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STATE OF TEXAS

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COUNTY OF BRAZORIA

**DECLARATION OF COVENANTS, CONDITIONS AND RETRICTIONS OF LULLING
STONE SUBDIVISION, SECTION V**

A&M REAL ESTATE DEVELOPMENT, LTD., hereinafter called "Declarant" is the Owner in fee simple of certain real property located in BRAZORIA County, Texas, said property being known as Lulling Stone Subdivision, SECTION V.

Subject property is now or will be divided into smaller parts or tracts, the total of which will hereinafter be referred to as the "Project", or as LULLING STONE, SECTION V.

For the purpose of enhancing and protecting the value, utility, attractiveness and desirability of the tracts constituting such project, Declarant hereby declares that all the real property described above and each part thereof shall be held, sold, and conveyed only subject to the following easements, authority, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to LULLING STONE, SECTION V PROPERTY OWNERS ASSOCIATION, its successors and assigns, also called P.O.A.

Section 2. "Board" shall mean the Board of Directors of the Association.

Section 3. "Commons" shall mean any property reserved for or dedicated to the common use of property Owners, or established through easements across tracts, or any properties leased for such purpose.

Section 4. "Declarant" shall mean LULLING STONE, SECTION V PROPERTY OWNERS ASSOCIATION, its successors and assigns, provided such an assign acquires the project in total, or the remainder in total for purposes of development and sale.

Section 5. "Drives" shall mean any common area reserved for the use by all Owners for vehicular traffic.

Section 6. "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting, drainage, irrigation systems, commons and other related

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improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted.

Section 7. "Member" shall mean every person or entity who has purchased property, including a purchase by Deed or contract for Deed, in the Project is a member of the Association upon such purchase.

Section 8. "Mortgage" shall mean a bona fide mortgage, a Deed of Trust, Contract for Deed or a Vendor's Lien.

Section 9. "Mortgagee" shall mean a holder of a bona fide mortgage or a beneficiary under or holder of a Deed of Trust.

Section 10. "Owner" shall mean the record Owner, including Declarant, whether one or more persons or entities, of the fee simple title to any tract which is a part of the project, and shall include purchasers under contract for deed, but shall not include those holding title merely as security for performance of an obligation.

Section 11. "Project" shall mean the real property known as Thistle Down Estates, SECTION VI, described more particularly in Exhibit "A," attached hereto and incorporated by reference herein, and such additions thereto as may be brought with the jurisdiction of the Association as herein under provided.

Section 12. "Tract" shall mean any plot of land as is divided or re-divided identified as a tract or lot on the unrecorded plat of the Subdivision.

Section 13. "Vote" shall mean one vote per Tract.

ARTICLE II

EASEMENTS, DRIVES, ROADS, AND PRIVATE ROADS

Section 1. Private roads, drives, or access easements and easements for installation and maintenance of utilities, irrigation and drainage, are established by separate instrument of record or to be placed of record in the office of the Brazoria County Clerk and as hereinafter set forth. With such easements and private roads, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of service or utilities, or which may damage, interfere with, or change the direction or flow of drainage facilities in the easements, or which may interfere with passage along such common or private road easements. The easement area of each tract and all improvements therein shall be continuously maintained by the Owner of such tract, except for improvements or maintenance of which a public, private, or quasi-public authority or utility company is responsible. Easements established as commons for greenbelts, riding trails, hiking trails, etc. will be maintained by the Association and may not be fenced into private property except as to hereinafter prescribed.

Section 2. No dwelling unit or other structure of any kind shall be built, erected or maintained on any such easement, reservation, or right of way and such easements, reservations

or rights of way shall at all times be open and accessible to representatives of the Association, to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary on, or under, and above such locations to carry out any of the purposes for which such easements, reservations and rights of way are reserved.

Section 3. Neither Declarant, Association nor any utility company using the above mentioned easements shall be liable for any damage on by either of them or their assigns, agents, employees, or servants, to shrubbery, trees, flowers, or other property of the owner situated on the land covered by said easements.

Section 4. The Association, through its duly authorized employees and contractors shall have the right, after reasonable notice to the Owner thereof, to enter any tract at any reasonable time to perform such maintenance as may be authorized herein.

Section 5. The private drive or roadway easements as set forth herein or by separate instruments or as established within the commons upon the ground, are for the private use and benefit of the Owners of the tracts within the project as therein prescribed, and under the conditions as therein set forth, and are not dedicated to the general public.

Section 6. The Declarant or the Association in its authority may take unto itself or execute unto any fresh water supply, electric utility, gas utility, telephone or other utility entity right of way easements in the form and under the conditions as may at the time be required by said entity as a prerequisite to service of this project with fresh water or other utility.

Section 7. The Declarant or the Association in its authority may take unto itself or execute unto others right of way easements in the form and under the conditions as at that time may be required by said entity to distribute to each and every tract herein water for the purposes of irrigation and/or provide drainage.

Section 8. It is understood and agreed that the easements granted herein and to be granted hereafter are reserved as permanent easements for the purposes set forth and are not subject to the time limit applicable to other restrictions.

Section 9. There is hereby reserved and established a utility easement adjacent and parallel to all roadway easements and/or drainage easements. Said utility easement is sixteen (16) feet wide upon the ground and sixteen (16) feet above the ground and extends from the outside boundary of the roadway easement or right of way into and upon the adjoining property on each side thereof. There is further reserved an easement, including an aerial easement, into all property adjacent thereto and in addition thereto for the purpose of installation of guy wires where necessary for securing utility poles.

