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AFTER RECORDING RETURN TO:

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AUSTIN, TEXAS 78701

Del Webb®

SWEETGRASS

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

Fort Bend County, Texas

Declarant: PULTE HOMES OF TEXAS, L.P., a Texas limited partnership

**Armbrust
& Brown**
LLP

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**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR DEL WEBB SWEETGRASS**

Fort Bend County, Texas

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MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DEL WEBB SWEETGRASS

Fort Bend County, Texas

This Master Declaration of Covenants, Conditions, Conditions and Restrictions is made this 3rd day of March, 2011, by **PULTE HOMES OF TEXAS, L.P.**, a Texas limited partnership, doing business through and under its "Del Webb" brand ("Del Webb"), and **CW RICHMOND, L.P.**, a Texas limited partnership ("CWR").

Del Webb and CWR, collectively, own all of the Properties (as defined below), which are described in Exhibit "A", attached hereto and incorporated herein by reference. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of development and improvement for the benefit of the owners of any portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance thereof, this Declaration provides for the creation of the DW Sweetgrass Homeowners Association, Inc., a Texas non-profit corporation, to own, operate and maintain the Common Area (as defined below), and to administer and enforce the provisions of the Governing Documents (as defined below).

Del Webb and CWR hereby declare that the Properties, together with such additional property subjected to this Declaration pursuant to **Section 7.2** below (collectively, "**Del Webb Sweetgrass**"), shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the land and title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties. Further, each contract or deed conveying those portions of the Properties will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

ARTICLE I. **DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 Activity Card(s). Those certain cards which are issued by the Association in accordance with the terms and conditions set forth in **Section 2.2** and which confer upon the holder rights of access to and use of recreational facilities and other Common Areas within the Properties.

1.2 Age-Qualified Occupant. Any individual: (i) 50 years of age or older who owns and

occupies a Lot and was the original purchaser of the Lot from the Declarant; or (ii) 55 years of age or older who occupies a Lot. The terms "occupy," "occupies," or "occupancy" shall mean staying overnight in a particular Lot for at least ninety (90) days in any consecutive twelve (12) month period.

1.3 Agreement Regarding Restrictive Covenants. The separate agreement, entered into between Del Webb and CWR, pursuant to which Del Webb and CWR have agreed to certain matters with respect to establishment and administration of this Declaration.

1.4 Architectural Reviewer. The party entitled to exercise architectural review authority pursuant to the terms and provisions of **Article IX**. As set forth more fully in **Article IX**, until expiration or termination of the Development Period, Declarant or its designee shall act as the Architectural Reviewer.

1.5 Area of Common Responsibility. The Common Area and such other areas, if any, for which the Association has or assumes responsibility for maintenance pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.6 Certificate of Formation or Certificate. The Certificate of Formation of DW Sweetgrass Homeowners Association, Inc., as filed with the Secretary of State of the State of Texas, as amended from time to time.

1.7 Association. DW Sweetgrass Homeowners Association, Inc., a Texas not-for-profit corporation, its successors or assigns.

1.8 Base Assessment. Assessments levied on all Lots subject to assessment under **Article VIII** to fund Common Expenses for the general benefit of all Lots.

1.9 Benefitted Assessment. Assessments levied in accordance with **Section 8.8**.

1.10 Board of Directors or Board. The body responsible for administration of the Association, selected in accordance with the terms of this Declaration and the Bylaws, and serving the same role as a board of directors under a Texas not-for-profit corporation.

1.11 Builder. Any Person which purchases one or more parcels of land within the Properties for subdivision, development, construction of homes and/or resale in the ordinary course of such Person's business other than for personal residential use.

1.12 Bulk Contract. One or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick up services, propane service, natural gas service, lawn maintenance services and any other services of any kind or nature which are considered by the Board to be beneficial.

1.13 Bylaws. The Bylaws of DW Sweetgrass Homeowners Association, Inc., as amended from time to time.

1.14 Charges. The Base Assessment, Neighborhood Assessments, Limited Common Area Assessments, Benefitted Assessments, and any Special Assessment and/or Fines and Damages Assessments levied by the Association and/or any other charges or amounts which an Owner is required to pay or for which an Owner is liable under this Declaration or the Bylaws.

1.15 Common Area. Any property and facilities that the Association owns or in which it otherwise holds rights or obligations. Common Area includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public. The Common Area shall generally include community wide recreational facilities, open space, detention areas, wetlands and green areas. The Common Area shall not include any streets, streetlights, water mains or sanitary sewers or other improvements which have been dedicated to the municipality or governmental agency. Common Area may be on a separate subdivided lot or may be part of a Lot.

1.16 Common Expenses. The expenses of administration, operation, maintenance, repair, replacement, landscaping and snow removal of the Common Area; the cost of insurance, water, electricity, telephone, gas and other necessary utility expenses for the Common Area; the cost of general and special real estate taxes and assessments levied or assessed against any portion of the Common Area owned by the Association; the cost of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Association in connection with the operation of the Common Area; the cost of maintenance of the landscaping of the rights-of-way and medians of streets, roads or highways, within or adjoining the Properties; if not specifically charged to the Owners, the cost of waste removal and scavenger services to the Properties; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners (including, without limitation, costs incurred for management, administrative, legal or other professional services). Notwithstanding the foregoing, Common Expenses shall not include Limited Common Area Expenses.

1.17 Community-Wide Standard. The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standards may be defined in the Design Guidelines or rules and regulations of the Board. Such standards may be specifically determined, and modified, by the Declarant at any time during the Development Period and thereafter by the Board and/or the Architectural Reviewer.

1.18 Covenant to Share Costs. Any declaration or agreement executed by Declarant and recorded in the Public Records, which grants rights or creates easements for the benefit of the Association and the present and future owners of the real estate subject thereto and which obligates the Association and such owners to share the costs related to or incurred in connection with real estate described therein.

