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07/07/2009 RP1 \$356.00

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

for

20090320540  
07/17/2009 RP3 \$360.00

**ENCLAVE AT BELLAIRE**

STATE OF TEXAS

§

**KNOW ALL PERSONS BY THESE PRESENTS:**

COUNTY OF HARRIS

§

WHEREAS, ZK Homes, L.P., a Texas limited partnership (the "Declarant"), is or was the owner of all that certain property known as Pine Street Townhomes (commonly known as Enclave at Bellaire), a Harris County, Texas, according to the map or plat thereof recorded under Film Code No. 605018 of the Map Records of Harris County, Texas ("Enclave at Bellaire"); and

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WHEREAS, the Declarant desires to establish a uniform plan for the development, improvement and sale of the lots in Enclave at Bellaire, and to ensure the preservation of such uniform plan for the benefit of both the present and future owners of lots in Enclave at Bellaire in order to protect and enhance the quality, value, desirability, and attractiveness of all lots in Enclave at Bellaire.

NOW, THEREFORE, in order to carry out a uniform plan for the improvement, development, maintenance, sale and use of the properties within Enclave at Bellaire, it is hereby declared that all of the properties within Enclave at Bellaire shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, charges and liens (sometimes herein collectively referred to as the "Declaration"), all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of Enclave at Bellaire. These covenants and restrictions shall run with said real property and be binding upon all parties having or acquiring any right, title, or interest in said real property or any part thereof, their heirs, predecessors, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I. Property Subject to this Declaration**

**SECTION 1.01** Property Subject to Declaration. The real property which, by the recording of this 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 Harris County, Texas, more particularly described as follows, to wit:

This document is being re-filed to include Exhibit "A", which was inadvertently omitted from the original recordation.

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Pine Street Townhomes (commonly known as Enclave at Bellaire), a Harris County, Texas subdivision according to the map or plat thereof recorded under Film Code No. 605018 of the Map Records of Harris County, Texas.

**SECTION 1.02**      **Annexation of Other Property.**      Declarant may annex additional real property in, to, and make same a part of the "Subdivision" (as hereafter defined) by amendment of this Declaration as provided in Article XII without the joinder or consent of any Owner or other Person. Any other real property may be annexed only upon approval by Owners of an amendment of this Declaration evidencing the annexation in accordance with applicable provisions of Section 13.02.

**SECTION 1.03**      **Notice; Effective Date and Effect of Annexation.**  
Whenever any real property is annexed as provided in Section 1.02, the annexation must be evidenced by filing of, and is effective from the date of filing of, the amendment evidencing the annexation in the Official Public Records of Real Property of Harris County, Texas. From and after the date of filing of the amendment evidencing the annexation, the real property covered thereby will be included within the "Subdivision" (as hereafter defined), and thereafter is fully covered by and subject to all terms and provisions of this Declaration (as amended).

## ARTICLE II.      Definitions

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

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

**SECTION 2.02**      **"Architectural Guidelines"** means the procedural, aesthetic, environmental and architectural policies and procedures from time to time adopted by the Architectural Control Committee in accordance with Article IV hereof, regardless of nomenclature or manner of designation, and may include Rules and Regulations.

**SECTION 2.03**      **"Association"** means ENCLAVE AT BELLAIRE OWNERS ASSOCIATION, a Texas non-profit corporation, incorporated for the purposes contemplated by this Declaration, and its predecessors, successors (by merger, consolidation or otherwise) and assigns.

**SECTION 2.04**      **"Board"** or **"Board of Directors"** means the Board of Directors of the Association.

**SECTION 2.05**      **"Builder"** means each Owner who is in the construction business or Person who regularly engages in the construction business who is constructing Residences in the Subdivision.

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**SECTION 2.06**        “**Building Site**” means a building site described by metes and bounds description and/or by reference to a Plat upon which one single-family Residence is or may be constructed. The term “Building Site” includes the footprint of the land within which each single family Residence is located, and appurtenant land, if any, as may be conveyed to the first Owner thereof by Declarant, but does not include the footprint of land within which any other single family Residence is located or land appurtenant thereto as conveyed by Declarant as aforesaid. The term “Building Site” also does not include Community Properties, and does not include commercial or other reserves so designated by a Plat, if any.

**SECTION 2.07**        “**Bylaws**” means the Bylaws of the Association, as from time to time amended in accordance with applicable provisions of the Bylaws.

**SECTION 2.08**        “**City**” means the City of Houston, Texas.

**SECTION 2.09**        “**Community Properties**” means:

2.09.1 all common areas so designated herein or by a Plat intended for the common use of Owners, including all reserves depicted and described on the Plat of the Subdivision as set forth in Section 1.01, but excluding any commercial or other reserves or areas not specifically designated as common areas or compensating open space;

2.09.2 all common drives and private streets contained within the boundaries of the Subdivision or as designated by a Plat, for so long as the common drives or streets remain private and are not dedicated to the public (and such dedication accepted);

2.09.3 all Subdivision Facilities; and

2.09.4 all other properties, real or personal, conveyed to or dedicated to the use of, or otherwise acquired by the Association for the common use and enjoyment of, the Association, together with all improvements thereon and appurtenances thereto.

**SECTION 2.10**        “**Declarant**” means ZK Homes, L.P., a Texas limited partnership, and its successors and assigns if such successors or assigns:

2.10.1 acquire all of the then remaining undeveloped or developed but previously unoccupied or unsold Building Sites within the Subdivision from ZK Homes, L.P., a Texas limited partnership for purposes of development and resale; or

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

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**SECTION 2.11** "**Declaration**" means this "Declaration of Covenants, Conditions, Restrictions and Easements for Enclave at Bellaire", and any lawful amendments thereto.

**SECTION 2.12** "**Development Period**" means the period of time beginning on the date of recordation of this Declaration in the Official Public Records of Real Property of Harris County, Texas, and ending on the earlier occurrence of either of the following events:

2.12.1 ten (10) years after the date of recordation of this "Declaration of Covenants, Conditions, Restrictions and Easements for Enclave at Bellaire a Subdivision in Harris County, Texas" in the Official Public Records of Real Property of Harris County, Texas; or

2.12.2 upon recordation of Declarant's statement in the Official Public Records of Real Property of Harris County, Texas, that the Development Period has ended or has been terminated by Declarant; provided, Declarant's statement may be limited to termination of the Development Period to specific functions, rights, or responsibilities or expressly reserve unto Declarant specific functions, rights, or responsibilities, either of which shall then survive filing of the statement of termination until terminated by expiration of the period stated in Section 2.12.1 or as may be provided in a subsequently filed statement or statements; and provided further, for purposes of Section 3.04.2 regarding conversion of Class B membership to Class A membership, the Development Period shall not be deemed to have terminated until expiration of the period stated in Section 2.12.1 unless Declarant expressly states otherwise in Declarant's filed statement as to termination.

**SECTION 2.13** "**Emergency**" means (i) any condition which may or does cause an imminent risk of infestation by termites, rats, or other vermin, and any other health, fire, or safety hazard, (ii) any condition which may or does cause waste of water or water infiltration to another Building Site, Community Properties, and any improvements located thereon, and (iii) any other thing, condition, or exigent circumstances which may or does present an imminent risk of harm or damage to a Building Site, Community Properties, or any improvements thereon or to any Owners or occupants thereof. The determination of the Board, the ACC, or their Related Parties that an Emergency exists is final.

**SECTION 2.14** "**Enclave at Bellaire**" means Pine Street Townhomes (commonly known as Enclave at Bellaire), a Harris County, Texas subdivision according to the map or plat thereof recorded under Film Code No. 605018 of the Map Records of Harris County, Texas.

**SECTION 2.15** "**Exclusive Community Properties**" means that portion of the Community Properties that will be maintained by the Owner of the Building Site to which the Exclusive Community Properties is appurtenant (unless otherwise agreed to

in writing by the Association), as set forth in Exhibit "A" attached hereto and incorporated herein for all purposes.

**SECTION 2.16** "Governing Documents" means all documents and applicable provisions thereof as set forth in this Declaration, the Bylaws, and Certificate of Formation 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 2.17** "Lot" means any of the numbered lots shown on the Plats as set forth in Section 1.01.

**SECTION 2.18** "Member" means every Person who is an Owner and holds a membership in the Association. Every member which is not a natural person must designate a representative of such entity who is a natural person as provided in Section 3.03.2.

**SECTION 2.19** "Owner" means:

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

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

**SECTION 2.20** "Patio Home(s)" means the single family detached residence built on Lots in the Subdivision.

**SECTION 2.21** "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other entity.

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**SECTION 2.22** **“Plat(s)”** means the maps or plats of the Subdivision as described in Section 1.01, and all maps or plats of properties made a part of the Subdivision as provided in Article I, if any, hereafter filed in the Map Records of Harris County, Texas, and any replats thereof.

**SECTION 2.23** **“Prevailing Community Standards”** means those standards of aesthetics, environment, appearance, architectural design and style, maintenance, conduct, and usage generally prevailing in the Subdivision as reasonably determined by the Board or ACC at any given pertinent time and from time to time, including as to each particular Regulated Modification and each other matter or circumstance considered as of the date of the evaluation (i) prevailing standards as to harmony and compatibility with surrounding aesthetics, appearance, and patterns of maintenance, harmony, and compatibility with surrounding buildings, structures, and other improvements, and harmony and compatibility with surrounding grades, topography, finished ground elevations, locations, colors, finishes, styles, workmanship, type and quality of materials and designs, and (ii) compliance with this Declaration and other applicable Governing Documents, and with applicable governmental laws, ordinances, and regulations.

**SECTION 2.24** **“Regulated Modification”** means (without implication that any particular matter is permitted or prohibited by this Declaration and without limitation as to Article IV hereof) the commencement, placement, construction, reconstruction, or erection of, or modification, alteration, or addition to, any Building Site, building, structure, improvement, thing or device, and any usage thereof (whether temporary or permanent or whether placed in the front, side or rear yards), which may affect, modify, or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades of 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:

2.24.1 any building, garage, porch, shed, greenhouse, covered or uncovered patio, swimming pool, clothes lines, radio, or television antenna, satellite dish, microwave, and similar systems (unless allowed under Section 8.10), fence, wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, flags, playstructures, patio covers, basketball goals, birdhouses or any temporary or permanent living quarters (including any mobile home) or any other temporary or permanent modification or alteration;

2.24.2 any change to the interior of a Residence, garage, and any other permitted outbuilding which in the sole opinion of the ACC materially affects the exterior appearance thereof;

2.24.3 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 Building Site 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 Building Site or any other portion of the Subdivision;

2.24.4 any change in the grade of any Building Site or any other portion of the Subdivision, and any similar disturbance to the surface of the land within the Subdivision;

2.24.5 any erosion control system or devices permitted or required as to any Building Site or any other portion of the Subdivision; and

2.24.6 any other building, structure, improvement, thing, or device, and any activities related thereto and any usage thereof, as specified from time to time by applicable Architectural Guidelines, 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.

**SECTION 2.25**      **“Related Parties”** means and applies as follows:

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

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

**SECTION 2.26**      **“Residence(s)”** means the Townhomes or Patio Homes built on Lots in Enclave at Bellaire.

**SECTION 2.27**      **“Rules and Regulations”** means the policies and procedures from time to time adopted by the Board of Directors regulating the maintenance, operation, use, or occupancy of the Subdivision, including the Building Sites and Community Properties, in accordance with Article VII hereof, regardless of nomenclature or manner of designation, and may include Architectural Guidelines.

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**SECTION 2.28**     “**Subdivision**” means Enclave at Bellaire, a residential community located in Harris County, Texas, as more particularly described in Section 1.01 hereof, and any other real property subjected to this Declaration as herein provided from time to time.

**SECTION 2.29**     “**Subdivision Facilities**” means all facilities and services built, installed, maintained, operated, or provided by the Association for the general benefit of the Subdivision, **INCLUDING, WITHOUT LIMITATION, BUT WITHOUT ANY REPRESENTATION, WARRANTY, OR IMPLICATION WHATSOEVER THAT ANY PARTICULAR FACILITIES OR SERVICES WILL BE BUILT, INSTALLED, MAINTAINED, OPERATED OR PROVIDED, AND SUBJECT TO THE RIGHT OF DECLARANT DURING THE DEVELOPMENT PERIOD, AND OF THE BOARD THEREAFTER, FROM TIME TO TIME AND AT ANY TIME TO ADD TO, MODIFY, OR DISCONTINUE ANY PARTICULAR FACILITY OR SERVICE:**

2.29.1 all water purchased by the Association as a common expense;

2.29.2 any sanitary sewer facilities, any drainage or storm water facilities, any water pipelines, water sprinkler systems, water meters and related water lines and facilities and any other common or shared facilities, utilities, or services constructed, owned, maintained or provided by the Association and specifically designated by Declarant or the Board to constitute a common facility, utility or service, excluding any such facility, utility, or service which exclusively service each Building Site which must be maintained by the Owner of each Building Site as provided in Section 6.02 or which are maintained by any governmental entity or utility company;

2.29.3 all Subdivision entry and other identification monuments, all perimeter fencing enclosing the Subdivision, mailboxes, gazebos, dog parks, landscaping, irrigation, lighting and other improvements located in the Community Properties;

2.29.4 any patrol or security access limiting type services, structures, or devices specifically obtained and maintained by the Association for such purposes, including without limitation any controlled access gates, guardhouses, and related structures or devices;

2.29.5 all street lights in the Subdivision, excluding all street lights currently or which hereafter are maintained by the City or other governmental entity or by any utility company;

2.29.6 any garbage or recycling collection, cable television, utilities or other services provided by or through the Association, and any structures or devices related thereto; and

2.29.7 any other facilities or services as from time to time so designated by Declarant or the Board.



**SECTION 2.30**      **"Townhome(s)"** means the single family attached residence built on Lots in the Subdivision.

**ARTICLE III.      Enclave at Bellaire Owners Association**

**SECTION 3.01**      **Organization.** Enclave at Bellaire Owners Association (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 providing of such Subdivision Facilities as herein permitted or required, and all other acts and undertakings reasonably incidental to any of the foregoing or in furtherance thereof as determined in the sole good faith opinions of the Board of Directors or Members.

**SECTION 3.02**      **Board of Directors.** The Association acts through a Board of Directors which manages the affairs of the Association as specified in this Declaration, the Bylaws and other applicable Governing Documents. Unless otherwise expressly required by law or other applicable provision of the Governing Documents, the Board of Directors shall exercise and have all rights, powers, authority, and responsibilities of the Association. The Board is specifically authorized to compromise and settle any and all claims, demands, liabilities, and causes of action whatsoever held by or asserted against the Association upon such terms and conditions as the Board may determine, and the decisions of the Board as to any of the foregoing are final and conclusive.

**SECTION 3.03**      **Membership.**

3.03.1 **Owners as Members.** Every Person who is the Owner of a fee simple title or undivided fee simple title interest applicable to any Building Site that is subject to this Declaration is a Member of the Association. The Association is entitled to rely on the Official Public Records of Real Property of Harris County, Texas, in determining such ownership, and may require submission to the Board of appropriate certified copies of such records as a condition precedent to recognition of ownership. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate any Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Building Site. Membership shall be appurtenant to and may not be separated from ownership of any Building Site, and shall automatically pass with the title to the Building Site.

3.03.2 **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 in accordance with applicable provisions of the Bylaws and as otherwise determined in the sole opinion of the Board. A designation as

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aforesaid fully authorizes the designated representative to bind the designating party as to all matters. Any such representative may serve as a Director in accordance with the Bylaws.

**SECTION 3.04            Voting Rights of Members.**

3.04.1 Development Period. During the Development Period there will be two (2) classes of membership entitled to voting rights in the Association which are as follows:

Class A: All Members of the Association other than the Declarant are Class A Members. **DURING THE DEVELOPMENT PERIOD, CLASS A MEMBERS HAVE NO VOTING RIGHTS WHATSOEVER.**

Class B: Class B Members are Declarant and Builders. **DURING THE DEVELOPMENT PERIOD DECLARANT AND BUILDER SHALL HAVE ONE (1) VOTE FOR EACH BUILDING SITE OWNED.**

3.04.2 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 the Owner, whether one or more, of each Building Site will be entitled to one (1) vote on each matter coming before the membership.

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

3.04.4 Cumulative Voting Prohibited. Cumulative voting is prohibited as to any matter placed before the membership for a vote, including election of Directors.

3.04.5 Suspension of Voting Rights. Voting rights of any Member may or will be suspended for breach of the Governing Documents as provided herein or in the Bylaws or Certificate of Formation, including without limitation, suspension as provided in Section 5.08.2(b).

**SECTION 3.05            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

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person or by agent, accountant, or attorney, at any reasonable time, for any proper purpose, the books and records of the Association relevant to that purpose, at the expense of the Member.

**SECTION 3.06            Limitation of Liability; Indemnification.**

3.06.1 General. Except for intentional and willful misconduct, knowing violation of the law, or as otherwise required by the Texas Business Organizations Code, no officer or Director of the Association is liable to the Association or its Members, and the Association and its Related Parties are 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 by or on behalf of the Association within the scope of its purposes. The Association shall indemnify and keep indemnified, and hold harmless, any current or former officer or Director to the fullest extent allowed by law, and hold any such officer or Director harmless from and against all claims, demands, suits, judgments, court costs, attorney's fees attachments and all other legal action as contemplated thereby. All provisions of this Section 3.06 also apply to all Association Committees and Members thereof (current or former), including the Architectural Control Committee.

3.06.2 Security Services. The Association may from time to time engage in activities or provide Subdivision Facilities, including activities, devices, or services intended to or which may have the effect of enhancing safety or security, including activities devices or services limiting or controlling Subdivision access, or providing of patrol services or otherwise monitor activities within the Subdivision (including Community Properties), and may from time to time provide information through newsletters or otherwise regarding same (all such matters and all activities, services, or devices of a similar nature or incident thereto herein referred to as "Security Services"). Without limitation of Section 3.06.1, each Owner and their tenants 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 THEIR TENANTS, AND THEIR RESPECTIVE RELATED PARTIES.** Security Services may be provided at the sole discretion of the Board of Directors. The providing of any Security Services at any time will 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 are independent contractors, the acts or omissions of which are not imputable to the Association or its Related Parties.

(c) Providing of any Security Services may never be construed as (i) an undertaking by the Association or its Related Parties to provide personal security as to any Owner, tenant or their Related Parties, or as to any other Person, or

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(ii) a representation or undertaking that any Security Services will be continued, or (iii) a representation, 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. **WITHOUT LIMITATION OF THE FOREGOING, DECLARANT, THE ASSOCIATION, AND THEIR RELATED PARTIES SHALL NOT HAVE ANY DUTY WHATSOEVER TO WARN, ADVISE, OR INFORM ANY OWNER, TENANT, OR THEIR RELATED PARTIES AS TO CRIMINAL CONDUCT OF ANY KIND OR AS TO ANY OTHER MATTER REGARDING OR RELATING TO SECURITY SERVICES, PAST OR PRESENT.**

(d) Declarant, the Association, and their Related Parties are not liable for, and each Owner, their tenants, and their respective Related Parties, must indemnify, keep indemnified, and hold Declarant, the Association, and their Related Parties harmless at all times from any injury, loss, or damages whatsoever, including without limitation any injury or damages caused by theft, burglary, trespass, assault, vandalism, or any other crime, to any Person or property arising, directly or indirectly, from providing or failure to provide any Security Services, or the discontinuation, modification, disruption, defect, malfunction, operation, repair, replacement, or use of any Security Services.

(e) **DECLARANT, THE ASSOCIATION AND THEIR RELATED PARTIES, HAVE NO DUTY, OBLIGATION, OR RESPONSIBILITY OF ANY KIND WHATSOEVER TO WARN, ADVISE, OR IN ANY OTHER MANNER INFORM ANY OWNERS, TENANTS, OR THEIR RELATED PARTIES, OR ANY OTHER RESIDENTS OR OCCUPANTS OF ANY BUILDING SITE OR COMMUNITY PROPERTIES, OR ANY LAW ENFORCEMENT AGENCY, OR ANY OTHER PERSON AS TO ANY ALLEGED, SUSPECTED OR KNOWN CRIMINAL ACTIVITIES OF ANY KIND, CRIMINAL HISTORY OR BACKGROUND OF ANY PERSON, OR CRIMINAL INVESTIGATIONS BY LAW ENFORCEMENT AGENCIES OR BY ANY OTHER PERSON (ALL SUCH MATTERS, ACTIVITIES, AND INVESTIGATIONS HEREIN REFERRED TO AS "CRIMINAL MATTERS"),** regardless of whether the Criminal Matters involve the Subdivision, other areas in the vicinity or any other place or lands. The Association may (but has no obligation to) from time to time disclose and/or transmit information concerning Criminal Matters to Owners, tenants, and any other occupants of Building Sites and/or any Community Properties, to any law enforcement agencies, and to any other Person which the Association's officers, directors, agents, employees, and other Related Parties in their sole discretion deem advisable. Each Owner and tenant by acceptance of any right, title, or interest in any Building Site, and every Owner, tenant, and occupant of a Building Site or any Community Properties by virtue of such occupancy, hereby consents, on their behalf and on behalf of their respective Related Parties, and on behalf of all other Persons coming upon a Building Site or any Community Properties at their invitation, or with their consent or permission, to any such disclosure and/or transmittal of information. Any such disclosure and/or transmittal of information shall in no way be deemed an undertaking to do so in the future, either as to the Criminal Matters then involved or as to any other current or future Criminal Matters. All other provisions of this Section apply to any disclosure and/or transmittal of information, and to any failure to disclose and/or transmit information, concerning Criminal Matters, including in particular but without limitation, the provisions

of Section 3.06.2(d) regarding the indemnity obligations of Owners, their tenants, and their respective Related Parties.

**3.06.3 Liability Arising from Conduct of Owners.** Each Owner, their tenants, and their respective Related parties must indemnify and keep indemnified, and hold harmless, Declarant, the Association, and their Related Parties from and against all claims, damages, suits, judgments, court costs, 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 their respective Related Parties.

**3.06.4 Subsequent Statutory Authority.** If the Texas Business Organizations Code and Chapter 84 of the Texas Civil Practice and Remedies Code or any other applicable statute, state or federal, is construed or amended to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this Section 3.06, then liability will be eliminated or limited and right to indemnification will be expanded to the fullest extent permitted by such construction or amendment.

**3.06.5 No Impairment.** Any repeal, amendment, or modification of this Section 3.06 may not adversely affect any rights or protection existing at the time of the amendment.

#### **ARTICLE IV. Architectural Control Committee**

##### **SECTION 4.01 Organization.**

**4.01.1 General.** There is hereby established an Architectural Control Committee. The ACC must be composed of either: (i) all members of the Board of Directors; or (ii) a committee appointed by the Board of Directors formed and designated as the ACC by resolution adopted by the Board of Directors. The ACC may from time to time designate any one of its Members to act in its stead.

