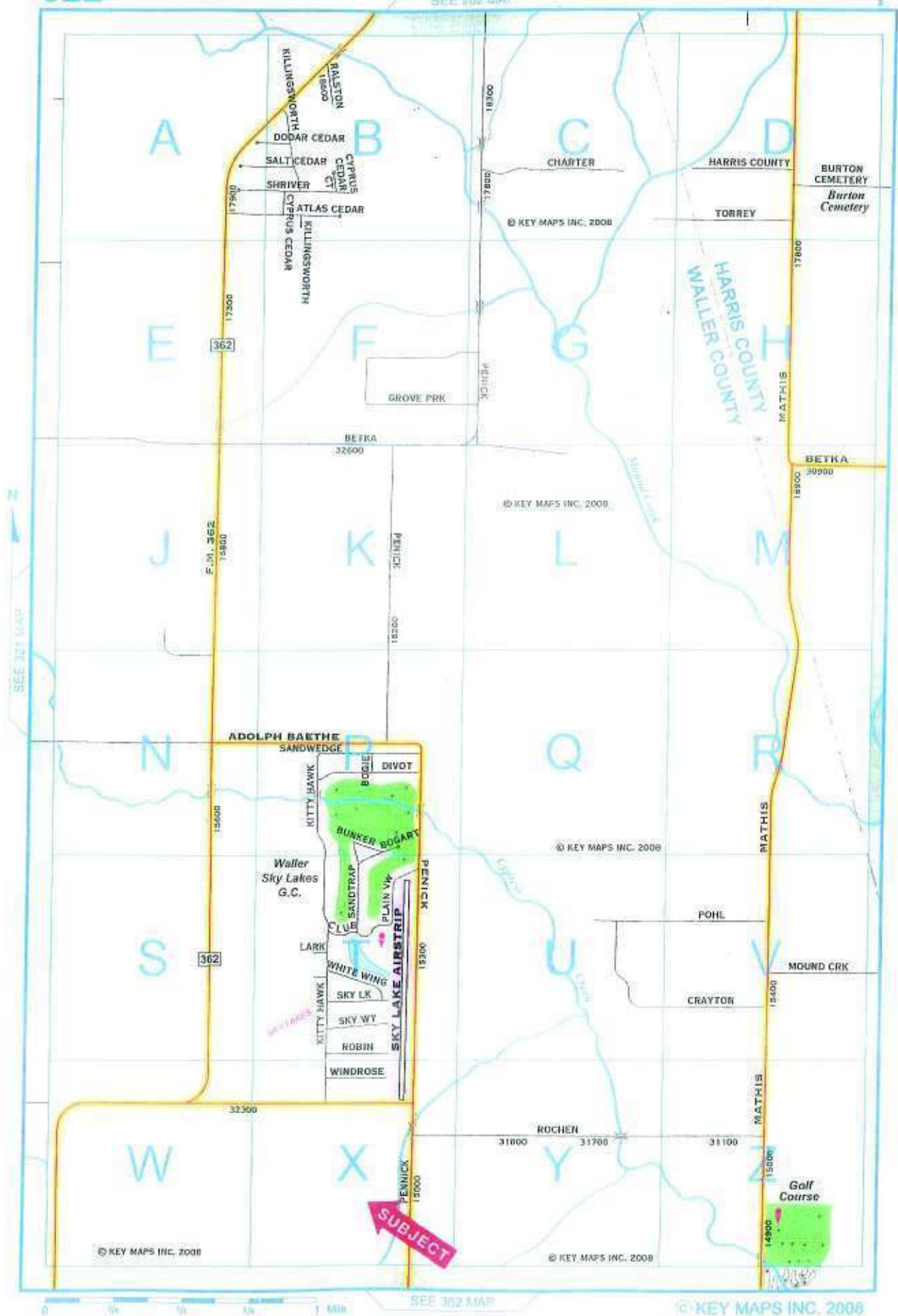


SUBJECT







DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
EQUESTRIAN OAKS ESTATES

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") for Equestrian Oaks Estates is made this day by N. Robert Smith and Annette W. Smith, hereinafter called "Declarant".

PREAMBLE

WHEREAS, N. Robert Smith and Annette W. Smith, hereinafter called "Declarant" is the owner of the real property described below and Declarant desires to create thereon Equestrian Oaks Estates which shall be a duly approved and recorded subdivision in Waller County, Texas.

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in said community contributing to the personal and general health, safety and welfare of residents, and for the maintenance of the land and improvements thereon, and to this end desires to subject the real property described below, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, to provide a means for meeting the purposes and intents herein set forth Declarant shall incorporate, under the laws of the State of Texas and according to the provisions of Article III, the Equestrian Oaks Estates COMMUNITY ASSOCIATION; and

WHEREAS, Declarant hereby delegates and assigns to EQUESTRIAN OAKS ESTATES COMMUNITY ASSOCIATION, the power of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

NOW THEREFORE, Declarant declares that the real property described in the FINAL PLAT OF EQUESTRIAN OAKS ESTATES, a subdivision in Waller County, Texas, Vol. 547, Pg. 823 of the Official Records of Waller County, Texas, said plat being incorporated herein for all purposes, which consists of 24.964 acres situated in the Polly Perry Survey, Abstract No. A-236, Waller County, Texas, consisting of 7 Residential Tracts Lots in One Block containing 22.910 acres, one (1) Roadway containing 1.758 acres, and one (1) Waller County Future Roadway Dedication containing 0.296 acres (the "Subdivision") and such additions thereto as may hereafter be made is and are and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

1.1 "Declaration" means the covenants, conditions, and restrictions and all other provisions herein set forth in this entire document, as they may from time to time be amended.

1.2 "Declarant" means N. Robert Smith and Annette W. Smith, and their heirs, executors, successors and assigns.

1.3 "Subdivision" means a recorded subdivision known as Equestrian Oaks Estates and defined on the recorded Subdivision Plats, and which is hereby subject to this Declaration, together with such other real property or additional Sections as may from time to time be annexed thereto under the provisions of Article II.

1.4 "Subdivision Plat means the respective map or plat recorded in the Map Records of Waller County, Texas and which shall define the development scheme of the Subdivision.

1.5 "Lot" and/or "Lots" means each of the Lots shown on the Subdivision Plat and conveyed according to the Lot numbers shown thereupon.

1.6 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated within the Subdivision.

1.7 "Association" means the EQUESTRIAN OAKS ESTATES COMMUNITY ASSOCIATION, a non-profit corporation, incorporated under the laws of the State of Texas, and its successors and assigns.

1.8 "Members" means the members of the Association, which shall consist of all Owners and Declarant.

1.9 "Directors" or "Board" shall both refer to the duly appointed or elected Board of Directors of EQUESTRIAN OAKS ESTATES COMMUNITY ASSOCIATION.

1.10 "Quorum of Members" means the representation by presence or proxy of Members who hold fifty percent (50%) of the outstanding Class A votes as defined in Section 3.03 and the representation by presence or proxy of the Class B Membership so long as it shall exist.

1.11 "Common Area" means all real property and improvements thereon owned or leased by the Association or over which the Association has an easement for maintenance (excepting Lots and dwelling units thereon) for the use and enjoyment of the Members.