1.19 Declarant. Pulte Homes of Texas, L.P., a Texas limited partnership, doing business

through and under its "Del Webb" brand, or any successor, successor-in-title, or assign who has or takes title to any portion of the Properties for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.20 Design Guidelines. Any written design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to **Article IX**, as modified from time to time.

1.21 Development Period. The period of time that Declarant owns or has the option to acquire all or any portion of the Properties. The Declarant may terminate the Development Period by an instrument executed by the Declarant and recorded in the Public Records.

1.22 Governing Documents. A collective term including the Declaration, any applicable Supplemental Declaration, the Bylaws, the Certificate, the Design Guidelines, and rules or regulations adopted by the Board, as any such documents may be amended from time to time.

1.23 Governmental Authorities. The City of Richmond, Texas, Fort Bend County, Texas, any municipal utility district or similar district, and any municipality or body politic that may be lawfully granted or lawfully obtains governmental authority or jurisdiction over the Properties or any part thereof in the future.

1.24 Home Owner. An Owner other than the Declarant or a Builder.

1.25 Limited Common Area. A portion of the Common Area which is designated for the exclusive use of the Owners and/or Residents of one or more Lots as designated in this Declaration or in a Supplement hereto. By way of example, a Limited Common Area may be a fence, retaining wall, landscaped buffer area or other real estate or improvements thereto which serve or benefit one or more, but less than all Lots.

1.26 Limited Common Area Assessment. Assessments levied on the Lots which have the right to use or benefit from a particular Limited Common Area to pay the associated Limited Common Area Expenses and to accumulate reserves for such expenses as more fully described in **Article VIII**.

1.27 Limited Common Area Expenses. With respect to a particular Limited Common Area, the expenses of administration (including management, legal and other professional services), maintenance, operation, repair, and replacement thereof; the cost of insurance, real estate taxes and other assessments, if any, water, waste removal, electricity, telephone and other necessary utility expenses for the Limited Common Area; the cost of and the expenses incurred for the maintenance, repair and replacement of personal property used by the Association only in connection with the maintenance or operation of the Limited Common Area; any expense designated as a Limited Common Area Expense in this Declaration or any Exhibit hereto, as supplemented or amended from time to time or any Supplement hereto; and any expenses incurred by the Association which, pursuant to generally accepted accounting principles, can reasonably be allocated to the Limited Common Area. Limited Common Area Expenses shall

not be deemed to be, and shall not be deemed to include, Common Expenses. In the event that certain expenses are incurred by the Association in connection with the operation of a particular Limited Common Area and another Limited Common Area and/or the Common Area (other than Limited Common Area), the allocation of expenses between the various Limited Common Area Expenses and the Common Expenses shall be made by the Board based on generally accepted accounting principles, and any allocation so made shall be final and binding.

1.28 Local Area Association. As defined in **Section 15.1**.

1.29 Lot. Any portion of the Properties designated by the Declarant or shown as a subdivided lot on a Plat, other than Common Area or Limited Common Area.

1.30 Master Plan. Declarant's conceptual land use plan for the development of Del Webb Sweetgrass, as it may be amended from time to time, which plan shall include the Properties and may also include other real estate. **DECLARANT EXPRESSLY RESERVES THE RIGHT TO MODIFY, AMEND AND REVISE THE MASTER PLAN AT ANY TIME DURING THE DEVELOPMENT PERIOD IN ANY AND ALL RESPECTS AS IT, IN ITS SOLE DISCRETION, DEEMS APPROPRIATE.** Inclusion of real estate on the Master Plan shall not, under any circumstances, obligate Declarant to subject such real estate to this Declaration as part of the Properties, nor shall the exclusion of real estate from the Master Plan bar its later inclusion therein.

1.31 Member. A Person entitled to membership in the Association pursuant to **Section 3.2**.

1.32 Mortgage. A mortgage, a deed of trust, a deed to secure debt, or any other form of residential loan security instrument affecting title to any Lot. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

1.33 Neighborhood. A portion of the Properties which is described and designated as a "Neighborhood" in Exhibit "A" hereto, in a Plat, or in a Supplement hereto. A Neighborhood may consist of Lots and a portion of the Common Area. The Declarant may make real estate which is added to the Properties part of a Neighborhood at the time it is annexed as provided in **Article VII**, or thereafter as permitted herein.

1.34 Neighborhood Assessment. Assessments levied on the Lots located within a particular Neighborhood to pay the associated Neighborhood Expenses and to accumulate reserves for such expenses, as more fully provided in **Article VIII**.

1.35 Neighborhood Expenses. The expenses of administration (including professional services), maintenance, operation and replacement of a Neighborhood Facility (if any); the cost of insurance, real estate taxes and other real estate assessments, if any; water, waste removal, electricity, telephone, gas, or other necessary utility expenses for the Neighborhood Facility, the cost of and the expenses incurred for the maintenance and repair and replacement of personal property used by the Association in connection with the operation of the Neighborhood Facility or the provision of Neighborhood Wide Services to all Lots in the Neighborhood; the cost of

furnishing Neighborhood Wide Services to all Lots in the Neighborhood; any expense designated as a Neighborhood Expense by this Declaration or any Exhibit hereto, as supplemented or amended from time to time, or any Supplement hereto; any expenses incurred by the Association which, pursuant to generally accepted accounting principles, can be reasonably allocated to the Neighborhood; and any other expenses lawfully incurred by the Association for the common benefit of the Owners of Lots in the Neighborhood. By way of example, Neighborhood Expenses may include expenses associated with such things as landscaping and other services provided to the Owners of Lots in the Neighborhood which are not provided to other Owners of Lots within the Property. Neighborhood Expenses shall be determined on a Neighborhood by Neighborhood basis and no expenses incurred for any one (1) Neighborhood shall be deemed to be a Neighborhood Expense for any other Neighborhood. Neighborhood Expenses shall not be deemed to be, and shall not be deemed to include, Common Expenses or Limited Common Area Expenses. In the event that certain expenses are incurred by the Association in connection with the operation of a given Neighborhood Facility and another Neighborhood Facility and/or the Common Area, the allocation of expenses between the Common Expenses, the various Limited Common Area Expenses, and the various Neighborhood Expenses shall be made by the Board based on generally accepted accounting principles, and any allocations so made shall be final and binding.