Section 10. Easements for installation and maintenance of utilities and drainage facilities, pipelines and alley ways are reserved as shown on the recorded plat. No construction may exist over or across any such easement. By acceptance of a deed to any one or more of the above lots, the owner thereof covenants and agrees to keep and maintain in a neat and clean condition any easement which may traverse a portion of the lot being conveyed.

Section 11. Subject to the terms and conditions of this Section, the roads and streets in this subdivision as shown on the plat are hereby dedicated, in addition to roadways, as utility easements for the purpose of constructing, operating, maintaining or repairing a system or systems of electric lighting, electrical power, telegraph and telephone lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utilities that the developer sees fit to install in, across and/or under the property.

ARTICLE III **ARCHITECTURAL CONTROL**

Section 1. No external improvements or changes shall be erected, placed, or altered on any tract until the construction plans and specifications and a plan showing the location of the structure, complete plan of septic system showing relation to tract lines and water lines or sources have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Approval shall be provided herein.

Section 2. The Architectural Control Committee is hereby authorized to enforce any building of fire codes, or any rules, restrictions, or requirements concerning the construction of buildings on this project. Said requirements having been made by an Authority, local, county, state, or otherwise, having the legal authority to make such requirements. It is further stipulated herein that the Architectural Control Committee is empowered to require fire walls to be constructed as wall sections in contiguous housing, should such type housing in the future be allowed, wherever said Architectural Control Committee deems that such requirement is necessary or beneficial to the safety and preservation of property or life. Such requirement would be based on the requirements of municipalities of the area or some other standard code ordinarily pertaining to the construction industry.

Section 3. The Architectural Control Committee may be composed of as many as three persons appointed by the Board of the Property Owners Association. In the event of death, dismissal, or resignation of any member of the committee, the remaining members shall have full authority to designate a successor, subject to approval of the Association's Board. Neither of the members of the committee nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant except as is budgeted and approved the Association Board.

Section 4. The Architectural Control Committee's approval or disapproval as required in the covenants shall be in writing. In the event the committee, or its designated representative, fail to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with; however, any building or improvements placed upon a lot herein that was not presented to the Architectural Control Committee for approval prior to start of construction or placement will be in violation of these restrictions and may be removed by the

Architectural Control Committee at the property owner's expense. If the P.O.A. pays for such removal, the cost plus interest will become a lien upon the property.

ARTICLE IV **USE RESTRICTIONS**

Section 1. Single Family Residential Construction. No building shall be erected, altered, placed or permitted to remain on any tract other than dwelling units to be used for residential purposes, except that one guest/servants house per dwelling unit may be built provided said guest/servants house must contain a minimum of 500 square feet and be built after or while the main dwelling is being built, and be approved in writing by the Architectural Control Committee. Detached garages, work shops, and barns may be constructed on the property prior to the main dwelling being built, so long as they are good construction, kept in good repair, provided, however, the construction of the main dwelling must begin within two (2) years of completion of any non-residential buildings. All dwellings, detached garages, work shops, and barns must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property. The terms "dwelling" does not include single or double-wide manufactured homes, and said manufactured homes are not permitted within the subdivision. All dwellings must have at least 1,500 square feet of living area, excluding porches, and be built with new construction materials. Any building, structure or improvement commenced on any tract shall be completed as to exterior finish and appearance within twelve (12) months from the commencement date. Pre-fabricated or pre-built homes from another location may not be moved onto the property. A camper or recreation vehicle may be kept on the property for no longer than 14 consecutive days out of a 30 day period, without the express written consent of the Architectural Control Committee, and the City of Manvel, Brazoria County, Texas. As used herein, the term "residential purposes" shall be construed to prohibit mobile homes or trailers being placed on said lots, or the use of said lots for duplexes, condominiums, townhouses, garage apartments, or apartment houses; and no lot shall be used for business, educational, religious or professional purposes of any kind whatsoever, nor for any commercial or manufacturing purposes other than agriculture. All structures shall be made of not less than fifty percent (50%) masonry.

Section 2. Composite Building Site. Any owner of one or more adjoining lots for portions thereof may, with the prior written approval of the Architectural Control Committee, consolidate such lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting site, in which case the side set-back lines shall be measured from the resulting side property lines rather than from the lot lines as indicated on the field note description.

Section 3. Location of the improvements upon the Lot. No building of any kind shall be located on any tract nearer to any side or rear property line, or nearer to any public road and no nearer to the natural creek waterway as may be indicated on the field note description; provided, however, as to any tract, Architectural Control Committee may waive or alter any such setback line if the Architectural Control Committee, in the exercise of the Architectural Control Committee's sole discretion, such waiver or alteration is necessary to permit effective utilization of a tract. Any such waiver or alteration must be in writing and recorded in the Real Property

Records of Brazoria County, Texas. All dwellings placed on subject property must be equipped with septic tank or other sewage disposal system meeting all applicable laws, rules, standards and specifications, and all such dwellings must be served with water and electricity. The main residential structure on any Lot shall face the front of the Lot unless a deviation is approved, in writing, by the Architectural Control Committee.

Section 4. Residential Foundation Requirements. All building foundation shall consist of concrete slabs, unless the Architectural Control Committee approves a different type of foundation when circumstances such as topography of the lot make it impractical to use a concrete slab for all or any portion of the foundation of the building improvements construed on the lot. Minimum finished slab elevation for all structures shall be above the 100 year flood plain elevation, or such other level as may be established by the City Engineer of Manvel, Brazoria County, Texas, and other applicable governmental authorities.

