY OF FORT BEND      X

BEFORE ME, the undersigned authority on this day personally appeared JAMAL NIKMARD, the Partner of RANNA & COMPANY, L.L.C., a Texas Limited Liability Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of RANNA & COMPANY, L.L.C.

GIVEN UNDER MY HAND AND SEAL on this 10 day of February, 2005.

*Elizabeth Sample*  
NOTARY PUBLIC STATE OF TEXAS  
Printed Name: Elizabeth Sample  
My Commission Expires: 10/5/06



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

*Dr. Dianne Wilson*

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DR \$81.00

Dianne Wilson, Ph.D. COUNTY CLERK  
FT BEND COUNTY TEXAS