1.36 Neighborhood Facility. A portion of the Properties which is designed as a "Neighborhood Facility" in a written instrument executed by the Declarant and recorded in the Public Records, as the same may be amended or supplemented from time to time, together with all improvements thereon, rights appurtenant thereto, and all personal property used in connection with the operation thereof. By way of example, a Neighborhood Facility may be a swimming pool, tennis court, park area, or other recreational facility which is available for use primarily or exclusively by Residents of a Neighborhood and their guests, a security gate or similar structure which serves a Neighborhood or other facilities which serve or are used exclusively by Residents of Lots in the Neighborhood. A Neighborhood Facility may be on a separate subdivided lot or parcel or may be part of a Lot. A Neighborhood Facility shall not be deemed to be part of the Common Area.

1.37 Neighborhood Wide Services. Those services which are described and designated as "Neighborhood Wide Services": (i) in a Supplemental Declaration; (ii) in a separate written notice executed by the Declarant and recorded in the Public Records during the Development Period; or (iii) by action of the Board pursuant to a petition signed by Owners of at least two-thirds (2/3rds) of the Owners of Lots in the Neighborhood. Neighborhood Wide Services shall be furnished to the Lots in a Specific Neighborhood by the Association as a Neighborhood Expense.

1.38 Owner. One (1) or more Persons, which may include the Declarant or a Builder, who hold the record title to a Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.39 Person. A natural person, corporation, partnership, limited liability company, trustee, or any other legal entity.

1.40 Plat. A plat of subdivision for a portion of the Properties which is recorded in the Public Records. DECLARANT EXPRESSLY RESERVES THE RIGHT TO REVISE, MODIFY, RECONFIGURE OR WITHDRAW ANY RECORDED PLAT AT ANY TIME DURING THE DEVELOPMENT PERIOD AS IT, IN ITS SOLE DISCRETION, DEEMS APPROPRIATE.

1.41 Properties. All of that certain real property described in Exhibit "A", attached hereto and incorporated herein by reference, subject to such additions thereto and deletions therefrom as may be made pursuant to **Section 7.2** and **Section 7.3** of this Declaration.

1.42 Public Records. The Official Public Records of Fort Bend County, Texas.

1.43 Resident or Qualified Resident. Any of the following Persons occupying a Lot:

(a) any Age-Qualified Occupant;

(b) any Person 19 years of age or older occupying a Lot with an Age-Qualified Occupant; and

(c) any Person 19 years of age or older who occupied a Lot with an Age-Qualified Occupant and who continues, without interruption, to occupy the same Lot after termination of the Age-Qualified Occupant's occupancy thereof.

The term "occupy" or "occupancy" shall have the same meaning as set forth in **Section 1.2**. An individual who occupies a Lot but does not satisfy the criteria of (a), (b) or (c) above shall not be deemed to be a Resident and shall not be entitled to any rights or privileges granted to a Resident hereunder.

1.44 Special Assessment. Assessments levied in accordance with **Section 8.7**.

1.45 Special Declarant Rights. As defined in **Article XIII**.

1.46 Special Services. As defined in **Section 5.3**.

1.47 Supplemental Declaration. A written instrument, executed by the Declarant and recorded in the Public Records as provided in **Section 7.1**, which imposes upon such portion or portions of the Properties described therein covenants, restrictions, conditions, limitations and/or easements which are in addition to those set forth herein.

1.48 Voting Member. As defined in **Section 3.3**.

ARTICLE II.

PROPERTY RIGHTS

2.1 Right to Use and Enjoy Common Area. Each Resident shall have the non-exclusive right and easement to use and enjoy the Common Area (except the Limited Common Area). Each Resident shall have the non-exclusive right and easement to use and enjoy any Limited Common Area assigned to his Lot, in common with the Owners of other Lots to which such Limited Common Area is assigned. Such rights and easements shall run with the land, shall be appurtenant to and pass with title to every Lot, and shall be subject to and governed by the following:

(a) This Declaration and any applicable Supplemental Declaration, amendments thereto, the Bylaws, and all Governing Documents;

(b) Any covenants, commitments, provisions, restrictions or limitations contained in any deed conveying Common Area to the Association;

(c) Rules and regulations adopted as more fully provided in **Section 4.3**;

(d) The right of the Board to impose fines and to suspend the rights, services and privileges of an Owner or Resident including, without limitation, the right to use recreational facilities pursuant to **Section 4.3**;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area;

(f) The right of the Board to impose reasonable membership requirements and charge reasonable admission fees or other use fees for the use of any recreational facility situated upon the Common Area;

(g) The right of the Board to permit use of any Common Area by Persons other than Members upon payment of use fees established by the Board;

(h) The right of the Board to create, enter agreements with, and grant easements to tax-exempt organizations under **Section 4.14**;

(i) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for Association obligations;

(j) The right of the Association to rent, lease, or make available, with or without charge, for any purpose, any portion of any clubhouse and other recreational facilities within the Common Area to any Person approved by the Board for such uses as may be approved by the Board, including, without limitation, the leases referred to in **Section 2.6** and in **Article IV**;

(k) The requirement that access to and use of recreational facilities within the Properties shall be subject to the presentation of an Activity Card issued by the Association for such purpose; and

(l) The rights of the Declarant hereunder.