**4.01.2 ACC Executive Committee.** If a committee is appointed by the Board of Directors to act as the ACC, then the provisions of this Section shall apply. Such committee must be composed of three (3) or five (5) persons. The Chairperson of the committee must at all times also be a Director, but the remaining persons need not be Directors or Members. All such persons will serve at the discretion of the Board, and all of its decisions are subject to review and modification by the Board except as herein otherwise expressly provided. In the event of the death or resignation of any Person serving on the ACC, the Board of Directors shall designate a successor or successors who will have all of the authority and power of his or their predecessor(s). Until such successor has been appointed, the remaining member or members have full authority to exercise all rights, duties and powers of the ACC.

**4.01.3 Compensation.** No Person serving on the ACC is entitled to compensation for services performed; provided, the ACC may employ one or more architects, engineers, attorneys, or other consultants, as approved by the Board of

Directors, to assist the ACC in carrying out its duties, and the Association shall pay such consultants for services rendered to the ACC. Members of the ACC may also be reimbursed for reasonable expenses in such manner and amounts as may be approved by the Board of Directors.

**SECTION 4.02      Function and Powers.**

4.02.1 Submission of Plans Required. No Regulated Modification may be commenced, constructed, erected, placed, maintained, or made upon any Building Site or within any part of the Subdivision unless and until complete plans and specifications have been submitted to and approved in writing by the ACC as to compliance with applicable Architectural Review Criteria as set forth in Section 4.03. Two (2) complete sets of plans and specifications must be submitted with each request for approval. Any plans and specifications to be submitted must specify, in such detail and form as the ACC may reasonably require:

- (a) the location upon the Building Site or within the Subdivision where the Regulated Modification will occur or be placed;
- (b) the dimensions, nature, kind, shape, height, and color scheme of and all materials to be used in connection with the Regulated Modification;
- (c) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking, and landscaping details;
- (d) intended uses; and
- (e) such other information, plans, or specifications as may from time to time be required by applicable Architectural Guidelines, or in specific instances as may be requested or required by the ACC, which in the sole opinion of the ACC is reasonably necessary to fairly and fully evaluate all aspects of the proposed Regulated Modification.

4.02.2 Architectural Guidelines. The ACC may, from time to time, adopt, modify, and delete such reasonable Architectural Guidelines applicable to the Subdivision, including Building Sites and Community Properties, as it deems appropriate to maintain or reasonably enhance Prevailing Community Standards of the Subdivision at the time of adoption. Such authority includes, but is not limited to, the right to specify:

- (a) specific procedural guidelines for submission of requests for, and plans, specifications, and other information necessary to obtain ACC approval, and procedural requirements for the conducting of all activities necessary to accomplish same;

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(b) the amount and manner of payment of any fees or charges reasonably anticipated to cover administrative costs, fees for architectural, engineering, construction, legal, or other expert advice or consultation, and all other costs and expenses in connection with review and evaluation of an application (such costs and expenses herein referred to as the "Architectural Review Fee");

(c) specific types of Regulated Modifications which may be commenced, constructed, erected, or maintained upon any Building Site or anywhere within the Subdivision, as well as specific types of Regulated Modifications which will not be permitted upon any Building Site or within the Subdivision;

(d) a limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of Regulated Modifications;

(e) minimum setbacks (except that minimum setbacks as shown on the Plat will control if in conflict with Architectural Guidelines);

(f) the location, height, and extent of fences, walls, or other screening devices, walks, decks, patios, or courtyards;

(g) the orientation of structures and landscaping with respect to front and side yards, streets, walks, driveways, and structures on adjacent properties; and

(h) in general, all requirements reasonably deemed necessary to maximize compliance with Architectural Review Criteria as set forth in Section 4.03.

#### 4.02.3 Manner and Effect of Adoption of Architectural Guidelines.

(a) No prior notice of any kind to any Owner or any other Person need be given as to adoption or amendment of Architectural Guidelines. Within a reasonable time after adoption or amendment of Architectural Guidelines, notice thereof must be given to all then Owners. The ACC shall provide applicable Architectural Guidelines to Owners upon request. Architectural Guidelines may also be (but are not required to be) filed in the Official Public Records of Real Property of Harris County, Texas.

(b) Architectural Guidelines shall be equal dignity with, and shall be enforceable in the same manner as, the provisions of this Declaration, provided: (a) such Architectural Guidelines shall not be deemed a waiver, modification, or repeal of any of the provisions of this Declaration; and (b) such Architectural Guidelines shall not be enacted retroactively except that all repairs, modifications, or maintenance performed subsequent to adoption shall be performed in such manner as to bring the Regulated Modification, so far as practicable, in compliance with all then applicable Architectural Guidelines

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4.02.4 Variances. The Board, by vote of two-thirds (2/3rds) of all Members of the Board, may grant specific variances to Architectural Guidelines and to the architectural and use restrictions set forth in Articles VII and VIII of this Declaration as herein provided. A variance may be granted only with respect to specific instances upon written request therefor, is not binding with respect to any other request for a variance whether or not similar in nature, and does not constitute a waiver, modification, or repeal of any of the provisions of this Declaration or other Governing Documents except for the limited purpose of and to the extent of the specific variance expressly granted. A variance may be granted only upon specific findings that the variance is necessary due to unusual circumstances which are reasonably beyond the control of the applicant to mitigate or rectify, and that the granting of a specific variance will not materially and adversely affect the architectural, aesthetic, or environmental integrity of the Subdivision or the scheme of development therein. The good faith determination of the ACC that the conditions for granting of a variance have or have not been met is final.

**SECTION 4.03** Architectural Review Criteria. The ACC will evaluate all submitted applications for ACC approval on the individual merits of the particular application, and based on evaluation of the compatibility of the proposed Regulated Modification with Prevailing Community Standards as of the date of submission of an application. The ACC must also use reasonable efforts to achieve consistency in the approval or disapproval of specific types of Regulated Modifications. To this end, consideration will be given to (but the ACC is not bound by) similar applications for architectural approval and the decisions and actions of the ACC with regard thereto.

**SECTION 4.04** Basis for Disapproval by ACC. The ACC may disapprove any request for approval for any of the following reasons: (i) failure to comply with any applicable Architectural Review Criteria as set forth in Section 4.03; (ii) lack of sufficient information, plans, or specifications as reasonably determined by the ACC to enable the ACC to fairly and fully evaluate the proposed Regulated Modification or the uses thereof; or (iii) failure to include any information, plans, or specifications, required by applicable Governing Documents, or as may be reasonably requested by the ACC. In the event of disapproval, the ACC shall so notify the applicant in writing.

**SECTION 4.05** Approval and Conditional Approval by ACC.

4.05.1 Manner. The ACC may fully approve any request for approval made pursuant to this Article IV, or the ACC may approve any such request subject to compliance with conditions stated in a conditional approval. Conditions for approval may include, without limitation, requirements for modifications to plans and specifications such as upgrading or other changes as to materials or changes as to color or design or location, or requirements for addition of other improvements such as sight barrier landscaping or other devices to screen the view of a proposed Regulated Modification from any street, Community Properties, or other Building Sites. A conditional approval is effective only upon full compliance with the stated condition(s). The ACC shall notify the applicant in writing of such approval (together with any qualifications or conditions of approval).



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4.05.2 Effect. Except for fraud, misrepresentation, accident or mistake, approval or conditional approval is final as to each Regulated Modification covered thereby, and may not be revoked or rescinded once given except as stated in Section 4.05.1. Except as to compliance with this Article IV, approval or conditional approval does not constitute a waiver, modification, or repeal of any covenant or restriction contained in this Declaration or other Governing Documents, or preclude by estoppel or otherwise full enforcement of all provisions hereof. Approval or conditional approval may not be deemed a waiver of the right of the ACC to subsequently disapprove similar requests for approval, or any of the features or elements included therein.

**SECTION 4.06            Submission and Response; Failure of ACC to Act.**

4.06.1 Submission and Response. Application for ACC approval and requests for variances are deemed submitted to the ACC only upon actual receipt. All responses by the ACC shall be in writing, and are deemed given when delivered to or when deposited in the United States mail, postage prepaid, and addressed to the applicant at the address specified in the application or request for variance or the last known address of the applicant according to the records of the Association. The ACC has no duty to respond to, and the provisions of this Section do not apply regarding any application or request for variance if the Person(s) identified in the application do not appear as Members or Owners according to the books and records of the Association unless and until receipt of such confirmation of ownership as is satisfactory in the sole opinion of the ACC. Lessees shall file applications or requests for variance in the name of their lessors, and shall also join therein. Where more than one Owner applies for approval or a variance, the delivery or mailing of a response to any one of the Owners as aforesaid constitutes notice to all such Owners.

4.06.2 Failure to Respond. If any applicant has not received written notice from the ACC approving, conditionally approving, or disapproving a request for approval or a request for a variance within thirty days after the application was originally received by the ACC, the applicant may notify the ACC in writing of that fact. If notice of failure to respond as aforesaid is not received from the applicant by the ACC within forty-five (45) days after submission of an application or request for variance, approval thereof will be deemed denied. If notice of failure to respond is given by the applicant to the ACC as aforesaid, then the request for approval or for a variance to which such notice relates will be deemed approved by the ACC as provided in Section 4.05.1 unless the ACC responds to the contrary not later than fifteen (15) days after the date such notice is received by the ACC.

**SECTION 4.07            Implied Conditions of Approval.**

4.07.1 Applicability. Unless expressly waived or modified by the ACC in writing and except as otherwise provided as to the initial construction of a single family Residence upon a Building Site as set forth in Section 8.04 hereof, each and every approval or conditional approval by the ACC of a Regulated Modification is subject to all

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provisions of this Section 4.07 whether or not stated in the approval or conditional approval.

4.07.2 Commencement and Completion of Work. Work on each Regulated Modification must commence within thirty days after ACC approval or conditional approval is given. Upon commencement, the work must be prosecuted diligently to obtain completion of all work as reasonably soon thereafter as possible, and in any event the work must be substantially completed within sixty (60) days. The foregoing sixty-day period will be extended in the event of and only for the duration of delays due to strikes, war, acts of God, or other good cause beyond the reasonable control of the Owner as determined in the sole opinion of the ACC. Section 8.04.2 and not this Section 4.07.2 applies to initial construction of a single-family Residence upon a Building Site.

4.07.3 Equipment and Materials. No equipment, material, or other things or devices necessary to completion of a Regulated Modification may be placed or stored upon a Building Site, or within the Subdivision any longer than necessary prior to, and in no event more than ten (10) days prior to, commencement of the work on the Regulated Modification. All such equipment, materials, things, and devices must be placed within the property lines of the affected Building Site, and so far as practical must be stored in locations not visible from any street, Building Site, or the Community Properties. Upon completion of the work on the Regulated Modification, any such equipment, materials, things, or devices not incorporated in the Regulated Modification must be promptly removed from the Building Site and Subdivision and in any event within five (5) business days. Section 8.04.4 and not this Section 4.07.3 applies to initial construction of a Residence upon a Building Site.

4.07.4 New Construction Materials Required. Only new construction materials may be used in construction of any Regular Modification except as otherwise approved by the ACC (such as the use of used brick).

4.07.5 Drainage. Each Owner is wholly and solely responsible for compliance with the provisions of Section 8.04.9 regarding drainage, including the obligation to comply with all requests or requirements of the ACC as authorized by said Section, and is liable for all consequences of any failure to comply.

4.07.6 Compliance with Plans. All work on a Regulated Modification must proceed in strict compliance with the application and plans and specifications approved by the ACC, all conditions stated by the ACC, if any, and all applicable Governing Documents and governmental rules, regulations, and ordinances.

4.07.7 Permit Requirements. Applicants shall be solely responsible for full compliance with all permitting requirements of the City and all other governmental agencies having jurisdiction, and shall apply for and diligently pursue obtaining of all required permits promptly after ACC approval or conditional approval is received. The ACC is expressly authorized to deny approval pending, or condition approval upon, prior

compliance with applicable permitting requirements or upon receipt of certification satisfactory to the ACC that no such permitting requirements exist.

**4.07.8 Compliance with Laws and Governing Documents.** Each applicant is solely responsible for insuring that, and nothing in the Governing Documents or any written decision of the ACC shall be construed as a covenant, representation, guaranty, or warranty that, any proposed Regulated Modification will be in compliance with applicable governmental laws, ordinances, or regulations (including building codes or permit or licensing requirements), or with applicable requirements of the Governing Documents except as provided in Section 4.05.2.

**SECTION 4.08 Inspection Rights.** Upon reasonable notice (oral or written), any Member of the ACC or the Board of Directors or their designated representatives may enter upon a Building Site without liability for trespass or otherwise for purposes of confirming compliance with any applicable provisions of the Governing Documents regarding a proposed Regulated Modification, the work in progress, and the completed Regulated Modification. Except for gross negligence, willful misconduct, or knowing violation of the law, the Owner of any Building Site so inspected by the ACC is not liable for any personal injuries, death, or property damage of or to any person or entity performing such inspection.

**SECTION 4.09 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 (4) years. The ACC must also maintain a record of all current Architectural Guidelines, and must provide copies to Owners upon written request and at the Owner's expense.

**SECTION 4.10 Liability of Architectural Control Committee.** Except as provided in Section 3.06, neither the Association nor the ACC, nor their respective Related Parties are liable to any Owner, the Owner's tenants, the Related Parties of either, or to 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 judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Architectural Guidelines may ever be construed as representing or implying that, or as a covenant, representation, 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 3.06.

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**ARTICLE V. Maintenance Funds**

**SECTION 5.01 Obligation for Payments to Maintenance Funds.**

5.01.1 Establishment of Maintenance Funds. There is hereby established a Maintenance Fund in to 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.

5.01.2 Types of Obligation for Payment of Assessments. Each Owner of a Building Site, by acquisition of any rights, title, or interest therein or acceptance of an executory contract of conveyance, or a deed or other instrument of conveyance therefore, whether or not so expressed therein, covenants and agrees to pay to the Association regular or annual assessments, utility assessments, special assessments and specific assessments, all as herein set forth.

5.01.3 Purpose of Maintenance Funds. The Maintenance Fund must be used exclusively for the purpose of promoting the recreation, welfare, common benefit and enjoyment of the Owners and occupants of the Subdivision, including the maintenance of all Community Properties (including any maintenance required by the City or other governmental entity, but excluding Exclusive 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 judgment of the Board the Subdivision will benefit thereby. The judgment of the Board in establishing any assessments and in the collection, management, and expenditure of the Maintenance Fund is final and conclusive.

5.01.4 Personal Obligation; Transferees. In addition to the assessment lien herein established, each assessment is the personal obligation of each Owner of the Building Site charged therewith at the time liability for the assessment accrued notwithstanding any subsequent transfer of ownership. Except as provided in Section 5.07.3, each Owner's transferee, whether by purchase, gift, devise, or otherwise, and whether voluntary or by operation of law, is also jointly and severally liable for payment of all unpaid assessments owed to the 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.

5.01.5 Statement of Assessments. Any transferee (or prospective transferee upon presentment of an executed 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 request must be in

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writing, must be addressed to the Association and must be delivered by registered or certified mail, return receipt requested, or by personal delivery with receipt acknowledged in writing. The 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.

**SECTION 5.02            Administration of Maintenance Fund.**

5.02.1 Assessment and Payment of Regular Assessments. Regular assessments are assessed on a monthly basis. **EXCEPT AS OTHERWISE DETERMINED BY THE BOARD, REGULAR ASSESSMENTS ARE DUE AND PAYABLE ANNUALLY, IN ADVANCE, ON OR BEFORE THE FIRST DAY OF JANUARY OF EACH CALENDAR YEAR.** The Board may elect to collect regular assessments on a semi-annual, quarterly, or monthly basis in which case such assessments shall be due and payable, in advance, on or before the first day of the applicable period.

5.02.2 Uniform Rates for Regular and Special Assessments. Except as provided in Section 5.02.3, regular and special assessments on all Building Sites must be fixed at a uniform rate, and must be determined on a per Building Site basis.

5.02.3 Declarant Rates; Construction Period Rates.

(a) Until the first day of the month following expiration or termination of the Development Period, Declarant and Builders are obligated to pay assessments only as provided in Section 12.08. Thereafter, Declarant and Builders will pay regular assessments and special assessments at the rate of one-half (1/2) of the full rate of assessment otherwise applicable as to any Building Site then owned or thereafter owned by Declarant or Builder.

(b) Any Owner (excluding Builders) who acquires ownership of an undeveloped or partially developed Building Site from Declarant or a Builder will pay regular and special assessments at the Construction Period Rate until the first day of the month following termination of the Construction Period. Utility assessments shall be paid at the full rate otherwise applicable during and after the Construction Period. The "Construction Period" begins on the first day of the month following the date of conveyance of the applicable Building Site by Declarant or a Builder to an Owner other than Declarant, in whole or in part, and ends on the earlier to occur of (i) the date upon which initial construction of a single-family Residence is substantially completed and the Residence is ready for occupancy as determined in the sole good faith opinion of the ACC, or (ii) one (1) year after the date of conveyance of the applicable Building Site by Declarant or a Builder.

(c) The Construction Period Rate is zero during the first twelve (12) months, or part thereof, of the Construction Period and one-half (1/2) of a full rate of regular and/or special assessment rate otherwise applicable during the last six (6) months of the Construction Period, or part thereof. Upon termination of the

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Construction Period, the Owner shall thereafter pay the full rate of assessments. If assessments have been paid in advance upon termination of the Construction Period, the Owner shall also then pay any additional assessments due by reason of application of the full rate of assessments prorated from the first day of the month following termination of the Construction Period.

(d) If Declarant or a Builder reacquires ownership of any Building Site before or after termination of the Construction Period, then the provisions of subsection (a) above again apply, and Declarant may thereafter again convey the Building Site subject to payment of assessments during the Construction Period as above provided.

5.02.4 Application of Payments. All payments made by or on behalf of an Owner for assessments (regular, utility, special, specific) are 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 5.07.1, (ii) then to payment of all utility assessments, (iii) then to payment of all special assessments; and (iv) finally, to payment of all regular assessments. Application within each category shall be on a first-in, first-out basis.

**SECTION 5.03                      Base Rate and Subsequent Computation of Regular Assessments.**

5.03.1 Initial Base Rate of Regular Assessment. The full initial base rate of the regular assessment per Building Site (and continuing during construction and thereafter unless modified as herein provided) is \$1980.00 per Building Site per year, assessed at the rate of \$165.00 per Building Site per month. **UNLESS AND UNTIL OTHERWISE DETERMINED AS HEREIN PROVIDED, REGULAR ASSESSMENTS ARE DUE AND PAYABLE ANNUALLY IN ADVANCE ON THE DAY OF INITIAL CLOSING AND THE SAME DATE EACH CALENDAR YEAR.**

5.03.2 Subsequent Computation of Regular Assessments. The annual rate of regular assessment per Building Site as specified by Section 5.03.1 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 the succeeding twelve (12) month period (including funding of capital, contingency, and other reserves). The Board shall set the annual rate of regular assessments based on the budget, and determine whether same will be payable annually, semi-annually, quarterly, or monthly. At least thirty (30) days written notice of such determinations must be given to Owners of all Building Sites if any change is made as to the due dates or amount of the annual rate of regular assessment. **THE FOREGOING NOTICE REQUIREMENT DOES NOT APPLY DURING ALL PERIODS OF TIME DURING WHICH A**

**DELINQUENT ASSESSMENT ACCOUNT HAS BEEN TURNED OVER TO AN ATTORNEY FOR PROCEEDINGS TO COLLECT SAME.**

(b) After the end of the Development Period, any change in the amount of the annual rate of regular assessment 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 one-third (1/3) of the Building Sites then contained in the Subdivision and the vote to disapprove of the Owners of at least two-thirds (2/3rds) of the Building Sites then contained in the Subdivision voting in person or by proxy at the special meeting. The petition to disapprove must be submitted to the Association not later than the thirtieth (30<sup>th</sup>) day after the date of the notice to Owners given as required by Section 5.03.2(a). If a petition to disapprove is properly submitted, the Board shall call and conduct the special meeting within sixty (60) days after the date of the notice. Notice of the results of the special meeting must be given to Owners of all Building Sites not later than the thirtieth (30<sup>th</sup>) day after the date of the special meeting. **NOTWITHSTANDING FILING OF A PETITION TO DISAPPROVE AS AFORESAID, ALL OWNERS MUST NONETHELESS PAY ASSESSMENTS IN ACCORDANCE WITH THE NOTICE GIVEN UNDER SECTION 5.03.2(a).**

(c) After the end of the Development Period, a petition to disapprove fails if either the Owner of two-thirds (2/3rds) of the Building Sites then contained in the Subdivision do not approve the petition or a quorum is not obtained at the applicable special meeting in person or by proxy. If a petition to disapprove is approved, the amount of the annual rate of regular assessment in effect immediately prior to giving of the notice required by Section 5.03.2(a) will continue in effect; and in such event the notice of results of the special meeting must either refund or charge to Owners, without interest, in accordance with the change in the amount of the annual rate of regular assessment disapproved by Owners. Any such charge is due and payable not later than the thirtieth (30<sup>th</sup>) day after the date of the notice setting forth same.

**SECTION 5.04**      **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 a notice of an annual rate of regular assessment or due date for payment thereof does not constitute a waiver, modification, or release of an Owner's obligation to pay assessments as otherwise herein provided. Once established, an annual rate of regular assessment and the due date or dates for payment thereof continues in effect from year to year and the Owners are obligated to pay such regular assessments accordingly unless and until a new annual rate of regular assessment is established as herein provided.

**SECTION 5.05**      **Special Assessments.** In addition to the other assessments authorized herein and in addition to the special assessment authorized by Section 6.01.4, the Board may levy special assessments at any time during each fiscal year for purposes of defraying, in whole or in part, any 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 BUILDING SITE DOES NOT EXCEED FIVE HUNDRED DOLLARS (\$500.00) IN ANY ONE FISCAL YEAR, THE BOARD MAY IMPOSE THE SPECIAL ASSESSMENT WITHOUT VOTE OR APPROVAL OF ANY OWNER; PROVIDED, AT LEAST SIXTY DAYS' WRITTEN NOTICE MUST BE GIVEN TO ALL OWNERS OF ANY SUCH SPECIAL ASSESSMENT, AND THE OWNERS MAY DISAPPROVE SAME IN THE MANNER PROVIDED IN SECTION 5.03.2 FOR DISAPPROVAL OF A CHANGE IN THE ANNUAL RATE OF REGULAR ASSESSMENT. Special assessments allocable to each Building Site exceeding the foregoing limitation will be effective only if approved by the Owners of a majority of the Building Sites 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 5.06      Specific Assessments.**

5.06.1 Types. Specific assessments must be assessed against individual Building Sites and the Owner(s) thereafter at the time liability for same accrues as follows:

(a) Interest. Interest compounded monthly from the due date at the rate of the lesser of eighteen percent (18%) per annum or the maximum legal rate will be charged on all delinquent assessments, regular, special, or specific, which are not paid in full within thirty (30) days after the due date.

(b) Late Charges. Late charges in such reasonable amounts 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 (30) days after payment of same is due.