1.12 "Common Facilities" shall specifically refer to all existing and subsequently provided improvements upon or within the Common Area. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of all Owners constructed, purchased, or leased on property not defined as a Common Area.

1.13 "Governing Documents" shall mean the Certificate of Formation, Bylaws and other agreements adopted by the Association from time to time.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

2.1 The "Subdivision". The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Waller County, Texas and is more particularly described in the recorded plat thereof.

2.2 Mineral Exception. There is hereby excepted from the Subdivision and Declarant excepts from all sales and conveyances within the Subdivision, or any part thereof, all oil, gas, and other minerals in, on, or under the Subdivision, but Declarant hereby waives, to the extent of its ownership interest, its right to use the surface of such land for exploration for or development



of oil, gas, and other minerals. No actions by any Owner and nothing in the Governing Documents shall limit the rights of the Mineral Owners or Lease Holders from obtaining oil or gas from said property by slant or horizontal drilling to obtain minerals is specifically prohibited.

### ARTICLE III

#### EQUESTRIAN OAKS ESTATES COMMUNITY ASSOCIATION

3.1 Non-Profit Corporation. EQUESTRIAN OAKS ESTATES COMMUNITY ASSOCIATION, a non-profit corporation, has been organized and it shall be governed by the Certificate of Formation and Bylaws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

3.2 Membership. Every person or entity who is a record owner of any Lot in the Subdivision shall be a "Member" of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the lots. Regardless of the number of persons who may own a lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each lot. Additionally, the Directors of the Association must be Members of the Association. Ownership of one or more Lots shall be the sole qualification for membership.

3.3 Bylaws. The Association has adopted or may adopt whatever Bylaws it may choose to govern the organization or operation of the Subdivision and the use and enjoyment of the Lots and Common Areas, provided that the same are not in conflict with the terms and provisions hereof.

3.4 Voting Rights. The Association shall have two classes of voting membership:

**CLASS A:** Class A Members shall be all the Members of the Association, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in the Subdivision owned by such Member. When more than one person holds such interest or interests in any such Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they determine among themselves but, in no event, shall more than one vote be cast with respect to any such Lot.

**CLASS B:** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in the Subdivision owned by the Declarant; provided that the Class B membership under this Declaration shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;
- (b) on January 1, 2013;
- (c) when, in its discretion, the Declarant so determines.

From and after the happening of whichever of these events occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in the Subdivision in which it holds the interest required for membership by this

Declaration. At such time, the Declarant shall notify the Association in writing that the Class B Membership has terminated.

3.5 Owner's Right of Enjoyment. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association, with respect to the Common Areas, to limit the number of guests of Owners;

(b) the right of the Association, in accordance with its Articles and Bylaws, to (i) borrow money for the purpose of improving and maintaining the Common Areas and facilities (including borrowing from the Developer or any entity affiliated with the Developer and (ii) mortgage said property, however, the rights of such mortgagee of said property shall be subordinate to the rights of the Owners hereunder.

(c) the right of the Association to suspend the Member's voting rights and the Member's and "Related Users" (as hereinafter defined) right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Tract remains unpaid; and

(d) the right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration of the "Rules and Regulations", as hereinafter defined, which suspension shall continue for the duration of such infraction or violation.

3.6 Declarant's Rights. All Directors elected by the Association must be approved by Declarant until the Class B Membership is converted to Class A Membership. Declarant may, at its sole option, give control of the Association totally to the Class A Members for election of a Class A Member Board prior to the date requirements above. The exercising of said option shall not impair the voting rights of Declarant as a Class B Member subject to Section 3.4. In addition, Declarant shall have the right and power to veto any action or decision of the Board, according to the provisions of the By-Laws, within ten (10) days of the Notice to Declarant required in Section 3.9 of an action by the Board. Such veto rights shall cease with the completed sale of ninety percent (90%) of the Lots within the Subdivision.

3.7 Architectural Control Committee. The Architectural Control Committee (ACC) shall operate under the provisions of Article V of this Declaration and shall be responsible for review of all plans for any improvement or action within the Subdivision which is subject to this Declaration or the Governing Documents. The Committee shall also be responsible for monitoring compliance with all of the provisions of this Declaration and and may instigate any action necessary to bring about compliance.

3.8 Association Business: In Addition to the duties and powers enumerated in its Governing Documents, or elsewhere provided for herein, and without limiting the generality thereof, the duties and powers of the Board shall normally include, but shall not be limited to, the following:

(a) **Corporate Business.** The right of the Association, acting through the Board to carry on all legal business functions and exercise all of the powers of a Texas non-profit corporation, subject only to such limitations as are expressly set forth in this Declaration, including but not limited to the rights to own, sell, grant, convey, lease, mortgage, or dedicate to any individual entity or utility, any portion of or rights pertaining to any Common Areas, roads or easements in favor of the Association; or to construct, purchase, lease, or contract for any additional property, facilities, equipment, etc.; or to borrow money for the purpose of constructing, improving, maintaining, or repairing said Common Areas or Facilities, roads, or easements and in aid thereof to mortgage said property.

(b) **Common Areas, Facilities And Easements.** All of the Common Areas, Common Facilities, including all roads within the subdivision, and easements in favor of the Association shall be operated, managed, and maintained in good repair for the benefit and enjoyment of all of the Members and the cost therefrom, including payments on any existing mortgages on the Common Areas or Facilities conveyed to the Association by Declarant, shall be a common expense to be paid out of the Annual Maintenance Fund Assessment.

(c) **Enforcement.** The Board shall have the right to enforce the provisions of the Governing Documents by any legal and appropriate means, whether specifically defined in this Declaration or not, for the benefit and protection of the Members in general and specifically to protect the scheme of the development as evidenced by this Declaration.

(d) **Rules And Regulations.** The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules") which may include the establishment of a system of fines and penalties. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of any Common Areas; provided, however, that the Association Rules may not discriminate among Owners, and shall not be inconsistent with the Governing Documents. A copy of the Association Rules as they may from time to time be adopted, amended, or repealed or a notice setting forth the adoption, amendment, or repeal of specific portions of the Association Rules shall be delivered to each Owner according to the "Notice" provisions of Section 12.4. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Association to each Owner or other interested party upon request. In the event of any conflict between any such Association Rules and any other provisions of the Governing Documents, the provisions of the Association Rules shall be deemed to be superseded by the provisions of the Governing Documents to the extent of any such conflict.

(e) **Budgets And Assessments.** The Board shall annually prepare an Operating Budget and Capital Budget for the operation and maintenance of the Subdivision and the Association, and therefrom compute the Annual Maintenance Fund Assessment to be charged against each Lot. The Board shall also have the right, subject to the provisions of this Declaration, to establish other fees or assessments that may from time to time be



required or beneficial to the purposes of the Association, and the right to adopt procedures for the purpose of making, billing, and collecting the Assessments, user fees and charges provided for herein, provided that the procedures are not inconsistent with the provisions hereof.

(f) **Contracts.** The Board shall have the right to hire or contract with any person or entity for the performance of various duties and functions including, but not limited to, the employment of a manager or management company to perform all or any part of the duties and responsibilities of the Association.

(g) **Delegation.** The Board shall have the right to delegate to committees, officers, employees, or agents any of its duties and powers under the Governing Documents except such powers which are non-delegable according to law. No such delegation, however, whether to a professional management company, the Architectural Control Committee, or otherwise, shall relieve the Association of its obligations to perform such delegated duty.