2.2 Activity Cards.

(a) Issuance by the Board. One (1) Activity Card shall be allocated to each Qualified Resident of a Lot, up to a maximum of two (2) Activity Cards per Lot. No Activity Cards shall be allocated to any Lot which is not occupied by a Qualified Resident. The Board shall determine entitlement to Activity Cards on an annual basis. Activity Cards shall be automatically renewed without charge, provided the Lot continues to be occupied by a Qualified Resident and all applicable assessments and other charges pertaining to the Lot have been paid. The Board may establish policies, limits, and charges with regard to the issuance of additional or duplicate cards and guest privilege cards. The Board may issue Activity Cards to Persons who have signed binding contracts to purchase a Lot, subject to such policies as the Board may determine from time to time.

(b) Assignment of Rights. The right to an Activity Card is based upon occupancy of a Lot. Any Owner who leases or otherwise transfers occupancy of his or her Lot shall be deemed to have assigned his or her rights to an Activity Card to the Qualified Residents of such Lot. Any Owner who leases or otherwise transfers the right to occupy his or her Lot shall provide the Association with immediate written notice thereof and shall surrender to the Association his or her previously issued Activity Card. Activity Cards shall be surrendered by any holder who ceases to occupy a Lot, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

(c) Vacation Getaways. Each Vacation Getaway, as described in **Section 13.7**, located within the Properties shall be allocated two (2) Activity Cards for use by the temporary occupants of the Vacation Getaway. Vacation Getaways located adjacent to the Properties may be issued Activity Cards based on the arrangements set forth in the contract or Covenant to Share Costs between the Association and the owner of such Vacation Getaways. Additional Activity Cards shall be issued to the Declarant upon request with payment of the then current charge for additional Activity Cards. In the event that no such charge is in effect at the time of such request, the charge for additional Activity Cards for Vacation Getaways shall be determined in the reasonable discretion of the Declarant.

(d) Issuance to the Declarant. During the Development Period, the Association shall provide the Declarant, free of charge, with as many Activity Cards as the Declarant, in its sole discretion, deems necessary for the purpose of marketing the Properties or for use by its employees. The Declarant may transfer the Activity Cards to prospective purchasers of Lots subject to such terms and conditions as it, in its sole discretion, may

determine. Activity Cards provided to the Declarant shall entitle the bearer to use all Common Area subject to the payment of admission fees or other use fees charged to Qualified Residents holding Activity Cards.

2.3 No Partition. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real estate which may or may not be subject to this Declaration.

2.4 Condemnation. In the case of a taking or condemnation by competent authority of any part of the Common Area, the proceeds awarded in such condemnation shall be paid first to satisfy any indebtedness secured by a mortgage or other lien encumbering such portion of the Common Area and the balance to the Association. The proceeds, if any, paid to the Association, together with any reserve being held for such part of the Common Area shall be used first to restore or replace any improvements taken or condemned, and the balance, if any, shall, in the discretion of the Board, either (i) be distributed to the Owners who have the right to use such Common Area and their respective Mortgagees, as their interests may appear, in equal shares, or (ii) be used for the mutual benefit of such Owners, as determined by the Board in its reasonable discretion; provided, that, during the Development Period, any such action shall be consented to by the Declarant.

2.5 Age Restriction. Del Webb Sweetgrass is intended to provide housing primarily for persons 55 years of age or older, subject to the rights reserved to Declarant in **Section 13.9**. The Properties shall be operated as an age restricted community in compliance with all applicable state and federal laws. No person under 19 years of age shall stay overnight in any Lot for more than ninety (90) days in any consecutive twelve (12) month period. Subject to **Section 13.9**, each Lot, if occupied, shall be occupied by at least one (1) individual 55 years of age or older; provided, however, that once a Lot is occupied by an Age-Qualified Occupant, other Qualified Residents of that Lot may continue to occupy the Lot, regardless of the termination of the Age-Qualified Occupant's occupancy. Notwithstanding the above, at all times, at least eighty percent (80%) of the Lots within the Properties shall be occupied by at least one (1) individual 55 years of age or older. The Board shall establish policies and procedures from time to time as necessary to monitor and maintain its status as an age restricted community under state or federal law. The Association shall provide, or contract for the provision of those facilities and services designed to meet the physical and social needs of older persons as may be required under such laws. The provisions of this Section may be enforced by the Association administratively under **Section 4.3** and/or by an action in law or in equity, including, without limitation, an injunction requiring specific performance hereunder.

2.6 Easements, Leases, Licenses and Concessions and Rights. The Board shall have the right and power from time to time: (i) to lease or grant easements, licenses, concessions or other rights with regard to any portions or all of the Common Area for such uses and purposes as the Board deems to be in the best interests of the Owners including, without limitation, the right to grant easements relating to installation and operation of utilities, communication systems, satellite or cable television systems, and similar and related purposes; and/or (ii) with the

agreement of the beneficiary or grantee of the easement, and any Owner whose Lot is benefitted thereby, cancel, alter or modify any easement which affects any Common Area, as the Board in its discretion shall determine; provided, that, any action by the Board taken pursuant to this sentence which would materially and adversely affect Limited Common Area must be approved by the Owners of a majority of the Lots which have the right to use the Limited Common Area. Any and all proceeds from leases, easements, licenses, concessions or other rights received by the Association with respect to the Common Area shall be used to pay the Common Expenses or Limited Common Area Expenses, as applicable. Each Person, by acceptance of a deed, Mortgage, other evidence of obligation, or other instrument relating to a Lot, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to exercise the powers as provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Association (or other appropriate officer) and duly recorded in the Public Records.

2.7 Agreement Regarding Restrictive Covenants. Notice is hereby provided that Del Webb and CWR have entered into the Agreement Regarding Restrictive Covenants, pursuant to which Del Webb and CWR have agreed to certain matters with respect to establishment and administration of this Declaration. Among other things, the Agreement Regarding Restrictive Covenants provides, upon the occurrence of certain events stated therein, for the assignment by Del Webb to CWR of its rights as Declarant hereunder, and the assumption by CWR of certain obligations with respect to payment of Charges levied hereunder.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and the primary entity responsible for compliance with and enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Texas.

