

STATE OF TEXAS

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COUNTY OF JOHNSON

**DECLARATION OF AMMENDED RESTRICITIONS, COVENANTS
AND CONDITIONS FOR SAGE CREEK**

This Declaration of Amended Restrictions, Covenants and Conditions is being made on this the 23rd day of March, 2018, by Comack Investments and Global Bottom Line, LLC, as the successors in interest of the original declarant, Sage Creek, L.P., and current owner of Sage Creek, a subdivision located in Johnson County, Texas, according to the map or plat thereof as recorded in Volume 9, Page 696 of the Plat Records of Johnson County, Texas. Comack Investments and Global Bottom Line, L.P., shall be hereafter referred to as "Declarant" or "the Declarant".

RECITALS

WHEREAS, Declarant is the current owner of that certain tract of land located in Johnson County known as SAGE CREEK, a subdivision in Johnson County, Texas, according to the map or plat thereof recorded in Volume 9, Page 696 of the Plat Records of Johnson County, Texas; and

WHEREAS, the original developer of SAGE CREEK placed certain restrictions, covenants and conditions upon SAGE CREEK with said restrictions, covenants and conditions being filed of record in Book 4091, Page 398 of the Official Public Records of Johnson County, Texas; and

WHEREAS, it is the desire of the Declarant to file these Amended Restrictions, Covenants and Conditions for SAGE CREEK in or the establish a more uniform plan for the development, improvement and sale of such property, and to insure the preservation of such uniform plan for he benefit of both the current owner and the future owners of Lots within SAGE CREEK; and

NOW THEREFORE, Declarant hereby adopts, establishes and imposes upon SAGE CREEK, and any addition to or replat thereof, if any, and declares the following restrictions, easements, covenants and conditions, applicable thereto, all of which are for the purpose of enhancing and protecting value, desirability and attractiveness of the land, which restrictions, easements, covenants and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein, or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Properties" – shall mean and refer to SAGE CREEK and any additional properties or lots made subject to SAGE CREEK hereof pursuant to the provisions set forth herein.

Section 2. "Lot and/or Lots" – shall mean and refer to Lots shown on the subdivision plat as well as the large out parcel on the subdivisions northern boundary, which may not be subdivided and are structured hereby to use for a single family residential dwelling only.

Section 3. “Garage” – shall mean and refer to the structure either attached or detached, designed for the primary purpose of parking resident’s vehicles.

Section 4. “Owner” – shall mean and refer to the recorded Owner, whether one or more persons or entities, of fee simple title to any Lot, which is a part of the properties, but in the event of the execution of a contract for sale covering any Lot, the Owner shall be the purchaser named in the contract.

Section 5. “Subdivision Plat” – shall mean and refer to the map or plat of SAGE CREEK, recorded in Volume 9, Page 696, Slide DRWC of the Plat Records of Johnson County, Texas, and any replats thereof.

Section 6. “Architectural Control Committee” means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Control Committee is Declarant, Declarant’s designee, or Declarant’s delegate. Thereafter, the board-appointed Architectural Control Committee is the Architectural Control Committee.

Section 7. “Assessment” means any charge levied against a Lot or Owner by the Association, pursuant to the Documents or State law, including but not limited to Regular Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article V of these Amended Restrictions, Covenants, and Conditions, including, but not limited to:

A. Regular and Special Assessments for:

1. All sums lawfully assessed for maintenance and improvement of the Common Area, as such term is defined herein;
2. All expenses of administration and management, maintenance, operation, repair or replacement and improvements to the Common Area;
3. Expenses agreed upon as Common Maintenance Items by the Board of Directors; and
4. Expenses declared to be either Common Expenses or Common Maintenance Items by this Declaration or by the Bylaws of the Association.

B. Individual Assessments assessed by the Association for reasons and purposes set out in the Bylaws of the Association.

Section 8. “Association” means the association of Owners of all Lots in the Sage Creek Subdivision, or their successors or assigns, initially organized as “The Sage Creek Property Owner’s Association” a Texas nonprofit corporation, and serving as the “Property Owners’ Association” or simply the “Association” defined in Section 202.001(2) of the Texas Property Code, the Bylaws of which shall govern the administration of this single family, detached residential Property and the membership of which shall be composed of all the Owners of the Lots

according to such Bylaws. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration and the Bylaws of the Association.

Section 9. “Board” means the Board of Directors of the Association.

Section 10. “Builder-Owner” – shall be any person or entity, which acquires a Lot or Lots for sale for the purpose of engaging in the business of construction of a single-family residence upon the Lot or Lots for the purpose of resale.

Section 11. “Common Area” means all real property, improvements thereon, and personal property within the Subdivision, including, but not limited to subdivision roads and/or streets, that are owned and/or maintained by the Association for the common use and enjoyment of the Owners.

Section 12. “Development Period” means the period of time of Declarant control and shall terminate on the earlier of December 31, 2023 or the sale of all of the Lots within SAGE CREEK to persons other than a Builder-Owner.