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

(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 rent as determined by the Board for the use of the Building Site and improvements thereon during the period of foreclosure, and the Board at its election is entitled to a receiver to collect same. The "period of foreclosure" commences on the date of posting for foreclosure in the event of non-judicial foreclosure, or on the date of entry of judgment granting foreclosure in the event of judicial foreclosure. The "period of foreclosure" continues through the first day of the

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month following the date of acquisition of actual possession 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 or several but not all Building Sites must be assessed against the applicable Owner(s). Such charges may include without limitation reasonable charges for:

- (i) providing a statement of assessments or indebtedness;
- (ii) providing a resale certificate or similar responses to requests for information;
- (iii) a transfer fee to reflect changes of ownership, refinancing, tenancy or occupancy on the records of the Association;
- (iv) fines for any violation of any provisions of this Declaration or other Governing Documents;
- (v) charges for processing of applications for architectural approval, including as provided in Section 4.02.2(b);
- (vi) submetered water usage assessments;
- (vii) admission or usage fees applicable to Community Properties;
- (viii) insurance in accordance with Section 6.02.5; and
- (ix) any other charges otherwise permitted or authorized by law including without limitation as permitted or authorized by Chapter 204 of the Texas Property Code.

5.06.2 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 is not grounds for any action against the Association, or any Director, officer, agent, or employee thereof, and does not constitute a waiver of the Association's right to exercise its authority to collect any specific assessments in the future. For good cause shown as determined in the sole opinion of the Board, the Board may waive, wholly or partially, imposition of any specific assessment; provided, any such waiver is conditioned upon

payment in full of all remaining monetary obligations then owed to the Association or receipt of written commitment that same will be paid within a specified period of time.

5.06.3 Usury Savings Clause. Notwithstanding any provisions to the contrary in this Declaration and any other Governing Documents, and any other documents, transactions, and commitments pertaining thereto, whether written or oral or expressed or implied, nothing shall require the payment or permit the contracting for, collection or receipt of interest in excess of the maximum amount permitted by law. If any such excess interest is provided for, or shall be adjudicated to be provided for, in any of the Governing Documents or in any document executed in connection therewith, then such is a mistake in calculation or wording and in such event (i) the provisions of this Section shall override, govern, and control, (ii) the excess interest shall be automatically cancelled, (iii) no Owner or other liable Person ("Liable Party") shall be obligated to pay the amount of such excess, (iv) any such excess interest which may have been received shall be first applied as a credit against the then unpaid principal amount owed by the Liable Party, and the excess, if any, shall be credited to the assessment account of or refunded to the Liable Party, and (v) the effective rate of interest shall be automatically reduced to the maximum lawful contract rate allowed under the usury laws of the State of Texas or applicable federal law, as they now exist or may be hereafter amended. Further, without limitation of the foregoing, all calculations of the rate of interest contracted for, charged, or received under this Declaration and any other Governing Documents, or under any document executed in connection therewith, shall be made, to the extent permitted by the laws of the State of Texas or applicable federal law, by amortizing, prorating, allocating, and spreading in equal parts during the applicable period all interest at any time contracted for, charged, or received from any Liable Party.

## **SECTION 5.07      Lien for Assessments.**

5.07.1 Establishment of Lien. All sums asserted against any Building Site pursuant to this Declaration, whether by regular, special, or specific assessments provided herein, are secured by a continuing lien on such Building Site in favor of the Association.

5.07.2 Perfection of Lien. The recordation of this Declaration constitutes record notice and perfection of the Association's continuing lien, effective from the date of recordation of this 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 Official Public Records of Real Property of Harris County, written notice of default in payment of assessments in such form as the Board may direct.

5.07.3 Priority of Lien. The Association's continuing lien is superior to all other liens of encumbrances of each Building Site except:

(a) a lien for real property taxes and other governmental assessment or charges on a Building Site (a "Tax Lien") to the extent so required by law but not otherwise (it being the intent hereof that the Association's continuing lien is superior to any Tax Lien if permitted by law, including Section 32.05 of the Texas Tax Code);

(b) a lien securing payment of purchase money for a Building Site or work and materials used in constructing improvements on a Building Site (a "First Lien"), (i) as to and only as to assessments (regular, special, or specific) the obligation for payment of which accrues from or after the applicable First Lien is duly recorded in the Official Public Records of Real Property of Harris County, Texas, and (ii) as to and only to the extent of unpaid sums secured by such First Lien;

(c) an extension of credit (commonly known as a home equity loan) made in accordance with and pursuant to Section 50(a)(6), Article XVI, of the Texas Constitution, as amended;

(d) a reverse mortgage made in accordance with and pursuant to Section 50(a)(7), Article XVI, of the Texas Constitution, as amended, and

(e) such other mortgages, deeds of trust, liens, or other encumbrances to which the Board may from time to time by written agreement specifically and expressly agree, subject to such terms and conditions as set forth in the applicable written agreement.

5.07.4 Other Liens. Except as provided in Section 5.07.3 or as otherwise expressly provided herein, all other Persons acquiring liens or encumbrances on any Building Site are deemed to consent that such liens or encumbrances are inferior to the Association's lien for assessments, as provided herein, whether or not consent is specifically set forth in, and notwithstanding any contrary provisions in, any instruments creating such liens or encumbrances.

## **SECTION 5.08 Effect of Nonpayment of Assessments.**

5.08.1 Delinquency Date. Any assessments which are not paid by the due date are delinquent as of midnight on the due date.

5.08.2 Automatic Remedies. Except to the extent otherwise expressly agreed in writing by the Board, if any assessments are not paid by the due date, then:

(a) late charges, interest from the due date, and all compliance costs (including reasonable attorney's fees), all as set forth in Section 5.07, shall be added to and included in the amount of such assessment; and

(b) all voting rights of the Owner and all rights to use of all recreational facilities by the Owner, their tenants, and their respective Related Parties

will be automatically suspended until all assessments (including all specific assessments) are paid in full.

5.08.3 Elective Remedies after Notice. If any assessments are not paid within thirty (30) days after the due date, then the Association may elect to exercise any or all of the following remedies without prejudice to any other rights or remedies, provided that notice and opportunity to be heard is first given:

(a) Acceleration of Assessments. The Association may accelerate, through the end of the year in which notice of default is given and for an additional twelve-month (12) period thereafter, all regular assessments, and any installments for utility, special or specific assessments due or to become due during said period.

(b) Suspension of Services. In addition to automatic suspension of rights to use of recreational facilities as above provided, the Association may suspend until all assessments (including utility specific assessments and accelerated assessments, if any) are paid in full all other rights of the delinquent Owner, the Owner's tenants, and the Related Parties of either, to the usage of any and all other Community Properties and/or Subdivision Facilities.

(c) Impoundment of Rents. The Association may impound all rental income of the defaulting Owner as to the Building Site as to which assessments are delinquent. In the event of impoundment of rents, the affected Owner's tenant must pay all rentals coming due after notice is given of the impoundment to the tenant until otherwise notified in writing by the Association. In the event of impoundment of rents, the Association will continue to collect the rents and apply same to payment of assessments until all delinquent assessments (regular, utility, special or specific, and including accelerated assessments, if any) are paid in full. After the Association is paid in full, it will notify the affected Owner and their tenant of such payment in full and at such time remit any surplus in collected rents to the affected Owner, without interest.

#### 5.08.4 Action for Debt; Foreclosure.

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

(b) By written resolution, 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, including without limitation to deliver and file the notices required by Section 51.002 of the Texas Property Code (as amended), to conduct the sale and to otherwise comply with said statute. By written resolution, the Board 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 Building Site at any foreclosure sale, and to acquire, hold, lease, mortgage, or convey the same.

(c) The filing of suit to collect any sums due hereunder or to foreclose the Association's continuing lien for 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 former 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 maintained by the purchaser(s).

(d) Each Owner, by acquisition of any Building Site within the Subdivision or right, title, or interest therein, specifically covenants and stipulates as to each and every Trustee's foreclosure sale that the recitals in any appointment or designation of Trustee, any conveyance by the Trustee and any affidavit of the Trustee or the Association related thereto shall be full proof and evidence of the matters therein stated, all prerequisites of the foreclosure sale shall be presumed to have been performed, and the foreclosure sale made under the powers herein granted shall be a perpetual bar against the Owner(s) of the Building Site(s) sold and their heirs, executors and administrators, successors and assigns, and any Persons whatsoever claiming or to claim thereunder.

5.08.5 Extinguishment of Inferior Liens; Revival of Assessment Lien. Foreclosure of the Association's continuing lien for assessments terminates, extinguishes, and forever discharges all inferior or subordinate liens and encumbrances (being all liens and encumbrances except as provided by Section 5.07.3) as to the affected Building Site. The foregoing applies to judicial and non-judicial foreclosure of the Association's continuing lien for assessments regardless of whether or not the holder of the inferior or subordinate lien or encumbrance is made a party to or given notice of any proceedings in connection therewith, including without limitation, whether or not made a party to or given notice of any judicial foreclosure suit and any other proceedings in connection therewith. Notwithstanding the foregoing, if a defaulting Owner reacquires a Building Site within two (2) years after foreclosure upon the Building Site by the Association or by any Person holding a lien superior to the Association's continuing lien, then the Association's lien shall be automatically revived at the time of reacquisition of ownership, effective as of the date before the applicable foreclosure and as to any assessments and any other indebtedness remaining due and unpaid to the Association.

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**SECTION 5.09 Effect of Foreclosure or Bankruptcy.** The effect of judicial or non-judicial foreclosure of a lien which is superior to the Association's continuing assessment lien under this Declaration, or acceptance of a deed in lieu thereof, and the effect of the discharge of an Owner in bankruptcy is determined as of the first day of the month following the date of foreclosure, the date of signing of a deed in lieu which is accepted by the grantee or the date of filing of the bankruptcy in which the Owner is discharged, as the case may be (the "Discharge Date"). Foreclosure or acceptance of a deed in lieu does not relieve the former Owner from the personal obligation for payment of assessments due as of the Discharge Date, but does release the Association's continuing assessment lien as to and only as to said assessments except as otherwise provided in Section 5.07.3. The purchaser at foreclosure or grantee under a deed in lieu and an Owner discharged in bankruptcy is obligated to pay all assessments assessed or assessable from and after the Discharge Date, and the Association's continuing assessment lien fully secures payment of said assessments. For purposes of the foregoing "assessments assessed or assessable" means (i) prorated regular annual assessments based on the number of months remaining in the calendar year in which the Discharge Date occurs regardless of whether the applicable regular annual assessment is payable in advance annually, semi-annually, or quarterly, and (ii) any installments for special or specific assessments so payable which become due after the Discharge Date.

**SECTION 5.10 Assessment as Independent Covenant.** The obligation to pay assessments is a separate and independent covenant and contractual obligation on the part of each Owner. No off-set, credit, waiver, diminution, or abatement may be claimed by any Owner to avoid or diminish the obligation for payment of assessments for any reason, including, by way of illustration, but not limitation (i) by nonuse of any Community Properties or abandonment of a Building Site, (ii) by reason of any alleged actions or failure to act by the Association, or its officers, Directors, agents, or employees, whether or not required under this Declaration or other Governing Documents, (iii) for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or (iv) by reason of any action taken by the Association, or its officers, Directors, agents, or employees to comply with any law, ordinance, or any order or directive of any governmental authority, or pursuant to any judgment or order of a court of competent jurisdiction.

**ARTICLE VI. Maintenance, Insurance, Casualty Losses, and Condemnation.**

**SECTION 6.01 Association Responsibilities.**

**6.01.1 General.**

(a) The Association will maintain the Community Properties (excluding of Exclusive Community Properties) and keep same in good repair; this maintenance includes, without limitation, maintenance, repair, and replacement of all landscaping and improvements situated on the Community Properties (excluding Exclusive Community Properties).

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(b) The Association will mow, trim, edge and weed lawn and landscape areas upon each Building Site located outside the front footprint of the Residence thereon which is visible from any street, and which is not located in an area which has been enclosed by Building Site Line Fencing (as defined in Section 8.09) as may be approved in accordance with Section 8.09. Such maintenance will not include replacing dead or damaged landscaping (which will be the responsibility of the Owner of the Building Sites), unless the damage to the landscaping was caused by the Association. The Association may also maintain such other lawn and landscape areas in such manner as from time to time approved by the Board. Nothing shall be done in any such areas maintained by the Association which may or does increase the cost of maintenance without prior written approval of the Board. The Board may specifically assess any added costs of maintenance to the responsible Owner(s).

6.01.2 Access and Other Rules and Regulations. Owners shall comply with all directives and decisions of the Board in providing access for, and as to all other aspects of, all maintenance to be provided pursuant to this Section 6.01, and otherwise fully comply with requests and directives of the Board and applicable Rules and Regulations.

6.01.3 Casualty to Community Properties. In the event of damage to Community Properties by fire or other casualty, or if any governmental authority requires any repair, reconstruction, or replacement as to same, the Association must perform the work necessitated thereby (the "Casualty Work"). The Casualty Work must be such as will substantially restore the Community Properties to its condition prior to the casualty or as required by the governmental authority. Any insurance proceeds payable as to the Casualty Work must be paid to the Association. **IF FUNDS FROM INSURANCE PROCEEDS AND FROM THEN AVAILABLE RESERVES ARE INSUFFICIENT TO PAY ALL COSTS OF THE CASUALTY WORK, THE BOARD MAY LEVY A SPECIAL ASSESSMENT TO MAKE UP THE DEFICIENCY WITHOUT THE CONSENT OF ANY OWNER OR OTHER PERSON. THE AMOUNT OF ANY SUCH SPECIAL ASSESSMENT IS NOT SUBJECT TO THE FIVE HUNDRED DOLLAR (\$500.00) LIMITATION SET FORTH IN SECTION 5.05.** Except as otherwise required by a governmental authority or by law, the provisions of this Section may be modified or varied as to any particular Casualty Work by vote of the Owners of two-thirds (2/3rds) of the Building Sites then subject to this Declaration at a special meeting called for that purpose.

6.01.4 Owner's Liability for Payment of Association Costs. Each Owner, their tenants, and their respective Related Parties are expressly prohibited from doing anything which (i) could increase the Association's costs of insurance or result in cancellation or diminution in coverage, or (ii) could or does cause damage to or increase costs of maintenance, repair, replacement, management, or operation of, any Community Properties (including Subdivision Facilities). Regardless of availability of insurance coverage, the Association may charge to each responsible Owner, as a specific assessment, all increased costs of insurance and all costs of maintenance, repair, replacement, management or operation and all other damages resulting, directly

or indirectly, from the acts or omissions of an Owner, their tenants, or their respective Related Parties.

**SECTION 6.02            Owner Responsibilities.**

6.02.1 General. Except as otherwise expressly stated in Section 6.01, all maintenance of each Building Site (and adjacent Exclusive Community Properties belong to the Building Site) and all improvements thereon (including, but not limited to, the Residence, and its driveways, pavers, fences, irrigation systems, roofs, foundations and all exterior surfaces, materials and other improvements) is the sole responsibility of the Owner(s) thereof. Each Owner must maintain their Building Site (and adjacent Exclusive Community Properties belong to the Building Site) and all improvements thereon at all times in such manner as to obtain and maintain Prevailing Community Standards on a continuing basis as may be more specifically determined by this Declaration and other Governing Documents, including as determined from time to time by duly adopted Architectural Guidelines and Rules and Regulations. Such maintenance also includes a requirement that (i) all gas lamps must be properly maintained and always lit, (ii) burned out exterior light bulbs must be replaced and left on in keeping with the Prevailing Community Standard, and (iii) pests, including rodents and pigeons that nest in roofs must be removed by the Owner. All maintenance and/or replacements by an Owner must be performed in a like kind manner (including materials, size, color and stairs) unless otherwise specifically agreed to in writing by the Board.

6.02.2 Utilities. The Owner of each Building Site must maintain all sanitary sewer lines and facilities, drainage, or storm water lines and facilities, water pipelines, water sprinkler system, water meters and related water lines and facilities, electrical and gas lines, meters and facilities, telephones, and any other telecommunication lines, devices or facilities, and all other facilities, utilities, and services which exclusively service each Building Site (the "Owner Utilities"), regardless of the location of the Owner Utilities, save and except to the extent maintenance of any Owner Utilities is provided and actually performed by any governmental entity or utility company.

6.02.3 Landscaping. Owners must replace all dead or damaged landscaping on their Building Site visible to public view with "like kind" landscaping. All grass, shrubbery, trees, flower beds, vegetation, and all other landscaping, either natural or artificial, in the back yard of each Building Site must be maintained at all times in accordance with the season as reasonably necessary to obtain and maintain Prevailing Community Standards, including as reasonably necessary to maintain on a consistent and continuing basis a sanitary, healthful, and attractive condition and appearance, and including, without limitation:

- (a) regular cutting, mowing, and edging of grass such that the grass does not grow to more than six inches (6") in height in the backyard

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(b) regular trimming and pruning of trees, hedges, bushes, and similar vegetation in the backyard, including as required to maintain unobstructed use of sidewalks, driveways, and streets to a height of at least nine feet (9') above the sidewalk, driveway, or street;

(c) such other maintenance as required to eliminate any condition which may create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests.

6.02.4 Annual Observations and Maintenance. Without limitation of an Owner's obligation for continuing maintenance as otherwise provided herein, each Owner is responsible for conducting at least annual observations and inspections of the Owner's Building Site and all improvements thereon to ascertain all maintenance and other work needed to obtain and maintain Prevailing Community Standards, including full compliance with this Section 6.02. The observations and inspections must include without limitation (i) foundations and flatworks, (ii) roofs, (iii) all wood works, including window and door frames, and (iv) all guttering, downspouts, grading and all other matters needed to ensure positive drainage from foundations to promote rapid runoff, to avoid collecting ponded water near any structure which could migrate down any soil/foundation interface and to minimize infiltration of water from rain and lawn watering, and to prevent drainage from one Building Site to another Building Site or to Community Properties. Each Owner must promptly perform all work which each annual observation and inspection indicates is reasonably necessary.

6.02.5 Required Owner's Insurance. **OBTAINING OF LIABILITY AND PROPERTY INSURANCE REGARDING AND FOR EACH BUILDING SITE AND ALL IMPROVEMENTS THEREON (INCLUDING RESIDENCES AND APPURTENANT STRUCTURES AND THE CONTENTS THEREOF) IS THE SOLE RESPONSIBILITY OF THE OWNER THEREOF.** The Board may, from time to time, establish Rules and Regulations regarding minimum insurance requirements applicable to each Building Site, including forms and types of insurance, and amounts, deductibles, limits, and similar matters. In such event, the Board may require Owners to provide satisfactory proof of compliance. Should such Rules and Regulations be adopted by the Board and an Owner fail to purchase such required insurance, the Association may purchase the required insurance on behalf of an Owner that failed to provide such proof of purchase. **NOTWITHSTANDING ANY SUCH RULES OR REGULATIONS OR ANY OTHER CIRCUMSTANCES, THE ASSOCIATION HAS NO DUTY WHATSOEVER TO INQUIRE AS TO MAINTENANCE OF INSURANCE OR TO PROVIDE INSURANCE COVERAGE OF ANY KIND AS TO ANY BUILDING SITE, OR ANY IMPROVEMENT THEREON, OR AS TO ANY OCCUPANT THEREOF.**

6.02.6 Repair or Replacement Required.

(a) Whether or not insured, all damage or destruction by fire or other casualty to all or any portion of a Residence and/or its appurtenant garage as originally constructed on a Building Site must be repaired or replaced by the Owner thereof within seventy-five (75) days after such damage or destruction; or, where repairs

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or replacements cannot be completed within seventy-five (75) days, they must be commenced within such period and completed within a reasonable time thereafter as determined by the ACC. For good cause shown, the ACC may extend the foregoing periods.

(b) Whether or not insured, all damage or destruction by fire or other casualty to any building, structure, improvement, and any other type of Regulated Modification other than as covered by Section 6.02.6(a) must either be repaired as provided in Section 6.02.6(a) or be razed or removed in its entirety from the affected Building Site and the Subdivision. In the latter event, the Building Site must also be properly restored such that after razing or removal Prevailing Community Standards are maintained.

(c) The provisions of Article IV apply to all work and any other activities pursuant to the requirements of this Section. In the event of noncompliance with this Section, the Association has all enforcement powers permitted by law and this Declaration, including, without limitation, the right to seek specific performance and/or to invoke the powers specified in Section 6.03 of this Declaration

6.02.7 Water Usage. All toilets, faucets (including outside faucets), sinks, dishwashers, washing machines, and all other plumbing and other water-related facilities which service a Building Site and any improvements thereon must be regularly inspected and properly maintained at all times to prevent water leakage, excess water usage and any other waste of water. Nothing shall be done and no condition shall be permitted which may or does cause water leakage, excess water usage or waste of water. If, in the opinion of the Board, any violation of this Section may or does exist, the Board may install, or require the Owner of the applicable Building Site to install, such devices as may be reasonably required to monitor water usage, may require specific modifications, replacements and/or repairs to specific water-related facilities and may take such other action as the Board deems appropriate to prevent water leakage, excess water usage and/or any other waste of water, including without limitation, as provided in Section 6.03. Regardless of negligence, each Owner is obligated to pay, as a specific assessment, all costs attributable to the Owner's Building Site for increase of costs and costs of modification, replacements, and repairs resulting from any water leakage, excess water usage, or waste of water.

6.02.8 Disturbance of Community Properties. In the event the performance of any Owner's maintenance responsibilities requires that any portion of the Community Properties be modified, removed, or disturbed, then such Owner must first obtain the written consent of the ACC as to same. All such work must be performed, at the option of the Association, either under the supervision of the Association in accordance with plans and specifications, approved by the ACC, or by the Association at the reasonable expense of the Owner. If the Association performs the work at the expense of the Owner, the ACC may require a security deposit or advance payment of all of the estimated expenses which the Owner must pay upon demand. Such indebtedness will be added to and become a part of the specific

assessment to which such Owner and the Owner's Building Site is subject, and is secured by the continuing lien hereby established against such Owner's Building Site.

6.02.9 Adjacent or Adjoining Owners; Common Fences. No Owner or their tenant will be allowed any condition to exist or fail or neglect to provide any maintenance which adversely affects any adjoining or adjacent Building Site, any Community Properties, or any improvements on any such Building Site or the Community Properties. All maintenance, repair, or replacement of Building Site Line Fencing (as defined in Section 8.09) as may be approved in accordance with Section 8.09 which separates adjoining Building Sites, or which is otherwise shared in common by two adjoining Building Sites, is the joint responsibility of, and the costs thereof shall be shared equally by, the adjoining Owners.

6.02.10 Dispute Resolution Among Owners.

(a) Any disputes among Owners regarding any rights or responsibilities pursuant to this Article and Article IX may be submitted in writing to the Board. The Board also has full authority to direct submission of any dispute to the Board in writing. After notice and opportunity to be heard, the Board has full authority to resolve all such disputes, and its decisions as to same are final. The Board's authority includes without limitation (i) the right to direct the completion of any maintenance, repair, or replacement and to allocate costs thereof among the disputing Owners, (ii) to authorize one of the disputing Owners or a third party to control the completion of the maintenance, repair, or replacement, (iii) to order the disputing Owners to mediation or arbitration through a county dispute resolution center or similar organization or under the Rules of the American Arbitration Association, and (iv) to allocate among the disputing Owners all costs of the maintenance, repair, or replacement and all costs (including attorney's fees) incurred in the dispute resolution process.