3.2 Membership. Every Owner shall be a "Member" of the Association and shall hold one (1) membership for each Lot owned. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, such reasonable fees as may be established in **Section 2.1**, and the restrictions on voting set forth in **Section 3.3** and in the Bylaws. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, manager or trustee, or by any other individual having apparent authority or designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. The Declarant shall be a member of the Association during the Development Period.

3.3 Voting.

(a) Except as otherwise provided in this Declaration, all of the voting rights at any meeting of the Members of the Association or otherwise exercised or cast as by law

allowed shall be vested in the Voting Members and each Voting Member shall have one (1) vote for each Lot which the Voting Member represents. One (1) individual shall be designated by each Owner to be the "Voting Member" with respect to each Lot owned by the Owner. If no designation is made and more than one (1) person seeks to be the Voting Member for a Lot, the Board may either recognize one (1) individual as the Voting Member or suspend the vote for the Lot (which shall still be counted for purposes of determining whether a quorum is present) until the issue has been resolved. Any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the Bylaws) upon an affirmative vote of a majority of the votes represented at the meeting by the Voting Members present at such meeting, except as otherwise provided herein or in the Bylaws. Voting Members may vote directly or by proxy as provided in the Bylaws. The Board shall determine from time to time whether votes shall be cast in person, by mail, or by other means permitted by law. In the event of the re-subdivision of any Lot into two or more Lots: (i) the number of votes to which such Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision, e.g., each Lot resulting from the re-subdivision will be entitled to one (1) vote. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights will continue to be determined according to the number of original Lots contained in such consolidated Lot. Nothing in this Declaration will be construed as authorization for any re-subdivision or consolidation of Lots.

(b) During the Development Period, in addition to the votes held by Declarant as Owner of one or more Lots, for every one (1) vote outstanding in favor of any other Person, Declarant will have four (4) additional votes. **ADDITIONALLY, AND NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS DECLARATION, UNTIL THE EXPIRATION OR TERMINATION OF THE DEVELOPMENT PERIOD, DECLARANT WILL BE ENTITLED TO APPOINT AND REMOVE ALL MEMBERS OF THE BOARD.** Declarant may terminate its right as to the appointment and removal of one or all the Board members by the recordation of a termination notice executed by Declarant and recorded in Public Records. In the event Declarant terminates its right to appoint and remove less than all of the Board members, the Board positions to which the termination applies will be elected by the Voting Members. Each Board member elected by the Voting Members in accordance with the foregoing sentence will be elected for a term of one (1) year. Further, Declarant shall be entitled to take any and all action it deems appropriate to encourage participation and Member involvement in governance of the Association. Such action may include, without limitation, the establishment of one or more advisory committees, or the appointment of one or more Voting Members to serve as advisory, non-voting members of the Board.

(c) Certain Special Declarant Rights, including the right to approve, or withhold approval of, certain actions proposed under this Declaration, the Bylaws and the Certificate during the Development Period, and the right and power, during the Development Period, to appoint all members of the Board are specified in the relevant sections of this Declaration, the Bylaws and the Certificate. To the extent those rights

conflict or are inconsistent with any provision of this section, those rights shall control.

3.4 Voting Delegates.

(a) Due to the number of Lots that may be developed in the Properties, during the Development Period, Declarant may, but is not obligated to, institute a representative system of voting known as “**Delegate Voting**”. If Declarant elects to institute Delegate Voting, Lots will be grouped into “**Delegate Groups**” to: (i) facilitate a system of representative voting on matters which this Declaration or any Supplemental Declaration require approval of the Association’s membership; and (ii) to promote a sense of community and belonging by permitting Owners and residents within a Delegate Group to share, discuss and take action on issues unique to their Delegate Group. A Delegate Group may be comprised of any number of Lots and may include Lots of more than one type, as well as Lots that are not contiguous to one another. Each Delegate Group will elect one “Voting Delegate” to cast the votes allocated to all Lots in that Delegate Group on matters requiring a vote of the Owners, as described below in this **Article III**.

(b) If Declarant elects to institute Delegate Voting, Declarant will record in the Public Records a notice which confirms that Declarant has elected to commence Delegate Voting, and sets forth the initial assignment of Lots to one or more “Delegate Groups. During the Development Period, Declarant may execute and record a written notice in the Public Records to designate or change Delegate Group boundaries, to terminate Delegate Voting, or to re-commence Delegate Voting after a prior termination.

3.5 Election of Voting Delegates.

(a) During any period in which Delegate Voting is in effect, the Owners of Lots in each Delegate Group shall elect a “**Voting Delegate**” and an alternative Voting Delegate, in the manner provided below, to cast the votes of all Lots in the Delegate Group on matters requiring a vote of the membership, except where this Declaration specifically requires a vote of the Owners.

(b) Candidates for election as the Voting Delegate and alternate Voting Delegate from a Delegate Group shall be Owners of Lots in the Delegate Group, or spouses of such Owners. The Voting Delegate and the alternate Voting Delegate shall be elected on a biennial basis (once every two years) as provided in **Section 3.5(c)** below, and shall serve until their successors are duly elected, either by written ballot or at a meeting of the Owners within each Delegate Group, as the Board determines; provided, upon written petition signed by Owners holding at least ten percent (10%) of the votes within any Delegate Group, the election for such Delegate Group shall be held at a meeting. The presence, in person or by proxy, of Owners representing at least twenty percent (20%) of the total votes in a Delegate Group shall constitute a quorum at any Delegate Group meeting.