ARTICLE II

RESERVATIONS, EXCEPTSIONS AND DEDICATIONS

Section 1. The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, the streets and easements shown thereon, and such Subdivision Plat further establishes certain restrictions applicable to the Properties including, without limitation, certain minimum setback lines. All dedications, limitations, restrictions and reservations are incorporated herein and made a part hereof as if fully set forth herein and shall be construed as being adopted in each and every contract of sale, deed or conveyance executed or to be executed by or on behalf of Declarant conveying said property or any part thereof, whether specifically referred to therein or not.

Section 2. Declarant reserves the easements and rights-of-way for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph or telephone line or lines, coaxial cable, optical cable, water, gas, sewer or any other utility Declarant sees fit to install in, across, and/or under the Properties with SAGE CREEK. Easements and rights-of-way labeled as drainage and access easements shall not be fenced, built upon or have any items placed or stored thereon by any Property Owner.

Section 3. Declarant reserves the right to make any changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements.

Section 4. Declarant reserves the right during installation and/or maintenance of the roads and streets as shown on the Subdivision Plat to enter onto any Lot or Lots for the purpose of disposing of street evacuation, including the removal of any trees, if necessary, whether or not the Lot or Lots have been conveyed to and/or contracted for by any other Owner or Owners.

Section 5. Neither Declarant nor any easement user using the easements herein referred to, shall be liable for any damages attributed to them or their assigns, their agents, employees or servants, to fences, shrubbery, trees flowers or any other property of the Owner situated on the land covered by said easements.

Section 6. It is expressly understood and agreed that the title conveyed by Declarant to any Lot or parcel of land within the Properties by contract, deed or other conveyance shall be subject to any easements affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph, telephone, cable or optical cable system, oil or natural gas gathering or transmission and shall convey no interest in any pipes, lines, poles, conduits or any utility facility or appurtenance thereto constructed by or under Declarant or any easement user, or its agents through, along or upon the premises affected thereby or any part thereof to serve said land or any other portion of the Properties. Where not affected by such easement, title to any Lot or parcel of land within the Property shall be subject to Declarant's right to maintain, repair, sell or lease such appurtenance to any municipality or other governmental agency or to any public service company or corporation or to any other party.

Section 7. In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and residents, as provided in this Declaration. Declarant's exercise of a Development Period right that appears to violate a rule, or a use restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

ARTICLE III

USE AND CONSTRUCTION RESTRICTIONS

Section 1. DWELLING SIZE. The total living area of any single-family dwelling shall not be less than two thousand one hundred (2,100) sq. ft., exclusive of open porches, garages or other appendages, and in not instance shall any building exceed two (2) stories in height.

Section 2. BUILDING TYPES. All Lots shall be known and described as Lots for (1) single family dwelling, which must be approved by the Architectural Control Committee, only and no structured shall be erected, attached, planned or permitted to remain on any Lot other than one (1) single family dwelling with attached or detached garage, one (1) guest house or servant's quarters house of the same design and construction as the main dwelling, one (1) horse barn (stable) and/or workshop. All structures must be of design and construction compatible with the main dwelling and have the prior written consent of the Architectural Control Committee.

The garage shall be of the same material and construction as the main dwelling, shall not exceed the dwelling height or number of stories, shall not open onto or face a street and shall have the capacity of no less than two (2) normal size vehicles. No carport or porte-cochere shall be permitted without the prior written consent of the Architectural Control Committee.

No mailbox shall be installed without the prior written consent of the Architectural Control Committee. Each mailbox shall be constructed with a masonry column (no more than forty-eight

(48) inches tall), with masonry material similar to that on the Dwelling or as approved by the Architectural Control Committee.

Section 3. PROPERTY USE. None of said Lots or improvements erected thereon shall be used for any purpose other than a private, single-family residence with the usual and customary accessory buildings such as garage, guesthouse, servant's quarters, and barns/stable as outlined in ARTICLE III, Section 2. No Lot, or improvements thereon, shall be used for any commercial purpose including but not limited to: kennels, auctions, grooming, commercial breeding, slaughter, processing or taxidermy; except businesses of limited impact and nature are permitted, such as professional pursuits (insurance, accounting, legal, engineering, real estate, etc.). Space required for business purposes shall be contained within the residence or guesthouse and no signage is permitted.

No mass gatherings of any nature shall be permitted on a regular basis.

No out building shall ever be used as a primary residence.

The Declarant reserves the right to use any portion of the unsold Property while selling Lots or constructing other improvements upon the Property. Declarant may grant such rights to Builder-Owner.

No building of any kind shall be moved onto any Lot of the Properties without the prior written consent of the Architectural Control Committee.

Section 4. ARCHITECTURAL CONTROL. A list of general building guidelines will be available and provided upon request. No building shall be erected, placed or altered on any Lot until the construction plan and specifications and plot plan showing the proposed location of the structures thereof have been approved in writing by the Architectural Control Committee as to harmony of exterior design and color with respect to the total plan of development and existing structures, as to location with respect to topography and finished grade elevation and as to compliance with minimum construction standards more fully provided in Article IV hereof.

Prior to building within the subdivision, all builders must be approved by the Architectural Control Committee. The Committee has the right to approve or reject any builder for any reason.

