



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WATERSIDE

This Declaration of Covenants, Conditions and Restrictions for Waterside is made on the date hereinafter set forth by the Declarant (hereinafter defined).

Declarant is the owner of the Property (as herein defined). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. This Declaration (as defined herein) is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property. In furtherance of such plan, Declarant has caused or intends to cause the Waterside Homeowners Association, Inc. to be formed as a Texas nonprofit corporation to own, operate, and maintain the Common Areas (as defined herein) and to administer and enforce the provisions of this Declaration.

Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, covenants and conditions contained in this Declaration, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of Declarant, the Association (hereinafter defined), the ACA (hereinafter defined) and each owner of any portion of the Property.

ARTICLE I DEFINITIONS

1.1 "Annexable Property" means the real property, if any, adjoining or within one mile of the Property which Declarant may wish to annex during Class B Control Period.

1.2 "ACA or "Architectural Control Authority" shall have the meaning provided such terms in Section 6.2 herein.

1.3 "ACA Standards" means standards adopted by the ACA regarding architectural and related matters, including, without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which may be either recommended or required by the ACA for use within the Property.

1.4 "Association" means the Waterside Homeowners Association, Inc., a Texas non-profit corporation established for the purposes set forth herein.

1.5 "Association Fencing" means that certain fencing installed by Declarant, if Declarant so elects.

1.6 "Board of Directors" means the board of directors of the Association.

1.7 **"Builder"** means any person or entity who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business.

1.8 **"City"** means the City of McKinney.

1.9 **"Class B Control Period"** means the period commencing upon the date of this Declaration and expiring upon the earliest of: (i) a date that Declarant in writing elects to terminate the Class B Control Period, or (ii) when 85% of the Lots (as herein defined) within all phases of the Development have been improved with a Dwelling thereon and conveyed to persons or entities other than a partner of Declarant or a Builder, or (iii) the expiration of 15 years from the date hereof. For purposes of determining the number of Lots within the Development, the final subdivision plats, when Recorded against the entire Development showing each residential building site, shall be the determining documentation.

1.10 **"Class Vote"** means a vote of the Class B Member during the Class B Control Period as provided in Section 3.2 below, and means a vote of all Class A Members after the expiration or termination of the Class B Control Period.

1.11 **"Common Area"** and **"Common Areas"** means all areas (including the improvements thereon) within the Property owned or to be owned by the Association for the common use and enjoyment of the Members.

1.12 **"Common Expenses"** means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas, but excluding any expenses incurred during the Class B Control Period for the initial or original construction of improvements.

1.13 **"Common Maintenance Areas"** means the Common Areas, if any, and any areas within public rights-of-way, easements (public and private), portions of a Lot, public parks, private streets, landscaping, entry feature, fence or similar areas that the Board of Directors deems necessary or appropriate to maintain for the common benefit of the Members.

1.14 **"County"** means the County of Collin.

1.15 **"Declarant"** means Beacon Hill Groups LLC, a Texas limited liability company and its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign in a document that is Recorded. There may be more than one Declarant if Declarant makes a partial assignment of the Declarant status.

1.16 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Waterside and any amendments and supplements thereto made in accordance with its terms.

1.17 **"Designated Interest Rate"** means the interest rate designated by the Board of Directors from time to time, subject to any interest limitations under Texas law. If the Board of Directors fails to designate an interest rate, then the interest rate shall be the lesser of 18% per

annum or the highest rate permitted by Texas law. The Designated Interest Rate is also subject to the limitations in Section 11.6 herein.

1.18 “**Development**” means the Property and the Annexable Property, if any.

1.19 “**Dwelling**” means any residential dwelling situated upon any Lot.

1.20 “**Lot**” or “**Lots**” means any separate residential building parcel(s) shown on a Recorded subdivision plat of the Property or any part thereof, but only if such parcel(s) has in place the infrastructure (including utilities and streets) necessary to allow construction of a single-family home thereon. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.

1.21 “**Member**” means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in Article III herein.

1.22 “**Owner**” means the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.23 “**Property**” means the real property described on Exhibit “A” attached hereto (other than areas dedicated to the City or County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.

1.24 “**Record**,” “**Recording**” or “**Recorded**” means the filing of a legal instrument in the Public Records of Collin County, State of Texas, or such other place as may be designated as the official location for filing deeds, plats, and similar documents affecting title to real property.

1.25 “**Supplemental Declaration**” means a Recorded instrument, which subjects additional property to this Declaration and/or imposes additional or different restrictions and obligations on the land described in the instrument.

1.26 “**Vacant Lot**” means a Lot that does not have thereon a Dwelling that has been occupied at any time (past or current) for residential purposes.

ARTICLE II PROPERTY RIGHTS

2.1 **Owners’ Easements of Use and Enjoyment.** Every Owner shall have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to any limitations set forth herein, including, without limitation, the following:

a. **Rules.** The right of the Association to establish and publish rules and regulations governing the use of the Common Areas and/or the Lots.

b. **Suspension of Voting Rights.** The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid.

c. **Conveyance of Common Area.** The right of the Association, subject to the provisions hereof, to dedicate, sell or transfer all or any part of the Common Areas. However, no such dedication, sale or transfer will be effective unless there is a 67% or greater Class Vote approving such action.

d. **Mortgage Common Area.** The right of the Association, subject to the provisions hereof, to mortgage or lien all or any part of the Common Areas. However, the Common Areas cannot be mortgaged or liened without a 67% or greater Class Vote approving such action.

2.2 Prohibitions on Easement of Use and Enjoyment. Each Owner's right and easement of use and enjoyment in and to the Common Areas is further limited as follows:

a. **No Transfer without Lot.** An Owner's right and easement of use and enjoyment in and to the Common Areas shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot and such right and easement of use and enjoyment in and to the Common Areas shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Areas.

b. **No Partition.** Except as provided in Section 2.1.c herein, the Common Areas shall remain undivided and no action for partition or division of any part thereof shall be permitted.

2.3 Right to Delegate Use and Enjoyment of Common Areas. Any Owner may extend his or her right of use and enjoyment of the Common Areas to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the Bylaws of the Association (the "Bylaws"), and any reasonable rules of the Board of Directors. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

ARTICLE III MEMBERSHIP AND VOTING

3.1 Membership - Owners. Every Owner by virtue of ownership of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot.

3.2 Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot owned. However, when more than one person holds an interest in any Lot, all such persons shall be members, but only one vote in total may be cast per Lot as the Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Owner is the person designated to cast the Lot's vote. If the Owners fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.