(b) Each disputing Owner must pay their allocated share of compliance costs (including attorney's fees) within thirty (30) days after receipt of a statement for payment thereof. A final cost statement may be submitted by the Board or may be submitted by disputing Owners to the Board for resolution as above provided. If any Owner fails to pay their allocated costs as aforesaid, all such costs shall automatically be assessed as a specific assessment against the defaulting Owner as provided in Section 6.03. If one Owner has prepaid allocated costs of another and the prepaid sum is later collected by the Association, that sum (without interest if any) will be reimbursed to the Owner who prepaid same. All rights and remedies under this Section are cumulative.

**SECTION 6.03** Right of Entry and Inspection; Owner's Default. In the event the Board or ACC determines that (i) an Owner may have or has failed or refused to discharge properly the Owner's maintenance obligations as provided in this Article and Article IX, or (ii) the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder may have or has been caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective

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Related Parties, then the Association may conduct inspections of any affected Building, the exterior of the Residence, and all other buildings thereon, and all other structures and improvements thereon (a "Compliance Inspection") and/or perform the repair, replacement, or maintenance (the "Required Work") in accordance with the following:

(a) If the Board or ACC determines that a violation of this Article and Article IX may exist, the Board, ACC, and their Related Parties may enter a Building Site, the exterior of the Residence and all other buildings thereon, and all other structures and other improvements thereon to inspect same and to conduct such investigative work as may be reasonably required to confirm that a violation does or does not exist. Except in the event of an Emergency, the Association must give written notice of the Association's intent to conduct a Compliance Inspection. The notice must state generally the nature of the suspected violations. The notice must also state the name, address, and telephone number of a contact with whom to schedule a date and time for the inspection within ten (10) days of the date of the notice (or such longer time as may be stated in the notice), and must state if a date and time is not so scheduled the Compliance Inspection may be conducted at any time within a specified period of time thereafter (which period of time may not exceed a ten (10) day period within thirty (30) days after expiration of the scheduling period).

(b) Except in the event of an Emergency, the Association must give written notice to the Association's intent to provide Required Work. The notice must set forth the Required Work with reasonable particularity. The Owner of the Building Site to which the notice of Required Work pertains will have ten (10) days within which to complete the Required Work as set forth in this notice, or, in the event the Required Work is not capable of completion within a ten (10) day period, to commence the Required Work within ten (10) days and to complete same within a reasonable time not to exceed thirty (30) days unless otherwise specifically approved by the Board or ACC. The affected Owner must give written notice of the intent to commence the work and of the completion of Required Stating in detail the Required Work which has been completed. The Board or ACC, through their Related Parties, may also conduct a Compliance Inspection to conform completion of all Required Work.

(c) A Compliance Inspection notice and a notice as to Required Work must be delivered or mailed to the street address of the affected Building Site and the Owner's last known address provided by the Owner in accordance with this Declaration for purposes of notice, if any.

(d) If any Owner fails to schedule an inspection pursuant to a Compliance Inspection notice, the Association has the right (but not the obligation), through its Related Parties, to enter a Building Site and thereupon to conduct the inspection as provided in Section 6.03(a). If any Owner fails fully to comply with a notice as to Required Work, the Association has the right (but not the obligation), through its Related Parties, to enter upon the Building Site and to do all things upon the Building Site, to the exterior of the Residence and all buildings, and as to any structures

and other improvements located thereon to commence and complete the Required Work.

(e) In case of Emergency, the Association has the right (but not the obligation), through its Related Parties to immediate entry upon a Building Site and to otherwise immediately exercise all rights and remedies authorized by this Section as is reasonably necessary in the sole opinion of the Board or ACC to abate the Emergency, without prior notice. Upon abatement of the Emergency applicable provisions of this Section will then again apply.

(f) The good faith determination by the Board or ACC as to the need for a Compliance Inspection and as to all aspects of Required Work is final and conclusive, and extends to any thing or condition as to such Building Site or which adversely affects any other Building Site or Community Properties. Neither the Association nor any of its Related Parties may be held liable for trespass or any other tort or claim for damages in connection with any actions or failure to act pursuant to this Section. The provisions hereof are cumulative of the provisions of Section 3.06.

(g) All reasonable costs and expenses as to conducting of a Compliance Inspection if a violation is confirmed and in all events as to all aspects of Required Work which is performed by the Association pursuant to this Section, as determined in the sole opinion of the Board or ACC, will be added to and become a part of the specific assessment to which such Owner and the Owner's Building Site is subject, and is secured by the continuing lien hereby established against such Owner's Building Site.

(h) The provisions of this Section also apply to any other violations of the Governing Documents as provided in Section 11.02.

**SECTION 6.04 Association Insurance.** To the extent reasonably available, the Board or its duly authorized agents has the authority to obtain, with such deductibles as the Board may determine, the following insurance coverage or substantial equivalent, and to pay all premiums and other costs thereof from the Association Maintenance Fund:

(a) property insurance on all insurable Community Properties insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least eighty percent (80%) of the replacement cost or actual cash value of the insured property as of the effective date and at each renewal date of the policy (exclusive of land, foundations, or slabs, excavations and such other items usually excluded from insurance coverage);

(b) commercial general liability insurance, including medical payments insurance, in an amount determined by the Board covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Community Properties;

- (c) worker's compensation to the extent required by law; and
- (d) such other insurance as the Board deems appropriate.

**SECTION 6.05 Condemnation.** If, at any time, all or any part of the Community Properties is taken (or conveyed in lieu of and under threat of condemnation by the Association acting on the approval of the Owners of a majority of Building Sites then contained within the Subdivision) by any authority having the power of condemnation or eminent domain, any award compensation or damages must be paid to the Association as trustee for all Owners. The Board has the exclusive right to act on behalf of the Association with respect to the negotiation and litigation of the taking or a condemnation issues affecting such Community Properties. The Association shall give timely notice of the existence of such proceedings to all Owners and their mortgagees, if any. The expense of participation in such proceedings shall be common expenses payable from the Association Maintenance Fund. The Owners may, by vote of the Owners of seventy-five percent (75%) or more of all Building Sites, agree to distribute the proceeds of any condemnation or taking by eminent domain, to each Owner and their mortgagee, if any, as their interest may appear. In the event the Owners do not so agree, such proceeds must be added to the funds of the Association, and the Association shall decide on whether or not to replace or restore, as far as possible, the Community Properties so taken or damaged. If condemnation proceeds are insufficient to replace or restore any loss or damage, the Association may levy a special assessment as provided for in Section 5.05 of this Declaration.

## **ARTICLE VII. Use Restrictions**

### **SECTION 7.01 Residential Use; Group Homes; Treatment Facilities.**

7.01.1 General. Each and every Building Site is hereby restricted to single family residential use only. No Residence may be occupied by more than one single family. No part of any garage and no part of any building other than the Residence may be used as living quarters.

7.01.2 No Business, Professional, Commercial, or Manufacturing Use. No business, professional, commercial, or manufacturing use may be made of any Building Site or any improvement located thereon, even though such business, professional, commercial, or manufacturing use may be subordinate or incident to use of the premises as a Residence, and regardless of whether or not done for profit or remuneration. Notwithstanding the foregoing, a single-family Residence may be used for maintenance of a personal professional library, keeping of personal or professional records or accounts, or handling personal business or professional telephone calls, or for maintenance of one business office, but if and only if such business activity (i) does not involve use of any part of the applicable Building Site, or Residence or other building or improvement thereon, by any Person other than the Owner or the Owner's tenant (but not both), (ii) is not detectable by sight, sound, or smell from outside the Residence and there is no other external evidence thereof (including signs, advertising, or contacts in person at the Residence with clients or customers), (iii) does not involve the storage

of any equipment, materials, or devices other than as consistent with operation of a small business office, and in all events which are not hazardous and do not constitute any type of threat to health or safety or other nuisance, (iv) complies with all applicable City ordinances (including zoning ordinances) and any other governmental laws, rules, regulations, and permitting or licensing requirements applicable to same, (v) is consistent with the residential character of the Subdivision, and (vi) does not cause any annoyance or unreasonable inconvenience to Owners or occupants of area Building Site or any Community Properties.

7.01.3 Residential Use Only. Without limitation of the foregoing, as used in this Declaration the term "residential use" shall be construed to prohibit the use of any Building Site or the Residence thereon for apartment houses or other type of dwelling designed for multi-family dwelling, or use for or operation of a boarding or rooming house or Residence for transients, or the use of any garage or permitted outbuilding as an apartment or residential living quarters.

7.01.4 Single Family Defined. As used in this Declaration the term "single family" means either: (i) husband and wife, their dependent children and their dependent parents, grandparents, grandchildren, brothers and sisters who are maintaining a common household and who are Members of a single family related by blood, marriage or adoption; or (ii) one or more natural persons not so related but who are maintaining a common household in a single family Residence on a nonprofit, noncommercial basis with a common kitchen and dining area; and (iii) the *bona fide* domestic servants of either. "Dependent Children" means the sons and daughters by blood or adoption, of the husband and/or wife who do not maintain a separate Residence, but does not include the children or any other relatives of the sons or daughters living at home. "Dependent parents, grandparents, grandchildren, brothers and sisters" means such relatives who do not maintain a separate Residence and are not able to maintain a separate Residence due to a physical or mental impairment that substantially limits their ability to maintain a separate Residence; and, in addition in the case of grandchildren, where their parents are similarly impaired or are deceased.

7.01.5 Maximum Occupancy. In addition to the limitations above set forth, in no event may a single family Residence be occupied by more persons than the product of the total number of *bona fide* bedrooms contained in the single family Residence multiplied by two (2). The number of *bona fide* bedrooms is based on the single family Residence as original constructed, plus any additional bedroom(s) which may thereafter be added which have been specifically constructed, plus any additional bedroom(s) which may thereafter be added which have been specifically approved by the ACC for such use, if any.

7.01.6 Group Homes; Treatment Facilities. To the fullest extent allowed by law, no Building Site or any part of the single family Residence thereon may be used for the operation of a "group home," "family home", "community home," "half-way house," day-care center, rehabilitation center, treatment facility, or Residence of unrelated individuals who are engaging in, undertaking, or participating in any group

living, rehabilitation, treatment, therapy, or training with respect to previous or continuing criminal activities or convictions, alleged criminal activities, alcohol or drug dependency, physical or mental handicaps or illness, or other similar matters.

**SECTION 7.02            Pets, Animals, and Livestock.**

7.02.1 Permitted Pets; Leasing Required. No animals, hogs, horses, livestock, or poultry of any kind may be raised, bred, kept, or maintained on any Building Site at any time except "Permitted Pets" which are dogs, cats, or other usual household pets. Not more than three (3) Permitted Pets are allowed per Building Site unless authorized in writing by the Board or applicable Rules and Regulations, and no Permitted Pets may be raised, bred, kept, or maintained for commercial purposes. Subject to Section 7.04, the foregoing limitation on the number of Permitted Pets does not apply to hamsters, small birds, fish, or other constantly caged animals which are continuously kept completely within a Residence, nor shall it apply to require the removal of any litter born to a Permitted Pet prior to the time that the animals in such litter are three (3) months old. All Permitted Pets must be kept on a leash or otherwise maintained under the control of their Owner when not maintained in an enclosed yard from which the Permitted Pet cannot escape. The Board may adopt Rules and Regulations to further regulate Permitted Pets, including without limitation to further specify types of usual household pets to be included or excluded as Permitted Pets, regulations as to number or otherwise applicable to caged animals and areas outside a Residence and/or an enclosed yard in the Subdivision where Permitted Pets are permitted or from which they are excluded. **NO PETS OF ANY KIND ARE PERMITTED UPON ANY COMMUNITY PROPERTIES EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PERMITTED BY APPLICABLE RULES AND REGULATIONS AND THEN ONLY IN STRICT COMPLIANCE THEREWITH.**

7.02.2 Removal. As to any animals or livestock not permitted by this Section, and as to any Permitted Pet which is allowed to roam free, or which in the sole opinion of the Board endanger health or safety, make objectionable noise, or constitute a nuisance, annoyance, or inconvenience to the Owners or occupants of other Building Site, the Community Properties or any property located adjacent to or in the vicinity of the Subdivision or which is otherwise raised, bred, kept, or maintained in violation of this Declaration or applicable Rules and Regulations, the Board may cause any such animal, livestock, or Permitted Pet to be removed from the Subdivision and may prohibit the return of any such Permitted Pet to the Subdivision. Removal as aforesaid will be at the sole expense of the Owner and without liability of any kind whatsoever to the Association, its officers, Directors, agents, or employees, including any person which the Board may direct to remove any such animal, livestock, or Permitted Pet.

**SECTION 7.03            Vehicles.**

7.03.1 Prohibited Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a three-quarter ton pickup, recreational vehicle, bus, unused vehicle, inoperable vehicle of any kind (including any vehicle requiring same which does not have both a current and valid license plate and current and valid state inspection

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sticker), and no unsightly vehicle as determined in the sole opinion of the Board, may be parked, stored, or kept at any time within the Subdivision, or on any driveway or upon any Building Site unless such vehicle is stored completely within a garage.

7.03.2 Parking. No vehicle of any kind may be parked, stored, or otherwise permitted to remain at any time (i) on grass or any other similar portion of any Building Site or any other place within the Subdivision not intended customarily for use for parking of vehicles, or (ii) in such manner as to obstruct or impede sidewalk, driveway, or street access. No vehicle of any kind may be parked, stored, or otherwise permitted to remain overnight upon the parking area for any Community Properties, including the Streets. **PERMITTED VEHICLES WHICH ARE OWNED OR OPERATED BY THE RESIDENTS OF A BUILDING SITE ("OCCUPANT VEHICLES") MUST BE PARKED ONLY IN THE GARAGE OF THE BUILDING SITE OCCUPIED BY THE OWNER OR OPERATOR OF THE OCCUPANT VEHICLE. NOT MORE THAN TWO (2) OCCUPANT VEHICLES ARE PERMITTED PER BUILDING SITE.** Notwithstanding the foregoing, the Owner of a Building Site may for good cause apply in writing to Declarant during the Development Period and thereafter to the Board for an increase in the aforesaid number of permitted Occupant Vehicles, and for designation of parking areas for same either upon the driveway of the applicable Building Site or in other parking areas within the Subdivision, if any. Any approval for additional Occupant Vehicles and parking as aforesaid may for good cause be modified or terminated as determined by Declarant during the Development Period and the Board thereafter. The Board may require valet parking for Owner/occupant parties and other events that will have five (5) or more visitor vehicles in attendance; the Board must be given three (3) days prior notice of any party or event so as to make such determination.

7.03.3 NOTICE OF LIMITED AVAILABILITY OF PARKING; ASSIGNED PARKING. **DECLARANT, DURING THE DEVELOPMENT PERIOD, AND THE BOARD THEREAFTER, MAY DESIGNATE SPECIFIC AREAS WITHIN THE SUBDIVISION AS ADDITIONAL PARKING AREAS FOR RESIDENTS OR AS VISITOR PARKING, BUT NEITHER SHALL HAVE ANY OBLIGATION WHATSOEVER TO PROVIDE FOR ANY SUCH PARKING AREAS. ACCORDINGLY, NO SUCH PARKING MAY EVER BE AVAILABLE WITHIN THE SUBDIVISION. IN ANY EVENT, AVAILABLE PARKING WITHIN THE SUBDIVISION WILL BE EXTREMELY LIMITED, AND PARKING ON ANY STREET WITHIN THE SUBDIVISION OR ANY OTHER STREETS IN THE VICINITY MAY BE PROHIBITED AND/OR LIMITED BY THE CITY AND/OR BY THE BOARD.** Parking areas for Building Sites may not be assigned, and any designation of parking areas may be changed from time to time as Declarant or the Board, as applicable, may determine. Guests that park in the visitor parking area in excess of three (3) days in any thirty (30) day period of time must be approved by the Board.

7.03.4 Repair of Vehicles. No work on any vehicle within the Subdivision, or on any street in front or along the side or back of any Building, or on any Community Properties, or on any Building Site, may be performed at any time other than temporary emergency repairs or other work required in order to promptly remove an inoperable or disabled vehicle from the Subdivision or to and completely within a garage.

7.03.5 Vehicle Defined. As used in this Section, "vehicle" includes motor homes, boats, trailers, motorcycles, scooters, trucks, campers, buses, automobiles, and all other "vehicles" as defined in Section 541.201(21) of the Texas Transportation Code (as amended), and such other devices as from time to time specified by applicable Rules and Regulations.

7.03.6 Presumptive Violations. Repairs or other work extended over a period exceeding twenty-four (24) hours is conclusively presumed not to be "temporary." Any vehicle is conclusively presumed to be "unused" or "inoperable" if the vehicle has not been operated outside the subdivision for seven (7) or more consecutive days or the vehicle has not been operated outside the Subdivision more than twice in any fourteen-day (14) period. The provisions hereof do not prejudice the right of the Association to otherwise establish a violation. The foregoing provisions do not apply to any vehicle completely stored within a garage. The Board may grant reasonable exceptions to the foregoing upon receipt of written request from an Owner or their tenant.

7.03.7 Towing. The Board or its designated representative may cause any vehicle which is parked, stored, or maintained (whether or not pending repairs or other work) in violation of this Declaration or other Governing Documents to be removed from the Subdivision to any vehicle storage facility within Harris County, Texas, at the sole cost and expense of the person owning such vehicle (whether or not such person is an Owner) and/or the Owner as to whom such Person is a tenant, visitor, guest, or invitee. Any such removal may be in accordance with any applicable statute or ordinance, or in accordance with the following:

(a) Written and dated notice must be securely affixed to the vehicle. No other notice whatsoever is required, any other notice being expressly waived.

(b) The notice must state the vehicle is deemed in violation of this Declaration or other Governing Documents, a telephone number for a contact Person, and that the vehicle will be towed at any time after a date certain stated in the notice unless a written explanation substantiating no violation exists is provided at an address stated in the notice by the date certain. Except as provided below, the date certain stated in the notice may not be sooner than the date of the second day after the date of the notice.

(c) In case of an Emergency, substantial threat of a health or safety hazard, or blocking of access to any street, driveway, garage, or the Community Properties, as determined in the sole opinion of the Board, the right of removal will be immediate and all above prerequisites will be inapplicable except that notice of an address and telephone number for a contact Person regarding the towing must be affixed to the vehicle.

(d) Without limitation of the provisions of Section 3.06, neither the Association nor any of its Related Parties, nor any Person removing any vehicle as

herein provided, have any liability whatsoever in consequence of removal of any vehicle as herein provided (the "Indemnitees"), and the Person owning such vehicle (whether or not such Person is an Owner) and the Owner and Owner's tenant as to whom such Person is a visitor, guest, invitee, or other Related Party of such Owner or the Owner's tenant, shall hold all such Indemnitees harmless from any and all claims, suits, actions, liabilities, or damages arising, directly or indirectly, as result of such removal.

7.03.8 Responsibilities of Owners and Tenants. Owners and their tenants must obtain full compliance with the provisions of this Section by their respective Related Parties and each is jointly and severally liable for all violations by their respective Related Parties as provided therein.

#### **SECTION 7.04            Nuisance; Unsightly, or Unkempt Conditions.**

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

7.04.2 Nuisance or Annoyance. No substance, thing, or material may be kept upon any Building Site 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 surround property. No noxious or offensive trade or activity may be carried on upon any Building Site, nor may anything be done thereon tending to cause embarrassment, discomfort, annoyance, or a nuisance to any residents of the Subdivision or to any Person using any property adjacent to the Building Site. No spirituous, vinous, malt, medicated bitters, alcohol, drugs, or other intoxicants may be sold or offered for sale on any part of any Building Site or any other place within the Subdivision. No Building Site or any part thereof may be used for any immoral or illegal purposes.

7.04.3 Pollutants; Hazardous Materials. Without limitation of any other provisions of this Section, no Owner or tenant, and Related Parties of either, shall dump grass clippings, leaves, or other debris, detergents, petroleum products, fertilizers, or other pollutants or potentially hazardous or toxic substances, in any sewer system, water system, drainage ditch, stream, pond, or lake within the Subdivision, or do any thing or maintain or permit any condition in violation of applicable environmental, toxic, or hazardous waste or similar laws, rules, or regulations. Storage of gasoline heating, or other fuels, or of any hazardous or toxic materials upon any Building Site is strictly

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prohibited (except that up to five (5) gallons of fuel may be stored upon a Building Site for emergency purposes and operation of lawn mowers and similar tools or equipment if properly kept and stored in a safe and non-hazardous manner). The foregoing does not place upon the Association or any of its Related Parties any obligation for enforcement of any applicable environmental, toxic, or hazardous waste or similar laws, rules, or regulations.

7.04.4 Authority to Cure. Upon the good faith determination of the Board that a violation of this Section exists, the Board may take such actions as it deems necessary to abate the violation in the manner provided in Section 6.03 at the sole cost and expense of the violating Owner and, if applicable, their tenant.

**SECTION 7.05**      Septic Tanks Prohibited. No septic tank, private water well, or similar private sewage or water system is permitted upon any Building Site.

**SECTION 7.06**      Disposal of Trash. No trash, rubbish, garbage, manure, debris, or offensive material of any kind may be kept or allowed to remain on any Building Site, nor may any Building Site be used or maintained as a dumping ground for such materials. No incinerator may be maintained on any portion of the Subdivision, and disposal of any materials by incineration within the Subdivision is strictly prohibited. All trash and similar matter to be disposed of must be placed in cans or similar receptacles with tight-fitting lids or plastic bags tied or otherwise tightly secured, and must be placed in an area adequately screened by planting or fencing from public view or within a garage except when placed for regular pickup as herein provided. Equipment used for the temporary storage and/or disposal of such material prior to removal must be kept in a clean and sanitary condition, and must comply with all applicable federal, state, county, municipal, or other governmental laws and regulations. All such prohibited matter must be removed from each Building Site at regular intervals if not removed or removable by a regular garbage and sanitation service. Trash and garbage for pickup by a regular service must be placed in such area or areas as the Board may from time to time direct, or as the applicable garbage and sanitation service or provider may require; provided trash and garbage may not be placed for pickup earlier than eight (8) hours prior to a scheduled pickup day, and all receptacles therefor and any remaining trash and garbage must be removed from the pickup site by midnight of the pickup day. Any of the foregoing provisions may be modified, added to, or deleted by applicable Rules and Regulations.

**SECTION 7.07**      Permitted Hours for Construction Activity. Except as is reasonably necessary for initial construction of a Residence on a Building Site, or in an Emergency, outside construction work or noisy interior construction work shall not be permitted except: (i) as to initial construction of a Residence upon a Building Site, only between the hours of 6:00 a.m. to 8:00 p.m., Monday through Friday, 7:00 a.m. to 6:00 p.m. on Saturday, and 10:00 a.m. to 6:00 p.m. on Sunday, and (ii) in all other cases, not on any legal holiday or Sunday, and otherwise only between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturdays.

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**SECTION 7.08 Building Materials.** No Building Site shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Building Site may be placed upon such Building Site as provided in Section 4.07. Under no circumstances shall building materials be placed or stored on any street or walkway or upon any Community Properties except as expressly authorized in writing by the Board.