Section 5. Use of Temporary Structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently; provided, however, that A&M REAL ESTATE DEVELOPMENT, LTD. shall have the exclusive right to erect, place and maintain such facilities in or upon any portion of the Subdivision at its sole discretion as may be deemed necessary or convenient while selling lots, selling or constructing residences and constructing other improvements within the Subdivision.

Section 6. Sanitary Sewers. No outside, open or pit type toilets will be permitted in this Subdivision. All dwellings constructed in this Subdivision prior to occupancy must have a sewage disposal system installed to comply with the requirements of the appropriate governing agency.

Section 7. Walls and Fences. Walls and fences, if any, must be approved prior to construction by the Architectural Control Committee and shall be no closer than the ditch boundary line of the inside of the lot. Any erection of any wall, fence or other improvements on any easement is prohibited. Fences along and adjacent to any road or street must be constructed of wood boards and painted white. All other fences and walls shall be constructed of wood, ornamental iron, or masonry. Barbed or smooth wire fences are allowed. All fences must be approved by the Architectural Control Committee.

Section 8. Water Supply. Residential dwellings in this Subdivision may be equipped with and served by a fresh water system installed, operated and continuously maintained in accordance with applicable utility company and governmental requirements. Water wells may be drilled with the approval of the Architectural Control Committee.

Section 9. Prohibition of Offensive Activities. Without expanding the permitted use of the lots, no activity shall be conducted on any lot which is not related to single family residential purposes. No noxious or offensive activity of any type shall be permitted nor shall anything be done to that violates this provision. This restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision. No exterior speaker, horn, whistle, bell or other sound device, except security and fire devices used exclusively for security and fire

purposes, shall be located, used or placed on any lot. The discharge or use of firearms is expressly prohibited. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

Section 10. Garbage and Trash Disposal. Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 11. Junked Motor Vehicles Prohibited. No lot shall be used as a depository for abandoned or junked motor vehicles. An abandoned or junked motor vehicle is one without a current, valid state vehicle inspection sticker and license plate. No junk of any kind or character, or dilapidated structure or building of any kind or character, shall be kept on any lot. No accessories, parts or objects used with cars, boats, buses, trucks, trailer, house trailers or the like, shall be kept on any lot other than in a garage or other structure approved by the Architectural Control Committee.

Section 12. Signs. No signs, advertisement, billboard or advertising structure of any kind may be erected or maintained on any lot without the consent in writing of the Architectural Control Committee, except one (1) sign not more than forty-eight inches (48") square, advertising an owner's lot for sale or rent. Declarant or any member of such Architectural Control Committee shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any lot in violation of these restrictions, and in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 13. Animal Husbandry and Other Agricultural Use of Property. Horses and cattle may be raised, bred, or kept on any lot within the subdivision, as herein described. Goats and Sheep are permitted as are Chickens and Ducks; however, each lot is limited to a total of twenty (20) fowl. Swine are not permitted. Exotics animals are limited to those which are specifically permitted, in writing, by the Architectural Control Committee. Dogs, Cats, and other Common household pets are permitted on any lot within the subdivision. Notwithstanding the foregoing, Animals being raised for 4-H or FFA school sponsored programs will be permitted, except that no pigs or hogs will be permitted under any circumstances or programs.

Section 14. Logging and Mineral Development. No commercial logging, oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any lot. Provided, however, that this provision shall not prevent the leasing of the Subdivision or any portion thereof, for oil, gas and mineral purposes and the development of the same, it being contemplated that the portion or portions of the subdivision wherein minerals are owed by Declarant may be developed from

adjacent lands by directional drilling operations, so as not to directly affect the subdivision proper.

Section 15. Drainage. Natural established drainage patterns of streets, lot or roadway ditches will not be impaired by any person or persons. Driveway culverts will be of sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow. The breaking of curbs, if any, for drive installations will be accomplished in a good and workmanlike manner and such break will be re-cemented without hindrance to drainage and such work is subject to the inspection and approval of the Architectural Control Committee.

Section 16. Lot Maintenance. All lots, at Owner's sole cost and expense, shall be kept at all times in a neat, attractive, healthful and sanitary condition, and the Owner or occupant of all lots shall keep all weeds and grass thereon cut and shall in no event use any lot for storage of materials or equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish. Provided, however, the burning of underbrush and trees during lot clearing shall be permitted. All yard equipment or storage piles shall be kept screened, so as to conceal them from view of neighboring lots, streets or other property. Such maintenance includes, but is not limited to the following:

- i. Prompt removal of all litter, trash, refuse and wastes.
- ii. Lawn mowing (outside of the natural vegetation areas).
- iii. Tree and shrub pruning (outside of the natural vegetation areas).
- iv. Keeping exterior lighting and mechanical facilities in working order.
- v. Keeping lawn and garden areas alive, free of weeds, and attractive.
- vi. Keeping parking areas, walkways and driveways in good repair.
- vii. Complying with all government health and policy requirements.
- viii. Repainting of improvements.
- ix. Repair of exterior damage to improvements.

In the event of the failure of Owner to comply with the above requirements after ten (10) days written thereof, the Association or their designated agents may, in addition to any and all remedies, either at law or in equity, available for the enforcement of these restrictions, without liability to the Owner, Contractor or other occupants of the lot in trespass or otherwise, enter upon (and/or authorize one or more agents to enter upon) said lot, cut, or cause to be cut, such weeds and grass and remove, or cause to be removed, such garbage, trash and rubbish or do any other thing which may be necessary to secure compliance with these Restrictions so as to place

said lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner, Builder or occupant of such lot for the cost of such work and associated materials, plus a fee of \$30.00 for each instance. Payment thereof Shall be collected by adding the charges to the Monthly Maintenance Charge and shall be payable on the first day of the next calendar month with the regular monthly Maintenance Charge payment.