Section 5. BUILDING LOCATION. No building shall be located nearer to the front Lot line or any side street Lot line than the minimum building set back lines. No single-family dwelling or garage shall be located nearer than fifty (50) feet from any street Lot line nor nearer than thirty-five (35) feet from any interior or rear Lot line.

No horse barn nor any out building shall be located nearer than one-hundred (100) feet from any front lot line, nor nearer than fifty (50) feet from any interior side Lot line, nor nearer than thirty-five (35) feet from a rear Lot line.

No portion of any building shall encroach upon another Lot except, that when any Owner shall own one or more adjoining Lots, that Owner may, with prior written consent of the

Architectural Control Committee, consolidate such Lots into one building site with the privilege of constructing improvements on the resulting site, in which case, side set-back lines will be measured from the resulting property lines rather than the Lot lines indicated on the recorded Plat. Such composite building sites shall be regarded as one Lot for purposes of Article III, Section 5 ONLY.

The front of each Lot shall coincide with and be the property line having the shortest dimension abutting a street, unless otherwise approved by the Architectural Control Committee. Each dwelling will face the front of the Lot and no out building, or garage will be located nearer the front Lot line than the dwelling.

Utility easements are dedicated and reserved as follows:

1. Twenty-five (25) feet along any Lot line adjoining a street
2. Five (5) feet on each side of interior side Lot lines
3. Fifteen (15) feet as shown on the recorded plat as "drainage and access easement"
4. Twenty-five (25) feet on any Lot line that borders County Road 1126
5. Ten (10) feet on either side of the Lot line between Lot 8 and Lot 9
6. Ten (10) feet on either side of the Lot line between Lot 15 and Lot 16

A sanitary easement is reserved in a One-hundred and fifty (150) foot radius from any public water well location or proposed water well location and One-hundred (100) foot radius from any private water well location or proposed water well location.

Section 6. LOT AREA. All lots are in excess of two (2) acres and may not be subdivided into smaller Lots without the prior express written consent of the Declarant.

Section 7. ANNOYANCES AND NUISANCES. No noxious or offensive activity shall be permitted on any Lot, which may become an annoyance to the neighborhood.

No hunting or discharging of any firearms or other weapons is allowed on any Lot or on any part of the Properties.

No vehicle of *any* size, which transports inflammatory or explosive or hazardous cargo, may be kept on or in the Properties at *any* time.

No mowing, weed eating or any other activity, which produces loud or disruptive noise, shall be permitted before 7:30 a.m. or later than thirty (30) minutes after sunset.

Section 8. TEMPORARY STRUCTURES. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn (other than permanent horse barns) or other outbuilding shall be maintained or used on any Lot at any time as a residence or for any other purpose, either temporarily or permanently; provided, however, that Declarant reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Properties or any other properties now or hereafter being developed as a portion of the subdivision known as SAGE CREEK, at its sole discretion as may be necessary or convenient while selling Lots, selling

or constructing residences and constructing other improvements upon the Property. Such facilities may include but are not necessarily limited to, sales and construction offices, storage areas, model units, signs and portable toilet facilities. No garage or other permitted accessory structure, other than a horse barn, shall be erected, placed or maintained on any Lot until construction of the single-family dwelling has commenced. **Any structure on which construction has commenced must be completed within twelve (12) months.** No boat trailers, boats, travel trailers, inoperative automobiles, campers, vehicles of any kind, or portable buildings are to be permanently or semi-permanently stored in the public street right-of-way or in driveways. Permanent or semi-permanent storage of such items and vehicles must be screened from public view, either within the garage or behind a fence, which encloses the rear of the Lot.

Section 9. SIGNS AND BILLBOARDS. No signs, billboards, posters or advertising devices of any character shall be erected, permitted or maintained on any Lot without the express prior written consent of the Declarant: except that a Builder-Owner may place on each Lot owned by such Builder-Owner, during the construction and sales period of improvements, not more than one sign with no more than two sides containing not more than six (6) square feet of sign space on each side.

The Declarant or its agents shall have the right to remove any sign not complying with the above restriction and in doing so, shall not be liable and is expressly relieved from any liability for trespass or other tort in connection with or arising from such removal. The right is reserved by Declarant to construct, display and maintain such signs, billboards or advertising devices as are customary in connection with the general sale of property.

Section 10. OIL, GAS AND MINING OPERATIONS. No oil or gas drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot. Holders of the mineral interest in effect as of the filing of this document are specifically excluded from this section. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

Section 11. STORAGE AND DISPOSAL OF GARBAGE AND REFUSE. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Lot shall be used for the open storage of materials whatsoever where such storage is visible from the street, except that new building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time of construction and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

Section 12. FENCES. Any fence, which borders any street or roadway built on a Lot shall be of metal pipe painted black. Posts and top rail shall be a minimum of 2-3/8" round pipe. All other side and rear fencing shall be of masonry, metal pipe, brick, wood or rock construction and shall be maintained in an attractive and serviceable manner. Smooth wire fencing

may be used along the rear of the Lot or any side not bordering a road, barbed wire fencing may not be used on any Lot where it adjoins easements or adjoining Lots. No chain link type fence of any kind shall be installed or kept on any Property other than animal kennels, not to exceed one hundred (100) square feet and no more than two (2) kennels per Lot and shall be located behind the residence. No fence shall be attached to the fence of any adjoining Lot without the express written consent of the adjoin Lot Owner. No fence shall be attached to subdivision entrance. **All fences, except those erected by Declarant, including their location must be approved by the Architectural Control Committee.** Any Lot that has a horse or horses must be properly fenced. Fences must be installed in a professional manner. No "home-made" type fence(s) shall be permitted.