(c) The Board shall call for the first election of a Voting Delegate from a Delegate Group not later than ninety (90) days after Declarant has recorded in the Public Records a

notice creating such Delegate Group. Subsequent elections shall be held such the later of (i) one (1) year after election; or (ii) Subsequent elections for all Voting Delegates shall be held such that all Voting Delegates for all Voting Groups are elected at a single meeting to be held biennially. The candidate for each position who receives the greatest number of votes shall be elected to serve until his or her successor is elected.

(d) Any Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owners holding a majority of the votes allocated to the Lots in the Delegate Group that the Voting Delegate represents.

(e) The Voting Delegate or, in his or her absence, the alternate Voting Delegate attends Association meetings and casts all votes allocated to Lots in the Delegate Group that he or she represents on any matter as to which such Voting Delegate is entitled to vote under this Declaration. A Voting Delegate may cast all votes allocated to Lots in the Delegate Group in such Voting Delegate's discretion, and may, but need not, poll the Owners of Lots in the Delegate Group which he or she represents prior to voting.

(f) Voting Delegates are subordinate to the Board and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

ARTICLE IV.
RIGHTS AND OBLIGATIONS OF THE
ASSOCIATION, VARIOUS DISCLOSURES AND DISCLAIMERS

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Area), and shall keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration.

4.2 Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, personal property and leasehold and other property interests to be part of Common Area, regardless of whether such real estate is specifically or formally designated as Common Area. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions of record or as set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

4.3 Rulemaking and Administrative Enforcement of Governing Documents.

(a) Rulemaking. The Association, through the Board, may make, modify, amend, cancel, limit, create exceptions to and enforce reasonable rules and regulations governing the use of the Properties, consistent with the rights and duties established by the Governing Documents, including, without limitation, rules limiting the use of the Common Area by visitors, including visiting children. Such rules shall be binding upon all Owners, Residents, guests, invitees, and licensees, if any, until and unless overruled, canceled, or modified in a regular or special meeting of the Association by the vote of a majority of the total votes in the Association. The Board shall have no obligation to call such a meeting except as provided for in the Bylaws. Rules established by the Board shall be deemed part of the Governing Documents.

(b) Enforcement. The Board may impose sanctions for violations of the Governing Documents (including failure to pay charges due and owing to the Association), after notice and a hearing to the extent required by applicable law. The Board shall establish a schedule and/or a range of penalties for violations of the Governing Documents. Any range or schedule established by the Board may be changed, modified or adjusted as the Board, in its sole discretion, deems appropriate; provided, however, that changes, modification and adjustments may be applied or imposed prospectively only. Such sanctions may include, without limitation:

(i) imposing a graduated range of reasonable monetary fines as a Fines and Damages Assessment in accordance with the provisions of **Section 8.9**. In the event that any Resident, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall be assessed against and the obligation of the Resident, guest or invitee and the Owner, jointly and severally, and enforceable as a Benefitted Assessment;

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress, egress or access to or from a Lot;

(iv) suspending any rights, services, or privileges provided by the Association to an Owner or the Owner's Lot; and

(v) levying Benefitted Assessments to cover costs incurred in bringing a Lot into compliance in accordance with **Section 8.8(b)**.

The above rights and remedies are cumulative and supplement all other rights of enforcement under applicable law. In addition, and by way of illustration and not limitation, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and

regulations in accordance with any applicable ordinance or requiring immediate abatement of violating activity) or by suit at law or in equity to enjoin any violation or to recover monetary damages, or both, without the necessity of compliance with the procedures set forth in the Bylaws. In any action or proceeding to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in connection with or in the course of such action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iii) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce applicable state and local laws and ordinances and governmental bodies may enforce their respective laws and ordinances within the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental, Educational, and Religious Interests. During the Development Period, the Declarant may designate sites within the Properties, including portions of the Common Area, for government, education or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks and other public facilities. In the event of such a designation, the Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

4.6 Indemnification. The Association shall indemnify every officer, director, and

committee member and the Association's managing agent and its employees and agents against all damages and expenses, including counsel fees, reasonably incurred 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 it, he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and/or Texas law.

The officers, directors, committee members and managing agent 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 or action taken in good faith on behalf of the Association. The Association shall indemnify and hold each such officer, director, committee member and managing agent harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, committee member and managing agent may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is available at a reasonable cost. Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party, and no provision of the Governing Documents shall be construed to impose a duty upon the Board to sue under any circumstances.

4.7 Dedication of Common Area. The Association may dedicate portions of the Common Area to Fort Bend County, Texas, or to any other local, state, or federal governmental or quasi-governmental entity.

4.8 Security. It is the goal of all Owners, including Declarant, to have a safe and healthy environment. However, no written or oral representations regarding the safe and secure nature of the Properties shall be construed in whole or in part as guarantees thereof, it being recognized that circumstances which are beyond the control of the Declarant, the Association, or the managing agent may arise. The Association may maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be; provided, however, that the Association shall not be obligated to maintain or support such activities nor shall any action taken by the Association in this regard be deemed or construed to create or give rise to any duty or obligation beyond any that exists under the law independent of the Association's action.

The Association, the managing agent, CWR, or the Declarant shall not in any way be considered insurers or guarantors of security within the Properties. None of the foregoing shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, entry gate, patrol, alarm system or other security system or measures, including any mechanism or system for limiting or monitoring access to the Properties, can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Each Owner acknowledges, understands and covenants to inform all Residents, tenants, guests, and invitees of the Owner's Lots that the Association, its Board and committees, the Declarant, CWR, and the managing agent are not insurers or guarantors of security within the Properties. Each Owner and all Residents, tenants, guests, and invitees of the Owner's Lot assume all risks for injury, loss or damage to persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, the managing agent, CWR, and the Declarant have made no representations or warranties, nor has any Owner, or any Resident, tenant, guest, or invitee of any Lot relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Properties, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Properties.