Section 17. Exterior Maintenance of Building. In the event the owner of any building in the subdivision should allow such building to fall into disrepair and become in need of paint, repair or restoration of any nature and become unattractive and not in keeping with the neighborhood, the Association and/or the Declarant will give such owner written notice of such conditions. Fifteen (15) days after notice of such conditions to owner, and failure of owner to begin and continue at a diligent, reasonable rate of progress to correct such condition, the Association and/or the Declarant in addition to any and all remedies, either at law or in equity, available for the enforcement of these restrictions, may enter upon said premises, without liability to Owner, to do or cause to be done any work necessary to correct said situation. The Owner thereof shall be billed for cost of necessary repairs, plus ten percent (10%). All monies so owed the Association will be added to the Monthly Maintenance Charge and shall be payable on the first day of the next calendar month with the regular Monthly Maintenance Charge payment.

Section 18. No culvert, bridge, or crossing may be installed by lot owners unless such installation is approved by the proper governmental authorities and the Architectural Control Committee.

Section 19. Should any property owner, as herein described, violate one or more of these covenants and restrictions, the Property Owners Association and the authority created herein will fifteen (15) days after notice, have the power to enforce compliance. The Property Owners Association will be empowered to charge a special assessment to reimburse it for all costs of time and other expenditures, including, but not limited to legal fees, member's time, meeting fees, costs of removal or repair of improvements found in violation, and pay all related expenses. This special assessment will attach to the property upon which the violation rests and will become a lien as provided in these covenants for assessments and liens.

Section 20. Any on-going violation may be prosecuted on a continuing basis with the goal of the Property Owners Association being to correct the violation by whatever means is necessary. Property Owners Association cure of violations is authorized at the violating property owner's expense.

Section 21. Developer's Rights and Reservations. Developer shall have, retain and reserve the right to construct additional improvements in common areas, if any, use common areas in promotion and marketing of the property and any annexable area, grant and create easements, whether temporary or permanent, for access, utilities, pipelines, drainage, water, and sanitary sewer. Such easements shall be located within the subdivision over and across roadways, lots, other easements in common areas at the Developer's sole discretion. Developer further reserves the right of annexation of additional residential property in common areas outside of the subdivision without the consent of the owners or any other party.

ARTICLE V
OWNER'S OBLIGATION TO REPAIR

Each Owner shall, at his or her sole cost and expense, repair and maintain his or her residence, and other buildings on his tract, keeping the same in a condition comparable to the condition of such building at the time of its initial construction, excepting only normal wear and tear.

ARTICLE VI
MEMBERSHIP IN ASSOCIATION: VOTING RIGHTS

Section 1. Membership. Every Owner of a Tract shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a tract.

Section 2. Developer. For purposes of voting, A&M REAL ESTATE DEVELOPMENT, LTD. ("Developer") will be construed as an Owner and Member with the same voting privileges of one (1) vote per Tract owned and Developer is entitled to one vote for each Tract owned by Developer so long as Developer retains a financial interest or any ownership in this development.

Section 3. Votes Per Member. All owners shall be entitled to one vote for each Tract owned or under contract for deed. When more than one person holds an interest in a given tract, all such persons shall be members and the vote for such tract shall be exercised as they may determine among themselves. In no event shall more than one (1) vote be cast with respect to any Tract owned by such Members.

Section 4. Voting Procedure. Voting may be by petition as prescribed for certain specific procedures herein. However, unless otherwise specifically stated herein, all votes will be by ballots mailed to the last known address of each member. These ballots must be mailed back by the member to a certified public accountant or lawyer designated by the board. The public accountant will tally all votes and certify the results to be true. Each vote will be identified by a lot, block and section number, stating the acreage owned and the number of votes represented thereby. Any ballot vote must allow no less than a 30 day period between mail out of ballots and the return of mailed ballots.

Section 5. Boards. Declarant shall initially appoint a three (3) member Board of Directors of the Association with terms running one to five years, who shall serve until their respective terms expire. On the anniversary date of such appointments, and the same date of each following year, the members of the Association shall meet for the purpose of electing a member or members of the Board of Directors for that year as set forth herein. Such Board of Directors shall have the full powers and duties as may be reasonably necessary to carry out the purposes and duties of the Association as provided herein. The above stated terms and election date may vary fifteen (15) days before or after said date at the option of the Board. Mail ballots will be provided for all voters who may return the ballots within the prescribed time and manner or who may bring the completed ballots to the above mentioned meeting.

ARTICLE VII

ASSESSMENTS

Section 1. Declarant hereby covenants for each tract within the project, and each Owner of a tract is hereby deemed to covenant by acceptance of his contract or deed for such tract, whether or not it shall be expressed in his contract or deed, to pay to the Association, (1) annual assessments, and (2) special assessments for capital improvements. Such assessments will be established and collected by the Board as hereinafter provided. The annual and special assessments, together with interests, costs, and reasonable attorney's fees, shall be a charge on the land and a continuing lien on each tract against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person or persons who owned the tract at the time the assessment fell due, and such personal obligation shall pass to the successors in title of such person or persons whether or not expressly assumed by them. However, the first owner liable will not be relieved of liability thereafter.