(h) **Appeals.** The Board shall hear appeals on decisions of the Architectural Control Committee according to the provisions of Section 5.6, and shall hold hearings on any proposed enforcement of the Governing Documents.

(i) **Court Alternative.** Prior to any lawsuit pertaining to or covered by the Governing Documents or pertaining to this Declaration being initiated by any Member or the Association, such dispute or case shall first be brought before the Board for a hearing. If a hearing by the Board does not resolve the dispute then a lawsuit may be filed. The Board shall hold a hearing upon the request of either a Member or the Association within 60 days after the date of the request.

3.9 **Notice To Declarant.** The Association shall inform Declarant of all decisions and actions of the Board and the Association including: Copies of the minutes of all meetings, notice of change of ownership along with a copy of the Certificate of Occupancy if required, notice of all applications for approval of the Architectural Control Committee along with the decision of said committee, notice of actions for enforcement, notices of meetings, bulletins, newsletters, and other information conveyed to the Members. All such information shall be provided to Declarant in a timely manner and without charge until Declarant shall inform the association in writing that it no longer requires the information.

3.10 **Insurance.** The Association, to the extent available and to the extent deemed necessary or beneficial, shall obtain and continue in effect in its own name the following types of insurance so long as such amounts or types of insurance coverage are not, in the good faith judgment of the Board, prohibitively expensive or no longer necessary or appropriate for the protection of the Properties, the Association, and the Members:

(a) **Fire And Extended Coverage.** This insurance coverage to be carried on all improvements owned by or leased to the Association, the amount of such insurance to be not less than ninety percent (90%) of their aggregate full insurable value, meaning actual replacement cost exclusive of the costs of excavations, foundations, and footings.

(b) **Other.** Public Liability, Fidelity Coverage, Worker's Compensation, Officers and Directors Liability Insurance and/or Indemnity, or other bonds shall be

obtained and maintained where the Board, shall deem necessary or beneficial to carry out the Association functions.

(c) Premiums. All of the costs, charges, and premiums for all insurance that the Board of Directors authorizes as provided herein shall be a common expense of all Members and be a part of the Annual Maintenance Fund Assessment or a Special Assessment at the option of the Board.

(d) Waiver By Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, Declarant and agents, and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

(e) Insurance Rates. Nothing shall be done or kept in the Subdivision which would result in the cancellation of insurance or increase the rate of insurance on any property insured by the Association without the express written approval of the Board, providing, however, Declarant may keep equipment, building materials, etc. that are necessary for the development of said Subdivision.

3.11 Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by, or imposed upon, any officer or director in connection with any 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 or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a common expense, maintain adequate general liability and officers and directors liability insurance to fund this obligation.

3.12 Inspection Of Records. The Members of the Association shall have the right to inspect the books and records of the Association at reasonable times during the normal business hours, and make copies of documents pertaining to the business of the Association. Such records shall be made available to all Members and any other person or entity having a valid interest in the Properties upon the written request of such party. The Association shall have the right to charge reasonable fees for providing copies of said documents.

#### ARTICLE IV

#### MAINTENANCE FUND AND ASSESSMENTS

4.1 Maintenance Fund Obligation. Each Owner of a tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association a monthly maintenance charge (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Tracts and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and other assessments are made.

4.2 Basis of the Maintenance Charge.

(a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund", which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot to the Association. The Maintenance Charge for the year of purchase shall be prorated at closing and then shall be paid annually, in advance, on or before the first day of January of each calendar year.

(b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Tract. No Owner may waive or otherwise escape liability for the Maintenance Charge by the non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Tract.

(c) The initial amount of the Maintenance Charge applicable to each Lot will be \$500.00 per year due in advance, payable on January 1 of each year. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Board of Directors of the Association, subject to the provisions hereof.

(d) The Association shall have the further right at any time, with a majority vote of all association members responding to a written request, to adjust or alter said Maintenance Charge from year to year as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

4.3 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner of a Tract in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Tract which may be foreclosed on by non-judicial foreclosure, pursuant to the provision of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of



Hays County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power or sale hereby granted, the Association, or the Association's agent, shall give notice of foreclosure sale as provided by the Texas Property Code 88 then amended. Upon request by Association, the Trustee shall give any further notice of foreclosure sale as may be required by the Texas Property Code as then amended, and shall convey such Tract to the highest bidder for cash by the General Warranty Deed.

Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Tract foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In the event of non-payment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such non-paying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 6.03 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Hays County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

4.4 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Tract of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Tract against which the lien is claimed and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amount secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as filed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

4.5 Liens Subordinate to Mortgages. The lien described in this Article VI shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or any other third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Tract and any renewal, extension, rearrangement

or refinancing thereof. Each such mortgagee of a mortgage encumbering a Tract who obtains title to such Tract pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Tract free and clear of any claims for unpaid Maintenance Charges or other charges of assessments against such Tract which accrued prior to the time such holder acquired title to such Tract. No such sale or transfer shall relieve such holder from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Tract shall not affect the Association's lien for Maintenance Charges or other charges or assessments.

4.6 Purpose of the Maintenance Charges. The Maintenance Charge levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described in this Declaration or in the Governing Documents, including the maintenance of any Common Areas, any Drainage Easements and the establishment and maintenance of a reserve fund for maintenance of any Common Areas. The Maintenance Fund may be expended by the Association for any purposes which in the judgment of the Association will tend to maintain the property values in the Subdivision, including but not limited to providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area as may from time to time be authorized by the Association. Except for the Association's use of the Maintenance Charge to perform its duties described in this Declaration and in the Bylaws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood that the judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

4.7 Handling of Maintenance Charges. The collection and management of the Maintenance Charge or other charge or assessment levied hereunder shall be performed by the Association. The Association shall maintain separate special accounts for these funds, and Owners shall be provided at least annually information on the Maintenance Fund.

4.8 Exempt Property. All Common Areas shall be exempt from the assessments, charges and liens created herein.

## ARTICLE V

### ARCHITECTURAL CONTROL COMMITTEE

#### 5.1 Basic Control.

(a) No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced or changes made in the design or exterior appearance thereof (excluding, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction or demolition or destruction by voluntary action made thereto after original constructed, on any Tract in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specification for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument.

(b) Each application made to the Committee, shall be accompanied by two sets of plans and specifications for all proposed construction (initial or alteration) to be done on such Tract, including plot plans showing location on the tract.

## 5.2 Architectural Control Committee.

(a) The authority to grant or withhold architectural control approval as referred to above is vested in the Architectural Control Committee of the Association (sometimes herein referred to as the "Committee"), in which event such authority shall be vested in and exercised by the Committee (as provided in (b) below), as to plans and specifications and plot plans. The term "Committee", as used in this Declaration, shall mean or refer to the Equestrian Oaks Estates Architectural Control Committee composed of members of the Association, as applicable.

(b) The Board shall select a committee of three (3) members to be known as the Equestrian Oaks Estates Architectural Control Committee. Two of the three Members of the Committee must be an Owner of property in Equestrian Oaks Estates.

(c) The Members of the Committee shall establish procedures for the submission of plans to the Committee, meeting times and places and all other procedures for the functioning of the Committee. The Board shall have the right to approve all such procedures.