Section 13. LOT MAINTENANCE. The Owners or other occupants of any Lot shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner, shall keep all fences painted, shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incidental to construction of improvements thereon as herein permitted, shall not permit the accumulation of garbage, trash or rubbish of any kind on a Lot, and shall not burn anything. Due to increasing demand on our water resources, low impact landscaping is highly encouraged. The drying of clothes in full view is prohibited. Owners or other occupants of any Lot(s) at intersection of streets where the rear yard or portion of the Lot is visible to full public view shall construct and maintain suitable enclosure to screen the following from public view: yard equipment or woodpiles which are incident to the normal residential requirements of a typical family. No above ground swimming pools, or satellite dishes over eighteen (18) inches in diameter, or above ground tanks for the storage of fuel shall be permitted, and all swimming pools and their locations must be approved in writing by the Architectural Control Committee.

Propane tanks must be placed in rear yard only and surrounded by either a fence or shrubs in such a manner that the tank itself is not visible from the street. Placement and screening of the propane tank must be approved in writing by the Architectural Control Committee.

In the event of default on the part of the Owner or other occupant of any Lot in observing any or all of the above requirements, such default continuing after ten (10) days written notice thereof being delivered to or posted upon the Lot, the Declarant or its agents or assigns may, at its option, without liability to the Owner or other occupant in trespass or otherwise, enter upon said Lot and cause to be cut such weeds and grass, cause such fence to be painted or removed or cause to be removed such garbage, trash and/or rubbish or do any other thing necessary to secure compliance with these restrictions so as to place said Lot in a neat, attractive, healthful and sanitary condition.

The Declarant may charge the Owner or other occupant of such Lot for the cost of such work and the Owner or other occupant, as the case may be, agrees by the purchase or occupancy of the Lot to pay such statement immediately upon receipt thereof.

Section 14. SEPTIC SYSTEMS AND WATER WELLS. In accordance with Johnson County rules and regulations:

(a) On-site sewage facility performance cannot be guaranteed even though all provisions of the Rules of Johnson County, Texas, for Private Sewage Facilities are complied with.

(b) Inspection and/or acceptance of a private sewage facility by the Public Works Department shall indicate only that facility meets minimum requirements and does not relieve the Owner or other occupant of the property from complying with County, State and Federal regulations. Private Sewage Facilities, although approved as meeting minimum standards, must be upgraded by the Owner at the Owner's expense if normal operation of the facility results in objectionable odors, if unsanitary conditions are created, or if the facility when used does not comply with governmental regulations.

(c) A properly designated and constructed private sewage facility system, in suitable soil, can malfunction if the amount of water it is required to dispose of is not controlled. It will be the responsibility of the Owner or other occupants to maintain and operate the private sewage facility in a satisfactory manner.

All septic systems and water wells must be installed and maintained in accordance with all governmental agencies and authorities having jurisdiction in Johnson County, Texas. All holding tanks for water wells will be contained within the dwelling, garage or other out building compatible with the structure of the dwelling.

Section 15. PETS AND ANIMALS. Any Owner or other occupant who wishes to keep and care for any animal, *except* dogs, cats or other household pets (provided they are not kept for a commercial purpose or in excessive numbers) on any Lot shall, prior to the entrance of the animal, have documented and warranted the health of the animal. This documentation shall be provided on an annual basis or at the sole discretion of the Declarant.

Should the Declarant deem at any time that any animal poses a risk to the health and well being of itself or the other animals and residents of Sage Creek, that animal may be removed, after examination by a qualified veterinarian chosen at the sole discretion of the Declarant, and in accordance with the laws of Johnson County and the State of Texas. All costs for examination and removal of any such animal by the Declarant will be the sole cost of the Property Owner in question. No animal shall be allowed to roam without a leash or halter and unattended by Owner or Owner's guest anywhere on the Property. Should the Owner or other occupant wish to keep any animals, all pens and living quarters must be maintained in a sanitary condition conducive to the well being of said animal and the other animals and residents of SAGE CREEK.

No livestock of any kind other than domestic pets of reasonable kind and number may be kept on any Lot except as hereinafter stated. No poultry or swine will be permitted. No more than two (2) horses may be kept per Lot without the prior written consent from the Declarant, in which case up to four (4) horses may be kept. One (1) school project, calf/sheep/goat, per child, per year and/or two (2) roping calves, properly penned, may be permitted with prior written consent of the Declarant. Any other animal shall require the prior written consent of the Declarant.