Section 2. The annual assessments levied by the Board of the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents of the project, and for the construction, improvement and maintenance of the commons, drainage, irrigation systems, or community facilities and private or public roadway easements or rights of way within the project. The provision for maintenance of public roadways is made herein only in case that the county, city, state or other public entity responsible therefore would fail to maintain said roadways properly.

Section 3. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the commons or a capital improvement to the project or any designated private roadway, or public roadway within or giving access to the project. Any such assessment must be approved by a majority of votes cast by members, in a manner of voting as herein prescribed.

Section 4. The Association's Board of Directors shall fix the amount of the annual assessment against each tract at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. Assessments may be made payable monthly. Notice of the annual assessments shall be sent to every Owner subject thereto. The Association shall, on demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessment against a specific tract has been paid, and shall on or before February 15th of each year, cause to be recorded in the office of the County Clerk of the County, a list of delinquent assessments as of that date setting forth and establishing the amount of the lien therefor.

Section 5. Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest from the thirtieth (30th) day after the date due at the highest legal rate per annum. The Association, acting through its Board of Directors, may bring an action at law against the Owner personally obligated to pay the same, and/or may foreclose the lien against the property. No Owner may waive or otherwise escape the liability for the

assessments provided for herein by non-use of the common areas, community facilities, roadway easements, or abandonment of his tract.

Section 6. The assessment lien provided for herein shall not be subordinate to the lien of any mortgage hereafter created. A sale or transfer of any tract shall not affect the assessment lien. The sale or transfer of any tract pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall not extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such tract from liability for any assessment thereafter becoming due or from the lien thereof, except as otherwise provided herein in Section 12 of Article VIV. However, any lender, investor or purchaser may accept without further pursuit of diligence a certificate executed by the president and attested by the Secretary of the Association certifying the status of dues, assessments or liens.

Section 7. Any expenses of suit brought by the Association and/or declarant herein and any expense of defense of any suit against the Association, its officers, or directors, and/or declarant in regard to the functions thereof in the administration or enforcement of these covenants shall be borne by the Association and the Association shall have and hold any rights to recovery of such expenses. If the Association, its officers, or directors, and/or declarant prevail in any suit brought against them by any Owner in the project with regard to the Association of declarant's administration or enforcement of these covenants and said Association, officers, directors, or declarant prevail in said suit, then such defendants are entitled to recovery and judgment against the suing Owner for their costs of suit, including but not limited to, expert witnesses, attorneys, appraisers, surveyors, and litigation expenses. The amount of any such judgment obtained for damages or costs shall automatically become a lien against defendant's property in this project and subject to the same stipulations for assessments. This lien will attach as otherwise prescribed by law.

Section 8. Each Owner in the project agrees that should suit be brought by Declarant and/or Association to enforce performance of the covenants the suing party will be and is entitled to judgment for damages and all costs of suit, including but not limited to, expert witnesses, attorneys, appraisers, surveyors, and court costs, should the action prevail. The amount of any such judgment obtained for damages or costs shall automatically become a lien against defendant's property in this project and subject to the same stipulations for assessments. This lien will attach as otherwise prescribed by law.

Section 9. It is specifically stipulated that should Developer, its successors or assigns foreclose on any property sold under deed or contract such property will revert to status of inventory free of the obligation of any accrued and unpaid assessments or costs and/or liens therefor. Any such liens of record will be released by the appropriate officer or officers upon presentation of release thereto by Developer. Upon failure of such action by said authority, or in lieu thereof, Developer may file a release executed on and by its own behalf which will be conclusive evidence to all persons that such lien is thereby released unless the Association acting within its authority files a proper court action to invalidate said release within thirty (30) days after recordation. Furthermore, see Section 13 of Article VIV herein.

ARTICLE VIII
NOTICE OF AUTHORITY FOR ASSESSMENT

Section 1. Maintenance of Common Elements. Each interested party or purchaser of a Tract in this project is hereby made aware of the fact that some of the roadways herein within the commons are dedicated or will be dedicated to the use of the property Owners and are not dedicated to the county, any municipal body or public authority nor to the public. Such Owner or other interested party is hereby given notice that the maintenance of such commons and county roads where deemed necessary by the Association, and other designated areas and facilities, called common areas, and the payment for security guards and patrols, if any, garbage pick-up and other conveniences deemed necessary and requisite to the pleasure, comfort, security and enjoyment of the property Owners in this project, will be provided for through an assessment or assessments, as the case may be, to be levied against each and every tract or parcel of land sold therein that will benefit for the use of the common areas and common facilities to be maintained by assessment, such determination to be made by the Association created herein. Determination of pro-rata assessment will be on a tract basis.

Section 2. Agreement. Each purchaser of a property in this project hereby agrees that Thistle Down Property Owners Association ("Association"), as created and chartered, under the laws of the State of Texas, has the authority to administer the funds and attend to the management and maintenance of all common areas, services and facilities in said project, and does hereby grant and give unto the said Association, its successors and assigns, the authority to levy and collect assessments as necessary, and to expend said funds as necessary, subject to the requirements as hereinafter set forth, for the purpose of the maintenance of all facilities and areas and services as herein above and hereinafter described. Until such association is formed, this authority is vested in Developer.