5.3 Effect of Approval. The granting of the aforesaid approval shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof: Further no person exercising any prerogative of approval or disapproval shall incur any liability by reasons of the good faith exercise thereof.

5.4 Failure of the Committee to Act. In the event said ACC fails to approve or disapprove any plans and specifications, other than variances, within sixty (60) days after said plans and specifications have been submitted to it, and acknowledged by a written "Receipt of Plans", approval will not be required and the provisions of this Article will be deemed to have been fully complied with; provided, however, that the failure of the ACC to approve or disapprove such plans and specifications within such sixty (60) day period shall not operate to permit any structure to be commenced, erected, placed, constructed, or maintained on any Lot in the Subdivision in a manner inconsistent with any provision of this Declaration. EXCEPT that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances specifically reserved to Declarant. If plans and specifications are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

5.5 Variance. The Committee may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Committee, when circumstances such as topography, natural obstructions, Tract configuration, Tract size, hardship, aesthetic or



environmental considerations require a variance. The Committee reserves the right to grant variances as to building set-back lines. Such variances must be evidenced in writing and shall become effective when signed by a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental law as and regulations affecting the property concerned and the Plat.

5.6 Appeals. Any Member or other individual or entity directly affected by a decision of the Architectural Control Committee may appeal in writing to the Board of Directors of the Association, provided the written appeal shall be received by the Board not more than thirty (30) days following the final written decision of the ACC. The Board shall submit such appeal to the ACC for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written approval or disapproval of the Ac's decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

## ARTICLE VI

### PROTECTIVE COVENANTS

6.1 Use Restrictions. Lots in Equestrian Oaks Estates are intended for single family residential purposes only, as further described herein, and are additionally subject to all of the restrictions of this Section. Each Lot, (including land and improvements) shall be used and occupied for single family residential purposes only. No Owner or other occupant shall use or occupy his Lot, or permit the same of any part thereof, to be used or occupied, for any purpose other than as a private single family residence for the Owner, his family, parents of the Owner and/or his children and their spouses, or his tenant and their families and domestic servants (and their families) employed on the premises. As used herein, the term "single family residential purpose" shall be deemed to prohibit specifically, but without limitation, the use of Lots for multiple or duplex apartments. This shall not preclude the main residential structure from being leased or rented in its entirety as a single residence to one family or person, providing that a new Certificate of Occupancy be obtained before any tenant may occupy said residence.

6.2 No Commercial. No profession, business or commercial activity which is in any way evident from the exterior of any building or which entails visitation by the general public shall be allowed on any Lot. No business or commercial structure of any kind or nature whatsoever shall be built on any portion of the property and no structure, facility, or area on any Lot shall be used for mechanical repair or construction work, manufacturing or production of any product except for repairing one's own vehicles in an area not visible from the road or neighboring properties, or purely for such purposes as would be considered a hobby and not a primary business regardless of whether such hobby shall be done for purposes of profit. This provision will not prohibit an owner from having tractors or trucks in an enclosed area totally shielded from the road and any common areas. This provision will not prohibit any homeowner from maintaining his/her office in the home or providing such things as sewing or piano lessons or selling such items as cosmetics or household cleaners from the home providing, however, that there should be no visual evidence of any such activity from the exterior of the home, no signage

of any kind, no advertising to come to the home and no noise made as a result of the activity. In any case, all activities shall be carried out in a manner and/or in a facility keeping with the intent that said Lot be kept in a neat and presentable manner.

6.3 Temporary And Other Structures. No structure of a temporary character; trailer, mobile home, manufactured home, tent, or shack shall be placed on any Lot, either temporarily or permanently and no previously used residence, house, garage, or other structure appurtenant thereto, shall be moved upon any Lot from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain and to permit builders to erect, place and maintain such facilities the Subdivision in its sole discretion as may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling of residences, and construction of other improvements in the Subdivision. Such facilities may include, but not necessarily be limited to, a temporary office, storage area, signs, portable toilet facilities and sales office. Declarant and builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales operations in the Subdivision, but in no event, shall a builder have such right for a period in excess of one (1) year from the date of substantial completion of his last residence in the Subdivision. Nothing contained herein, however, shall prohibit the construction or installation of permanent outbuildings pertinent to single family use and approved by the Architectural Control Committee. Such outbuildings must meet all construction requirements of this Declaration and must be of an architectural style similar to or complimentary to the style of the main residence. Barns and out-buildings may be placed on the property prior to the construction of the main residence providing the barn is approved by the Architectural Control Committee. All barns will be located behind the back line of the main residence and shall at no time be utilized as a permanent residence.

6.4 Signs. Except for signs, billboards or other advertising devices displayed by Declarant for so long as Declarant shall own any portion of the Subdivision, no sign of any kind shall be displayed to the public view on any Lot or the Common Areas, except Builders may display one (1) sign of not more than sixteen (16) square feet on a Lot to advertise the Lot and any residential structure situated thereon for sale during the sales and/or construction period and no "For Sale" signs are permitted for five (5) years after date of purchase an unimproved lot. Any owner, or owner's representative may display one (1) sign of not more than nine (9) square feet on a Lot improved with a residential structure to advertise the residence for sale or after five (5) years to advertise the sale of the Lot. Also reasonable accommodation will be made for realtors to gain access to the subdivision for purposes of showing the property. The Association may display such signs as it may deem necessary for the efficient use of the Common Areas or beneficial for the Members. Declarant or Equestrian Oaks Estates Community Association specifically is granted the right to enter on any property to remove signs not permitted by these Covenants.

6.5 Garbage And Refuse Storage And Disposal. All Lots and Common Areas shall at all times be kept in a healthful, sanitary and attractive condition. No Lot or any part of the Common Areas shall be used or maintained as a dumping grounds for garbage, trash, junk, or other waste matter. All trash, garbage or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tightly fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view except as necessary for garbage pick-up days. No Lot shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction or improvements erected on any Lot may be placed upon such Lot at the time

construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot.

6.6 Removal Of Dirt. The digging of dirt or the removal of any dirt from any Lot or from any portion of the Common Areas is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon, and subject to the Approval of the Architectural Control Committee.

6.7 Cutting Of Trees. No Owner or his representative shall cut any live timber or trees upon any lot larger than four (4) inches in diameter measured forty-eight (48) inches from the ground except clearing fence line or on that portion of said Lot which comprises the actual building site where improvements are going to be erected, together with a driveway leading to such building site.

6.8 Window Air Conditioners. No window or wall type air conditioners shall be permitted to be used, erected, placed, or maintained on or in any building in any part of the Subdivision.

6.9 Protection Of Water System. The Owner of each Lot is solely responsible for the protection of all portions of the well and water system upon his Lot. Repair of damages to the water system upon an Owner's Lot caused by negligence or willful misconduct of the Owner, his family, guests or representatives shall be the Lot Owner's expense.

6.10 Antennas And Satellite Dishes. Any antenna, satellite dishes or appurtenant structure shall be located behind the ridge line of the residence or in the backyard and shielded from view. Any antenna which will be more than ten (10) feet taller than the ridge line of the residence and will be easily visible from any street must be approved by the Architectural Control Committee.

6.11 Exterior Appearances. Each Owner shall keep the exterior appearance of his residence in a neat and attractive manner. In no case shall windows be covered by sheets, aluminum, foil or other unsightly articles.