Section 16. DRAINAGE. Any person or persons may not impair the drainage of streets, Lots or roadway ditches. Driveway culverts shall be of sufficient size to afford proper

drainage of ditches without backing water up in the ditch or diverting its flow. In no event shall a culvert be less than eighteen (18") inches in diameter and must pass Johnson County regulations with regards to the five (5) year storm. The driveway above the culvert should be constructed such that the drive is five (5) inches below the outside edge of the main road so that storm water, which exceeds the capacity of the culvert can pass over the culvert without entering the driveway.

Declarant may remove any culvert that obstructs the flow of water through the street ditches, without liability to the Owner or other occupant in trespass or otherwise or do any other thing necessary to secure compliance with these restrictions.

ARTICLE IV

ASSOCIATION AND MEMBERSHIP RIGHTS

Section 1. **GOVERNANCE.** The Association shall come into operating existence on the earlier of (1) the issuance of its corporate charter and full legal formation, or (2) the initial levy of assessments against the Lots and Owners once FIFTY PERCENT (50.0%) of the Lots within SAGE CREEK have been sold. The Association will continue to exist at least as long as this Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, safety and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association will be governed by a Board of Directors elected by the Members. Unless the Association's Bylaws or Articles of Incorporation provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the Bylaws and these Protective Covenants. Unless the Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners of at least a majority of all Lots, or at a meeting by Owners of at least a majority of the Lots that are represented at the meeting.

Section 2. **BOARD.** Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors." The affairs of the Association shall be conducted by its Board of Directors (herein referred to as the "Board"). The Board shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association.

Section 3. **DUTIES OF THE ASSOCIATION.** The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of the Sage Creek Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of Texas. Among its duties, the Association levies and collects assessments, and maintains the Common Areas at the assessed expense of the Owners and pays the expenses of the Association. The Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein. The Board, on behalf of the Association, shall have full power and

authority to contract with any Owner for the performance, on behalf of the Association, of services which the Board is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for any consideration as the Board may deem proper, advisable and in the best interest of the Association. The Board shall also have the following specified rights, powers and duties:

- A. **Tax Assessment.** to execute all declarations of ownership for tax assessment purposes with regard to any of the Common Property;
- B. **Agreements and Contracts.** to enter into agreements or contracts with insurance companies, taxing authorities and the holders of first mortgage liens on the individual Lots with respect to:
 - 1. taxes on the Common Property;
 - 2. insurance coverage (if any) on Common Property; and
 - 3. utility installation, consumption and service matters;
- C. **Association Borrowing.** on behalf of and for the benefit of the Association, to borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit or secured by such other assets of the Association as are deemed appropriate by the lender and the Association;
- D. **Contracts and Banking.** to enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- E. **Common Property Protection.** to protect or defend the Common Property from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;
- F. **Rules and Regulations.** to make reasonable rules and regulations for the operation of the Common Property and the Lots and to amend them from time to time;
- G. **Annual Report to Owners.** to make available to each owner within ninety days (90) days after the end of each year an Annual Report;
- H. **Members Assessments.** to assess the Members and adjust the assessment amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency;
- I. **Enforcement of Governing Documents.** to enforce the provisions of the Association's Governing Documents, including this Declaration, the Bylaws and all Rules and Regulations

established by the Board of Directors, and to fine, enjoin and/or seek damages from any Owner for violation of such provisions or rules.

Section 4. ASSOCIATION MEMBERSHIP. Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Lot. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Lot is owned by more than one person or entity, each Co-Owner is a Member of the Association and may exercise the membership rights appurtenant to the Lot. A Member who sells his Lot under a Contract for Deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, regardless of the existence of the contract, seller remains liable for all assessments attributable to his Lot until fee title to the Lot is transferred.

Section 5. VOTING. One vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. Each vote is uniform and equal to the vote appurtenant to every other Lot, except during the Declarant Control Period. Votes may be cast by written proxy, according to the requirements of the Association's Bylaws.

Section 6. VOTING BY CO-OWNERS. The one vote appurtenant to a Lot is not divisible. If only one of the multiple Co-Owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to the Lot. If more than one of the Co-Owners is present, the Lot's one vote may be cast with the Co-Owners' unanimous agreement. Co-owners are in unanimous agreement if one of the Co-Owners casts the vote and no other Co-Owner makes prompt protest to the person presiding over the meeting. Any Co-Owner of a Lot may vote by ballot or proxy and may register protest to the casting of a vote by ballot or proxy by the other Co-Owners. If the person presiding over the meeting or balloting receives evidence that the Co-Owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

Section 7. BOOKS & RECORDS. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Article 1396-2.23.B. of the Texas Nonprofit Corporation Act.

Section 8. INDEMNIFICATION. The Association indemnifies every officer, director, committee chair, and committee member (for purposes of this Section, **'Leaders'**) against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his or her willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors' and officers' liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the

Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

Section 9. **OBLIGATIONS OF OWNERS.** Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

9.1. **Owners' Information.** Within thirty (30) days after acquiring an interest in a Lot, and within thirty (30) days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (1) a copy of the recorded deed by which Owner has title to the Lot; (2) the Owner's address, phone number, and e-mail address, and driver's license number, if any; (3) any mortgagee's name, address, and loan number; (4) initial and annual proof of casualty insurance on Owner's dwelling; (5) the name and phone number of any resident other than the Owner; (6) the name, address, and phone number of Owner's managing agent, if any.