Section 3. Commons. It is stipulated that designated common areas may be used for any purpose required or deemed advantageous to the property owners in the project, such purpose to include but not be limited to, the installation of any and all utilities, and dedication of such easements and rights of way as deemed necessary by said Association. Such dedications may be made upon a plat thereof or by separate instrument in writing and such dedication may be made at the discretion of the Association at any time, present or future. The Association may allow the installation of any main or service extensions in said Commons by letter or formal agreement to the utility company, or may allow installation of service lines from main to dwelling or outlets by oral approval. Any such installations made will be considered approved if the Association has not ordered such installation halted prior to completion thereof.

Commons may be of several categories:

- (a) Dedicated commons are those commons owned or to be owned by the Association through dedication upon the plat or by separate dedication by other recorded instrument of conveyance.
 - (b) Easements as commons for community use by the property owners are those commons dedicated upon and across various lots, tracts and parcels of land,
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shown as easements and/or commons on the plats thereof and/or as cited in separate instruments of record or to be placed of record.

- (c) Leasehold commons are those commons not provided as easements or dedicated as fee commons, but are shown as leasehold. Leasehold commons are provided for the use of property owners under the terms and conditions as set forth in the lease agreements.
- (d) Temporary Commons are those commons designated on a plat as such or upon the ground as such and may be commons utilizing land being held for future development, or as timberland forest by developer. Temporary Commons may be moved or eliminated.

Section 4. Effective Date of Assessments. Any and all levies for any and all purposes as herein set forth may be made and begun at an appropriate time as will be determined by the Association. Said action may be made to affect, at different times, any sections or tracts and levies for maintenance of various areas may be made or begun at different dates, and are not required to be made simultaneously. When such determination is made by the Association, notice will be given to the Owners of such properties as affected and all said Owners will then be required to pay said assessments to the Association.

Section 5. Handling of Assessed Funds. All funds collected by the Association for maintenance and services of commons will be kept in a special bank account or savings account to be used only for the purposes as herein stated, and an itemized account of all receipts and disbursements will be mailed annually to all property owners on said Project upon such Owner's written request. If at any time the Owners of fifty-one percent (51%) of more of the Tracts affected by an assessment desire that the fund so established and the books and records pertaining thereto be audited, then said Owners may, by affixing their signatures to a petition, cause such audit to be made. Such petition shall stipulate the name of a Certified Public Accountant who shall make such audit and the date that such records shall be made available to said Accountant. The Association will then be compelled to make such records available to the named Certified Public Accountant in the offices of the Association or other place at the discretion of Association. The Association shall not be responsible or liable for the fees of such Accountant unless material discrepancies are found.

Section 6. Establishment of Amount of Assessment. The Association in initially setting the monthly levy or assessment for any purpose stated herein, will do so on an estimated basis determined by a study of the requirement of said purposes. Said amount so levied may be changed from time to time, by the Association's Board of Directors as necessary, to pay the allowed expenses as herein set forth or should said assessment prove to be more than needed for such purposes, then, the Association may reduce said levy accordingly, or carry forward such excess to be used to decrease the amount of future assessments.

Section 7. Special Assessments. The Association will have the right, privilege and powers to levy special assessments as may become necessary for purposes as required and authorized herein. Such special assessments would be made upon the same pro-rata basis as hereinabove set

forth and paid to Association as prescribed by said Association. Upon the approval of the Owners of fifty-one percent (51%) of the acreage, subject to any special assessment, such special assessments could be made for the purpose of the construction or reconstruction of improvements in the common areas for the use and benefit of such Owners.

Section 8. Collection of Assessments. The Association will have the sole responsibility and authority to collect all assessments unless otherwise assigned to an agent. Such assessments will be levied on a monthly basis and Association will have the power to allow certain reasonable discounts to Owners paying said assessments semi-annually or annually in advance. Association will have the power to add to such assessments appropriate and reasonable penalties against said Owners for delinquency in payment of assessments as well as the other remedies set forth herein.

Section 9. Delinquent Assessments. Any Owner being thirty (30) days delinquent on the payment of any assessment will have filed against his property a lien for such assessment, plus any penalties and costs. Such lien shall remain in effect until all past due assessments, penalties and costs have been paid or satisfied as otherwise set forth herein.

Section 10. Enforcement of Liens. Each lien established by the Association pursuant to the provisions of this instrument, may be enforced by recording with the County Clerk of this County a notice of delinquency and lien upon said property and may be foreclosed, as and in the same manner as is provided for the non-judicial foreclosure of a mortgage upon real property under the laws of the State of Texas, the same as if said Association had retained a vendor's lien and possessed a Deed of Trust and note against said property. In any action to foreclose any such lien, the Association shall be entitled to costs, including reasonable attorney's fees, and other allowed costs and penalties. The Association may employ any other process available under the law for collection.

Section 11. Reservation of Liens. The Association does hereby reserve unto itself, establish and impose, a lien, thereby securing each assessment imposed or to be imposed, or in any way provided herein, together with any costs, interest, or penalties against all of the property covered in this instrument subject only to any limitations and/or provisions in this instrument.

Section 12. Subordination to Mortgage. Each and every assessment and lien, together with any cost, penalty or interest, established, reserved or imposed under this instrument and authority shall be subordinate to any prior valid bona fide mortgage or trust deed (and the lien and/or title thereof) which has been given in good faith and for value of any interest covered by this instrument and authority. Any subsequent Owner of any property so covered, purchased at foreclosure or otherwise, shall be bound by restrictions, conditions, covenants, reservations, assessments and liens set out in this instrument, excluding any assessment or lien arising prior to a foreclosure sale brought about by a lender under any valid, bona fide mortgage or trust deed. A valid, bona fide mortgage or trust deed for purposes of this document is one given for funds applied to the purchaser of, or improvements of, the property upon which the lien is created. This lien for assessments is also subordinate to future liens as set forth in Section 13 following.