Class B. The sole Class B Member shall be Declarant. During the Class B Control Period, all votes of the Association shall be cast solely by the Class B Member, to the exclusion of the Class A Members. The Class B membership shall cease and be converted to Class A membership upon expiration of the Class B Control Period; provided that Declarant shall continue to appoint the members of the ACA and to enforce architectural and design standards until all of the Lots within all phases of the Development have been improved with a Dwelling thereon and conveyed to persons or entities other than a partner of Declarant or a Builder.

ARTICLE IV ASSESSMENTS

4.1 Obligation to Pay Assessments. Subject to the terms of this Article IV, each Owner of any Lot other than Declarant, by acceptance of a deed therefor, whether or not such covenant will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) semi-annual assessments or charges on January 1 and July 1 of each year, (ii) special assessments as provided in Section 4.5 herein, and (iii) specific assessments as provided in Section 4.8 herein.

4.2 Personal Obligation to Pay Assessments. Each such assessment, together with interest at the Designated Interest Rate, late charges, costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded mortgage or beneficiary of a Recorded deed of trust shall be liable for unpaid assessments, which accrued prior to such acquisition of title. In addition, no mortgagee shall be required to collect assessments.

4.3 Purpose of Annual and Special Assessments. Annual assessments and special assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Maintenance Areas.

4.4 Maximum and Actual Annual Assessment. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner other than Declarant, the maximum annual assessment shall be in an initial amount per Lot fixed by the Board of Directors based upon the initial budget. From and after January 1st of the year immediately following the

conveyance of the first Lot to an Owner other than Declarant or a Builder, the maximum annual assessment may be increased as follows:

a. **Maximum Increase Without Vote.** Without a vote of the Members in accordance with **Subsection b** below, the Board of Directors may increase the maximum annual assessment each year by up to 20% above the maximum annual assessment for the previous year. The Board of Directors may increase the maximum annual assessment with or without increasing the actual annual assessment.

b. **Maximum Increase With Vote.** The maximum annual assessment may be increased more than 20% above the prior year's maximum annual assessment amount by a 67% or greater Class Vote of Members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present approving such action.

4.5 **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to cover expenses that the Board of Directors determines, in its sole discretion, would more appropriately be handled outside of the regular operating budget, provided that any such special assessment must have a 67% or greater Class Vote of Members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present approving such action.

4.6 **Uniform Rate of Assessment.** Both annual assessments and special assessments shall be fixed at a uniform rate for all Lots, except that no Lot shall be subject to any annual assessment or special assessment until the date upon which such Lot has been conveyed by Declarant.

4.7 **Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to an entity that assumes Declarant status as provided herein), unless the Board of Directors elects to commence the annual assessment earlier. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each assessment period. Written notice of the annual assessment shall be sent to an Owner of every Lot subject thereto. The due dates shall be established by the Board of Directors. The Board of Directors shall also establish whether the annual assessment shall be paid annually, quarterly or monthly.

4.8 **Specific Assessments.** The Association shall have the power to levy specific assessments against a particular Lot to (i) cover costs incurred in bringing a Lot into compliance with this Declaration, (ii) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests, and/or (iii) collect any sums due by the Owner to the Association (other than annual assessments or special assessments or interest or late charges related thereto), including, without limitation, fines and transfer fees.

4.9 **Capitalization of Association.** Upon acquisition of record title to a Lot by the first Owner thereof (other than Declarant or a Builder), at the election of the Board of Directors,

a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to 3 months of the full annual assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

4.10 **Certificate of Assessment Status.** The Association will, promptly after written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

4.11 **Transfer Fees and Fees for Issuance of Resale Certificates.** The Board may, at its sole discretion, enter into contracts with third parties to oversee the daily operation and management of the Association. These third parties may, and probably will, have fees, which will be charged to an Owner for the transfer of a significant estate or fee simple title to a Lot and the issuance of a Resale Certificate. The Association or its agent shall not be required to issue a Resale Certificate until payment for the cost thereof has been received by the Association or its agent. Transfer fees and fees for the issuance of a Resale Certificate are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. This Section does not obligate the Board or any third party to levy such fees.

4.12 **Failure to Pay Assessments; Remedies of the Association.** With respect to any assessment or other sum due herein not paid within ten days after the due date, the Association shall have the right to: (i) charge a late fee, in an amount determined by the Board of Directors; (ii) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; and/or (iii) charge costs and fees related to the collection of the sum due. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of his or her Lot. The failure to pay assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

4.13 **Lien.**

a. **Creation of Lien.** The Association shall hereby have and is hereby granted a continuing lien against each Lot to secure payment of delinquent assessments (annual assessments, special assessments and specific assessments) and capitalization contributions, as well as interest at the Designated Interest Rate, late fees, and costs of collection, including, without limitation, court costs and attorneys' fees. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot, the amount of delinquent sums due the Association at the time such document is executed including fines, costs, and attorneys' fees, and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and Record any

such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

b. **Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial or nonjudicial foreclosure. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale to be exercised in accordance with Texas Property Code Ann. 51.002 (Vernon 1995), as it may be amended. The Board of Directors may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board of Directors' meeting.

c. **Subordination of Lien.** The lien of the assessments provided for herein is subordinate to the lien of any Recorded first mortgage or first deed of trust against a Lot.

d. **Effect of Conveyance.** An Owner that conveys title to a Lot shall not be liable for assessments that are attributable to the period after the conveyance of the Lot, except as provided in the following paragraph. However, a conveyance of title to a Lot shall not affect the assessment lien or relieve the Owner that conveys the Lot from personal liability for any assessments attributable to the period prior to the date of the conveyance, except as provided in the following paragraph.

e. **Effect of Foreclosure.** The foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will extinguish the lien of such assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof shall not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term "first" in connection with a mortgage or deed of trust shall refer to the lien priority as compared to other mortgages or deeds of trust.

ARTICLE V THE ASSOCIATION

5.1 **The Association - Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation of the Association (the "Articles of Incorporation"), Bylaws and this Declaration. The Association shall continue to exist until the Association is dissolved,

regardless if the corporate status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Articles of Incorporation and the Bylaws.

5.2 Board of Directors. The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws. The Board of Directors shall have the powers granted in this Declaration, the Articles of Incorporation and the Bylaws, all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein.

5.3 Limitation on Liability. The liability of an officer, director or committee member of the Association shall be limited as provided in the Articles of Incorporation.