6.12 Vehicles and Unsightly Articles. No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private streets. Without limiting the generality of the foregoing, boats, RV's, wagons, motor scooters and garden maintenance equipment shall be kept at all time, except when in actual use, stored behind the back building line of the residence or garage, stored in an out-building, or screened from public view, either within the garage or behind a fence suitable to the Architectural Control Committee. No vehicle of any type shall be parked on the street in front of the Lot. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Subdivision, including the assessment of charges to Owners who violate or whose invitees violate such rules, and the right to tow away any vehicles parked or stored in violation of said rules and regulations. No repair work, dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway or other portion of any Common Areas. No repair work shall be performed on automobiles or other vehicles in driveways, or visible from the street except such work that is of a temporary nature. Any regularly recurring repair or dismantling work shall take place within a garage or other building screened from public view. No unlicensed motor vehicles, other than



those specifically and individually allowed in writing to the Owner thereof by the Board of Directors, shall be operated within the Subdivision. Such permission form shall be in the possession of the operator of said vehicle at all times, and shall be shown without question to anyone requesting to see it. No motor bikes, motorcycles, motor scooters, "go-carts", 3 or 4 wheelers, or other similar vehicles shall be permitted to be operated in the Subdivision, if, in the sole judgment of the Board of Directors of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance or annoyance.

6.13 Animals. No poultry of any kind shall be raised, bred or kept on any Tract except that one (1) horse; one (1) cow; or one (1) goat per acre, or any combination thereof may be kept, as long as the maximum number of the above stated animals does not exceed one (1) per acre and does not become a nuisance or threat to other Owners. Provided, however, animals being raised for 4-H school sponsored programs will be permitted. No pigs or hogs will be permitted under any circumstances or programs. All horses, cows and 4-H animals raised by individual tract owners must be kept in a fenced area on the owner's tract. Dogs, cats, or other common household pets may be kept on a Tract. Dogs must be kept in a kennel, dog run, or fenced in area that confines said dog(s) to that area, and for these purposes chain link fencing shall be permitted provided, however, no such fenced in area shall be located adjacent to any side, front or rear boundary line. Dogs will not be permitted to run loose in the Subdivision and must be vaccinated for rabies according to State law. Guinea fowl, peacocks and other noisy fowl are prohibited. Dangerous exotic animals are prohibited, including, by way of example only, and without limitation, tigers, lions, leopards, panthers, mountain lions and bears. All pets must be kept in a fenced area or on a leash or chain and are not permitted to roam. The Association has the right to adopt rules and regulations concerning the keeping of animals in the Subdivision and means to enforce such.

6.14 Resale of Lots. Reference shall be made to this Declaration in any instrument transferring title to any Lot. The Board of Directors and Declarant shall be notified of any conveyance of a Lot by any manner. Said notice shall indicate the Lot number, date and type of conveyance, new owner's name, address and phone number, and any other such information as may be required for the issuance of a Certificate of Occupancy which may be required at the option of the Architectural Control Committee before a new resident may move into the residence upon said Lot. The Board, upon receipt of the above information, shall prepare an estoppel certificate which shall set forth any assessments and charges due upon such Lot at time of conveyance and certify as to whether or not there are violations of the Governing Documents remaining on the Lot as of the date of preparation of such certificate and further stating the remaining assessment balance, if any, due from the buyer for the balance of the fiscal year. This certificate shall be delivered to the place of closing, and the outstanding assessments, if any, and a reasonable charge to cover the cost of providing such certificate shall be deducted from the seller's account at the closing and transmitted directly to the Association.

6.15 Certificate of Occupancy. No Lot shall be used for residential purposes in any manner; either initially, or subsequent to resale or leasing at the option of the ACC, until an inspection of the Lot has been made by the Architectural Control Committee to ascertain that all exterior improvements of the main residence, garage, driveways, culvert crossings, lighting, or other construction shall be completed and that the condition of the Lot is in compliance with the provisions of the Governing Documents. Said inspection by the ACC shall take place within three (3) days of the receipt of written notice of completion of construction and/or such other information as is required for the issuance of a Certificate of Occupancy. Within three (3) days of the inspection, the ACC shall:

- (a) In the case of a satisfactory inspection; issue a Certificate of Occupancy,  
or
- (b) In the case of unsatisfactory inspection; issue by Notice to the Owner, a statement of the deficiencies which prevent the issuance of a Certificate of Occupancy.

No warranty of the fitness of workmanship or materials, and no waiver of the Association's rights to enforce provisions of the Governing Documents shall be implied by the issuance of said Certificate of Occupancy.

6.16 Liability for Damages. Each Lot Owner, his family, guests, or his builders, subcontractors and agents shall be liable, both jointly and severally, for any damages to any part of the Subdivision by them or their agents by reason of the negligent or intentional misconduct of such person or entity. This shall include, without limitation, dumping of materials or concrete tailings in any area not specifically designated for that purpose by Declarant or the Association; damages to ditches, roads, culverts, etc. by trucks or other vehicles; and damages to any other vegetation or improvements anywhere within the Subdivision. The dumping of materials and concrete tailings in any ditches is specifically prohibited. The correction of any damages applicable under this Section shall be handled the same as the enforcement of maintenance on any Lot with any charges arising from this Section becoming a lien upon the responsible Owner's Lot with the same attributes of an assessment lien set forth in IV.

6.17 Water Service. No water for purposes of residential usage shall be supplied or allowed to any Lot prior to the issuance of the original Certificate of Occupancy. It being the intention that no residence shall be habitable until all construction requirements or restrictions are fully complied with.

6.18 Nuisance. Noxious, destructive, offensive activities, or any activity constituting a nuisance shall not be carried on in any Lot or in the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could cause unreasonable embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

## ARTICLE VII

### LOT IMPROVEMENTS

7.1 Minimum Set-Back Lines. No structure of any kind and no part thereof shall be placed within these set-back lines:

- (a) Front Lot Line. Seventy-five (75) feet except as noted on the recorded plat.
- (b) Rear Lot Line . Twenty (20) feet.
- (c) Side Lot Line. Fifteen (15) feet except on those lots bounded by any road where a "green belt" is designated and will be maintained.

The set back restrictions do not apply to (1) structures below and covered by the ground, (2) steps, walks, patios, swimming pools, driveways and curbing, (3) planters, walls, fences or

hedges, not to exceed nine (9) feet in height, and (4) walls and fences not to exceed six (6) feet in height, and landscaping.

(d) Any other improvements approved in writing by the Architectural Control Committee. Roofed structures other than (1) guard houses, (2) gate houses, (3) swimming pool equipment, houses and cabanas, and (4) greenhouses may in no event be approved.

7.2 Front Of Lot. For the purpose of these restrictions, the front of each Lot shall coincide with and be the property line abutting the street of the Lot's address. Unless otherwise approved in writing by the Architectural Control Committee, each main residence building shall face the front of the Lot.

7.3 Minimum Square Footage. Each single story residence constructed on said property shall have minimum square feet of air conditioned living area (exclusive of the area of attached garages, un-air conditioned porches, patios, breezeways, or other appurtenances) of 2600 square feet. Each two story residence constructed on said property shall have minimum of 3200 square feet of air conditioned living area (exclusive of the area of attached garages, un-air conditioned porches, patios, breezeways, or other appurtenances) and 2200 square feet on the ground floor.