**SECTION 7.09 Outdoor Cooking.** Outdoor cooking shall be permitted on any Building Site only in equipment especially constructed for same, and only in such manner as not to create a hazard of fire or injury to persons or property. Outdoor cooking is prohibited upon Community Properties unless authorized by the Board. All outdoor cooking equipment shall be properly maintained, and shall be stored in an area screened from public view when not in use. The Board may enact Rules and Regulations specifically prohibiting outdoor cooking any place within the Subdivision or upon any Building Site, or otherwise restricting or regulating outdoor cooking.

**SECTION 7.10 Firearms and Fireworks Prohibited.** The use of firearms in the Subdivision is strictly prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and small or large firearms of all types. Fireworks of any type are strictly prohibited at any place within the Subdivision.

**SECTION 7.11 Basketball Goals.** No basketball goals or backboards may be mounted on a garage or on a pole, or otherwise erected or maintained upon any Building Site, without the prior written approval of the ACC.

**SECTION 7.12 Leases.**

**7.12.1 Restrictions.** No Building Site may be leased other than for use as a single-family Residence as herein provided and defined. No Owner may lease a Building Site and attendant use of the Residence and improvements thereon for transient or hotel purposes. No Owner may lease less than an entire Building Site and attendant use of the Residence and improvements thereon. All leases:

(a) must be in writing; and

(b) are specifically subject in all respects to all provisions of this Declaration and all other Governing Documents (whether or not expressly stated in the lease), and any failure by lessee to comply with this Declaration or any other Governing Documents will be a default under the lease.

**7.12.2 Default.** In the event of default under any lease due to violation of this Declaration or any other Governing Documents, the Board may (but has no obligation to) initiate any proceedings, actions, or litigation under the lease to enforce compliance or to terminate the lease and/or for eviction. With regard to the foregoing, each Owner hereby irrevocably appoints the Board or its designated representative as their attorney-in-fact, agrees to indemnification in regard thereto to the fullest extent

herein provided (including as set forth in Section 3.06) and agrees to be solely responsible for all costs thereof (including as provided in Section 5.07).

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

**7.12.4 Surrender of Use of Community Properties by Lessor(s).** During all periods of time during which a Building Site is occupied by lessee(s), lessor(s) automatically surrender 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 the exercise of any other rights or remedies customarily reserved for the protection of lessor(s).

**SECTION 7.13 Unoccupied Residences.** The Owner of a Building Site with an unoccupied Residence, including any mortgagee in possession and any mortgagee obtaining title to a Building Site by foreclosure or by any deed or other arrangement in lieu of foreclosure, is liable for full observance and performance of all terms and conditions of this Declaration and all other Governing Documents, including in particular, but without limitation: (i) proper maintenance of the Building Site and all improvements thereon; (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; and (iii) such other maintenance as required to avoid an appearance of abandonment or other unsightly or unkempt appearance.

**SECTION 7.14 Undeveloped Building Sites.** The Owner of any Building Site upon which a single family Residence has not been constructed must maintain such Building Site in a neat, sanitary, and attractive condition and in accordance with other applicable provisions of this Declaration and other Governing Documents, including without limitation, periodic and regular removal of trash and debris therefrom and mowing of grass and other vegetation thereon as necessary to prevent growth to more than eight inches (8") in height.

**SECTION 7.15 Garage Usage.** No portion of any garage may be diverted to any use other than the parking of vehicles and other generally accepted and customary usage of a garage. In particular, but not in limitation of the foregoing, no portion of any garage may be used as a Residence or a game room, or for any similar use as living quarters. Garage doors must be kept in a closed position when the garage area is not being actively used.

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**SECTION 7.16**      **Mineral Production.**      No drilling, development operations, refining, quarrying, or mining operations of any kind shall be permitted upon any Building Site, nor shall oil wells, tanks, tunnels, mineral excavation, or shafts be permitted upon any Building Site. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Building Site.

**SECTION 7.17**      **Clotheslines.**      No outside clotheslines shall be constructed or maintained on any Building Site or Community Properties, nor shall any other outside drying of clothes be permitted.

**SECTION 7.18**      **Timesharing Prohibited.**      No Building Site may be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Building Site or the single family Residence thereon rotates among members of the program on a fixed, floating, or other time schedule.

**SECTION 7.19**      **Electronic Signal Devices.**      The Board may require registration of the frequencies of any electronic signal devices such as garage door openers, fence openers, remote controls for lights, or other electronic devices with the Board. If so required and in the event a similar frequency is already registered with the Board, the Board has the right to require the later registering user to change their proposed frequency. The Board will attempt to coordinate such frequencies so that one user's electronic device will not interfere with the devices of other users.

**SECTION 7.20**      **Rules and Regulations.**      The Board is hereby specifically authorized to promulgate, amend, modify, and delete such reasonable Rules and Regulations applicable to the operation, use, and occupancy of the Subdivision, including all Building Sites and Community Properties, as the Board may, from time to time, deem beneficial to the Subdivision. Such authority includes, but is not limited to: (i) the right to limit, in addition to the provisions of Section 7.03, the type and size of vehicles permitted within the Subdivision, traffic and parking regulations and other traffic control procedures, and the maximum permissible noise levels of vehicles within the Subdivision; (ii) procedures and reasonable restrictions and limitations on the right to use Community Properties; and (iii) all procedural and substantive aspects for the establishment, levy, collection, and payment of fines for any violations of the Governing Documents. Rules and Regulations of equal dignity with and may be enforceable in the same manner as the provisions of this Declaration; provided

(a) Rules and Regulations may not be enacted retroactively (except that if any activity is subsequently covered by Rules and Regulations and such activity ceases after enactment of the Rules and Regulations covering same, then the Rules and Regulations will apply to the activity thereafter);

(b) Rules and Regulations may not be incompatible with the provisions of this Declaration; and

(c) Rules and Regulations will not become effective until thirty (30) days after notice thereof is given to all Owners or such later date as stated in the notice (certification by the Association that proper notice was in accordance with this Section to be conclusive absent proof of fraud).

## ARTICLE VIII. Architectural Restrictions

### SECTION 8.01 Type of Residence.

8.01.1 Single Family Residence. No building other than one single family Residence not to exceed three (3) stories which is to be occupied as a Residence by one single family and outbuildings if and as may be approved in writing by the ACC may be constructed, placed, or permitted to remain on each Building Site.

8.01.2 Garage and Garage Doors. All single family Residences must have an attached or detached enclosed garage. Each such garage must contain a minimum of three hundred fifty (350) square feet of interior floor space, and may not be larger than a three-car garage. The garage must be architecturally similar and compatible to the appurtenant Residence, including as to roofline and appearance. Except for porte-cocheres, carports on Building Sites are prohibited. All garages must be enclosed with permanent walls and their fronts enclosed with standard type overhead doors customarily used in the building industry which garage doors must be maintained in good working order at all times. Any replacement garage door must be approved by the ACC, and must be painted to match the color scheme of the Residence as originally constructed or a subsequent color scheme which has been approved in writing by the ACC. Except for interior modifications of a garage wholly consistent with its use as a garage and which do not alter the use or exterior appearance of the garage as originally constructed, no modification of the interior or exterior of any garage as originally constructed is permitted without prior written approval of the ACC.

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

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



**SECTION 8.02**      **Living Area Requirements.** All Residences, exclusive of porches and garages, must contain not less than two thousand (2,000) square feet.

**SECTION 8.03**      **Location of Residences.** No single family Residence (excluding any roof overhang, fireplace, chimney, bay window, steps, or similar architectural detail which is part of a single Residence) may be located upon any Building Site except in accordance with building setback lines shown on any applicable Plat, or as established by this Declaration or applicable requirements of the City and as approved in writing by the ACC.

**SECTION 8.04**      **Construction Standards.**

8.04.1 Applicability. Except as may be otherwise authorized in writing by the ACC and in addition to all other applicable requirements of this Declaration and other Governing Documents, initial construction of all single family Residences and appurtenant structures must be in accordance with, and such Residences or appurtenant structures must thereafter be maintained to the extent applicable in accordance with, the provisions of this Section.

8.04.2 Maximum Period for Completion of Construction. Upon commencement of construction of a single family Residence, the work thereon must be prosecuted diligently to the end that the same will not remain in a partly finished condition any longer than reasonably necessary for completion thereof. In any event construction must be substantially completed by the last day of the twelfth month following the first day of the next month after the first conveyance of the applicable Building Site by Declarant to any Person other than Declarant. The foregoing period will be extended in the event of and only for the duration of delays due to strikes, war, acts of God, or other good causes beyond the reasonable control of the builder or Owner as determined in the sole opinion of the ACC.

8.04.3 New Construction Materials Required. Only new construction materials (except for used brick if approved by the ACC) may be used.

8.04.4 Storage of Materials; Clean Up. No building materials of any kind or character shall be placed or stored upon any Building Site more than thirty (30) days before construction is commenced. Except as otherwise permitted by the ACC, all materials permitted to be placed on a Building Site shall be placed within the boundaries of the Building Site. Upon completion of construction, any unused materials shall be promptly removed from the Building Site and the Subdivision and in any event not later than thirty (30) days after construction is completed.

8.04.5 Landscaping. All initial landscaping installed on any Building Site must be in accordance with the plans and specification therefor approved by the ACC.

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8.04.6 Home Address Numbers. Any house address or number markers are subject to the prior written approval of the ACC, and as to same, the ACC must maintain general uniformity.

8.04.7 Driveways. Each Building Site must contain a driveway constructed from the garage to the abutting common drive or street. All driveways must be constructed of concrete or concrete pavers, or as otherwise approved by the ACC.

8.04.8 Exterior Materials. The exterior materials for a single family Residence and appurtenant structures constructed on a Building Site must be brick, stone, stucco, Hardiplank, acrylic plastic coating such as the present-day Dryvit type exterior system, or other masonry product. (Either (i) not less than sixty percent (60%) of the exterior wall areas of all Residences or (ii) all of the first floor front and side exterior wall areas of all Residences, excluding gables, windows, and door openings, must be brick, stone, or stucco.) The remainder of the exterior wall areas of Residences may be constructed of wood or composite siding. The ACC is expressly authorized to permit use of other materials or otherwise modify the foregoing requirements from time to time by Architectural Guidelines or as otherwise expressly approved.

8.04.9 Drainage.

(a) Drainage Easements and Devices. Each Building Site is conveyed subject to all drainage easements shown on any Plat of the Subdivision. All drainage easements as aforesaid are herein referred to as the "Drainage Easements." Declarant hereby reserves for itself, and for its successors and assigns, the right of unobstructed access, ingress and egress to, from over, and across all Drainage Easements for purposes of excavating to the extent reasonably necessary, and constructing, maintaining, repairing, and reconstructing drainage swales and such other things and devices ("Drainage Devices") upon, over, across, or under any Drainage Easement as Declarant deems appropriate. **THE FOREGOING SHALL NOT BE CONSTRUED TO OBLIGATE DECLARANT TO CONSTRUCT, INSTALL, MAINTAIN, REPAIR OR RECONSTRUCT ANY DRAINAGE DEVICES OF ANY TYPE OR KIND WHATSOEVER AND ANY REPRESENTATION, WARRANTY, OR IMPLICATION AS TO SAME IS HEREBY SPECIFICALLY DISCLAIMED. THE FOREGOING ALSO SHALL NOT PROHIBIT LOCATION OR ENCROACHMENT UPON ANY DRAINAGE EASEMENT BY ANY PART OF A SINGLE FAMILY RESIDENCE AS ORIGINALLY CONSTRUCTED.**

(b) Owner Obligations. Once established and for so long as continued maintenance thereof is reasonably necessary, all Drainage Easements and Drainage Devices shall remain unobstructed, and shall be properly maintained by each Owner of each Building Site to which same pertains. Each Owner must refrain from permitting any construction, grading, and any other work, act or activity upon such Owner's Building Site which would obstruct, alter, divert, increase, accelerate, or impede the natural flow of water over any Drainage Easements, or otherwise obstruct, alter, divert, impede, or impair the proper functioning of any Drainage Device. In addition, each Owner must perform such work, act or activities and install and maintain

such Drainage Devices (i) as is reasonably necessary to prevent so far as practical drainage from the Owner's Building Site to any other Building Site, or to Community Properties, and (ii) as needed to maintain so far as practical positive drainage away from the foundation of the Residence located upon the Owner's Building Site. To obtain and maintain proper drainage, including as required by this Section, the Architectural Control Committee is hereby specifically authorized to require any Owner to construct, install, and maintain such gutters and/or downspouts, drains, drainage lines, and any other Drainage Devices as the ACC determines, either upon initial construction of any Residence or other improvement, or at any time thereafter that circumstances reasonably require. Compliance with this Section may be enforced in accordance with Section 6.03, or in any other manner permitted for obtaining compliance with the Declaration. Failure to obtain ACC approval prior to altering any type of drainage can affect not only the Owners improvements, (including foundations), but those of other Owners.

8.04.10 Garage Height. No garage may exceed in height the dwelling to which it is appurtenant.

8.04.11 Painting of Frame Construction. No structure of any kind of character which incorporates frame construction on the exterior may be erected on any Building Site unless such structure receives at least two (2) coats of paint at the time of construction.

8.04.12 Roof Materials. Roofs of all Residences must be constructed so that the exposed material is slate, tile, or composition shingles, or such other material which is compatible in qualifying and appearance to the foregoing as may be approved by the ACC. Wood shingles of any type are prohibited on any Residence, building, or structure.

8.04.13 Gutters and Downspouts. Adequate guttering must be installed around rooflines and downspouts must be installed to promote drainage in accordance with Section 8.04.10.

8.04.14 Pre-Fabricated Homes Prohibited. No mobile homes, modular homes, manufactured home or similar pre-fabricated residential structures of any kind is permitted upon any Building Site.

8.04.15 Compliance with Laws. All construction of any single family Residence must be in compliance with applicable governmental laws, ordinances, and regulations, including applicable building codes or permit or licensing requirements

**SECTION 8.05 Metal Buildings or Structures Prohibited.** Subject to Sections 8.06 and 12.07, no metal buildings of any kind are permitted anywhere within the Subdivision. The foregoing shall not prohibit incorporation of metal components in permitted buildings (such as stairs) as approved by the ACC.

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**SECTION 8.06 Temporary Structures; Sales Office.** Temporary buildings or structures shall not be permitted on any Building Site; provided, the Board may permit (and shall 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. During all times when a garage is used as a sales office, as aforesaid, there must be posted a conspicuous sign in such garage advising prospective purchasers that the area must be reconverted to and thereafter maintained as a garage upon the sale of the Building Site. 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 8.07 Building Site Resubdivision or Combination.** No Building Site as originally conveyed may thereafter be subdivided or combined with any other Building Site, or the boundaries thereof otherwise changed.

**SECTION 8.08 Window and Door Glass Covers.** Glass in windows, doors, and other similar openings must be maintained as installed during the original construction except as otherwise permitted in writing by the ACC. Glass film and similar tinting, and aluminum foil and similar reflective materials, are in all event prohibited; provided, factory tinted glass may be approved by the ACC. Only blinds, curtains, or drapes which are white or off-white are permitted unless prior written approval of the ACC is obtained.

**SECTION 8.09 Building Site Line Fences, Walls, and Hedges.** All fences and free-standing fence type walls, gateposts, hedges, and planters (sometimes herein referred to as "Building Site Line Fencing"), whenever and wherever located on any Building Site, must comply with the following:

8.09.1 ACC Approval Required. No Building Site Line Fencing may be constructed, placed, or maintained on any Building Site without prior written approval of the ACC.

8.09.2 Maximum Height. No Building Site Line Fencing may be more than eight feet (8') in height.

8.09.3 Composition. All Building Site Line Fencing other than hedges must be constructed of redwood or cedar, ornamental iron, brick, or masonry, or combinations thereof, as approved by the ACC.

8.09.4 Chain Link Fences Prohibited. No chain link type fencing of any type is permitted on any Building Site.

8.09.5 Ownership and Maintenance. Ownership of all Building Site Line Fencing passes with title to the Building Site, and each Owner must continuously

maintain all Building Site Line Fencing in a neat and attractive condition, in good repair, and otherwise as to obtain and maintain Prevailing Community Standards.

8.09.6 Hedge Defined. For the purposes of this Section, "hedge" means a row of bushes, shrubs, and similar plant which, at natural maturity, will exceed three feet (3') in height and have sufficiently dense foliage as to present a visual and physical barrier substantially similar to a fence.

## **SECTION 8.10            Antennas and Satellite Dish System.**

8.10.1 Permitted Antenna. To the extent required by the federal Telecommunications Act of 1996 or other applicable statutes, and subject to other applicable provisions of this Section and applicable Architectural Guidelines as may from time to time be hereafter adopted, the following types of antenna (including mast, cabling, supports, conduit, wiring, fasteners, and other accessories necessary for proper installation, maintenance, and use) are permitted per Building Site ("Permitted Antenna"):

(a) an antenna that is designated to receive direct broadcast satellite service, including direct-to-home satellite services, that is one (1) meter or less in diameter; or

(b) an antenna that is designed to receive video programming services via multiunit distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one (1) meter or less in diameter or diagonal measurement; or

(c) an antenna that is designed to receive television broadcast signals.

8.10.2 Limitations on Permitted Antenna. The following limitations apply to installation and maintenance of Permitted Antenna unless reception would be substantially degraded in which case compliance shall be as near as reasonably possible to avoid substantial degradation of reception:

(a) Permitted Antenna must be located so as not to be visible from any street.

(b) Permitted Antenna must be installed in such manner as to minimize the visibility and visual impact of same from adjoining Building Sites and Community Properties.

(c) To the fullest extent possible without substantial degradation of reception, all Permitted Antenna must be installed inside the applicable Residence. Otherwise, Permitted antenna must be attached to the single-family Residence upon the Building Site upon which the antenna is installed, and not mounted freestanding or on

any mast. Without limitation of the foregoing and to the fullest extent allowed by law, no more than one (1) antenna is permitted outside of the Residence.

(d) In the case of Permitted Antenna covered by Section 8.10.1(b) and (c), if mast mounting is required, the mast may not be higher than the lesser of (i) the lowest height required to obtain line-of-sight contact and to otherwise avoid substantial degradation of signal reception, or (ii) twelve feet (12').

(e) The Permitted Antenna, including base and any mast, must be securely attached to withstand the effects of high wind, heavy rain, and similar adverse weather conditions. Guy wires and similar mounting apparatus are not permitted.

(f) No advertising slogans, logos, banners, signs, or any other printing or illustration whatsoever, other than that provided by the original manufacturer, shall be permitted upon or be attached to the antenna or mast.

(g) No Permitted Antenna shall ever be used for the transmission of any signal whatsoever other than limited transmission capability designed or the viewer to select or use video programming provided it meets FCC standards for radio frequency emission. Permitted Antenna shall be for the purpose of receiving only normal signals through airwaves for television viewing purposes only.

(h) No Permitted Antenna shall be permitted to cause any distortion or interference whatsoever with respect to any other electronic device in the Subdivision.

(i) The Permitted Antenna shall be a solid color consisting of whichever one of the following color best conforms with the color of the house located in the Building Site: white or black or shades of either brown, gray, or tan.

#### 8.10.3 ACC Approval and Notice as to Permitted Antenna.

(a) No antenna (including Permitted Antenna) may be installed without the prior written approval of the ACC obtained in accordance with Article IV except as may otherwise be required by the Federal Communications Commission in which case the provisions of the next subsection (b) will apply.

(b) To the extent prior approval is not required under applicable Federal Communications Commission rules, then not later than the thirtieth (30<sup>th</sup>) day after installation of a Permitted Antenna, notice of installation of the Permitted Antenna must be submitted to the ACC. The notice must specifically describe the type and size of the antenna, specifically designate the location of the antenna, and must be accompanied by a color photograph of the antenna as installed. If the antenna is of a type permitted by Section 8.10.1 and complies with the provisions of Section 8.10.2, such notice is sufficient to comply with Section 4.02.1. Otherwise, Article IV fully applies

to installation of the antenna, including obtaining of written approval of the ACC prior to installation of the antenna.

8.10.4 Prohibited Antenna. In no event shall any antenna or other device be used for transmitting electronic signals of any kind; except as provided in Section 8.10.2(g). No electronic antenna or device of any type, citizen band, "HAM," "CB," or other similar radio antenna or other television antenna or accessories, except as above provided, shall be erected or permitted to remain on any Building Site or elsewhere in the Subdivision, or on any Residence or other building, without prior written approval of the ACC (and the ACC may condition approval of any such antenna upon placement of same in the attic of a Residence).

**SECTION 8.11            Signs.**

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

8.11.2 Prohibited Signs. No sign is permitted which is vulgar, obscene, or otherwise patently offensive to persons of ordinary sensibilities. Permitted signs must be professionally printed and prepared, and must be properly installed and maintained to avoid unsightly appearance. The good faith determination of the Board or ACC as to any of the foregoing is final. No sign is permitted to be larger than four square feet. No sign may be illuminated. No sign may be placed on any Building Site closer than ten feet (10') from any street or any side or back Building Site line, or within any traffic sight line area as defined in Section 8.14. No Owner (or their tenants, guests, or invitees) is permitted to place any sign on another Owner's Building Site or upon Community Properties. Distressed, foreclosures, and bankruptcy references are specifically prohibited.

8.11.3 Permitted Signs. To the extent required by law or in any event upon prior approval of the ACC, but subject to applicable provisions of Section 8.11.2, each Owner is permitted to place upon (and only upon) such Owner's Building Site (i) one sign advertising the particular Building Site 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. If permitted, the ACC may reasonably regulate the period(s) of time political signs may be permitted, and the number of permitted political signs and in relationship thereto their size and location. The ACC may (but is not obligated to) allow builders within the Subdivision to construct and maintain such signs, billboards,

banners, pennants, and advertising devices as are customary in connection with the sale of newly-constructed residential dwellings.

**SECTION 8.12**      **Exterior Lighting.**      Excepting Christmas lighting, any exterior lighting of a Residence or Building Site must be approved by the ACC in accordance with Article IV. No exterior lighting (including Christmas lighting) may be directed outside property lines of the Building Site upon which same is located. All lighting fixtures (except Christmas lighting) must be compatible in style and design to the Residence where located. Christmas lighting and decorations and ornamentation may be displayed between November 1 and January 16, and the ACC may in particular instances or through Architectural Guidelines permit other holiday lighting, decorations, and ornamentation (all of which for purposes of this Section are referred to as "Christmas lighting"); provided, the ACC is authorized to fully regulate all Christmas lighting in particular instances or by Architectural Guidelines to avoid any annoyance, nuisance, safety hazard, or unsightly condition or appearance as determined in the sole opinion of the ACC.

**SECTION 8.13**      **Tree Removal.**      No living tree with a trunk diameter of six inches (6") or greater shall be cut down or removed from any Building Site without the prior written approval of the ACC except for trees within the footprint of a single family Residence to be constructed on the Building Site or within five feet (5') thereof. Dead or damaged trees which may create a hazard to property or persons within the Subdivision must be promptly removed or repaired at the Owner's expense.