5.4 Indemnification. Subject to the limitations and requirements of the Texas Nonprofit Corporation Act, as amended, and of the Bylaws, the Association shall indemnify every officer, director and committee member (including, without limitation, the Member(s) of the ACA) against all damages and expenses, including, without limitation, attorneys' fees, reasonably incurred in connection with any threatened, initiated or filed action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or committee member, except that such obligation to indemnify shall be limited as provided under the Articles of Incorporation. Additionally, subject to the limitations and requirements of the Texas Nonprofit Corporation Act, as amended, and of the Bylaws, the Association may voluntarily indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against such person in that capacity and arising out of that capacity. **The above indemnity shall include an indemnity against the ordinary negligence of the said indemnitees.**

5.5 Limitations on Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless there is a 75% or greater Class Vote of Members approving such action. This **Section 5.5** shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens, or suits for injunctive relief to compel compliance with the provisions of this Declaration); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions to enforce written contracts between the Association and a third party. Except as authorized by said vote, the Board of Directors shall not be liable for failing or refusing to commence litigation.

5.6 Insurance.

a. Required Coverages. The Association, acting through its Board of Directors or its duly authorized agent, shall obtain and continue in effect, at a minimum the following insurance coverage, if reasonably available or, if not, the most nearly equivalent coverages as are reasonably available:

(i) **Property Insurance.** Blanket property insurance covering loss or damage on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Areas and within the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits and/or endorsement related thereto sufficient to cover the full replacement cost of the insured improvements. The Association shall obtain endorsements to the property insurance policy to the extent the Board of Directors determines that particular endorsements are advisable and reasonably available to the Association. Such endorsements may include, without limitation: (i) a Replacement Cost Endorsement with an Agreed Amount Endorsement; (ii) a waiver of the insurer's right to repair and reconstruct instead of paying cash, if reasonably available; (iii) an Inflation Guard Endorsement; (iv) a Building Ordinance or Law Endorsement; and (v) a Steam Boiler and Machinery Coverage Endorsement.

(ii) **General Liability Insurance.** Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on the Association's behalf. Such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage. The Board of Directors may obtain a higher policy coverage if the Board of Directors determines that such additional coverage is advisable.

b. **Additional Insurance.** The Board of Directors may obtain additional insurance as the Board of Directors determines advisable, including, without limitation, the insurance set forth below. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary, the Board of Directors shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

(i) **Directors and Officers Liability Insurance.** Directors and officers liability insurance.

(ii) **Fidelity Insurance.** Fidelity insurance covering all parties responsible for handling Association funds in an amount determined by the Board of Directors. If fidelity insurance coverage is obtained, the policy should contain, if reasonably available, a waiver of all defenses based upon the exclusion of persons serving without compensation.

(iii) **Flood Insurance.** Flood insurance covering any improvements located on the Common Areas to the extent that the Board of Directors determines that the improvements have significant enough value and the risks related thereto justify the cost of such insurance.

(iv) **Workers Compensation Insurance.** Workers compensation insurance and employers liability insurance.

c. **Policy Requirements.** All insurance coverage obtained by the Association shall: (i) be written in the name of the Association and shall provide for a certificate of insurance to be furnished to the Association; (ii) contain a reasonable deductible; (iii) contain an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation of insurance; (iv) contain a provision or endorsement excluding Owners' individual policies from consideration under any other insurance clause, if reasonably available; and (v) contain a waiver of subrogation as to any claims against the Board of Directors and the Association's officers, employees and manager, and the Owners and their tenants, servants, agents and guests, if reasonably available.

d. **Review of Policies.** The Board shall annually review the types and amounts of insurance coverage for sufficiency.

e. **Compliance with Federal Agencies and Secondary Mortgage Market Requirements.** In addition to the foregoing insurance in Section 5.6, the Board of Directors may obtain such insurance coverage that the Board of Directors determines desirable to satisfy any applicable insurance requirements of any federal agency or secondary mortgage market entity, including, without limitation, the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the U.S. Department of Veterans Affairs ("VA"), and the U.S. Department of Housing and Urban Development ("HUD"), to the extent applicable.

5.7 **Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board of Directors. The Board of Directors may employ for the Association a management agent or agents, at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policymaking authority. The Association may enter into contracts with Declarant or affiliates of Declarant provided that such contracts are on market terms.

5.8 **Books and Records.** The books and records of the Association shall be made available to the Members for inspection as provided in the Bylaws. In addition, Members may obtain copies, at a reasonable cost, of the books and records of the Association as provided in the Bylaws. To the extent allowed by applicable law, the Board may withhold information which it deems may violate another Member's right to privacy.

5.9 **Dissolution of Association; Conveyance of Assets.** If the Association is dissolved other than incident to a merger or consolidation, the assets both real and personal of the Association shall be conveyed as provided in the Articles of Incorporation.

5.10 **Enforcement.** The Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with the applicable procedures set forth in the Bylaws. The Bylaws do not provide for an absolute right under all circumstances to notice and/or hearing either prior to or after the imposition of sanctions but the Association will follow any such notice or hearing requirements prescribed by applicable law. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

a. **Fines.** The Board of Directors may impose reasonable monetary fines, which shall constitute a lien on the Lot, upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest or invitee of the Owner of such Lot.

b. **Suspension of Voting Rights.** The Board of Directors may suspend an Owner's right to vote.

c. **Suspension of Rights to Use Common Area.** The Board of Directors may suspend any person's or entity's right to use any recreational facilities within the Common Areas; provided, however, nothing herein shall authorize the Board of Directors to limit ingress or egress to or from a Lot.

d. **Right of Self-Help.** The Board of Directors may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration.

e. **Right to Require Removal.** The Board of Directors may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the Lot, remove the violation, and restore the property to substantially the same condition as previously existed, without such action being deemed a trespass.

f. **Levy Specific Assessment.** The Board of Directors may levy a specific assessment to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration.

g. **Lawsuit; Injunction or Damages.** The Board of Directors has the right, but not the obligation, to bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

h. **Perform Maintenance.** In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Association may record a notice of violation in the public records of the County and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific assessment.

The decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Board of Directors' sole and absolute discretion, except that the Board of Directors shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board of Directors may determine that, under the circumstances of a particular case, (i) the Association's position is not strong enough to justify taking any or further action; or (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

ARTICLE VI ARCHITECTURAL CONTROLS

6.1 No Improvements Unless Approved by Architectural Control Authority - Except Improvements by Declarant. No building, fence, wall, outbuilding, landscaping, pool, detached building, athletic facility, structure or any other improvement will be erected, altered, added onto or repaired upon any portion of any Lot without the prior written consent of the ACA. However, ACA approval is not required for (i) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant to be exempt from the ACA approval requirements; (ii) any improvements to the interior of a Dwelling, except as provided herein; (iii) the painting or re-bricking of the exterior of any Dwelling in accordance with the color and design scheme approved by the ACA; or (iv) improvements for which the Declaration expressly states that the ACA's prior approval is not required. Any improvements pursuant to clauses (iii) and (iv) immediately preceding must be in compliance with any applicable ACA Standards. A master set of Builder Plans will be approved prior to the initial takedown of lots by such Builder.

6.2 Architectural Control Authority. The ACA shall have the sole and exclusive authority to perform the functions contemplated by the ACA in this Declaration. The purpose of the ACA is to enforce the architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The ACA will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The "ACA" or "Architectural Control Authority" shall be the Architectural Committee (as defined herein).

6.3 Architectural Committee. A committee to be known as the "Architectural Committee" consisting of a minimum of three members will be established. The members of the Architectural Committee will be appointed, terminated and/or replaced by the Board of Directors; provided that so long as the Declarant owns one or more Lots in the Property, and after the end of the Class B Control Period, the Declarant will appoint the ACA members. The Architectural Committee will act by simple majority vote.

6.4 **Submission of Plans.** Prior to the initiation of construction of any work required to be approved by the ACA as provided in **Section 6.1** above, the Owner (excluding Declarant and any Builder designated in writing to be exempt from the ACA approval requirements as provided herein) will first submit to the ACA a complete set of plans and specifications for the proposed improvements, including site plans, landscape plans, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACA for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. This approval process is separate and independent of any approval process required by a governmental entity.

6.5 **Plan Review.**

a. **Timing of Review and Response.** Upon receipt by the ACA of all of the information required by this **Article VI**, the ACA will have 30 days in which to review said plans. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACA in form satisfactory to the ACA. If the ACA requests additional information and the applicant fails to provide such information prior to the date stated in the ACA's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACA consider the request. If the ACA fails to issue its written approval within 30 days after the ACA's receipt of all materials requested by the ACA to complete the submission, then such failure by the ACA to issue its written approval shall be deemed approval. The ACA may charge a reasonable fee for reviewing requests for approval.

b. **Approval Considerations - Aesthetics.** The proposed improvements will be approved if, in the sole opinion of the ACA: (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements in the Development; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property. Decisions of the ACA may be based on purely aesthetic considerations. The ACA shall have the authority to make final conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and its members change over time.

6.6 **Timing of Completion of Approved Items.** All work approved by the ACA shall be completed within one year after the approval by the ACA or such shorter period that the ACA may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACA. All work and related improvements shall be in compliance with the items approved by the ACA.

6.7 Improvements Impact on Drainage. With respect to any improvements performed on a Lot and/or any alterations to the yard, the Owner shall take proper precautions to insure that such improvements do not (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling, or (ii) allow water to collect near the foundation of the Dwelling. Although the ACA may comment on and/or deny the approval of plans because of the impact of the proposed improvements or alterations on surface water drainage, the ACA's comments or approval shall not constitute or be construed as a representation, warranty or guaranty that adverse surface water drainage problems will not occur and shall not be relied upon as such. The Owner is responsible for taking the necessary actions in order to avoid any surface water drainage problems, including, without limitation, engaging the services of a qualified consultant.

6.8 No Waiver. The approval by the ACA of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACA under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

6.9 Variances. The ACA may authorize variances from strict compliance with the requirements herein, in any ACA Standards or any required procedures: (i) in narrow circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence; or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. For purposes of this Section 6.9, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing as the sole or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance shall be contrary to the terms of this Declaration and no variance shall be effective unless in writing. No variance shall estop the ACA from denying a variance in other circumstances.

6.10 Architectural Control Authority Standards. The ACA may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent of members of the ACA, the ACA Standards. The ACA Standards may not conflict with the terms of this Declaration.

6.11 Enforcement; Non-Conforming and Unapproved Improvements. If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACA in its sole and absolute discretion, such improvements will be in violation of this Article VI to the same extent as if made without prior approval of the ACA and shall constitute grounds for the imposition by the ACA or the Association of an automatic fine against the Owner of said Lot not to exceed Two Hundred and No/100 Dollars (\$200.00). The Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alternation to any improvement on any Lot that is not approved by the ACA.

6.12 Limitation of Liability. Neither the Declarant, the Association, the Board of Directors nor the ACA shall have any liability, individually or in combination, for (i) decisions made by (or failed to be made by) the Declarant, the Association, the Board of Directors or the

ACA, or (ii) decisions in connection with the approval or disapproval or failure to disapprove or approve any plans and specifications submitted. Neither the Declarant, the Association, the Board of Directors nor the ACA shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board of Directors, the ACA nor any member of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling and/or Lot. The ACA and its members shall be defended and indemnified by the Association as provided in Section 5.4 herein.

6.13 Construction Materials. All construction materials shall conform to the following provisions:

a. **Exterior Materials.** All exterior construction materials shall be subject to approval by the ACA and shall conform to any and all City ordinances.

b. **Roof Materials.** All roofing materials are allowed except for wood shingles, provided such materials [i] are 20-year spec; [ii] are fireproof, [iii] conform to City requirements, and [iv] are approved by the ACA.

ARTICLE VII USE RESTRICTIONS AND COVENANTS

7.1 Single Family Residential Use. All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees; and (iv) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (i) through (iv) above shall be made by the Board of Directors in its sole and absolute discretion. The business activity prohibition will not apply to the use of any Dwelling by Declarant or any Builder as a model home, construction office and/or sales office; or the use of any Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot by Declarant or any Builder. The total air conditioned living area of each Dwelling, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be no less than the number of square feet required by the City.

7.2 Parking of Motor Vehicles. No vehicles or similar equipment will be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such

vehicle (i) has less than one ton carrying capacity; (ii) has less than three axles; (iii) is in operating condition; and (iv) is generally in daily use as a motor vehicle on the streets and highways of the State of Texas. Trucks with tonnage in excess of one ton and any vehicle with a painted advertisement shall not be permitted to park overnight within the Development except those used by a Builder during the construction of improvements. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement; provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board of Directors as intended for such vehicular use. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot or a street within the Property, except within an enclosed garage. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or portions of any Lot that are visible from any street within the Property.