Section 13. Exclusion of Developer. The Developer of this project, its successors and assigns, hereinafter called Developer, will sell to purchasers properties within said project. It is

specifically stated and agreed that if one or more tracts or parcels of land are sold to any purchaser by Developer, by contract for deed, or deed with lien and note or other instrument, and purchaser defaults in payments of said lien in any manner, such as failure to pay principal, interest, taxes, insurance or assessments set forth hereunder and said property be repossessed, or such contract canceled by Developer, or any assignee of Developer's right, title and interest in any such lien or contract, then Developer or said assignee, will not be required to pay to the Association any delinquent or past due assessments or penalties and any liens for non-payment of same filed by said Association will be released as regards such property. Evidence of such cancellation, repossession or foreclosure will, in itself be sufficient with no further release or action required by the Association for this purpose; however, this stipulation does not, by any means, relieve the purchaser in default who failed to pay such assessments levied and/or penalties and cost, and from whom said property was repossessed, of his personal liability to pay such delinquent funds, though such delinquency will not be attached to such property as a lien in this instance. This provision does not affect the rights of the Association, as creditor, to pursue other remedies and liens.

Section 14. Rules and Regulations Governing Use of Commons and Facilities Therein. Rules and regulations governing the use of all commons and facilities will be made and enforced by the Association, to insure the best and mutual enjoyment thereof of all the qualified property owners and their guests. Any Owner who fails to pay assessments levied or fails to comply with any requirements or rules and regulations governing the use of said commons and facilities, will be denied the use thereof. Such rules and regulations to be made and enforced by the Association will include, but not be limited to, rules concerning guest privileges to commons, recreation facilities, if any, speed limits on streets, type of vehicles on streets and other commons, control of noise, use of irrigation water, channels or canals, use of any lakes, ponds or streams within the commons.

Section 15. Delegation of Use of Facilities. Any Owner may delegate his right of enjoyment to the common areas and facilities to the members of his immediate family, his tenants, or contract purchasers who reside on the property.

Section 16. Maintenance of Tracts. The Owner of a tract or tracts in the project will be required to keep the grass and weeds cut and will be required to keep said property free of any unsightly or offensive accumulation of trash, garbage, or unsightly deposits of any nature or kind from the date of purchase of said tract. This requirement is effective on occupied and unoccupied tracts. Ten days after notice to Owner of such situations existing, the Association and/or its employees shall have the right and authority to enter upon said premises and correct the existing violation of the requirement so stated. Such Association will charge said Owner a reasonable fee for such work accomplished and bill said Owner for said fee plus a reasonable service charge per month, for each instance, until Owner pays said Association in full as billed. All monies so owed the Association will become special assessment against the property Owner.

Section 17. Exterior Maintenance of Buildings. In the event the Owner of any building in the project should allow such building to fall into disrepair and become in need of paint, repair, restoration of any nature or other corrective measures and become unattractive and not in keeping with the neighborhood, the Association as herein established will give such Owner

written notice of such conditions. Fifteen (15) days after notice of such condition to owner, and failure of Owner to begin and continue at a reasonable rate of progress to correct such condition, the Association may enter upon said premises to do or cause to be done any work necessary to correct said situation. The Owner thereof shall be billed for cost plus ten percent (10%). All monies so owed the Association will become a special assessment against the Owner of the property.

Section 18. Assessment for Street Lighting. The Association herein created is empowered to contract with a utility company for the Owner of each tract or dwelling in this project to pay the amount of \$2.00 (Two Dollars) to be paid in cash or added to such owner's electric bill each month, as a contribution toward payment for the operation, and maintenance of street lighting in this project. This fee may be adjusted up or down within reason in accord with the rates of the utility company. Association may include funds for street lights in the general assessment.

Section 19. Notice. In all instances herein where notice is required, notice will have been given upon placing in the United States mail, said notice to the last known address of such person or party to whom notice is to be given.

Section 20. Use of Commons By Developer. It is specifically agreed by each purchaser and stipulated herein that the Developer, its successors and assigns will have the right of use of all commons. Such use will be allowed for the purposes of promotion and sale of property by said Developer and will include the right of Developer to issue passes and permits to guests or prospective purchasers of property and Developer's employees to use and enjoy for limited periods, such commons, facilities and services. This right is reserved unto the Developer, its successors and assigns so long as said Developer owns land in the project and is marketing same.

Section 21. Developer Lots. It is fully understood that Developer is subjected to the same payments per tract owed to the Association created herein as in any other tract owner; save and except those lots or tracts foreclosed on by Developer or received by Developer as the result of canceling a contract. However, Developer may pay in advance any amount of funds in the form of improvements, maintenance, repairs, leases, rentals, and property donation at market value, and will receive full credit for such contributions and advances, plus interest at twelve percent (12%) per annum on such funds advanced against assessments. Each year the Association will charge against such advances and interest any assessments accrued against Developers' tracts, carrying forward any credit balances to the next and ensuing years. Should Developer have a credit balance remaining after sell out of the total project of all sections, such credit balance will not be a charge to the Association, but will, in fact, be written off by Developer.