7.4 Minimum Width. Because of the nature of this development, it is the intent of Declarant to have the width of the house as wide as possible so as to have a very spacious look from the front. Therefore, no residence shall be less than seventy-five (75) feet in width including the garage (whether the garage is attached or detached) unless the width of the lot does not provide for seventy-five (75) feet between building lines. In such case the home shall be within one (1) foot of the width the building lines permit.

7.5 Traffic Areas. All driveways or parking areas used for vehicles shall be constructed of reinforced concrete over four (4) inches of compacted county approved road base of iron ore, limestone, or other approved base material. Uncovered base material is permitted where not visible from the road or in excess of 200 feet from the road. In no case, at any time, shall driveways be of unfinished ground. All paved areas shall be maintained in a neat and presentable manner free of degeneration, cracking, breakage, or pot holes.

7.6 Walls and Fences.

(a) Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain in any corner Lot within the triangular area formed by the street easement lines and a line connecting them at points twenty-five (25) feet from the intersection of the street easement lines.

(b) Fence Location And Materials. Fences or walls shall be set back ten (10) feet from any road right of way. Each Lot, when improved with a single family residence, shall have a white vinyl fence along the roadway in the Subdivision. Privacy fencing shall only be permitted for the backyard of a residence and shall be constructed of wood, masonry, or wrought iron. No fences in front of home may be more than four (4) feet six (6) inches high and must be constructed of wood, (plastic fences that look like wood are acceptable), masonry, or wrought iron. All fences must be approved by the Architectural Control Committee and shall be maintained in a fully repaired, neat and presentable manner.



7.7 Landscaping. Landscaping work and planting in general do not require the approval of the Architectural Control Committee. Prior to occupying any residence, the lawn areas surrounding the building shall be cleaned of all debris and construction materials pertaining to work remaining, shall be stored within the garage or out of view from the road. The lawn areas shall be shaped and smoothed to remove the scarification of construction and to provide an acceptable seed bed for grass and within six (6) months of the issuance of the original Certificate of Occupancy, the Owner shall complete the installation of grass (seed or sod) and shrubbery in the yard area.

7.8 Septic Systems. Each Lot Owner will install his own aerobic septic system in accordance with all governmental regulations and be placed on the property so that the required sanitary easement does not encroach on any other lot. Neither the Association nor Declarant warrants the workability of any septic system.

7.9 Water. Each Lot Owner will install his own well, wells may be used for irrigation, landscaping, lake maintenance, pools, etc., All wells must have: 1) ACC approval prior to being drilled; 2) be cemented in; 4) be placed on the property so that the required sanitary easement does not encroach on any other lot. (Unless approved by Declarant or Community Association); and 5) be in accordance with all governmental regulations.

7.10 Electrical, Broadband or other Utility Service. All power lines for electricity, broadband cable service or any other power service shall be installed underground. Overhead lines are not permitted.

7.11 Gas and Propane. There is no natural gas service in the Subdivision. Propane tanks are permitted provided that such propane tank is buried below ground or as not to be visible from adjoining property or public or private streets.

#### 7.12 Culverts and Drainage.

(a) Culvert Crossings. All culvert crossings shall be constructed exactly according to detailed plans and specifications designated by and available from the Architectural Control Committee. 24" Round, concrete driveway culverts must be installed and will be of sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow. All culverts will have straight walls covered with masonry, no slope ends. Said culvert crossing shall consist of a minimum of sixteen (16) feet of culvert pipe but not more than twenty (20) feet covered by concrete and finished on both ends with three (3) inches above the level of the drive along both ends of the crossing.

(b) Drainage. No Owner may block or impede the flow of any drainage ditch whether natural or man-made including, but not limited to, roadway ditches and drainage easement. All culverts shall be installed with sufficient depth to prevent erosion. Each Owner shall be responsible for maintaining all drainage ways and culverts on or adjacent to his Lot in a manner that will encourage the free flowing of water without erosion, including but not limited to the planting and mowing of grass, removal of debris or sediment, and clearing of any obstructions that may develop in said drainage ways or culverts. Declarant or the Association may remove or repair any culverts, culvert crossings, or other obstructions or impediments; or repair damage from improperly placed culverts at the Lot Owner's expense according to the provisions of Article IX.

7.13 Mailbox. Each lot owner will provide for his own rural mailbox that conforms to the U. S. Postal Service requirements and shall be constructed, maintained and located according to the plans and specifications as required by the ACC. Mailbox stanchion must be constructed of brick or stone.

7.14 Address Numerals. All address numbers, as assigned by Centerpoint Energy or such other authorized agency, shall be prominently displayed in a decorative manner along the front property line on the street of the address. Each address display shall be constructed and installed in accordance with plans and specifications designated by the Architectural Control Committee or lot owner's plans provided that they are approved by the Architectural Control Committee. In general the address display must be constructed of brick or stone. All numerals will be of standard size and shall be located so that the lighting required in Section 7.13 shall make the address readily visible at night.

7.15 Lighting. Each Lot shall contain night lighting in conjunction with the address display according to plans and specifications designated or approved by the Architectural Control Committee. Said lighting or other lights adjacent to the streets shall automatically turn on every evening. All such street lighting shall be kept in an operating condition.

7.16 Yard Lighting. The design of yard or security lighting systems shall be such that light doesn't encroach on neighboring lots.

## ARTICLE VIII

### CONSTRUCTION STANDARDS

8.1 General. All buildings or structures within the Subdivision shall meet the following requirements except as otherwise modified by this Declaration or the Architectural Control Committee.

(a) New Construction. All buildings or structures placed upon any Lot in the Subdivision shall be constructed of all new materials excepting for used brick or other decorative accessories that are commonly used in the construction of new residences. All exterior material other than those which are not commonly decorated or painted shall be stained or painted with at least two (2) coats of paint.

(b) Roofing. All roofs shall be constructed of (1) "top of the line", two hundred forty (240) pound (or equivalent) heavyweight, accented shadow line composition roof in an earthen tone color (2) tile or (4) approved metal roof materials. In no case shall lightweight or flat composition shingles be allowed on any structure.

(c) Masonry/Stone. The front of each residential structure shall be constructed with at least 65% stone. The approval of all materials and appearances is at the sole discretion of the Architectural Control Committee.

(d) Construction Standard. In order to insure value and quality in the Development, the Architectural Control Committee may adopt a Minimum Building or Construction Standards Code. Prior to developing plans and specifications, each lot owner should get a copy of said Code, if adopted. Inspections during construction may be required in order to facilitate compliance. Said building code must be approved by Declarant prior to being adopted.

8.2 Garages. All residences must have an enclosed garage, architecturally similar to the residence. The garage must be at least a two car garage and a concrete parking pad the same width as the garage and a minimum of twenty (20) feet in depth shall be constructed immediately in front of the garage. This paragraph shall not prohibit the construction or use of carports or porticos in addition to the garage which are architecturally similar or complimentary to the residence. All garages must be side loading or rear loading. Garage doors may not face the street. They must be at an angle of at least 90° from the street. No garage shall be permitted to be enclosed for living or used for purposes other than storage of automobiles and other Common uses, unless another approved garage is built, and all garage doors shall be kept closed when not in specific use. This does not preclude the use of "bonus rooms" above the garage being used for normal living purposes.