7.3 Trailers, Boats, Commercial and Recreational Vehicles. No campers, boats, marine crafts, hovercraft aircrafts, pick-up campers, trailers, motor homes, travel trailers, camper bodies, golf carts, recreational vehicles, non-passenger vehicles, vehicles with three or more axles or greater than one ton carrying capacity, and/or equipment or accessories related thereto may be kept on any Lot, unless such item is in operable condition and such item is (i) kept fully enclosed within a garage located on such Lot; (ii) kept fully screened from view by a screening structure or fencing approved by the ACA, but in no event shall the item be in front of the Dwelling; (iii) temporarily parked on any street within the Property or on a Lot for the purpose of loading or unloading; or (iv) a commercial vehicle that is in use for the construction, maintenance or repair of a Dwelling or Lot in the immediate vicinity. The Board of Directors will have the absolute authority to determine from time to time whether an item is in operable condition and complies with the requirements in clauses (i) through (iv) above. Upon an adverse determination by the Board of Directors, the Owner will cause the item to be removed and/or otherwise brought into compliance with this paragraph. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. Notwithstanding any provision herein, no trucks or vehicles of any size that transport inflammatory or explosive cargo may be kept in the Development at any time.

7.4 Fences.

a. **Required Fencing.** The backyard of each Lot must be enclosed with a perimeter fence.

b. **Type of Fencing.** All perimeter fences will be wood, brick, stone and/or masonry except for the Association Fencing. All fencing shall comply in all respects (including size and location) with applicable City requirements. All perimeter fences (except Association Fencing, which fencing shall be no less than four feet in height) shall be between six and eight [open] feet in height unless another height is approved by the ACA and shall be a color approved by the ACA. No fences may be painted, unless otherwise approved in writing by the ACA. Except for Association Fencing, no chain-link, metal, cloth or agricultural fences may be built or maintained on any Lot unless such fence is located within the perimeter fence in such a manner that it is not

visible from any street, alley, park, Common Area or public area, unless otherwise approved by the ACA. Except for Association Fencing, the portion of all fences which exterior or side faces a street adjoining such Owner's Lot (front, side or rear streets, but not alleys) or which exterior or side faces a Common Area, open space, park or other recreational area adjoining such Owner's Lot (which area may be separated by an alley) shall have the smooth surface of the fence materials facing the applicable street or Common Area unless otherwise approved by the ACA. The fence posts and bracing boards on such front, side and rear fences shall face the interior of the fenced yard. Owners shall not construct a second fence (a parallel fence) along or near the Common Fence or the Association Fencing.

c. **Location of Fence.** No fence, wall or hedge will be placed on any Lot in a location nearer the street than the front building setback line for such Lot. The foregoing shall not limit or restrict fences erected in conjunction with model homes or sales offices. In addition to the foregoing, easements may also restrict the placement of fences.

d. **Maintenance of Fencing.** Except for the Association Fencing, each Owner shall maintain the portion of fencing on such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto, except that Owners adjoining a Common Fence (as provided in Section 7.4.e) shall share in the cost of such maintenance as provided in Section 7.4.e. The Association shall be responsible for maintaining the Association Fencing. All repairs and replacements to the perimeter fencing and/or Association Fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in the foregoing sentence, perimeter fencing and/or Association Fencing shall not be changed or modified without the prior written consent of the ACA.

e. **Common Fencing.** Side and rear yard fences that are installed by Declarant or a Builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "Common Fence") shall be maintained jointly by the Owners whose Lots adjoin such Common Fence and the costs associated therewith shall be shared equally by said Owners. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of one-half of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of one-half of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term "Arbitration" shall mean binding arbitration pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners.

f. **Sight Lines.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three and six feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet from the intersection of

the street right-of-way lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any lot within ten feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. Declarant or the Association may direct the Owner to trim any hedge, shrub planting or tree that does not comply with the foregoing provisions, and upon Owner's failure to do so, Declarant or the Association may, at its option, perform such trimming, whereupon the Owner shall be obligated, when presented with an itemized statement, to reimburse Declarant or the Association (as applicable) for the cost of such work.

7.5 Outbuildings, Sheds and Detached Buildings. No detached accessory buildings, including, but not limited to, detached garages, storage buildings and sheds shall be erected, placed or constructed upon any Lot, unless (i) the item is approved by the ACA prior to the installation or construction of the item; (ii) such item is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition; (iii) the exterior paint and roofing materials of such outbuildings shall be consistent with the existing paint and roofing materials of the Dwelling; (iv) the outbuilding is located within a backyard that has a fence that completely encloses the backyard; (v) the height of the structure walls shall not be greater than eight feet; and (vi) the outbuilding shall not have more than 225 square feet of floor space.

7.6 Animals. No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that so long as they do not exceed two in number in the aggregate, cats, dogs or other generally recognized household pets may be permitted on any Lot; however, those pets that are permitted to roam free or that, in the sole discretion of the Board of Directors, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board of Directors. If the animal owner fails to remove the animal from the Lot after the Board of Directors' request, the Board of Directors may remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the Bylaws. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the property so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other non-domesticated animals that may interfere with the quietude, health or safety of the community. No more than two domesticated pets will be permitted on each Lot. All animals will be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal.

7.7 Signs.

a. **Sign Restrictions.** Except for Entry Signs (as defined in Section 7.7.b), and except as required by applicable law to be allowed, no sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the

following: (i) an Owner may erect one sign on a Lot advertising the Dwelling for sale or rent, provided that the sign does not exceed two feet by three feet in size; (ii) an Owner may temporarily place one sign on a Lot advertising the "open house" of the Dwelling, provided that the sign does not exceed two feet by three feet in size (or as otherwise approved by the ACA) and the sign may only be displayed during actual open house hours; (iii) signs or billboards may be erected by the Declarant or any Builder designated in writing by the Declarant as having the right to erect such signs or billboards; (iv) an Owner may temporarily place one sign on a Lot advertising a "garage sale", provided that the sign does not exceed two feet by three feet in size and the sign may only be displayed during the garage sale hours; or (v) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected for a period in advance of the election to which they pertain longer than allowed by law and are removed within the period after the election allowed by law, and to the extent allowed by law only one sign per candidate is permitted. A permitted or authorized sign may not contain any language or symbols on the sign that are not directly related to the authorized purpose of the sign. The ACA may in the ACA Standards permit additional signs and/or place additional restrictions or limitations on the signs permitted in this Declaration, provided that such additional restrictions or limitations do not conflict with the terms herein. No banners are permitted without the prior written approval of the ACA. The Association will have the right to remove any sign, billboard, banner or other advertising structure that does not comply with the foregoing. Removal shall not subject the Association to any liability in connection with such removal. No sign shall be permitted which disparages the Declarant, Builder or a Member, or counsels against purchase of home in the Development.

b. **Entry Signs.** The term "Entry Signs" shall mean any entry feature signs for the name of the subdivision that are placed by the Declarant or its agents on the Property. The Association shall be responsible for maintaining the Entry Sign.