9.2. **Pay Assessments.** Each Owner will pay assessments properly levied by the Association against the Owner and his Lot and will pay Regular assessments in advance as set forth in 3.3.1. below, without demand by the Association.

9.3. **Comply.** Each Owner will comply with the Documents as amended from time to time.

9.4. **Reimburse for Damage.** Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a resident of the Owner's Lot, or the Owner or resident's family, guests, employees, contractors, agents, or invitees.

9.5. **Liability.** Each Owner is liable to the Association for violations of the Documents by the Owner, a resident of the Owner's Lot, or the Owner's or resident's family, lessees, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

9.6. **Transfer-Related Fees.** A number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. As of the effective date of this Declaration, a Five Hundred Dollar (\$500.00) Transfer Fee shall be charged to the Buyer of any Lot from the Declarant or Builder of each Lot in the Sage Creek Subdivision. The \$500.00 Transfer Fee shall be collected from each Buyer purchasing a Lot thereafter. Each \$500.00 Transfer Fee shall be collected by and for the benefit of the Association at the closing of each such transfer of title of any such Lot. The Association Board of Directors is hereby granted the power and authority to modify and establish a higher or lower Transfer Fee in its sole discretion at any time hereafter. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (1) foreclosure of a deed of trust lien, tax lien,

or the Association's assessment lien; (2) transfer to, from, or by the Association; (3) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association or Declarant. This Article does not obligate the Board or the manager to levy transfer-related fees.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section 1. **PURPOSE OF ASSESSMENTS.** The Association will use assessments for the purpose of maintaining the Property values and promoting the health, safety and welfare of the Owners of the Subdivision Property and Additional Property, which hereafter may become subject to the jurisdiction of the Association, and for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and residents, including but not limited to maintenance, repair or replacement of real and personal Common Area property, drainage easements management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of assessments is final.

Section 2. **PERSONAL OBLIGATION.** An Owner is obligated to pay assessments levied by the Board against the Owner or his Lot. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

Section 3. **ASSESSMENT INCREASE OR DECREASE.** This Article of this Declaration may not be amended without the approval of Owners of at least two-thirds (2/3rds) of the Lots. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget:

3.1. VETO INCREASED DUES. At least thirty (30) days prior to the effective date of an increase in Regular Assessments, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless Owners of at least two-thirds (2/3rds) of the Lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

3.2. VETO SPECIAL ASSESSMENT. At least thirty (30) days prior to the effective date of a Special Assessment, the board will notify an Owner of each Lot of the amount of, the

budgetary basis for, and the effective date of the Special Assessment. The Special Assessment will automatically become effective unless Owners of at least a two-thirds (2/3rds) majority of the Lots disapprove the Special Assessment by petition or at a meeting of the Association.

3.3. TYPES OF ASSESSMENTS. There are four (4) types of assessments: Regular, Special, Individual, and Deficiency.

3.3.1. REGULAR ASSESSMENTS. Regular assessments are based on the annual budget established annually in amounts sufficient to meet the reasonable operation expenses and reserve requirements of the Association to allow the Association to carry out its duties. Each Lot is liable for its equal share of the annual budget. Regular Assessments are due in advance for the period of the assessment. The initial Regular Assessment shall be established by the Association, whose Board shall be charged with the responsibility of assessing the Members at least the amount necessary to pay the maintenance and operational expenses of the Association. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year following the Board's approval of the initial and subsequent annual budgets for the Association, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular Assessments are used for Common Expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- A. maintenance, repair, and replacement, as necessary, and as appropriate, administrative expenses of the Association and operating expenses of the Common Area, specifically including but not limited to all roadways, street lamps and fixtures, and all visibility, access and maintenance easements, screening fences, the SAGE CREEK entrances and traffic signage, and all other common areas and common facilities and amenities defined in this Declaration.
- B. utilities billed to the Association.
- C. services billed to the Association and serving all Lots.
- D. taxes on property owned by the Association and the Association's income taxes.
- E. management, legal, accounting, auditing, and professional fees for services to the Association.
- F. costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- G. premiums and deductibles on insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including any required fidelity bonds and directors' and officers' liability insurance.

- H. contributions to the reserve funds.
- I. all costs of the Association's performance of its Property (including but not limited to all Lots) landscaping and maintenance obligations.
- J. any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

3.3.2. SPECIAL ASSESSMENTS. In addition to Regular Assessments, and subject to the Owners' control for assessment increases, the Board may levy one or more Special Assessments against all Lots for the purposes of funding Common Expenses not anticipated by the annual budget or reserve funds. Special Assessments shall be prorated equally among all Lots, and do not require the approval of the Owners. All Special Assessments will automatically become effective unless Owners of at least two-thirds (2/3rds) of the Lots disapprove the Special Assessment by petition or at a meeting of the Association. However, the foregoing provision, notwithstanding, Special Assessments for the following purposes, must be approved by Owners of at least a majority of the Lots:

- A. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot.
- B. Construction of additional improvements within the Property, but not replacement of original improvements.
- C. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

3.3.3. INDIVIDUAL ASSESSMENTS. In addition to Regular and Special Assessments, the Board may levy an Individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefits received.