8.3 Servant's Quarters. Any servant's quarters not structurally a part of the main residence shall be architecturally similar to the residence and constructed of the same materials. Such quarters must have a minimum of 500 square feet of air conditioned living space in addition to a garage.

8.4 Outbuildings. All outbuildings other than the garage or servant's quarters shall be constructed or installed behind the back line of the residence. No unfinished tin or aluminum materials may be used in the construction of any outbuildings. All structures must match the residence in architectural design, materials, and color or blend in with the surroundings.

8.5 Swimming Pools. Swimming pools must have the approval of the Architectural Control Committee before any work is undertaken. Above ground-level swimming pools will not be approved.

8.6 Amendment of Articles VI, VII and VIII. The Association, acting through the Board of Directors, shall have the right to amend, modify or abandon any of the provisions of Articles VI, VII and VIII provided that such changes shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration. Said change shall (i) prior to January 1, 2012, have the written approval of Declarant, (ii) be recorded in the records of the Association, (iii) be evidenced by Notice to all Members, and (iv) become effective six (6) months after the date of Notice to the Members unless a "Petition for Referendum" signed by fifteen percent (15%) of the Members is received prior to the effective date. Should a properly signed "Petition of Referendum" be received prior to the effective date, the proposed changes will be brought before the membership at a regular or special meeting of the Association called for that purpose with the assent of the majority of a Quorum of Members being considered as ratification of the proposed changes. Said changes shall become effective immediately upon ratification.

## ARTICLE IX

### MAINTENANCE

9.1 Duty of Maintenance. Owners of any part of the Subdivision shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that Lot or portion of the Subdivision so owned or occupied, including buildings, improvements and grounds in connection therewith, in a well maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to the following.

- (a) Completion of all improvements and/or compliance with all of the requirements for a Certificate of Occupancy.
- (b) Prompt removal of all litter, trash, refuse, and wastes.
- (c) Prompt removal of any trees or vegetation inflicted with communicable diseases or parasites and dead or unsightly trees or vegetation.
- (d) Regular mowing of all cleared areas.
- (e) Tree and shrub pruning after completion of improvements.
- (f) Keeping lawn and garden areas alive, free of tall weeds, and attractive.
- (g) Watering.
- (h) Keeping parking areas, driveways, roads, and drainage ways in good repair.
- (i) Complying with all restrictions or requirements of this Declaration and the Governing Documents.

9.2 Enforcement. If, in the opinion of the Association or Declarant, any such owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association or Declarant may, but shall not be obligated to, cause such deficiency to be corrected as hereinafter set forth.

(a) For failure to keep a lot mowed, or to remove dead or diseased tree, or for failure to remove rubbish or debris from a Lot; the Owner shall be notified of such condition. Such notice shall include: (i) a reasonable deadline date for performing said clean-up, and (ii) a statement of what charges will be assessed by the Association for performing said service on behalf of the Association if not performed by the Owner prior to the deadline date. Said charges may include not only the actual costs of performing said services, but also any legal fees or other charges permitted by this and any billing fees required to collect said funds. The Owner specifically acknowledges that it is not the Association's primary job to maintain individual lots and that there is a great deal of time and energy required by the Board to protect the appearance of the Subdivision whenever an individual fails to maintain his Lot. For all more serious instances of non-compliance or lack of maintenance, the Association shall proceed as follows:

(b) Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give registered Notice of deficiency to the Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its powers under this section to a duly appointed committee of the Association.

(c) Such hearing shall be held not less than fifteen (15) nor more than thirty (30) days from the date of delivery of said notice.

(d) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee



renders a decision against the Owner, it shall further set a date by which the deficiency is to be corrected by the Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(e) Should any such person fail to fulfill this duty and responsibility within such period, then the Association or Declarant, as a common expense to be paid out of the Maintenance Fund, acting through its authorized agent or agents shall have the right and power, but not duty, to enter onto the premises and perform such construction, work, care, or maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and occupants (including Lessees) of any part of the Subdivision on which such work is performed shall jointly and severally be liable for the cost of such work along with any fines set by the Association for failure of the Owner to comply, and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after delivery of a statement for such work from the Association, then said indebtedness shall be a debt of all of said persons jointly and severally, and shall constitute a lien against that Lot on which said work was performed. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in Article IV above, which provisions are incorporated herein by reference, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

## ARTICLE X

### COMMON PROPERTIES

10.1 Members' Easements of Enjoyment. Subject to the provisions of Section 10.2, every Member shall have a common right and easement of enjoyment in and to Common Areas and Common Facilities in the Subdivision, and such right and easement shall be appurtenant to and shall pass with the title to each Lot in the Subdivision

10.2 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) Fees And Rules. The right of the Association, in its discretion, to charge reasonable admission and other fees for the use of the recreational Common Areas, and to make, publish and enforce reasonable rules and regulations governing the use and enjoyment of the Common Areas and Facilities or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with, and observed by each Member. These rules and regulations may include provisions to govern and control the use of such Common Areas and Facilities by guests or invitees of Members, including, without limitation, the number of guests or invitees who may use such Common Areas and Facilities, or any part thereof, at the same time.

(b) Normal Business Functions. The right of the Association to carry on normal business functions according to the provisions of the Governing Documents.

(c) Suspension Of Rights. The right of the Association to suspend the voting rights of a Member and his rights to use any recreational Common Areas during the period he is in default in excess of thirty (30) days in the payment of any assessment against his Lot or person and to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published rules and regulations. The aforesaid rights of the

Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in this Declaration and any Supplemental Declarations or in its By-Laws or by law.

(d) Other Restrictions. The restrictions as to use of the Common Areas provided for elsewhere in the Governing Documents.

10.3 Title to Common Areas. Declarant may retain the legal title to the Common Areas and Common Facilities in the Subdivision until such time as it has completed improvements thereon, if any, and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until title to such Common Areas and Facilities has been conveyed to the Association by Declarant, the Association will maintain said Common Areas and Facilities to the extent of the Association's ability. If Declarant does maintenance, repairs, upkeep or pays taxes on common property, then the Association will reimburse Declarant to the best of its ability for said expense. Once title is passed to the Association, then the Association will be responsible for all maintenance, repairs, improvements, taxes, etc.

## ARTICLE XI

### EASEMENTS AND RESERVES

11.1 Existing or Platted Easements. Declarant reserved the easements and right-of-way as shown on the Subdivision Plats for the purpose of constructing, maintaining, and repairing a system or systems of roads, drainage ways, electric lighting, electric power, communication and telephone line or lines, or any other utility Declarant sees fit to install in, across, and/or under the Subdivision. Natural gullies constitute a drainage easement. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Subdivision are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Subdivision. There is hereby established a one (1) foot reserve around the perimeter of the Subdivision in favor of Declarant, it being the intention of Declarant that no lot shall be used as access to or joined to any property not included within the Subdivision without Declarant's express approval. Unless otherwise set forth herein, any easement reserved to Declarant shall be a non-exclusive easement and may, at its option, be used for any or all purposes mentioned in this Article.

11.2 Utility/Drainage Easements. In addition to all easements shown on the subdivision plats, there is dedicated for public utilities, the following easements:

(a) Front Lot Lines. An easement ten (10) feet in width is reserved along all dedicated roads.