7.8 Trash; Containers and Collection. No Lot or other area in the Development shall be used as a dumping ground for rubbish. Any compost heaps will be stored in a container acceptable to the ACA. No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept, placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except on the day designated for removal of garbage; then such containers may be placed in the designated location for pick-up of such garbage, provided that the container will be removed from view before the following day. All incinerators or other equipment for the storage or other disposal of garbage or trash shall be kept in a clean and sanitary condition. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any builder designated by Declarant.

7.9 Nuisances. No noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics, will be carried on upon any Lot, nor will anything be done thereon which the Board of Directors determines, in its sole and absolute discretion, is or may become an unreasonable source of annoyance or nuisance to the Property.

7.10 Antennae and Satellite Dishes. Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of the Lot outside the Dwelling, except that (i) antennas, satellite dishes one meter or less in diameter designed to receive transmissions other than television broadcast signals shall be permitted; and (ii) antennas or satellite dishes designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACA (a "Permitted Device") must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained. In all cases except as may be approved by the ACA, no Permitted Device of any style shall be (a) erected as a free-standing structure, (b) permitted to extend outside the roof of the main residential structure or (c) maintained on any portion of the Lot forward of the front building line. The ACA in the ACA Standards may include rules or provisions regarding the type of additional Permitted Devices and/or the placement of Permitted Devices, provided that such ACA Standards do not conflict with the terms of this Section 7.10 and do not unreasonably increase the cost of installation, maintenance or use of the Permitted Device. A Permitted Device that complies with the provisions of this paragraph and the ACA Standards shall not require the ACA's approval prior to installation. However, the ACA shall be the sole and exclusive authority for purposes of determining if the item or device complies with the provisions of this paragraph and the ACA Standards.

7.11 Air-Conditioning Units. Air-conditioning apparatus must be installed on the ground behind the rear of the Dwelling or on the ground near the side of the Dwelling. No air-conditioning apparatus or evaporative cooler may be attached to any wall, window or roof of any Dwelling.

7.12 No Solar Collectors. Except with the written permission of the ACA, no solar collector panels or similar devices may be placed on or around any Dwelling.

7.13 No Temporary Structures as a Residence. No structure of a temporary character, including, without limiting the generality thereof, any trailer, basement, tent, shack, garage, barn, or other out-building will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent that is erected in the back yard behind a fully screened fence is permitted provided that such activity does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board of Directors in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

7.14 No Garage as a Residence. No garage, garage house or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person as a residence.

7.15 No Temporary Structures on Lot. No temporary dwelling, shop, trailer or mobile home of any kind or any improvements of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, which may be placed on a lot only in places which are not visible from any street on which the lot fronts) shall be permitted on any Lot except that the Builder or contractor may have temporary improvements (such as sales office and/or construction trailer) on a given Lot during the entire time that construction activities within the Development are underway. No building material of any kind or character shall be placed or stored upon the property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected.

7.16 Sidewalks. The Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot to the extent required by the City.

7.17 Landscaping. All Lots shall be appropriately landscaped, including planting of grass and other plants in conformity with any Design Guidelines and other improvements on the Property. The Builder shall plant two (2) trees in the front yard of each Lot, with each tree being a minimum 2" caliper and not less than ten (10) plants, before securing a certificate of occupancy. Measurements are as defined by the Texas Association of Nurserymen Guidelines and Standards. Specifications for tree installation shall be American Standard for Nursery Stock published by the American Association of Nurseryman. All landscaping located on any Lot, including grass lawns, must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board of Directors, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass and plantings of every kind on his or her Lot cultivated, pruned and free of trash and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flowerbeds and planter areas. Removal of live native trees is not permitted without the approval of the ACA.

7.18 Exterior Improvement Maintenance. All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board of Directors, in its sole and absolute discretion.

7.19 Garages. All garages must comply with City requirements. Garages may be used as Declarant's or a Builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant or Builder as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot.

7.20 Clothes Hanging Devices. No clothes hanging devices exterior to a Dwelling are to be constructed or placed on the Lot.

7.21 Window Treatment. No aluminum foil, newspaper, reflective film or similar treatment will be placed on windows or glass doors of a Dwelling. Bed sheets and similar linens may only be used during the first 30 days after the Owner acquires title to the Lot.

7.22 Mining. No oil or water drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted in the Development, nor will oil wells, tanks, tunnels, mineral excavations or shafts be permitted in the Development. No derrick or other structure designed for use in boring for oil or natural gas will be erected, maintained or permitted in the Development. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

7.23 Mail Boxes. Mailboxes shall be constructed to the specifications indicated in Exhibit "E" attached hereto. They will be subject to the approval of the ACC and shall conform to the United States Postal Service regulations. Replacement mailboxes shall be of similar type as originally installed, unless the ACA approves additional types of mailboxes.

7.24 Athletic and Recreational Facilities. No outdoor athletic and recreational facilities such as playscapes, swing sets, trampolines, and sport courts may be placed on a Lot unless (i) such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed ten feet in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACA may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling. No such items shall be otherwise located (including, without limitation, in any street).

7.25 No Above Ground Pools. Above ground-level swimming pools shall not be installed on any Lot.

7.26 Lighting; Exterior Holiday Decorations. Lighting and/or decorations on a Lot may not be used or placed in a manner that, in the Board of Directors' sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Dwelling that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

7.27 Lawn Decorations and Sculptures. The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags and similar items on any portion of such Owner's Lot except the interior of the Dwelling, unless (i) such item is placed within a backyard completely enclosed by a fence which blocks the view of the item at ground level; and (ii) such item is no taller than the fence.

7.28 No Lot Consolidation or Division. No Owner, other than Declarant, may divide any Lot and/or consolidate any adjoining Lots and/or any portion thereof.