3.3.4. DEFICIENCY ASSESSMENTS. The Board may levy a Deficiency Assessment against all Lots for the purpose of defraying, in whole or in part, the cost of repair or restoration of the Property if insurance proceeds or condemnation awards prove insufficient.

3.4. BASIS & RATE OF ASSESSMENTS. The share of liability for Common

Expenses allocated to each Lot is uniform for all Lots, regardless of a Lot's location or the value and size of the Lot or dwelling; subject, however, to the exemption for Declarant provided below.

3.5. DECLARANT OBLIGATION. A Lot that is owned by Declarant during the Development Period is exempt from mandatory assessment by the Association. Declarant has a right to reimbursement for any assessment paid to the Association by Declarant during the Development Period. This provision may not be construed to prevent Declarant from making a loan or voluntary monetary donation to the Association, provided it is so characterized.

3.6. ANNUAL BUDGET. The Board will prepare and approve an estimated Annual Budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

3.7. DUE DATE. The Board may levy regular assessments on any periodic basis, such as annually, semi-annually, quarterly, or monthly. Regular Assessments are due on the first day of the period for which levied. Special and Individual and Reserve Fund Assessments are due on the date stated in the Notice of Assessment or, if no date is stated, within ten (10) days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

3.8. RESERVE FUNDS. The Board will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Board must budget for reserves and may fund reserves out of Regular Assessments. Reserve funds will be maintained and accounted for separately from other funds maintained for annual operating expenses, and the Board will establish separate, bank trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Association.

3.9.1. OPERATIONS RESERVES. The Association will endeavor to maintain Operations Reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, such as the full amount of deductibles on insurance policies maintained by the Association.

3.9.2. REPLACEMENT, REPAIR AND MAINTENANCE RESERVES. The Association will endeavor to maintain replacement, repair and maintenance reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Areas, including the road and or streets within the subdivision.

3.10. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of Owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money

borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

3.11. LIMITATIONS OF INTEREST. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Regular and Special Assessments, or reimbursed to the Owner if those assessments are paid in full.

ARTICLE VI

ASSESSMENT LIEN

Section 1. ASSESSMENT LIEN. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association, and hereby grants to the Association a contractual lien on such Lot, which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions 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. Each assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his Lot.

Section 2. SUPERIORITY OF ASSESSMENT LIEN. The Assessment Lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, and (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the Delinquent Assessment became due. The Assessment Lien is subordinate and inferior to a recorded deed of trust lien that secures a first or senior purchase money mortgage, an FHA-insured mortgage, or a VA-guaranteed mortgage.

Section 3. EFFECT OF MORTGAGEE'S FORECLOSURE. Foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid assessments that became due before the sale but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale.

Section 4. NOTICE AND RELEASE OF NOTICE. The Association's Assessment Lien for assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Johnson County's Deed Records. If the debt is cured after a notice has been recorded, the Association will record a

release of the notice at the expense of the curing Owner.

Section 5. POWER OF SALE. By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of nonjudicial sale in connection with the Association's Assessment Lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Associations Assessment Lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

Section 6. FORECLOSURE OF LIEN. The Assessment Lien may be enforced by judicial or nonjudicial foreclosure. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the Bylaws and applicable law, such as Chapter 209 of the Texas Property Code. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose the Assessment Lien if the debt consists solely of fines and/or a claim for reimbursement of attorney's fees incurred by the Association.

ARTICLE VII

EFFECT OF NONPAYMENT OF ASSESSMENTS

Section 1. An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the Bylaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies available to the Association.

Section 2. INTEREST. Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) or the maximum permitted by law. If the Board fails to establish a rate, the rate is eighteen percent (18%) per annum, compounded annually.

Section 3. LATE FEES. Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

Section 4. COSTS OF COLLECTION. The Owner of a Lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorney's fees and

processing fees charged by the manager.

Section 5. ACCELERATION. If an Owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments with (10) days' written notice to the defaulting Owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

Section 6. SUSPENSION OF USE. If an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right of Owners and residents to use Common Areas and Common Services during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay assessments.

Section 7. MONEY JUDGMENT. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of assessments, without foreclosing or waiving the Association's Lien for assessments.

Section 8. NOTICE TO MORTGAGEE. The Association may notify and communicate with the holder of any lien against a Lot regarding the Owner's default in payment of assessments.

Section 9. FORECLOSURE OF ASSESSMENT LIEN. As provided by this Declaration, the Association may foreclose its Assessment Lien against the Lot by judicial or nonjudicial means.

Section 10. APPLICATION OF PAYMENTS. The Board may adopt and amend policies regarding the application of payments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot's account.