**SECTION 8.14**      **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 feet (2') and six feet (6') above a street shall be permitted on any corner Building Site within the triangular area formed by the two (2) boundary lines thereof abutting the street and a line connecting them at points twenty-five feet (25') from their intersection, or within the triangular area formed by the boundary line abutting a street, the edge line of any driveway pavement and a line connection them at points ten feet (10') from their intersection.

**SECTION 8.15**      **Solar and Other Energy Devices.**      No solar energy collector panels or attendant hardware or other similar equipment is permitted upon any portion of the Subdivision, including any Building Site and/or Residence located thereon, without the prior written consent of the ACC. Any such installation shall be in harmony with the design of the Residence, and such that the device is not visible from any street. Windmills, wind generators, and other apparatus for generating power from the wind are prohibited.

**SECTION 8.16**      **Exterior Colors.**      Unless otherwise approved by the ACC, each Residence and other painted improvements upon each Building Site must be painted or repainted in substantially the same color(s) used in the original construction of same.

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**SECTION 8.17**      **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.

**SECTION 8.18**      **Air Conditioners.** Except as approved by the ACC, no window, wall, or exterior roof-mounted type air conditioners or heating units, or any part thereof, and no air conditioners or heating units, or any part thereof, which is visible from any street will be permitted.

**SECTION 8.19**      **Private Utility Lines.** All electrical, telephone, or other utility lines and facilities which are located on a Building Site and which are not owned and maintained by a governmental entity or a utility company must be installed in underground conduits or other underground facilities unless otherwise approved in writing by the ACC, and must be maintained at all times by the Owner of the Building Site upon which same is located.

**SECTION 8.20**      **Disposal Units.** Each kitchen in a single family Residence must be equipped with a garbage disposal unit, and same must at all times be kept in good working order and serviceable condition.

**SECTION 8.21**      **Pools and Spas.** Pools, spas and/or ponds of every kind may not be installed, except with the prior written approval of the ACC obtained as provided in Article IV. No above ground pool or spa may ever be installed that is visible from any street.

**SECTION 8.22**      **Irrigation.** No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, river, lakes, ponds, canals, or other ground or surface waters shall be installed, constructed, or operated upon any Building Site or elsewhere in the Subdivision. Private irrigation wells are prohibited upon any Building Site. Sprinkler and irrigation systems installed as Subdivision Facilities will be maintained by the Association. No other sprinkler or irrigation system may be installed upon any Building Site or elsewhere in the Subdivision except with the prior written consent and approval of the ACC obtained as provided in Article IV.

**SECTION 8.23**      **Artificial Vegetation, Exterior Sculpture, and Similar Items.** Artificial vegetation, exterior sculpture, fountains, flags, and temporary flagpoles (excepting state and United States flags maintained and exhibited in accordance with applicable Architectural Guidelines), birdhouses, birdbaths, and other decorative embellishments of similar items are prohibited at any location upon a Building Site which is visible from any street or at ground level from another Building Site except with the prior written consent and approval of the ACC obtained as provided in Article IV.

**SECTION 8.24**      **Excavation.** The digging of dirt or the removal of any dirt from any Building Site is expressly prohibited except upon written approval of the ACC

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as may be necessary in conjunction with the landscaping of or construction on such Building Site.

**SECTION 8.25 Lot Consolidation.** Two (2) adjoining Lots may be consolidated into one (1) building site only with the prior written approval of the ACC and subject to the restrictions. If more than one (1) Lot is used as one (1) building site, the restrictions set out herein shall not apply to the common property line of such Lots. No more than two (2) Lots can be combined to create a building site. Except as set forth herein, such consolidated building site shall continue to be considered as two (2) separate Lots for all purposes and each such Lot shall continue to be subject to annual assessments and special assessments and be entitled to one (1) vote for each Lot.

#### **ARTICLE IX. Party Walls, Roofs and Foundations of Residences**

**SECTION 9.01 General Rules of Law to Apply.** Each wall which is built as a part of the original construction of attached Residences between two (2) attached Residences shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**SECTION 9.02 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**SECTION 9.03 Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission. In the event of a casualty and a party wall(s) is damaged and the Owners thereof are unable to agree to the terms of repair of such party wall(s) within thirty (30) days following such casualty, then the Association shall have the right to negotiate the repair thereof with the insurance company and contractors and all Owners shall be bound by the settlement made by the Association.

**SECTION 9.04 Waterproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**SECTION 9.05 Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**SECTION 9.06 Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator,

and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party.

**SECTION 9.07 Exterior Walls, Roofs and Foundations.** Exterior walls, roofs and foundations of attached Residences shall be dealt with in the same fashion as party walls, as set forth in this Article.

## **ARTICLE X. Easements**

**SECTION 10.01 Incorporation of Easements.** All easements, dedications, limitations, restrictions, and reservations shown on the initial map or plat of the Subdivision as described in Section 1.01 or on any other applicable Plat, if any, and all validly existing grants and dedications of easements and related rights heretofore made or hereafter established as herein provided affecting the Subdivision of any Building Site and filed in the Official Public Records of Real Property of Harris County, Texas, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by any Person covering any portion of the Subdivision, including any Building Site. In the event of any conflict between any of the foregoing filed after the date of filing of this Declaration and any provisions of this Declaration, the provisions of this Declaration control. The foregoing shall not be construed as in any manner giving effect to any instrument of record and other than in accordance with the instrument and applicable law.

**SECTION 10.02 Owner's Easements for Use and Enjoyment.** Every Owner of a Building Site has a right and easement of ingress and egress, use and enjoyment in and to the Community Properties which is appurtenant to and passes with the title to the Building Site subject to the following provisions:

10.02.1 Usage Control. The Board has a continuing right to: (i) establish, install, maintain, operate, and regulate a limited access gate or gates and such other security oriented systems, devices, and procedures as it may determine; (ii) issue, charge for, and require as a condition of entry to the Subdivision and/or Community Properties such identification cards, passes, keys, or similar devices as the Board may from time to time determine; (iii) limit the number of guests of Building Site Owners and their tenants who may use the Community Properties; (iv) provide for the exclusive use and enjoyment of specific portions of the Community Properties at certain designated times by an Owner, his family, and the Owner's tenant, and the guests or invitees of either; and (v) charge reasonable admission and other fees for the use of any portion of the Community Properties, including any Subdivision Facilities.

10.02.2 Suspension of Usage Rights. The Board has a continuing right, upon notice and opportunity to be heard, to suspend the right of an Owner, and the Owner's tenant, and the Related Parties of either, to use all or any part of the Community Properties and/or Subdivision Facilities for any breach, violation, or

infracton of this Declaration or other Governing Documents until all such breaches, violations, and infractons are cured. The provisions of this Section may not be construed to permit any limitation of ingress and egress to or from any Building Site.

**SECTION 10.03 Easements for Encroachment and Overhang.** In the event that any portion of any roadway, walkway, parking area, driveway, water line, sewer line, utility line, sprinkler system, building, or any other structure or improvement, including without limitation any building steps, fences, paving, decking, footings, piers, piles, grade beams, or similar improvements, or any overhang of walls or roofs of any such building or structure as originally constructed, encroaches on any Building Site or the community Properties due to the unintentional placement or setting or shifting of any of the foregoing to a distance of not more than thirty inches (30"), as measured from any point on the common boundary between each Building Site and the adjacent portion of the Community Properties or as between adjacent Building Sites, as the case may be, along a line perpendicular to such boundary at such pint, it shall be deemed that the Owner of such Building Site or the Association has granted a perpetual easement to the Owner of the adjoining Building Site or to the Association for continuing maintenance and use of such encroaching improvements for maintenance, repair, or replacement of any of the foregoing if performed in substantial compliance with the original construction. The foregoing also applies to any overhead encroachment and to any encroachment which is completely underground for any distance which does not substantially and adversely affect the Building Site or Community Properties being encroached.

**SECTION 10.04 Patio Home Owners' Access Easement.**

10.04.1 Defined. Each Patio Home Building Site and the Community Properties are subject to a non-exclusive access easement for the construction, maintenance, repair, and replacement of improvements located upon any adjacent Patio Home Building Site (the "Accessing Building Site") for usage by an Accessing Building Site Owner or occupant, or their agents or employees. The Patio Home Building Site or Community Properties being accessed is herein referred to as the "Easement Building Site." This access easement area on the Easement Building Site (the "Access Area") consists of a strip of land abutting the nearest boundary line of the Accessing Building Site of not less than three feet (3') nor more than six feet (6'), as may be reasonably required. In no event with such easement extend to any part of the single-family residence located on the Easement Building Site.

10.04.2 Notice; Duration. Prior to use of the Access Area, the Owner or occupant of the Accessing Building Site must give written notice of intent to utilize the Access Area stating therein the nature of intended use and the duration of such usage. Such notice must be delivered to the Owner or occupant of the Easement Building Site by regular or certified mail or personal delivery, or by attaching same to the front door of the residence located upon the Easement Building Site. If by mail, such notice must be given at least ten (10) business days prior to use of the Access Area; and if by personal delivery or affixing to the front door, such notice must be given at least five (5) business

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days prior to use of the Access Area. In case of Emergency, the Accessing Building Site Owner or occupant may commence and continue usage of the Access Area without giving the foregoing notice for so long as is reasonably necessary to control the Emergency and complete work necessitated thereby, but must proceed with giving of the required notice as soon as practical after commencement of usage. If made by an Owner or occupant, the determination that an Emergency exists is the sole responsibility of Owner or occupant who are solely liable as to same.

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

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

10.04.5 Restoration. Promptly after completion of usage of an Access Area, the Accessing Building Site Owner or occupant must thoroughly clean the Access Area and repair and restore same to substantially the same condition that existed at the time of commencement of usage; provided, such obligation for restoration does not apply to any structures or improvements which have been placed in the Access Area without written ACC approval. At the time of receipt of notice, the Easement Building Site Owner or occupant must promptly notify the Accessing Building Site Owner or occupant as provided in Section 10.04.2 of any structures or improvements within the Access Area which have been approved by the ACC.

## **SECTION 10.05 Association Easements.**

10.05.1 Blanket Access Easement. The Association has a continuing non-exclusive access easement as to all Building Sites as is reasonably necessary for the performance of any of the Association's functions or duties or exercise of any of its rights under this Declaration. The Association must give notice to the Owner or occupant of the Building Site being accessed.

10.05.2 Subdivision Facilities. The Association is hereby granted an irrevocable easement (i) for installation, maintenance, repair, and replacement of all Subdivision Facilities to the extent installed upon any Building Site before commencement of construction of a single family Residence thereon or at any time within easement area established pursuant to Sections 10.01 or 10.06. After initial occupancy of a single family Residence upon each Building Site, the Association must give notice to the Owner or occupant of the Building Site in the exercise of the easement rights hereby established.

**SECTION 10.06 Governmental Functions, Utilities, and Other Services.**

10.06.1 Governmental Functions; Removal of Obstructions. A blanket easement is hereby granted to the City and other governmental authorities for access, ingress, and egress upon, over and across any portion of the Subdivision and any Building Site in the performance of any official business without liability of any kind. **THE CITY IS ALSO SPECIFICALLY AUTHORIZED TO REMOVE OBSTRUCTIONS IF NECESSARY FOR EMERGENCY VEHICLE ACCESS, INCLUDING AS PERMITTED BY SECTION 10.07.2, AND TO ACCESS THE COST OF REMOVAL TO THE OWNER OF THE OBSTRUCTION.**

10.06.2 Service Vehicles. A blanket easement is hereby granted to all police, fire protection, ambulance, and other emergency vehicles, to garbage and trash collection vehicles and other service vehicles and to all Association agents and employees in connection with any work or other duties as set forth in this Declaration upon, over, and across any portion of the Subdivision and any Building Sites in the performance of their duties. An easement is also specifically granted to the United States Post Office, its agents and employees upon, over, and across any portion of the Subdivision or Building Site in performance of mail delivery or any other United States Post Office services.

10.06.3 Mailbox Bank. Perpetual easements for the placement and maintenance of mail box banks designed to service two (2) or more single family Residences upon any Building Site or elsewhere within the Subdivision, including entry, access, and exit areas as to same; provided, no such mailbox banks may be located in such manner as to encroach upon the footprint of any existing building (including any Residence).

10.06.4 Utilities. In addition to all other applicable easements as established herein or by any Plat, a private easement is hereby granted under any private street located within the Subdivision for purposes of erecting, installing, operating, maintaining, replacing, inspecting, and removing any electrical, water, sewer, gas, cable television, and any other utilities as determined by the Board, together with rights of ingress and egress to or from any such easement. This easement shall not include by implication or otherwise any appurtenant aerial easement.

10.06.5 Changes and Additions. At the sole election of Declarant during the Development Period and the Board thereafter, the Association has the right to grant,

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dedicate, reserve, or otherwise create, at any time and from time to time, easements for public, quasi-public, or private utility purposes, including, without limitation, gas, electricity, telephone, sanitary, storm, cable television, and similar services, along, over, above, across, and under the Subdivision and any Building Site; provided, such additional easements shall not be located in such manner as to encroach upon the footprint of any then existing Residence (including any attached or detached garage) or any swimming pool.

**SECTION 10.07 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.

**SECTION 10.08 Title to Easement and Appurtenances Not Conveyed.** Title to any Building Site conveyed by contract, deed, or other conveyance may not be held or construed in any event to include the title to any easement established by this Article X, 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.

**SECTION 10.09 Reserve Easements.** Declarant during the Development Period and the Board thereafter may grant as appurtenant to any Building Site usage easements covering any restricted reserves designated by a Plat which abuts a Building Site on such terms as either shall determine, including perpetual usage easements but subject in any event to all applicable building codes and ordinances of the City of Houston, State of Texas, and all other easements which have or may be granted under this Declaration. The Owner of the Building Site to which any such easement is appurtenant shall be solely liable and responsible for all costs of maintenance of and payment (by reimbursement to the Association or direct payment) of all property and other taxes covering the entire easement area during the full term of the easement, shall be solely liable for damages or otherwise regarding the easement area and any usage thereof by any Person and shall indemnify and hold the Association harmless regarding same to the fullest extent provided herein (including as provided in Section 3.06).

**SECTION 10.10 Easement Perpetual.** Easement rights established by or obtained pursuant to this Article X may not, once established or obtained, be adversely effected by any amendment of this Declaration. The foregoing does not limit subsequent abandonment or other modification of easement rights in accordance with applicable instruments covering any easement, by consent or agreement of the affected parties, or as otherwise provided by law.

## ARTICLE XI. Enforcement

**SECTION 11.01 Strict Compliance Required.** Each Owner and each Owner's tenants, by acquisition of any right, title, or interest in any Building Site, covenant and agree to be bound by and to strictly comply with all restrictions, covenants, conditions, and easements set forth in this Declaration and all other Governing Documents as same may from time to time or at any time be herein amended. The foregoing provisions apply regardless of whether or not any such Governing Documents are filed in the Official Public Records of Real Property of Harris County, Texas, or any other public records except as otherwise expressly required by this Declaration.

### **SECTION 11.02 Enforcement.**

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

11.02.2 Right to Inspect and Cure Defaults. The provisions of Section 6.03 apply to any breach of this Declaration and any other applicable Governing Documents. In addition and without prior notice, the Association may photograph any violations or suspected violation at any time and otherwise obtain evidence to confirm the existence or non-existence of any suspected violation in any reasonable manner without liability in trespass or otherwise.

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

11.02.4 Cumulative Rights and Remedies. Each right and remedy set forth in this Declaration and any other Governing Documents is separate, distinct, and non-exclusive, and all are cumulative. The pursuit of any right or remedy so provided for or by law, or the failure to exercise that particular right or remedy, will not be construed as a waiver of such right or remedy or any other right or remedy.

**SECTION 11.03 Liability for Conduct of Others ("Related Parties").** Each Owner and the tenant of each Owner must ensure that their respective Related Parties strictly comply with all applicable provisions of this Declaration and all other Governing Documents. Each Owner is liable for all consequences of any such violation



by the Owner's tenant and by Related Parties of the Owner, and each Owner and the Owner's tenant are jointly and severally liable for all consequences of any such violation by Related Parties of the tenant. To the same extent as aforesaid, each Owner and each tenant must indemnify and hold harmless the Association and its Related Parties from any and all claims, liabilities, damages, loss, costs, expenses, suits, and judgments of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during, or after proceedings in a court of competent jurisdiction, by Related Parties of the Owner or the Owner's tenants attributable to any and all actions or omissions of the Association or by its Related Parties resulting, directly or indirectly, from any such violation, said indemnification to be secured and paid as provided in Section 11.04.

**SECTION 11.04 Obligation for Payment of Costs and Expenses Resulting from Violations.** Each Owner and tenant of an Owner found to have committed, or who is responsible for, a violation or violations of any of the provisions of this Declaration or any other Governing Documents, is jointly and severally liable for payment to the Association for, and to indemnify and to hold and save harmless the Association and its Related Parties from, any and all claims, liabilities, damages, loss, costs, expenses, suits, and judgments of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during, or after proceedings in a court of competent jurisdiction, incurred or attributable to any such violation(s), and must pay over to the Association all sums of money which the Association or its representatives may pay or become liable to pay as a consequence, directly or indirectly, of such violation(s). All such sums are assessed as a specific assessment, and are secured by the continuing lien established by Article V hereof. All such sums are due and payable upon demand by the Association or its representative without the necessity of any other or further notice of any act, fact, or information concerning the Association's rights or such Owner's or their tenant's liabilities under this Section; provided, in the case of indemnification, the demand shall contain a statement setting forth the Association's payment or liability to pay the claim with sufficient detail to identify the basis for the payment or liability to pay.

**SECTION 11.05 Notice and Opportunity to be Heard.** Unless otherwise provided by law, whenever this Declaration or other Governing Documents require notice and opportunity to be heard, the procedures set forth in this Section must be observed.

11.05.1 **Notice of Violation.** The party proposing to take the action (such as the Board, a committee, the Managing Agent, etc.) must give written notice of violation to the Owners and, if applicable, to the Owner's tenants according to the records of the Association (the "Affected Parties"). The notice must include (i) a general description of the matters complained of, (ii) all curative action requested and a time period within which curative action must be completed, and (iii) a statement advising that the Affected Parties are entitled to a hearing upon delivery of a written request in accordance with Section 11.05.2 of this Declaration.

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11.05.2 Time to Cure; Response. A notice of violation must allow at least ten (10) days from the date of the notice within which to complete the curative action thereby required and to request a hearing. The ten (10) day period to cure may be shortened in the case of an Emergency. The Affected Parties may request a hearing only in writing and only by also stating in the request each claim or other matter which is disputed or contested and a general description of the basis for the dispute or contest. If no hearing is requested in writing as aforesaid, it is presumed the Affected Parties do not dispute any matters set forth in the notice of violation.

11.05.3 Hearing. If a hearing is requested in writing as above set forth, all Affected Parties so requesting the hearing must be given written notice of the date, time, and place for the hearing. At the hearing, the Affected Parties have the right, personally or by a representative, to give testimony orally, in writing or both, and to present such other relevant evidence as they may choose, subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. The hearing will be held in closed executive session, but the minutes of the hearing (or other written record) shall reflect the results of the hearing. The Affected parties must be notified of decisions made in consequence of the hearing in the same manner in which notice of the hearing was given.

11.05.4 Appeal. Any decision made pursuant to Section 11.05.3 by a party other than the Board may be appealed to the Board by filing a written notice of appeal with the Board within ten (10) days after the Affected Parties are given notice of the decision. The Board shall then conduct a hearing within a reasonable time after the Board receives the notice of appeal, giving the same notice and observing the same procedures as were required for the initial hearing.

11.05.5 Limited Abatement of Enforcement. Except in the case of an Emergency or other exigent circumstances as determined in the sole opinion of the Board, enforcement proceedings are abated until after expiration of the curative period stated in the notice of violation, or if a hearing is requested or an appeal properly made until ten (10) days after notice of decisions made in consequence of the hearing or appeal is given.

11.05.6 Fines. After notice and opportunity to be heard, fines may be imposed as specific assessments by the Board or ACC for any violation of this Declaration or other Governing Documents except non-payment of assessments. Except as otherwise provided by applicable Rules and Regulations, the Board or ACC shall fix the amount of a fine for each violation on a case-by-case basis. Before any fine is imposed, the Affected Parties must be given written notice allowing not less than ten (10) days to cure the violation(s); provided, any fine may be imposed at the time of giving notice if written notice has been given to any of the Affected Parties of a similar violation within the preceding six (6) month period.

**SECTION 11.06 Filing of Notices of Non-Compliance.** At any time the Board determines there exists any noncompliance with any provisions of this

Declaration or other Governing Documents, the Board may, at its option, direct that a Notice of Noncompliance be filed in the Official Public Records of Real Property of Harris County, Texas, covering the affected Building Site or Building Sites and the Owner(s) thereof at the sole cost and expense of such Owner(s). All such costs and expenses are due and payable upon demand, are deemed a specific assessment applicable to the affected Building Site(s) and are secured by the Association's continuing assessment lien.

## **ARTICLE XII. Development Period**

**SECTION 12.01 Application.** Notwithstanding any other provisions of this Declaration or any other Governing Documents to the contrary, the provisions of this Article XII apply during the Development Period (and thereafter as herein provided).

**SECTION 12.02 Appointment of Board and ACC; Authority of Association; Declarant as Member.** During the Development Period, Declarant may 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 to exercise all rights and authority of the Association as set forth in this Declaration and all other Governing Documents. Without limitation of the foregoing, the provisions of the Bylaws or any other Governing Documents regarding qualifications for members of the Board or ACC are hereby specifically declared inapplicable to Developer during the Development Period. Without limitation of the foregoing, Declarant is specifically authorized during the Development Period to grant variances pursuant to Section 4.02.4. Declarant will be deemed to be a Member of the Association for all purposes during the Development Period whether or not Declarant continues to own any Building Site.

**SECTION 12.03 ACC Approval Not Required; Declarant's ACC Authority as to Initial Development of Lots.** Declarant and any builder as so designated by Declarant are not required to obtain ACC approval or otherwise comply with any provisions of Article IV hereof until completion of the initial sale of each Building Site, and Declarant hereby reserves and retains full and exclusive authority of the ACC as to each Building Site, until completion of the initial sale of each Building Site. The foregoing applies notwithstanding any other provisions of this Declaration or any other Governing Documents until completion of the initial sale of all Building Sites within the Subdivision. As to each Building Site, "completion of the initial sale" occurs upon substantial completion of the construction of a single-family Residence and related improvements upon the Building Site and the sale of the Building Site to a Person other than Declarant or a builder for use and occupancy of the Building Site for a single-family Residence.

**SECTION 12.04 Remedial Measures.** If, at any time, whether during or after the Development Period, any claim, demand, or cause of action is asserted by the Association, or any Owner or tenant, or the Related Parties of any of the foregoing, or by any other Person, including any owners or occupants of properties outside the Subdivision, as to Declarant or its Related Parties concerning any acts, omissions, or other activities of any kind whatsoever of Declarant regarding development of the

Subdivision, including the construction or sale of Building Sites, Residences or Community Properties, any "Developmental Activities" as that term is defined in Section 12.11, and any matters pertaining to drainage within or from the Subdivision or otherwise, then Declarant may take all actions which in Declarant's sole opinion are necessary or appropriate to address, correct, cure, or otherwise deal with the asserted claim, demand, or cause of action. For such purposes, Declarant may utilize any easements established by this Declaration or by any Plat or otherwise, including the easements established by Section 8.04.9 regarding drainage and by Article X, without the consent of or compensation of any kind to the Association, or any Owner or tenant, or any Related Parties of the foregoing, or any other Person. Except in case of an Emergency, Declarant shall give at least ten (10) days' written notice to any party which will be directly affected by activities undertaken by Declarant pursuant to the foregoing setting forth the general nature of activities to be undertaken.