7.29 Drainage Alteration Prohibited. Unless approved by the ACA, no Owner will: (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling; or (ii) install landscaping or other improvements that may interfere with, obstruct or divert drainage flows established by the Declarant or any Builder. The

foregoing shall not prevent or limit the Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot.

7.30 Construction Activities. This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board of Directors in its sole good faith judgment, the Board of Directors will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board of Directors may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

7.31 No Individual Water Supply System. No individual water supply system shall be permitted in the Development.

7.32 No Individual Sewage Disposal System. No individual sewage disposal systems shall be permitted in the Development.

7.33 New Construction Only. Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment (no higher than six feet and not visible from street level), no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.

7.34 No Burning. Except within fireplaces in the Dwelling and except for outdoor cooking, no person shall be permitted to burn anything within the Development.

7.35 No Interference with Easements. Within easements on each Lot, no structure, planting or materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities.

7.36 Declarant and Builder Development and Construction. Notwithstanding any other provision herein, Declarant, and its successors and assigns, and any Builders, will be entitled to conduct on the Property all activities normally associated with, and convenient to, the development of the Property and the construction and sale of Dwellings on the Property.

7.37 Burglar Bars. No burglar bars or similar attachments may be made to any Dwelling at any time.

ARTICLE VIII COMMON AREAS

8.1 **Association to Hold and Maintain.** The Association will own all Common Areas in fee simple title. The Association shall maintain the Common Areas and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas to the extent the Board of Directors determines that such maintenance is desirable.

8.2 **Use of Common Areas at Own Risk.** Each Owner, by acceptance of a deed to a Lot, acknowledges that the use and enjoyment of any Common Area recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any Builder are not insurers of personal safety and that each person using the Common Areas assumes all risks of personal injury and loss of or damage to property, resulting from the use and enjoyment of any recreational facility or other portion of the Common Areas. Each Owner agrees that neither the Association, the Board of Directors and any committees, any Builder, nor Declarant shall be liable to such Owner or any person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from or otherwise relating to the use of any recreational facility or other portions of the Common Areas, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant or any Builder. **THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.**

8.3 **Condemnation of Common Areas.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board of Directors determines, in its business judgment, including, without limitation, (i) to purchase additional Common Areas to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Areas any improvements that were on the condemned Common Areas, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

8.4 **Damage to Common Areas.** If the Common Areas or improvements on the Common Maintenance Areas are damaged and if there are insurance proceeds sufficient to repair such damage to its prior condition, then the Association shall cause such damage to be repaired or reconstructed unless there is a 67% or greater Class Vote of Members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (all classes counted together) within 90 days after the loss not to repair or reconstruct. If said 67% vote is cast not to repair or reconstruct such damage and no alternative improvements are authorized, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

8.5 **Conveyance of Common Areas by Declarant to Association.** Declarant shall have the right to convey title to any portion of the Property owned by Declarant, as the case may be, or any easement interest therein, to the Association as Common Area, and the Association shall be required to accept such conveyance. Property conveyed by Declarant to the Association as Common Area shall be conveyed free and clear of monetary liens and encumbrances other than taxes and assessments imposed by governmental entities or districts authorized by Texas law. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the public land records of the County.

ARTICLE IX EASEMENTS

9.1 **Easement for Utilities on Common Areas.** During the period that Declarant owns any real property within the Development, the Declarant, on behalf of itself, reserves the right to grant perpetual, nonexclusive easements as reasonably necessary for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Areas for the construction, installation, use and maintenance of utilities, including, without limitation, water, sewer, electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements. The Association will also have the right to grant the easements described in this paragraph.

9.2 **Easement to Correct Drainage on Property.** During the period that Declarant owns any real property within the Development, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where the Dwelling is located) as reasonably necessary to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.3 **Easement for Right to Enter Lot.** If an Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association will have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence. **THE FOREGOING RELEASE IS INTENDED TO RELEASE THE ASSOCIATION FROM LIABILITY FOR ITS OWN NEGLIGENCE.**

9.4 **Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of Declarant, its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Dwellings and

landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot 24 months after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.5 Easement for Association Fencing. Declarant hereby reserves for the benefit of Declarant and the Association an exclusive easement for the purpose of placing and maintaining the Association Fencing on the perimeter boundary of all Lots where Declarant has installed Association Fencing.

ARTICLE X ANNEXATION AND WITHDRAWAL

10.1 Annexation by Declarant. Until ten years after the Recording of this Declaration, Declarant may, at its sole option, annex the Annexable Property or any portion thereof into the Association and subject such Annexable Property or portions thereof to the terms hereof and to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. The annexation shall not require the approval of any person other than the owner of the property being annexed. In the annexation document, Declarant may amend the Declaration to cause the terms Common Area, Entry Signs, Association Fencing and other terms necessary to appropriately address and describe the new applicable areas of land within the real property being annexed. The foregoing amendment shall not require the approvals set forth in Section 11.2 herein.

10.2 Annexation by Association. The Association may annex any portion of the Annexable Property by a 67% or greater Class Vote approving such action and the consent of the owner of such portion of the Annexable Property.

10.3 Recording of Annexation. The annexation of any portion of the Annexable Property shall be evidenced by a Recorded written document. This Declaration shall not burden any portion of the Annexable Property until such time, if any, as the Annexable Property is annexed into the Declaration as herein provided and evidenced by a Recorded written instrument.

10.4 No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any portion of the Annexable Property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

10.5 Withdrawal of Property. Declarant may withdraw real property without a Dwelling thereon from the definition of the Property and from the coverage of this Declaration, provided that (i) the withdrawal is not unequivocally contrary to the overall, uniform scheme of development of the Property; (ii) the owner of real property to be withdrawn must consent; and (iii) FHA or VA must consent to the withdrawal of the real property to the extent that there are FHA or VA insured loans secured by a portion of the Property. Such withdrawal shall not

require the consent of any other person, Member or Owner, except a 67% or greater Class Vote approving such action is required if the real property to be withdrawn is a Common Area.

ARTICLE XI MISCELLANEOUS

11.1 Declaration Term - Perpetual. Unless the Members holding 90% of the votes (all classes counted together) approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless Recorded.