ARTICLE VIII

ENFORCING THE DOCUMENTS

Section 1. NOTICE AND HEARING. Before the Association may exercise any of its remedies for a violation of the Documents or damage to the Property, the Association must give an Owner written notice and an opportunity for a hearing, according to the requirements and procedures in the Bylaws and in applicable law, such as Chapter 209 of the Texas Property Code. Notices are also required before an Owner is liable to the Association for certain charges, including reimbursement of attorneys' fees incurred by the Association.

Section 2. REMEDIES. The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following rights to enforce the Documents, subject to applicable notice and hearing requirements:

2.1. NUISANCE. The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

2.2. VIOLATIONS. The Association may levy reasonable charges, as an Individual Assessment, against an Owner and his Lot if the Owner or resident (including lessees), or the Owner or resident's family, lessees, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

2.3. SUSPENSION. The Association may suspend the right of Owners and residents to use Common Areas for any period during which the Owner or resident, or the Owner's or resident's family, lessees, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

2.4. SELF-HELP. The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner ten (10) days' notice of its intent to exercise self-help.

2.5. LEGAL PROCEEDINGS. Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

Section 3. BOARD DISCRETION. The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

Section 4. NO WAIVER. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Documents at any future time. No officer, director, or Member of the Association is liable to any

Owner for the failure to enforce any other Documents at any time.

Section 5. RECOVERY OF COSTS. The costs of curing or abating a violation are at the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

ARTICLE IX

ARCHITECTURAL CONTROL COMMITTEE

Section 1. APPROVAL OF BUILDING PLANS. No building or other improvement shall be erected, placed, or altered on any Lot until the construction plan and specifications and a plot plan showing the location of the structure, have been approved by the Architectural Control Committee in writing as to harmony of exterior design and color with respect to the total plan of development and any existing structures as to location with respect to topography and finished ground elevation and as to compliance with minimum construction standards which may be set by the Architectural Control Committee as herein after provided. The signature of any two (2) members of the Committee on any such plans and specifications with "approved" or disapproved" written or stamped thereon shall be prima facie evidence as to such approval or disapproval being the act of the full Architectural Control Committee. A copy of the construction plans and specifications and a plot plan, together with such additional information as may be deemed pertinent, shall be submitted to the Architectural Control Committee or its designated representative prior to the commencement of construction. The Architectural Control Committee may require the submission of such plans, specifications, and plot plans, together with such other documents, as it deems appropriate, in such form and detail as it may elect at its entire discretion. In the event the Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the same are submitted to it, approval will not be required, and the requirements of this Section will be deemed to have been fulfilled.

The granting of approval of the construction plans, specifications and plot plan shall constitute only an expression of opinion by the Architectural Control Committee that the terms and provisions hereof shall be complied with if the building or other improvement is erected in accordance with said construction plans, specifications and plot plan, and such approval shall not constitute any kind of waiver to serve to estop the Architectural Control Committee or any other person in the event that such building or improvement is not constructed in accordance with such plans and specifications or in the event that such building or improvement is constructed in accordance with such plans and specifications but, nevertheless, fails to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof and approval of such construction plans, and specifications and plot plan shall in no way be construed as any warranty of the construction plans and specifications and plot plan or of the fitness of the proposed building or improvement is constructed in accordance therewith.

Section 2. COMMITTEE MEMBERSHIP. The Architectural Control Committee shall be initially composed of Craig Carter and Wade Railsback, either of which may designate a representative to act for either of them.

Section 3. REPLACEMENT. In the event of death or resignation of any member or members of the Architectural Control Committee, the remaining member or members shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove construction plans, specifications and plot plans submitted or to designate a representative with like authority.

Section 4. MINIMUM CONSTRUCTION STANDARDS. The Architectural Control Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve, as a minimum guideline and such Architectural Control Committee shall not be bound thereby.

Section 5. TERM. The duties and powers of the Architectural Control Committee and of the designated representative shall cease on and after fifteen (15) years from the date of this instrument. Thereafter, all duties and powers vested in said Committee by this Declaration of restrictions shall automatically pass to an appointed successor.

ARTICLE X

GENERAL PROVISIONS

Section 1. TERM. These covenants shall run with and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless at the end of the forty (40) years, or any time thereafter, an instrument is signed by a two-thirds (2/3) majority of the then Owners of the Lots has been recorded by which such Owners agree to change or terminate said covenants in whole or in part. Upon any violation or attempt to violate any of the covenants contained herein, it shall be lawful for the Declarant or any other Lot Owner to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him to them from doing so or recover damages or obtain other remedies for such violations. The Declarant reserves the right to enforce these restrictions at any time, regardless of whether or not Declarant is then an Owner, and Declarant shall be entitled to recover all reasonable attorney's fees, costs and expenses which are associated with the enforcement of these restrictions.

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

Section 3. ACCEPTANCE OF DECLARATION. The provisions hereof are hereby made a part of each contract and deed in respect of any Lot to the same effect as if fully set forth therein, and each such contract and deed shall be conclusively held to be executed, delivered and accepted upon and subject to the provisions and conditions herein set forth.