(b) Side Lot Lines.

(i) A seven and one-half (7.5) foot utility/drainage easement is reserved on each side of the lot line (a total of fifteen (15) feet in width) extending from the front of the lot to the building set-back line.

(ii) A seven and one-half foot utility/drainage easement is reserved on each side of a lot line (a total of fifteen (15) feet in width) from the building set-back line to the rear property line.

11.3 Title to Improvements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed, or other conveyance shall not be held or construed in any event to include the title to any improvements or appurtenances installed by Declarant or other entity providing any utility or service to the Subdivision, and the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved to Declarant or the Association.

11.4 Installation and Maintenance. There is hereby created an easement upon, across, over, and under all of the Subdivision for ingress and egress in connection with the completion of all development work by Declarant or its agents and with the installation, replacement, and maintenance of all utilities, including, but not limited to, roadways, drainage ways, water, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying such service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across, and under the Subdivision within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Subdivision until approved by Declarant or the Association's Board of Directors. Declarant and the utility companies furnishing service shall have the right to remove all trees situated within or adjacent to the utility easements shown on the Subdivision Plats which would constitute a hindrance to the installation of such utilities, and to trim overhanging trees and shrubs located on portions of the Subdivision abutting such easements including any easements granted under Section 11.02 of this covenant.

11.5 Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance, and other emergency vehicles, and to garbage and trash collection vehicles and other service vehicles to enter upon the Subdivision in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Subdivision to render any service provided for herein or to perform any of its functions.

11.6 Surface Areas. The surface of easement areas for above ground or underground utility services may be crossed by driveways, walkways, and fences and used for planting of shrubbery, lawns, etc. subject to the approval of the utility companies furnishing services to the Subdivision. However, neither Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or their respective agents, employees, servants, or assigns, to any of the aforesaid vegetation or improvements as a result of any normal activity relating to the construction, maintenance, operation, or repair of any facility in any such easement area. All easements shall be kept clear of all other structures or buildings.

## ARTICLE XII

### GENERAL PROVISIONS

12.1 Duration. This declaration and the covenants, restrictions, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and every owner of any part of the Subdivision, including Declarant, and their respective legal representatives, heirs, successors and assigns, for a term beginning on the date this Declaration is recorded, and continuing through and including December 31, 2029 after which time said covenants shall be automatically extended for successive periods of ten (10) years unless a change (the word change including additions, deletions, or modifications thereto, in whole or in part) is approved according to the provisions of Section 12.2.

12.2 Amendments. This Declaration (other than as provided for in Section 8.6, pertaining to Articles VI, VII and VIII, may be amended or terminated at any time by the written agreement, by signed ballot, of sixty percent (60%) of the TOTAL ELIGIBLE VOTES of the Association as defined in Article III hereof, with both classes of the membership voting together and with both Classes having ONE VOTE for each lot owned. Members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting, provided that Declarant or its assigns must consent thereto if such amendment or termination is to be effective prior to December 31, 2012. Any such amendment or termination shall become effective when an instrument is filed for record in the Deed Records of Waller County, Texas, accompanied by a Certification, signed by a majority of the Board of Directors, stating that the required number of Members cast a written vote in favor of said amendment or termination at the meeting called for such purpose. Such instrument and certification shall also be signed by Declarant or its assigns if the amendment or termination is to be effective prior to December 31, 2012.

12.3 Amendments By Declarant. Declarant shall the absolute right at any time and from time to time prior to December 31, 2012, without joinder or consent of any other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner or his Mortgagee.

12.4 Notices. Any notice required or permitted to be given to any party pursuant to this Declaration shall be given by personal delivery or by certified mail, return receipt requested sent to the address of record of the recipient according to the records of the Association.

12.5 Enforcement. In addition to the remedies for enforcement provided for elsewhere in this Declaration, the violation or attempted violation of the provisions of the Governing Documents or the Association's Rules by an Owner, his family, guests, lessees or licensees shall authorize the Board to avail itself of any one or more of the following remedies.

12.6 The imposition of a special charge not to exceed Fifty Dollars (\$50.00) per violation, or

(a) The suspension of Owner's rights to use any Association property for a period not to exceed sixty (60) days per violation,

(b) The suspension of Owner's voting rights and his rights to default on any assessment against his Lot or person, or



(c) The right to cure or abate such violation and to charge the expense thereof, if any, to such Owner, or

(d) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court costs.

Before the Board may invoke the remedies provided above, it shall give Registered Notice of such alleged violation to Owner, and shall afford the Owner a hearing according to the provisions of Section 9.2. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation.

12.7 No Waiver. Failure by the Association, Declarant, or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, By-Laws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement on any such future breach of the same or any other covenant, condition or restriction.

12.8 Cumulative Remedies. All rights, options and remedies of Declarant, the Association, or the Owners under this Declaration are cumulative, and not one of them shall be exclusive of any other, and Declarant, the Association, and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

12.9 Rights of Waller County. Notwithstanding anything herein to the contrary, any officials of Waller County shall have the right to enforce any of the provisions of this Declaration for the benefit of the public or any other affected individual by any action defined under this Declaration or any other action, which shall be legally available to the County.

12.10 Rights of Mortgagees. Any violation of any of the easements, agreements, restrictions, reservations or covenants contained herein shall not have the effect of impairing or affecting the rights of any mortgagee, guarantor or trustee under any mortgage or Deed of Trust outstanding against the Lot, at the time that the easements, agreements, restrictions, reservations or covenants are violated. Nothing contained in this Declaration shall impair or defeat the lien of any mortgage or Deed of Trust made in good faith and for value, but titles to any property subject to this Declaration obtained through sale and satisfaction of any such mortgage or Deed of Trust shall thereafter be held subject to all the protective restrictions hereof.

12.11 Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

12.12 Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other work, clause, sentence or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

12.13 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the

provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

12.14 Titles. The titles, headings, and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

12.15 Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null, or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses, or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses, and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

12.16 Attorneys' Fees. If an action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorney's fees and costs of such suit.

12.17 Choice of Law and Conflicts. In case of any conflict between this Declaration and the Articles of Incorporation or By-laws or Association rules, this Declaration shall control. The validity, interpretation and performance of this Declaration, the Articles of Incorporation and By-laws shall be controlled and construed under the laws of the State of Texas.

12.18 Non-liability of Officials. To the fullest extent permitted by law, neither the Board, Declarant, the Architectural Control Committee, nor any other committees of the Association or any Member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

12.19 Acceptance by Lienholders. The undersigned Lienholders, if any, have executed this Declaration to evidence their consent to the imposition of the foregoing covenants, conditions, and restrictions upon any and all tracts included within the Subdivision regardless of whether such tracts may be encumbered by a pre-existing lien. It is agreed hereby that any such liens shall be subordinated to this Declaration and all of the provisions hereof.

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N. Robert Smith

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Annette W. Smith

LIENHOLDER:

## Ella Domino

STATE OF TEXAS §

COUNTY OF WALLER §

This instrument was acknowledged before me on \_\_\_\_\_,  
2009 by N. Robert Smith and Annette W, Smith.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF WALLER §

This instrument was acknowledged before me on \_\_\_\_\_,  
2009 by Ella Domino.

Notary Public, State of Texas