**SECTION 12.05 Community Properties.**

12.05.1 Designation or Change as to Community Properties and/or Subdivision Facilities. **REGARDLESS OF DESIGNATION BY ANY PLAT, DURING THE DEVELOPMENT PERIOD DECLARANT MAY DESIGNATE COMMUNITY PROPERTIES, EXCLUSIVE COMMUNITY PROPERTIES AND/OR SUBDIVISION FACILITIES, AND AT ANY TIME DURING THE DEVELOPMENT PERIOD, MODIFY, DISCONTINUE, RE-DESIGNATE, OR IN ANY OTHER MANNER CHANGE THE COMMUNITY PROPERTIES AND/OR SUBDIVISION FACILITIES.**

12.05.2 Construction and Maintenance of Community Properties. During the Development Period, Declarant may provide and construct such Community Properties as Declarant may desire at Declarant's sole cost and expense or in conjunction with and as part of the cost of construction of single family Residences. Once provided or constructed, all costs and expenses of the operation, management, maintenance, repair, and replacement of Community Properties, including all costs and expenses of insurance thereon, will be paid by the Association from the Association Maintenance Fund (either directly or by reimbursement to Declarant) regardless of whether or not title has been transferred or conveyed to the Association and regardless of whether or not any applicable contract, agreement, or other arrangement for operation, management, maintenance, repair or replacement is in the name of, is procured through or has been transferred or assigned to the Association. The Association will also pay as aforesaid all costs and expenses, regardless of type and including procurement, as to service type Subdivision Facilities such as any patrol or garbage or recycling services.

12.05.3 Conveyance of Community Properties. Declarant may convey, transfer, or assign any or all Community Properties to the Association during the Development Period, and must do so within a reasonable time after termination of the Development Period. **ANY RIGHT, TITLE, OR INTEREST TO ALL COMMUNITY PROPERTIES WILL BE TRANSFERRED, CONVEYED OR ASSIGNED TO THE ASSOCIATION ON AN "AS IS", "WHERE IS", AND "WITH ALL FAULTS" BASIS, AND, EXCEPT FOR SPECIAL WARRANTY OF TITLE BY, THROUGH, OR UNDER DECLARANT,**

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WITHOUT ANY COVENANT, WARRANTY, GUARANTY, OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO (i) ANY IMPLIED COVENANTS UNDER SECTION 5.23 OF THE TEXAS PROPERTY CODE AND ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR OR INTENDED PURPOSE; (ii) THE NATURE AND CONDITION OF THE PROPERTY OR OTHER ITEMS TRANSFERRED, ASSIGNED, OR CONVEYED, INCLUDING, WITHOUT LIMITATION, PHYSICAL OR ECONOMIC CHARACTERISTICS OF THE PROPERTY, THE WATER, SOIL, AND GEOLOGY, THE SUITABILITY THEREOF AND OF THE PROPERTY OR OTHER ITEMS FOR ANY AND ALL ACTIVITIES AND USES, THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING, BUT NOT LIMITED TO, THE PRESENCE OF ANY HAZARDOUS MATERIALS, SUBSTANCES, OR CONTAMINANTS OF ANY KIND) OR COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS, RULES, OR REGULATIONS; (iii) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION, OR OTHERWISE; AND (iv) THE COMPLIANCE OF THE PROPERTY OR OTHER ITEM TRANSFERRED, ASSIGNED, OR CONVEYED OR ITS OPERATION WITH ANY LAWS, ORDINANCES, OR REGULATIONS OF ANY GOVERNMENTAL ENTITY OR BODY. ALL SUCH COVENANTS, WARRANTIES, GUARANTIES, AND REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, OR BY OPERATION OF LAW, ARE HEREBY EXPRESSLY DISCLAIMED. THE PROVISIONS OF SECTIONS 3.06 AND 12.11.3 FULLY APPLY AS TO SAME, AND THE PROVISIONS HEREOF SHALL APPLY REGARDLESS OF WHETHER OR NOT STATED IN ANY DEED, CONVEYANCE, OR OTHER TRANSFER AS TO THE AFFECTED COMMUNITY PROPERTIES.

12.05.4 Use and Maintenance of Community Properties. So long as Declarant owns any Building Site within the Subdivision, Declarant and any builder as so designed by Declarant (i) have a non-exclusive easement appurtenant upon, over, under, and across any and all Community Properties, and a non-exclusive right to use in any manner any part or all of the Community Properties, as is reasonably necessary in Declarant's sole opinion for the development of the Subdivision and the development and sale of Building Sites therein, and (ii) may construct, maintain, expand, improve, and repair any Community Properties, including, without limitation, any such matters regarding any thing or device relating to drainage within or which may otherwise affect the Subdivision, or any Building Site thereon, or any properties adjacent thereto, or in the vicinity thereof. **THE FOREGOING SHALL NOT BE CONSTRUED AS IN ANY MANNER CONSTITUTING ANY REPRESENTATION, WARRANTY, OR IMPLICATION WHATSOEVER THAT DECLARANT OR ANY BUILDER WILL UNDERTAKE ANY SUCH USAGE OR ANY SUCH CONSTRUCTION, MAINTENANCE, EXPANSION, IMPROVEMENT, OR REPAIR, OR THAT IF AT ANY TIME OR FROM TIME TO TIME UNDERTAKEN THAT ANY SUCH ACTIVITIES WILL CONTINUE, AND ANY SUCH REPRESENTATION, WARRANTY, OR IMPLICATION IS HEREBY SPECIFICALLY DISCLAIMED.**

**SECTION 12.06 Easements.** Declarant and its agents or employees (including any builder, contractor, or subcontractor) are entitled during the Development Period to use and exercise all easements set forth in this Declaration for, and Declarant may grant or exercise such additional easements for ingress, egress, and usage as is reasonably necessary for, construction of single family Residences, providing and

development of utilities, Community Properties and/or Subdivision Facilities and any and all other "Developmental Activities" as defined in Section 12.11. Any part of a single family Residence as originally constructed may be located or encroached upon any easement established by this Declaration so long as any such location or encroachment does not interfere with any actual usage as permitted by any applicable easement actually existing at the time of establishment of such location or encroachment.

**SECTION 12.07 Sales Activities.** During the Development Period Declarant has the right to transact any business reasonably necessary to development of the Subdivision (including all "Developmental Activities" as defined in Section 12.11), and to consummate the sale or rental of Building Sites and single family Residences to be constructed thereon, and in connection therewith to maintain models, have signs, use without charge, any part of any Building Site or Residence located thereon which is not occupied by a resident and use without charge any Community Properties (including Subdivision Facilities).

**SECTION 12.08 Assessments.**

12.08.1 Right of Declarant to Set Rate. During the Development Period, Declarant is entitled to change the annual rate of regular assessment as set forth in Section 5.03.1 without the joinder, vote, or consent of any Owner and without further formality than giving of notice thereof as provided in Section 5.03.2. Without limitation to the foregoing, the provisions of Section 5.03.2 regarding disapproval of an annual rate of regular assessments is specifically declared inapplicable when the rate is set by Declarant under this Section.

12.08.2 Payment of Assessments by Declarant during Development Period.

(a) Notwithstanding anything to the contrary contained herein, or in the Declaration or in any other Governing Documents, all Building Sites owned by Declarant or Builder are exempt from payment of all assessments (regular, utility, special or specific assessments) until the first day of the month following expiration or termination of the Development Period.

(b) In lieu of payment of assessments as aforesaid, Declarant and Builder will contribute to the Association Maintenance Fund during the Development Period, an amount, if any, equal to the Actual Operating Expenses of the Association less all funds available to the Association regardless of source and regardless of any principles of accrual or other accounting which might otherwise be applicable, including, without limitation, all assessments (regular, utility, special, and specific) received from all other Owners subject to payment of assessments plus all other income received by the Association from any source (such as, for example, interest income); provided, Declarant shall never be required to contribute more than an amount equal to the full annualized rate of regular annual assessments which would

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otherwise be applicable to Declarant's Building Sites. "Actual Operating Expenses" means those expenses reasonably necessary for the discharge of the Association's functions and duties under this Declaration, but does not include capital expenditures (determined in accordance with generally-accepted accounting principals), or any amounts paid or to be paid to capital, contingency, or other reserves, or any prepaid items, inventory, or similar expenses attributable to periods after expiration or termination of the Development Period. The determination of Actual Operating Expenses by Declarant is final and conclusive. Declarant will contribute to the Association Maintenance Fund as aforesaid from time to time as Declarant may determine. Annually, and upon expiration or termination of the Development Period, Declarant may offset any surplus funds of the Association against all contributions made by Declarant during the Development Period and demand repayment from such surplus funds up to the full amount of Declarant contributions, without interest.

**SECTION 12.09 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 personal delivery acknowledged in writing or by certified or registered mail, return receipt requested, or as otherwise directed by written notice of Declarant filed in the Official Public Records of Real Property of Harris County, Texas. Notices or other communications to Declarant are deemed given only upon actual receipt.

**SECTION 12.10 Amendment of Governing Documents or Plat; Annexation.**

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

12.10.2 **NO IMPAIRMENT OF DECLARANT'S RIGHTS.** NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS DECLARATION TO THE CONTRARY, NO PROVISIONS OF THIS ARTICLE XII MAY BE AMENDED, MODIFIED, CHANGED, OR TERMINATED EITHER DURING OR AFTER TERMINATION OF THE DEVELOPMENT PERIOD WITHOUT THE PRIOR WRITTEN CONSENT OF DECLARANT.

**SECTION 12.11 Limitation of Liability.**

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12.11.1 General. Without limitation of Section 3.06 hereof, 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; provided, Declarant will conduct all such activities in a manner consistent with the general scheme of development hereby established.

12.11.2 Developmental Activities. Declarant may or will be required during the Development Period to engage in construction activities upon multiple Building Sites or Community Properties, to store equipment or materials on multiple Building Sites or Community Properties, to create accumulations of trash and debris and to otherwise engage in activities and create conditions related to its initial development of the Subdivision, including the construction and sale of Residences and any other improvement in the Subdivision (the "Developmental Activities"). Declarant will use reasonable efforts to minimize the adverse effects of its Developmental Activities. However, Declarant is not liable to any Owner or tenant, or to the Association or ACC, or to any Related Parties of any of the foregoing, for any consequences of the reasonable conducting of its Developmental Activities. Further, Declarant may establish any reasonable regulations as to Owners and tenants, as to the Association an ACC, and as to any Related Parties of any of the foregoing, which Declarant deems appropriate to avoid hindrance or interference with its Developmental Activities, including limiting or denying access to areas of the Subdivision, designating temporary dumping sites, maintenance of metal buildings or structures and use of Community Properties and/or Subdivision Facilities in connection with its Development Activities.

12.11.3 NO REPRESENTATIONS OR WARRANTIES; INDEMNIFICATION.

(a) **NO COVENANTS, REPRESENTATIONS, GUARANTIES, OR WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, OR BY OPERATION OF LAW, INCLUDING ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, AND FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE, SHALL BE DEEMED TO BE GIVEN OR MADE BY DECLARANT, OR DECLARANT'S OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, BY ANY PROVISION OF THIS DECLARATION OR ANY OTHER GOVERNING DOCUMENTS REGARDING ANY DEVELOPMENT ACTIVITIES OR OTHERWISE. WITHOUT LIMITATION OF THE FOREGOING, DECLARANT EXPRESSLY DISCLAIMS ALL COVENANTS, REPRESENTATIONS, GUARANTIES, AND WARRANTIES, EXPRESSED OR IMPLIED, AND BY OPERATION OF LAW (i) AS TO ANY FUTURE DEVELOPMENT, (ii) FOR MANAGEMENT OR SUPERVISION OF BUILDING, CONSTRUCTION, AND ALL OTHER WORK BY ANY BUILDER, VENDOR, OR SUPPLIER NOT DIRECTLY EMPLOYED BY DECLARANT, INCLUDING ANY DUTY TO ENFORCE ANY PROVISIONS OF THE GOVERNING DOCUMENTS AS TO ANY SUCH PARTY (iii) THE NATURE, CONDITION, APPEARANCE, USE, AND ALL OTHER MATTERS PERTAINING TO ANY PROPERTIES ADJACENT TO OR WHICH ARE NOT OTHERWISE SUBJECT TO THE GOVERNING DOCUMENTS, INCLUDING WITHOUT LIMITATION, ANY OBLIGATION NOW OR IN THE FUTURE TO INCLUDE IN THE SUBDIVISION OR IN ANY MANNER TO OTHERWISE SUBJECT ANY SUCH PROPERTIES TO ANY PROVISIONS OF THE GOVERNING DOCUMENTS, (iv) THE MANAGEMENT OR OPERATION OF THE ASSOCIATION, AND (v) AS TO ENFORCEMENT OF ANY PROVISIONS OF THE GOVERNING DOCUMENTS AS TO**



ANY OWNER, TENANT, OR ANY OTHER PERSON, IT BEING EXPRESSLY STIPULATED AND AGREED THAT SUCH ENFORCEMENT IS AT ALL TIMES THE SOLE RESPONSIBILITY OF THE ASSOCIATION AND/OR ANY AFFECTED OWNER.

(b) IN ADDITION TO AND WITHOUT LIMITATION OF SECTION 3.06, THE ASSOCIATION AND EACH OWNER HEREBY RELEASES DECLARANT FROM, AND THE ASSOCIATION AND EACH OWNER MUST HEREAFTER INDEMNIFY, PROTECT, DEFEND, SAVE, AND HOLD HARMLESS DECLARANT, AND DECLARANT'S EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, AND AGENTS FROM AND AGAINST, ANY AND ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND EXPENSES, AND COURT COSTS) IN ANY WAY RELATED TO, CONNECTED WITH, OR ARISING OUT OF ANY OF THE MATTERS SET FORTH IN SECTION 12.05 AND IN THIS SECTION, INCLUDING, WITHOUT LIMITATION, THE COST OF ANY REMOVAL OF HAZARDOUS SUBSTANCES OR CONTAMINANTS OF ANY KIND FROM THE PROPERTY, OR THE OWNERSHIP, LEASING, USE, CONDITION, OPERATION, MAINTENANCE, OR MANAGEMENT OF THE PROPERTY, REGARDLESS OF WHETHER THE SAME ARISES OR ACCRUES DURING OR AFTER TERMINATION OF THE DEVELOPMENT PERIOD. THE PROVISIONS OF THE SECTION (INCLUDING ITS INCORPORATION AS TO SECTIONS 3.06 AND 12.05) CONSTITUTE A COVENANT OF RELEASE AND INDEMNIFICATION RUNNING WITH THE LAND (INCLUDING EACH BUILDING SITE AND ALL COMMUNITY PROPERTIES), AND IS BINDING UPON EACH OWNER AND THEIR TENANT, AND THEIR RESPECTIVE FAMILY OR OTHER HOUSEHOLD MEMBERS, SUCCESSORS IN TITLE OR INTEREST, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS.

**SECTION 12.12 Mandatory Dispute Resolution Procedures.**

12.12.1 "Dispute" or "Disputes" Defined; Scope. "Dispute" or "Disputes" means any claim, demand, action, or cause of action, and all rights or remedies therefore, whether in contract or tort, statutory or common law, or legal or equitable, claimed or asserted by the Association by any Member or Owner, or by their respective Related Parties, against or adverse to Declarant or to any Related Parties of Declarant regarding any aspect of the construction, development operation, maintenance or management of the Subdivision, the establishment, operation or management of the Association, the construction, operation or application of any provisions of, or otherwise arising out of or relating to, this Declaration and any other Governing Documents, or the breach thereof, and all other matters relating directly or indirectly to any of the foregoing. Such terms do not include any matters covered by any written limited warranties of any Owner regarding the Owner's Residence such as, for example, the limited warranty program sponsored by American Construction & Education Services, Inc. ("ACES") or substantial equivalent; provided, such terms shall include any disagreement, controversy, or claim to the extent necessary to determine that a matter is covered by any such written limited warranty.

12.12.2 Presentment of Dispute Required. Within one hundred twenty (120) days after conducting of the first annual meeting of the Members of the Association, the Board of Directors must submit written notice to Declarant in the manner required by the Declaration setting forth all Disputes, if any, claimed or asserted

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against, or adverse to Declarant or its Related Parties (herein referred to as the "Dispute Notice"). The Dispute Notice must include, without limitation, a punch list as to any and all clean-up, finish work (such as street, curb paver, landscaping, and related repairs) and any and all other maintenance, repair, or other work to any Community Properties or Subdivision Facilities, or to any other properties or improvements within or relating to the Subdivision.

12.12.3 Settlement by Agreement. Declarant and the Board of Directors agree to use reasonable efforts to resolve all Disputes set forth in the Dispute Notice in writing within sixty (60) days after Declarant's receipt of the Dispute Notice. To that end, Declarant may by written request require the Board of Directors to attend and participate in (i) one or more meetings at Declarant's office during the sixty-day period in an effort to resolve all disputes and/or (ii) an administrative conference between Declarant, the Board of Directors and a representative of the American Construction & Education Services, Inc. ("ACES") or the American Arbitration Association ("AAA"). In the case of an administrative conference, each party must submit a written proposal for resolution of all Disputes set forth in the Dispute Notice to the applicable representative at least five (5) days before the conference. The written proposals for resolution must be kept confidential by the representative, and same shall be destroyed after conducting of the administrative conferences.

12.12.4 Mediation. If all Disputes have not been settled by written agreement within the sixty (60) day period as provided in Subsection 12.13.3, then Declarant, by written request, may require that all unresolved Disputes be submitted to non-binding mediation to be conducted, as Declarant elects, through the Harris County Dispute Resolution Center ("DRC"), ACES, or AAA. The mediator will be appointed by the DRC, ACES, or AAA, as the case may be, in accordance with applicable rules of the designated organization. The mediator must meet the requirement of Section 154.052 of the Texas Civil Practice and Remedies Code, and must have at least three (3) years experience as a mediator, including construction/real estate development mediation experience. The mediation shall be conducted within thirty (30) days after appointment of the mediator. The mediation must be attended by a person or persons with authority and discretion to negotiate and settle all Disputes. The mediator shall determine the format and rules for the mediation; provided the provisions of Sections 154.053, 154.071, and 154.073, regarding conduct of the mediator, effect of a written settlement agreement and confidentiality shall apply. Fees and expenses of the mediator shall be borne by the parties equally.

12.12.5 Binding Arbitration.

(a) If all Disputes have not been resolved by agreement of the parties or through mediation as above provided within one hundred twenty days (120) after Declarant's receipt of the Dispute Notice, then Declarant may, by written request, whether made before or after the institution of any legal action, require that all unresolved disputes be submitted to binding arbitration conducted in accordance with the Construction Industry Arbitration Rules (or substantial equivalent) of the American

Arbitration Association ("AAA"). **SUCH ARBITRATION WILL BE BINDING AND FINAL TO THE EXTENT ALLOWED BY LAW, AND THE ASSOCIATION, EACH MEMBER, AND OWNER AND THEIR RESPECTIVE RELATED PARTIES HEREBY WAIVE THE RIGHT TO PURSUE ANY OTHER RESOLUTION OF A DISPUTE, INCLUDING A PROCEEDING IN ANY JUDICIAL FORUM.**

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

(c) An arbitrator will be appointed by agreement of the parties from a list of construction arbitrators to be provided by AAA; or, if the parties cannot agree within ten (10) days after receipt of the list, then an arbitrator will be appointed by AAA in accordance with its rules for appointment from a roster.

(d) The arbitration proceedings must be conducted in Houston, Harris County, Texas. In rendering its award, the arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of the State of Texas, and in accordance with applicable provisions of this Declaration and other Governing Documents, and applicable AAA rules.

(e) Any provision remedy that would be available from a court, including injunctive relief to maintain the status quo, shall be available from the arbitrator pending final determination of all Disputes.

(f) Declarant may make written request that arbitration proceedings under this Declaration be consolidated with arbitration proceedings pending between Declarant and other parties if the arbitration proceedings arise from the same transaction or related to the same subject matter. Consolidation will be by an order of the arbitrator in any of the pending cases or, if the arbitrator fails to make such an order, Declarant may apply to any court of competent jurisdiction for such an order.

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

12.12.6 Declarant's Right of Inspection. At any time during the existence of any Dispute which has not been finally resolved in writing, Declarant and its designated representatives may make such inspections and conduct such surveys, tests, and examinations as reasonably necessary to determine or confirm the nature and cause of all Disputes, the nature and extent of repairs and other work necessary to

remedy or otherwise resolve the Disputes and any other matters reasonably related to the disputes.

12.12.7 MEMBERS' AND OWNERS' IRREVOCABLE POWER OF ATTORNEY. EACH MEMBER AND EACH OWNER, FOR THEMSELVES AND THEIR RELATED PARTIES, HEREBY IRREVOCABLY APPOINT THE BOARD OF DIRECTORS OF THE ASSOCIATION AS THEIR RESPECTIVE ATTORNEY-IN-FACT TO ACT IN THEIR PLACE AND STEAD REGARDING ALL PROVISIONS OF THIS SECTION 12.12, AND ARE BOUND IN ALL RESPECTS AS TO ALL ACTIONS, OMISSIONS, AGREEMENTS, AND DECISIONS OF THE BOARD OF DIRECTORS RELATING THERETO AND THE RESULTS OF ANY BINDING ARBITRATION REGARDING SAME.

12.12.8 COMPLIANCE AS CONDITION PRECEDENT; LIMITATIONS. THE GIVING OF NOTICE OF DISPUTES AS REQUIRED BY SECTION 12.12.2 AND THE SUBSTANTIAL COMPLIANCE WITH ALL OTHER APPLICABLE PROVISIONS OF THIS SECTION 12.12 IS A CONDITION PRECEDENT TO THE RIGHT TO BRING SUIT PERTAINING TO ANY SUCH DISPUTE. IN ADDITION THERETO, BUT NOT OTHERWISE WITHSTANDING ANY OTHER PROVISIONS OF THIS DECLARATION OR ANY OTHER GOVERNING DOCUMENTS, ANY SUIT REGARDING ANY DISPUTE AND ANY MATTERS PERTAINING THERETO MUST BE FILED IN A COURT OF COMPETENT JURISDICTION IN HARRIS COUNTY, TEXAS, WITHIN TWO (2) YEARS AFTER THE DATE OF THE FIRST MEETING OF MEMBERS.

### ARTICLE XIII. General Provisions

**SECTION 13.01** Term. Subject to the provisions of Section 13.02, 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 (20) years from the date this Declaration is filed in the official Public Records of Real Property of Harris County, Texas after which time said covenants, conditions, restrictions, reservations, easements, liens, and charges will be automatically extended for successive periods of ten (10) years each.