ARTICLE IX **UTILITY STANDBY CHARGES**

Section 1. Should the requirement for utility standby charges become necessary to the installation of any utility or service, the Association shall have the right to establish such standby charges and in such case there shall be levied against every individual tract, severally, a standby charge not to exceed the exact cost per month to the Association. Such charge shall be fixed from time to time by the Board of Directors of the Association, which charge shall be due and

payable in monthly installments in advance, or as otherwise required; and the payment of such standby charge or charges shall be and is secured by a lien hereby created. The Association hereby reserves unto itself, its successors and assigns and establish and impose a lien, thereby securing the assessment as herein set forth for the prescribed utility standby charge.

Section 2. This lien so established, may be foreclosed upon after notice of delinquency to the Owner of any tract, as and in the same manner as is provided for the non-judicial foreclosure of a mortgage upon real property under the laws of the State of Texas, the same as though the Association had retained a vendor's lien and possessed a deed of trust and note against said tracts. Any such action of foreclosure will entitle the lien holder to reasonable attorney's fees and other allowed costs and penalties. In addition to this provision, the Association may pursue any other procedures of collection as may be provided under the law.

Section 3. It is specifically stated herein that all property held by the Developer, its successors and assigns for sale or resale within this project is hereby totally exempt from any and all of the requirements of this Article and no lien shall become effective on any property herein until said property is sold to a bona fide purchaser by contract or deed.

Section 4. Such standby charge, the liens securing the payment thereof, and the right and responsibility for the enforcement thereof are hereby reserved and given over to the Association. Such charge, and all liens securing the payment thereof, except for delinquents, shall be released and discharged automatically (without further action) on any tract upon the conveyance of any tract to the initial person or persons who will reside on the property and the completion of a dwelling or residence on the property and tie into the utility with continued service. Such completion may be evidenced by the execution by the creation and recordation of the first lien mortgage or deed of trust on the improved property or by the execution of a release by the holder of said lien or by the Board of Directors of the Association, of the lien created hereunder to secure the standby charge, however, prior to same any and all due or past due charges and fees must be paid in full.

Section 5. The Association may assign or pledge to any utility provider this right of assessment and security for standby charges. In such instance, the standby charges will be set at a rate in conformance with published or approved tables of any state agency or authority, if any. In the absence of such an authority, the rates will conform to normal and usual rates. This authority granted and created in this SECTION V reserved unto Developer until the creation of the Association is accomplished.

ARTICLE X

LAW ENFORCEMENT AND STREET RIGHTS

Section 1. Traffic Law. Notwithstanding the fact that some roads and commons in this project are or may be dedicated not unto the public, but only to the property owners on the project as easements, it is hereby stipulated that the Commissioners Court or other public governing body will have the full authority to establish speed limits or other traffic laws and rules, and penalties for violations thereof upon the streets of this project, and the law enforcement officers of the County or of the State of Texas or any other beneficial body having

such authority, any enter upon this project to enforce the speed limits as set by the County Commissioners Court or any other entity or authority, just as though said roadways were public.

Section 2. Public Law. Notwithstanding the fact that commons in the project are private and dedicated or are made available only unto the property owners within the project, it is hereby stipulated that any law enforcement officer, City, County, State, or Federal, is hereby authorized to enter upon the premises of the project for all purposes just as though the project commons were dedicated unto the public, and every law enforcement officer will have the same rights, privileges and duties within the boundaries to this project as he would in any subdivision whereby the streets and other commons and facilities were dedicated to the public.

ARTICLE XI GENERAL PROVISIONS

Section 1. Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, easements reservations, liens, and charges now or hereafter imposed by the provisions of this declaration. Failure by Declarant, the Association, or by any Owner to enforce any covenant, or restriction herein contained shall in no event be deemed a waiver of the rights to do so thereafter.

Section 2. Invalidation of any one of these covenants or restrictions by judgement of court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Covenants and restrictions of this declaration may be amended by not less than fifty percent (50%) of the Votes cast by Members by duly recording an instrument executed and acknowledged by the Board or an officer of the Association stating that 50% of the Members affirmed the amendment.

Section 4. No breach of any of the conditions herein contained or re-entry by such breach shall defeat or render invalid the prior lien of any mortgage made in good faith and for value as to the project or any tract therein; provided, however, that such conditions shall be binding on any Owner, except Developer, whose title is acquired by foreclosure, trustee's sale, or otherwise.


Section 5. The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any member thereof for a period of twenty-five (25) years from the date hereof, and thereafter shall continue in effect for additional periods of ten (10) years, unless canceled or amended by written vote by the then Owners of at least seventy-five percent (75%) of the acres based upon one vote per each acre owned.

Section 6. Declarant shall have the right during the term of the continuation of this Agreement to add to the real property within the project any area tracts and the Owners of the tracts within such added portion shall become members of the Association on the same terms and conditions subject to the same restrictions as apply to Owners of tracts within the original project.

Section 7. If any one of these restrictions shall be held to be invalid or for any reason is not enforced, none of the others shall be affected or impaired thereby but shall remain in full force and effect.

APPROVED AND EXECUTED THIS 10 day of JANUARY, 2003.

LULLING STONE SUBDIVISION, SECTION V
PROPERTY OWNERS ASSOCIATION

By: 
Bruce Karpman, General Partner
President of Lulling Stone Subdivision
Partner ATM Real Estate Development

THE STATE OF TEXAS

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COUNTY OF BRAZORIA

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ACKNOWLEDGMENT

This instrument was acknowledged before me on the 10th of JANUARY, 2003,
by Beau S. King, President of LULLING STONE,
SECTION V PROPERTY OWNERS ASSOCIATION.



Jennifer Washington
Notary Public, in and for the State of Texas
Name: *Jennifer Washington*
My Commission Expires: *12/02/06*