11.2 Amendments to Declaration. This Declaration may be amended by a written consent by Members holding 67% of the Class Vote Members, except that Declarant, at its sole discretion and without a vote or the consent of any other party, may modify, amend or repeal this Declaration: (i) at any time prior to the conveyance of the first Lot; (ii) as necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation or judicial determination; (iii) as necessary to comply with the requirements of the VA, HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency or secondary mortgage market entity; or (iv) as necessary to clarify or to correct technical, typographical or scrivener's errors; provided, however, any amendment pursuant to clause (ii), (iii) and/or (iv) immediately above must not have a material adverse effect upon any right of any Owner. Any amendment to this Declaration shall be effective upon Recording.

11.3 Enforcement by Association and/or Owner. The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

11.4 Remedies; Cumulative. In the event any Lot does not comply with the terms herein or any Owner fails to comply with the terms herein, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

11.5 Notice to Association of Sale or Transfer. Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board of Directors written notice of the name and address of the purchaser or transferee within 30 days after the date of such transfer of title and such other information as the Board of Directors may reasonably require. The Association may charge a transfer fee upon the conveyance of title to a Lot for purposes of covering the reasonable administrative costs to change the records.

11.6 Limitation on Interest. All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to the Owner.

11.7 Construction and Interpretation. This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

11.8 Notices. Except as otherwise provided in the Bylaws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given three days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice.

11.9 Not a Condominium. This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

11.10 Severability. Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions, which will remain in full force and effect. Any invalidated provision shall be automatically reformed in such a way so as to be legal and to carry out as near as possible such invalidated provision.

11.11 Rights and Obligations Run With Land. The provisions of this Declaration are covenants running with the land and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed.

11.12 Disclaimer Regarding Security. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of

them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees and licensees that the Association, its Board of Directors and committees and Declarant are not insurers and that each person using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

11.13 Street Lights. Street lights within the Property are anticipated to be maintained by the electric utility provider. The operational costs for the street lights are anticipated to be paid by the City. If, at any time in the future, the City adopts an ordinance, regulation, or other mechanism whereby the costs for maintaining and/or operating the street lights within the community are allocated to the Declarant, the Declarant shall have the right to assign all such obligations to the Association, and the Association hereby consents to accept the assignment of all obligations related to maintaining and/or operating said street lights, and the Association shall assume these additional costs as Common Expenses. If, at any time in the future, the City adopts an ordinance, regulation, or other mechanism whereby the costs for maintaining and/or operating the street lights within the community are allocated to the Association, the Association shall assume these additional costs as Common Expenses.

11.14 Attorneys' Fees and Court Costs. If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

11.15 Gender. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

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

11.17 Conflicts. In the event of conflict between this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration will control.

11.18 Exhibits. All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on this 10th day of July, 2006.

DECLARANT:

BEACON HILL GROUP LLC,
a Texas limited liability company

By: _____

Alice Wong
Alice Wong
Manager

STATE OF TEXAS §

COUNTY OF Dallas §

The foregoing instrument was acknowledged before me on this the 11th day of July, 2006 by Paul Cheng, Manager of Beacon Hill Group LLC, a Texas limited liability company, on behalf of said entity.



Christine Frankum
Notary Public in for The State of Texas

AFTER RECORDING RETURN TO:

Beacon Hill Group LLC
4125 Fairway Dr. Ste 128
Carrollton, TX 75010

EXHIBIT "A"

The Property

BEING a tract of land situated in the H. L. Upshaw Survey, Abstract No. 934, Collin County, Texas and being known as the tract of land conveyed from Shaw-Rentfro Properties Inc. to Felix Chen, Trustee by deed recorded in Volume 3138, page 928, Deed Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found for corner in the West line of F. M. Highway NO. 1461, and being the Southeast corner of said Chen tract, the Northeast corner of a tract of land conveyed to Jimmy K. Lu by deed recorded in Volume 1505, Page 689, deed Records of Collin County, Texas and being the Easterly corner of an agreed line described in the Boundary Line Agreement recorded in Volume 2085, page 537, Deed Records of Collin County, Texas;

THENCE in a Westerly direction with line described in said Boundary Line Agreement and the North line of said Lu tract and along a fence line the following calls and distances:

North 89 degrees 40 minutes 18 seconds West for a distance of 655.10 feet to a ½ inch iron rod with red plastic cap stamped "USA INC PROP COR" set (hereafter called ½ inch iron rod set) for corner;

South 88 degrees 59 minutes 10 seconds West for a distance of 285.89 feet to a ½ inch iron rod set for corner;

South 88 degrees 35 minutes 32 seconds West for a distance of 803.59 feet to a fence corner post found for corner at the Northwest corner of said Lu tract and being in the most Northerly East line of a called 38.48 acre tract of land conveyed to Felix Y. Chen, et al by deed recorded in County Clerk's File No. 94-0105993, Real Property Records of Collin County, Texas;

THENCE North 08 degrees 17 minutes 32 seconds West with the most Northerly East line of said 38.48 acre tract and the South line of said Chen tract and along a fence for a distance of 14.65 feet to a fence corner post found for corner;

THENCE South 83 degrees 13 minutes 50 seconds West with the North line of said 38.48 acre tract and the South line of said Chen tract and along a fence for a distance of 85.36 feet to a fence corner post found for corner, said point being in the East line of a called 346.256 acre tract of land conveyed to Felix Y. Chen by deed recorded in Volume 3006, Page 828, Deed Records of Collin County, Texas;

THENCE North 01 degrees 11 minutes 51 seconds West with the East line of said 346.256 acre tract and the West line of said Chen tract and along a fence line for a distance of 44.01 feet to a ½ inch iron rod with cap stamped "January" found for corner;

THENCE North 00 degrees 18 minutes 08 seconds West with the East line of said 346.256 acre tract and the West line of said Chen tract and along a fence line for a distance of 731.66 feet to a ½ inch iron rod with cap stamped "January" found for corner, said point being the Northwest corner of said Chen tract and the Southwest corner of that tract of land conveyed to 107/1461, Ltd. by deed recorded in Volume 5246, Page 5080, Real Property Records of Collin County, Texas;

THENCE North 90 degrees 00 minutes 00 seconds East with the North line of said Chen tract and the South line of said 107/1461, Ltd. tract at a distance of 1665.74 feet and continuing for a total distance of 1835.18 feet to a point for corner in a double hackberry tree, said point being in the West line of said F. M. Highway No. 1461 and being the Northeast corner of said Chen tract;

THENCE South 00 degrees 03 minutes 27 seconds East with the West line of said FM 1461 and the East line of said Chen tract for a distance of 759.04 feet to the POINT OF BEGINNING and containing 32.143 acres of land.

EXHIBIT A

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