### **SECTION 13.02** Amendment.

13.02.1 By Owners. Except as otherwise expressly herein provided, the Owners of two-thirds (2/3rds) of the total number of Building Sites then contained within the Subdivision always have the power and authority to amend this Declaration, in whole or in part, at any time from time to time; provided, during (i) the Development Period, no amendment is effective unless and until approved in writing by Declarant, and (ii) after the Development Period, no amendment is effective unless approved in writing by the Board of Directors of the Association. In this Declaration, and all other Governing Documents the terms "amend," "amendment," or substantial equivalent mean and refer to any change, modification, revision, or termination of any provisions of this Declaration or other Governing Documents.

13.02.2 By Association. The Board of Directors has the right in its sole judgment, 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; provided, the Board has no obligation whatsoever to amend this Declaration in accordance with any such lending institution 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, or Federal Housing Administration, and in this respect, the Board shall so amend this Declaration to the extent required by law upon receipt of written notice of such requirements and request for compliance.

13.02.3 Method for Approval of Amendment by Owners.

(a) Notice of any proposed amendment must be given to Owners of all Building Sites at least ten (10) days before circulation of the amending instrument or conducting of the special meeting as to same as provide in Section 13.02.3(b). Unless a complete copy of the proposed amending instrument is included with the notice, the notice must set forth a reasonable summary of the proposed amendments and in that event a complete copy of the amending instrument must be mailed to any Owner promptly upon receipt by the Association of a written request for same.

(b) The Owner's approval of any amendment of this Declaration as provided in Section 13.02.1 may be obtained (i) by execution of the amending instrument or a consent thereto by any Owner of each Building Site so approving, (ii) by affirmative vote, in person or by proxy, at a special meeting called for consideration of any such amendment, or (iii) by a combination of the foregoing.

(c) Any joint Owner may nullify the approval of another joint Owner only by filing of a written objection in the Official Public Records of Real Property of Harris County, Texas, within ninety (90) days after filing of the amending instrument. The certification of the Association's Secretary as to compliance with all prerequisites for amendment set forth herein is final and conclusive from and after two (2) years after filing of the applicable amending instrument in the Official Public Records of Real Property of Harris County, Texas.

13.02.4 Effective Date. Any lawful amendment of this Declaration will be effective from and after filing of the amending instrument in the Official Public

Records of Real Property of Harris County, Texas, or such later date as may be stated in the amending instrument.

13.02.5 NO IMPAIRMENT OF DECLARANT'S RIGHTS. NO AMENDMENT UNDER THIS SECTION MAY REMOVE, REVOKE, OR MODIFY ANY RIGHT OR PRIVILEGE OF DECLARANT WITHOUT THE WRITTEN CONSENT OF DECLARANT.

**SECTION 13.03 Notices to Association, ACC, and Owners.** Unless otherwise expressly provided herein, all notices or other communications permitted or required under this Declaration must be in writing and are deemed properly given if, but only if, given in accordance with the following:

13.03.1 Notices to Association or ACC. All notice or other communications to the Association or ACC during the Development Period must be given to Declarant as provided in Section 12.09. 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 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 are deemed given only upon actual receipt of same. In the event the Association or ACC disputes receipt of any notice or other communication, the original or a copy of the delivery acknowledgement, or return receipt must be provided to the Association or ACC failing which the notice or other communication will be conclusively deemed not to have been received.

13.03.2 Notice to Owners. All notices or other communications to any Owner are 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 Building Site located within the Subdivision, or to the most current street address given by an Owner for purposes of notice as provided in Section 13.03.3. Where more than one Person is the Owner of a single Building Site, the mailing of any notices or other communications as aforesaid to any single Owner constitutes notice given to all such Owners.

13.03.3 Owner's Notice of Address other than Building Site Address Required. Any Owner may request any notices required or permitted hereby be mailed to an address other than such Owner's Building Site address by giving written and dated notice of the alternate address to the Association. 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 request or delivery receipt acknowledgement. In the event of conflict in such requests by a single Owner or multiple Owners, the request last received shall control.

13.03.4 Change of Ownership. Written notice of any change of ownership of a Building Site by sale or otherwise must be given to the Association within thirty (30) days after the change. The notice must state the name and current

mailing address of the current Owner(s), the date of acquisition of ownership, the names of all persons who will occupy the affected Building Site and their relationship, and a general statement of the legal basis of the change of ownership (such as sale under deed, or executory contract for conveyance).

13.03.5 Leasing. Written notice of leasing of or other change in occupancy of a Building Site must be given to the Association within thirty (30) days after the change of occupancy. The notice must state name and current mailing address of the Owner(s), the date of change of occupancy, the names of all persons who will occupy the Building Site and their relationship, and a general statement of the legal basis of the change of occupancy (for example under lease for one (1) year term).

13.03.6 Notice of Liens, Status, and Foreclosure; Notice of Default.

(a) Upon written request, an Owner must provide to the Association, a written statement setting forth the current holder of all mortgages, deeds of trust, and other liens and encumbrances as to their Building Site for the purchase thereof, taxes thereon, and work and materials used in constructing improvements thereon, and as to each, the nature of and loan, account, or similar identifying number or other designation applicable to the mortgage, deed of trust, or other lien or encumbrance.

(b) Upon written request, the holder of any mortgage, deed of trust, and any other lien or encumbrance pertaining to a Building Site must provide to the Association a statement of current status, including account or similar identifying number or other designation applicable to the mortgage, deed of trust, or other lien or encumbrance, the nature of any current default and resulting current amounts due, if any, the nature of and current status of any enforcement proceedings, current payoff, and such other relevant information as may be set forth in the written request.

(c) The holder of any mortgage, deed of trust, or other lien or encumbrance pertaining to a Building Site must give the Association written notice of acquisition of title by foreclosure or deed or other instrument of conveyance in lieu of foreclosure, or of the status of a mortgagee in possession, within thirty (30) days after acquisition of such title or status. The notice must include name and mailing address, account or similar identifying number or other designation (such as REO No.) and such other relevant information as the Association may request in writing.

(d) The Association may (but is not required to) notify any credit bureau, and the holder (or purported or believed holder) of any right, title, or interest in and any mortgage, deed of trust, and any other lien or encumbrance pertaining to a Building Site as to any default under the Governing Documents, including delinquency in payment of assessments and any other monetary amounts due to the Association.

13.03.7 Other Information or Documentation. The Board may, from time to time, by written request, require any Owner or their tenant to verify the

information covered by Sections 13.03.3 through 13.03.6 by submission of such documentation and additional information as the Board may reasonably require.

13.03.8 Other Governing Documents. Applicable provisions of this Section 13.03 also apply to notices or other communications permitted or required by other Governing Documents except as otherwise expressly provided in such other Governing Documents, and provided that notice given in accordance herewith is in all events sufficient regardless of contrary provisions in other Governing Documents.

**SECTION 13.04 Managing Agent.** The Board shall have 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 services to the Association, including discharge of such functions and 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 shall be retained, hired, employed, or contracted for on such terms and conditions as the Board, in its sole good faith judgment, may determine; provided, the Board shall 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 (60) days notice.

**SECTION 13.05 Conflicts in Governing Documents.** In the event of any conflict in the Governing Documents which cannot be reasonably reconciled after application of rules or interpretation as provided herein or by law, this Declaration shall control over any other Governing Documents, and all other Governing Documents shall control in the following order of priority: (i) Architectural Guidelines; (ii) Rules and Regulations; (iii) Certificate of Formation; (iv) Bylaws; (v) Board and Member resolutions; and (vi) all others.

**SECTION 13.06 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 shall be 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 shall govern. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience, and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. In particular and without limitation, the division of use restrictions under Article VII hereof and architectural restrictions under Article VIII hereof are for convenience of reference, it being the intent that all such provisions be given full effect in an integrated manner in light of the general purposes and objectives of this Declaration and the scheme of development accomplished thereby. Whenever used, the singular number shall include the plural, the singular, and the use of any gender shall be applicable to all genders.

**SECTION 13.07 Severability.** Wherever possible, each provision of this Declaration shall 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 shall be prohibited or held invalid, such prohibition or invalidity shall not extend beyond such Person, particular circumstance, or property, and shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**SECTION 13.08** Effective Date. This Declaration is effective from and after the date of filing of same in the Official Public Records of Real Property of Harris County, Texas.

**IN WITNESS WHEREOF**, the undersigned, being the current sole Owner of all Building Sites initially subject to this Declaration, has executed this Declaration to be effective upon the date of filing of this Declaration in the Official Public Records of Real Property of Harris County, Texas.

**ZK HOMES, L.P.**,  
a Texas limited partnership

(A) 100  
100

By: **ZK GP, L.L.C.**,  
A Texas limited liability company,  
Its General Partner

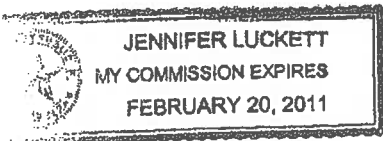
By: [Signature]  
Lee Zieben, President

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

Before me, a notary public, on this day personally appeared Lee Zieben, President of ZK GP, L.L.C., a Texas limited liability company, its General Partner to ZK Homes, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and, being by me first duly sworn and declared that he executed same in the capacity and consideration therein expressed.

Given under my hand and seal of office this the 30<sup>th</sup> day of June, 2009.

[Signature]  
NOTARY PUBLIC - STATE OF TEXAS



MP 066-31-3027

**CONSENT AND SUBORDINATION OF LENDER**

The undersigned, being the owner and holder of a lien(s) against the Subdivision hereby consents to Declarant's adoption of the "Declaration of Covenants, Conditions, Restrictions and Easements for Enclave at Bellaire" ("Declaration") and joins in to subordinate its lien(s) to the Declaration so that the Declaration shall hereafter be considered the superior in title to all lien(s) in favor of the undersigned against the Subdivision; and hereby further agrees that a foreclosure of any or all of its lien(s) shall not affect the foregoing reservations, restrictions, covenants and conditions in the Declaration.

This consent and joinder shall not be construed or operate as a release of any mortgage or liens owned or held by the undersigned, or any part thereof, but the undersigned agrees that its lien(s) shall hereafter be upon and against the Subdivision, subject to the foregoing Declaration (except that no provision hereof shall be construed to subordinate lien(s) of the undersigned to any lien(s) reserved or referred to in the foregoing Declaration).

Executed as of June 5, 2009.

LENDER

The Frost National Bank

By: [Signature]

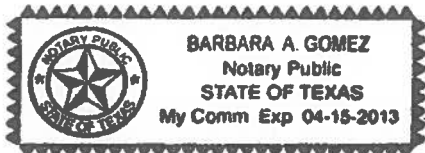
Printed: Mike Aubuchon

Its: Market President - Westchase

STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

On June 5, 2009, before me, personally appeared Michael Aubuchon Market President of The Frost National Bank, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same.

[Signature]  
Notary Public in and for the State of Texas



RP 066-31-3028

**CONSENT AND SUBORDINATION OF LENDER**

The undersigned, being the owner and holder of a lien(s) against the Subdivision hereby consents to Declarant's adoption of the "Declaration of Covenants, Conditions, Restrictions and Easements for Enclave at Bellaire" ("Declaration") and joins in to subordinate its lien(s) to the Declaration (except as otherwise provided below in this Consent and Subordination of Lender) so that the Declaration (except as otherwise provided below in this Consent and Subordination of Lender) shall hereafter be considered the superior in title to all lien(s) in favor of the undersigned against the Subdivision; and hereby further agrees that a foreclosure of any or all of its lien(s) shall not affect the foregoing reservations, restrictions, covenants and conditions in the Declaration.

Notwithstanding anything contained above, this consent and joinder shall not be construed or operate as a release of any mortgage or liens owned or held by the undersigned, or any part thereof, but the undersigned agrees that its lien(s) shall hereafter be upon and against the Subdivision, subject to the foregoing Declaration (except that no provision hereof shall be construed to subordinate lien(s) of the undersigned to any lien(s) reserved or referred to in the foregoing Declaration) and no amendment to this Declaration shall be binding on Whitney National Bank, its successors and assigns unless such amendment is approved in writing by Whitney National Bank, its successors or assigns.

Executed as of June 18, 2009.

LENDER

Whitney National Bank

By: \_\_\_\_\_

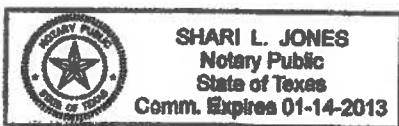
Printed: \_\_\_\_\_

**RUBEN ALVAREZ**  
**VICE PRESIDENT**

Its: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

On June 18, 2009, before me, personally appeared Ruben Alvarez, Vice President of Whitney National Bank, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same.

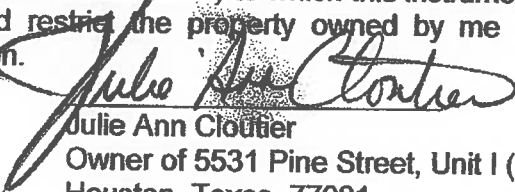


Shari L. Jones  
Notary Public in and for the State of Texas

MP 066-31-3029

**JOINDER OF OWNER**  
**of**  
**ENCLAVE AT BELLAIRE**  
**to**  
**"DECLARATION**  
**of**  
**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR**  
**ENCLAVE AT BELLAIRE"**

I, the undersigned, being owner of Lot 12 in Pine Street Townhomes (commonly known as Enclave at Bellaire), a Harris County subdivision, according to the map or plat thereof recorded under Film Code No. 605018 of the Map Records of Harris County, Texas ("Enclave at Bellaire"), do hereby agree to and consent to the terms and conditions of that certain instrument entitled "Declaration of Covenants, Conditions, Restrictions and Easements for Enclave at Bellaire" (the "Declaration") to which this instrument is attached, which document shall run with and restrict the property owned by me in Enclave at Bellaire, as set forth in the Declaration.

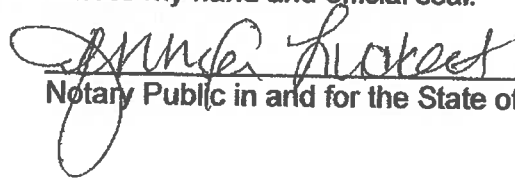
  
 Julie Ann Cloutier  
 Owner of 5531 Pine Street, Unit I (Lot 12),  
 Houston, Texas 77081  
 of Enclave at Bellaire, a Subdivision in  
 Harris County, Texas

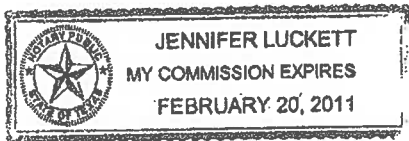
*102*

THE STATE OF TEXAS §  
 COUNTY OF HARRIS §

BEFORE ME, the undersigned notary public, on this day personally appeared Julie Ann Cloutier, Owner of 5531 Pine Street, Unit I (Lot 12), Houston, Texas 77081 of Enclave at Bellaire, a Subdivision in Harris County, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

June SUBSCRIBED AND SWORN TO BEFORE ME on this the 30<sup>th</sup> day of \_\_\_\_\_, 2009, to certify which witness my hand and official seal.

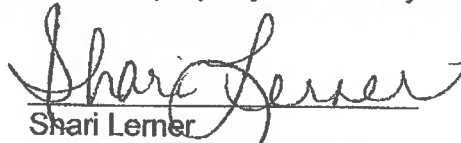
  
 Notary Public in and for the State of Texas



REF 066-31-3030

**JOINDER OF OWNER  
of  
ENCLAVE AT BELLAIRE  
to  
"DECLARATION  
of  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
ENCLAVE AT BELLAIRE"**

I, the undersigned, being owner of Lot 14 in Pine Street Townhomes (commonly known as Enclave at Bellaire), a Harris County subdivision, according to the map or plat thereof recorded under Film Code No. 605018 of the Map Records of Harris County, Texas ("Enclave at Bellaire"), do hereby agree to and consent to the terms and conditions of that certain instrument entitled "Declaration of Covenants, Conditions, Restrictions and Easements for Enclave at Bellaire" (the "Declaration") to which this instrument is attached, which document shall run with and restrict the property owned by me in Enclave at Bellaire, as set forth in the Declaration.



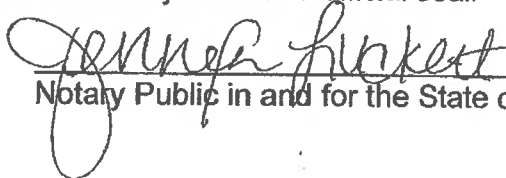
Shari Lerner  
Owner of 5531 Pine Street, Unit G (Lot 14),  
Houston, Texas 77081  
of Enclave at Bellaire, a Subdivision in  
Harris County, Texas

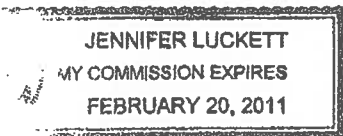
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THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned notary public, on this day personally appeared Shari Lerner, Owner of 5531 Pine Street, Unit G (Lot 14), Houston, Texas 77081 of Enclave at Bellaire, a Subdivision in Harris County, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

June SUBSCRIBED AND SWORN TO BEFORE ME on this the 30<sup>th</sup> day of June, 2009, to certify which witness my hand and official seal.

  
Notary Public in and for the State of Texas



RECORDED

**CONSENT OF LIENHOLDER**

The undersigned, being a lienholder against 5531 Pine Street, Unit G (Lot 14), Houston, Texas 77081 of Enclave at Bellaire, does hereby consent and agree to the foregoing "Declaration of Covenants, Conditions, Restrictions and Easements for Enclave at Bellaire" to which this instrument is attached.

**RMCVANGUARD MORTGAGE CORPORATION**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

2009 JUL 17 PM 4:07  
*Dorely B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

**FILED**

STATE OF TEXAS      §  
                                 §  
COUNTY OF HARRIS   §

On \_\_\_\_\_, 2009, before me, personally appeared \_\_\_\_\_ of RMCVanguard Mortgage Corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public in and for the State of Texas

154109

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS

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

**JUL - 2 2009**



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

2009 JUL -2 PM 3:57  
*Dorely B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

**FILED**

**Return to:  
Butler & Hailey, P.C.  
8901 Gaylord, Suite 100  
Houston, Texas 77024**

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

2808-18-990 JK

(001\*TR 35B) WESTMORE FARM

3088025.9015  
13821825.9491

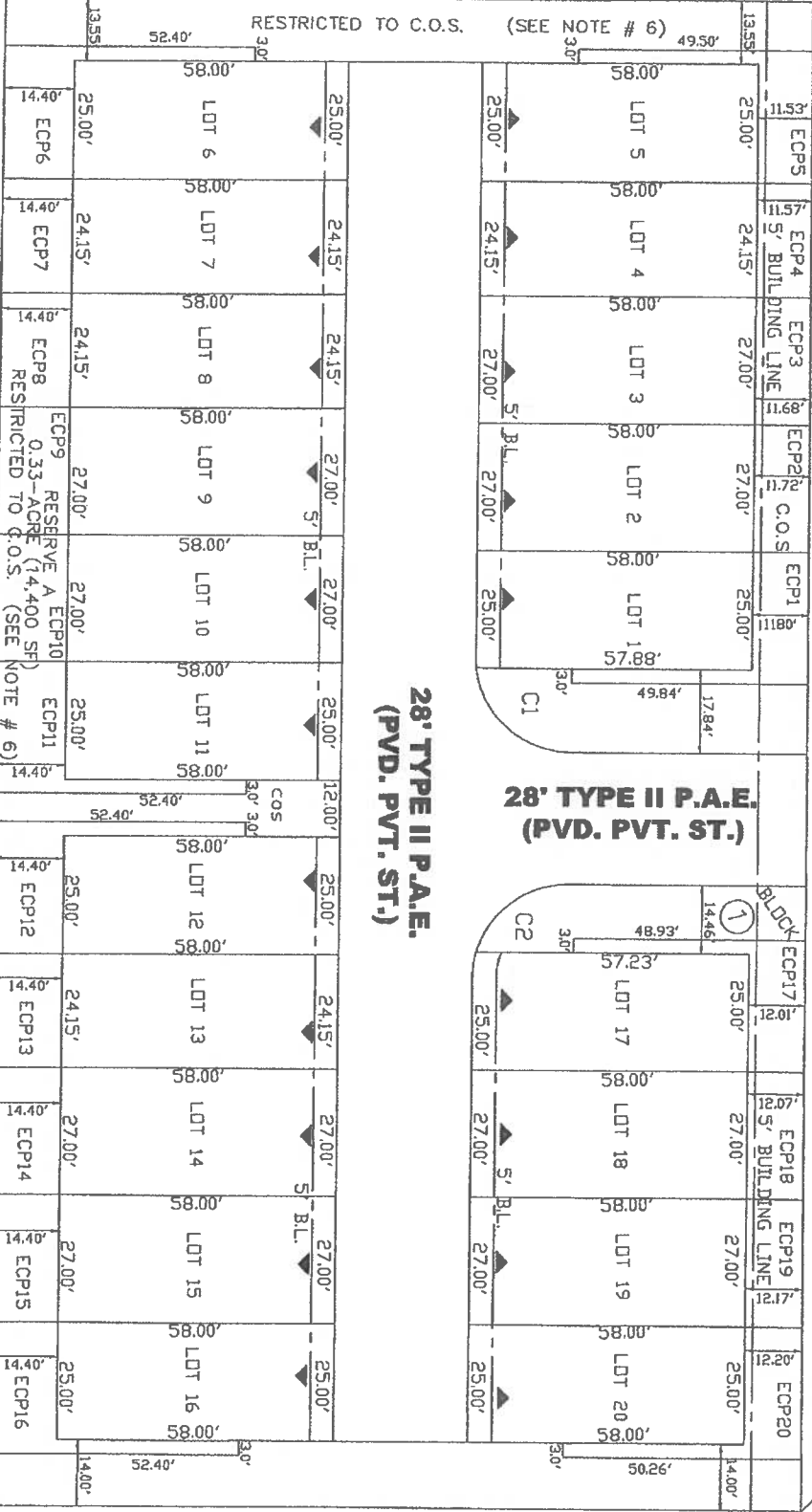
N 00°03'14" W 169.92'

RESTRICTED TO C.O.S. (SEE NOTE # 6)

N 13822016.0751  
E 3088025.7695

S 89°51'12" W 320'

PINE STREET  
(70' R.O.W.)



28' TYPE II P.A.E.  
(PVD. PVT. ST.)

28' TYPE II P.A.E.  
(PVD. PVT. ST.)

S 89°58'10" W 320'

N 00°03'14" W 170.57'

N 13822016.6384  
E 3088025.7729

N 13821846.1063  
E 3088025.7695

WESTMORELAND FARMS VOL. 4 PAGE 21  
EAST 150' OF LOT 29, BLOCK 5  
WESTMORRIAND FARMS VOL. 4 PAGE 21



REC'D - 12-9-90 DE

HP 066-31-3034

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in file number Sequence on the date and at the  
chancel office by me and was duly RECORDED in the Official Public Records of Real Property of Harris  
County Texas on

JUL 17 2009



*Dorothy L. Kayman*

COUNTY CLERK  
HARRIS COUNTY, TEXAS