4.9 Bulk Contracts. The Association will have the power to enter into Bulk Contracts at any time and from time to time. The Association may enter into Bulk Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Base Assessments, including without limitation the right to foreclose the lien against such Owner's Dwelling which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such twelve (12) day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the Resident of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

4.10 Community Systems. The Association is specifically authorized to provide, or to enter into contracts with other Persons to provide, central telecommunication receiving, transmission and distribution systems (e.g. cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Properties ("**Community Systems**"). Any such

contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

4.11 Assumption of Risk. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to promote the health, safety and welfare of the Owners and Residents. Notwithstanding anything contained in the Governing Documents or any other document binding the Association, none of the Association, the Board, the managing agent, CWR, or the Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or Resident of any Lot or any tenant, guest or invitee of any Owner or Resident or for any property of any such Persons. Each Owner and Resident of a Lot and each tenant, guest and invitee of any Owner or Resident shall assume all risks associated with the use and enjoyment of the Properties, including all recreational facilities.

The Association, the Board, the managing agent, CWR, or the Declarant shall not be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines, facilities or equipment on, adjacent to, near, over, or on the Properties. Each Owner and Resident of a Lot and each tenant, guest, and invitee of any Owner or Resident shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines, facilities or equipment and further acknowledges that the Association, the Board, the managing agent, CWR, and the Declarant have made no representations or warranties, nor has any Owner or Resident, or any tenant, guest, or invitee of any Owner or Resident relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines, facilities or equipment.

No provision of the Governing Documents shall be interpreted as creating any duty or obligation of the Association, the Board, the managing agent, CWR, or the Declarant to protect or further the health, safety or welfare of any individuals, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Properties (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the managing agent, CWR, and the Declarant, their directors, officers, committee members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

4.12 Change of Use of Common Area. The Declarant, during the Development Period, and the Board thereafter, without the approval or consent of the Members, shall have the power

and right to change the use and/or configuration of portions of the Common Area or Limited Common Area. Any such change shall be pursuant to Declarant or Board resolution stating that: (i) the present use, configuration or service is no longer in the best interest of the Owners as a whole; (ii) the new use or configuration is for the benefit of the Owners as a whole; and (iii) the new use or configuration is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Area.

4.13 View Impairment. Neither the Declarant nor the Association guarantees or represents that any view from any Lot will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in **Article V**. **Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.**

4.14 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties, the Association, its Members and Residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("**Code**"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

4.15 Recycling Programs. The Board may establish a recycling program and recycling center within the Properties, and in such event, all Residents shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

4.16 Wildlife Control. Declarant and the Association reserve the right to undertake such measures as may be appropriate to control wildlife within the Properties including, but not limited to, the taking of deer, turkeys, beaver and large birds so long as such measures are consistent with all applicable legal requirements. Without limiting the foregoing, Declarant or the Association may, in their discretion, establish regular control programs such as, for example, the use of dogs to prevent non-migratory geese and other species from nesting within and/or causing damage to the Properties or otherwise becoming a nuisance and may limit, control or prohibit the placement or distribution of food or other items consumed by or attractive to wildlife.

4.17 Sales Center. The sales center, and the Lots currently occupied by the sales center (collectively, the "**Sales Center Property**"), are owned and maintained by the Declarant solely for the benefit of the Declarant, and are not part of the amenity offering for the community.

Declarant reserves all rights with respect to the sales center and the Sales Center Property after Declarant no longer requires the sales center for sales and marketing purposes. Without limiting the foregoing, Declarant may construct a residence upon each Lot comprising the Sales Center Property, and sell such Lots and residences to third parties, or sell the Lots to the Association or to a third party for any use permitted under applicable law.

ARTICLE V. MAINTENANCE

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(a) all Common Area (including Limited Common Area); provided, however, that nothing herein shall mandate a particular method or level of maintenance and it is expressly understood that portions of the Common Area may be maintained to different standards or left "rustic" or "natural" (not maintained) as the Board in its sole discretion deems appropriate from time to time.

(b) all water service facilities included in the Common Area;

(c) all perimeter walls or fences constructed by the Declarant surrounding the Properties or which separate a Lot from the Common Area, regardless of whether such wall or fence is located on the Common Area or on a Lot; provided that Owners shall be responsible for maintaining the interior surface of the perimeter wall or fence located on such Owner's Lot as provided in **Section 5.2**. A perimeter wall or fence shall not be a Party Wall as set forth in **Section 5.7**;

(d) if, and to the extent, required under applicable ordinances, and except for such areas for which Owners are responsible as provided herein, landscaping, street lights and signage within public rights-of-way abutting the Properties;

(e) except for such areas for which Owners are responsible as provided herein, landscaping and other flora within any public utility easements and scenic easements within the Common Area (subject to the terms of any easement agreement relating thereto);

(f) any additional property included within the Area of Common Responsibility as may be required under the terms of this Declaration, any Supplemental Declaration, any Plat, or any contract or agreement for maintenance thereof entered into by, or which is binding upon, the Association;

(g) any property or facility owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members and identified by written notice from the Declarant to the Association until the Declarant revokes such privilege by written notice to the Association; and

(h) "cluster"-type mail boxes installed by Declarant.

The Association may also maintain other property which it does not own, including, without limitation, rights-of-way and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law and any governmental entity directly responsible therefor.

Except as hereinafter provided in this Section, the costs of maintenance, repairs and replacement of: (i) the Common Area and Areas of Common Responsibility (excluding the Limited Common Area) shall be Common Expenses; and (ii) Limited Common Area shall be Limited Common Area Expenses which shall be paid by the Owners of Lots who have the right to use the Limited Common Area in equal shares for each Lot.

If, during the Development Period, the Association fails to properly perform its maintenance responsibilities hereunder, the Declarant may, upon not less than ten (10) days notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, the Association shall reimburse Declarant for all costs incurred.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Lot and all improvements thereon in a manner consistent with the Community-Wide Standard and all applicable easements, buffer requirements and covenants, unless such maintenance responsibility is otherwise expressly assumed by or assigned to the Association hereunder or pursuant to a Supplemental Declaration or to a Local Area Association (as more fully provided for in **Article XV**). Unless expressly designated as part of the Common Area, each Owner shall be responsible for maintaining the area located within the public right-of-way adjacent to his or her Lot and between the perimeter boundary of the Lot and the paved portion of the roadway located thereon. Maintenance of this area within the public right-of-way shall be consistent with the Community Wide Standard, as well as all requirements and ordinances of the Governmental Authorities, if any.

In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Association shall have the right to come upon such Owner's Lot and perform such maintenance responsibilities and assess all costs incurred as a Benefitted Assessment in accordance with **Section 8.8**. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency or other situation where injury, harm or damage is imminent, which determination shall be made by the Board, acting in its sole discretion.

5.3 Special Services. To the extent provided for in a Supplemental Declaration or by action of the Board, from time to time, the Association may furnish "Special Services" to a Lot or a group or groups of Lots. By way of example and without limitation, a Special Service may include snow removal from driveways and/or walkways on a Dwelling Unit or grass cutting or maintenance of landscaping on a Lot. The cost of furnishing a Special Service shall be assessed to the benefitted owner as a Benefitted Assessment under **Section 8.8**. The Association may, by Board action and in its sole discretion, discontinue providing a Special Service in which case

each Owner may be required to furnish the Special Service to the Lot at Owner's sole cost and expense. If the Association is required to furnish a Special Service to a Lot, but if a portion of the Lot with respect to which the Special Service is to be furnished is obstructed with temporary or permanent improvements, personal property or other obstructions which make it difficult or impractical for the Association's agent or contractor to furnish the Special Service, the Association shall not be required to furnish the Special Service and, in such case, the Owner shall be responsible for furnishing the Special Service to such portion of the Lot at the Owner's sole cost and expense, so that the appearance of such portion of the Lot is similar to that of those portions where the Special Services are furnished by the Association.

5.4 Neighborhood-Wide Services. To the extent allowed under **Section 1.37**, the Association may furnish "Neighborhood-Wide Services to any Neighborhood designated or identified as provided in **Section 1.33**. By way of example and without limitation, a Neighborhood-Wide Service may include snow removal from driveways and/or walkways on all Lots in the designated Neighborhood, or grass cutting or maintenance of landscaping on all Lots in a designated Neighborhood. The cost of furnishing a Neighborhood-Wide Service shall be Neighborhood Expenses as defined in **Section 1.35** which shall be assessed and collected as provided in **Section 8.3**. No assurance or guarantee is made that the Association will continue to provide Neighborhood-Wide Services. The Association may, by Board action and in its sole discretion, suspend, modify, or discontinue providing a Neighborhood-Wide Service in which case each Owner may be required to furnish the Neighborhood-Wide Service to the Lot at Owner's sole cost and expense. If the Association is furnishing a Neighborhood-Wide Service to a Lot, but a portion of the Lot with respect to which the Neighborhood-Wide Service is to be furnished is obstructed with temporary or permanent improvements, personal property or other obstructions which make it difficult or impractical for the Association's agent or contractor to furnish the Neighborhood-Wide Service, the Association shall not furnish the Neighborhood-Wide Service and, in such case, the Owner shall be responsible for furnishing the Neighborhood-Wide Service to such portion of the Lot at the Owner's sole cost and expense, so that the appearance of such portion of the Lot is similar to that of those portions where the Neighborhood-Wide Services are furnished by the Association and for the ongoing payment of Neighborhood-Wide Assessments without reduction or adjustment.

5.5 Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board. Without limiting the foregoing, the Board may establish standards for maintenance of portions of the Properties which are higher than those generally required under the Community Wide Standard.

Notwithstanding anything to the contrary contained herein, neither the Association, any Owner, nor the managing agent shall be liable for property damage or personal injury occurring on, or arising out of, the condition of property which it does not own unless, and only to the extent that, it has been negligent in the performance of its maintenance responsibilities.

5.6 Alterations, Additions or Improvements. Alterations, additions or improvements to

the Common Area may be made only pursuant to action of the Board. The cost of any such alterations, additions or improvements to Common Area (other than Limited Common Area) shall be charged to all Owners of Lots as a Common Expense. Upon delivery of a written request for an alteration, addition or improvement to a particular Limited Common Area which is signed by Owners of two-thirds (2/3) of the Lots which have the right to use the Limited Common Area and which is also approved by the Board, the requested alteration, addition or improvement shall be made and the cost thereof shall be charged to the Owners of Lots who have the right to use the Limited Common Area as a Limited Common Expense.

5.7 Party Walls.

(a) In General. Every wall, including the foundations therefor, which is built as a part of or in connection with the original construction of a building and placed on the boundary line between separate Lots shall constitute and be a “**Party Wall**,” and the Owner of a Lot immediately adjacent to a Party Wall shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls. Additionally, all “**Common Fencing**” (as defined in **Section 5.8(d)** below) shall constitute a Party Wall, and be subject to the terms and provisions of this **Section 5.7**.

(b) Rights in Party Wall. Each Owner of a Lot, which is adjacent to a Party Wall, shall have the right to use the Party Wall for support and/or benefit of each Lot and the structure originally constructed thereon and all replacements thereof, and shall have the right to keep, maintain, repair and replace the Party Wall, including all pipes, conduit, and ducts, if any, originally located therein and all replacements thereof.

(c) Damage to Party Wall.

(i) If any Party Wall is damaged or destroyed through the act or acts of any Owner or Resident of a Lot which is adjacent to such Party Wall, or his or her agents, servants, tenants, guests, invitees, licensees, or members of his or her family, whether such act is willful, negligent or accidental, the Owner shall forthwith proceed to rebuild or repair the same to as good a condition as in which such Party Wall existed prior to such damage or destruction without costs therefor to the Owner of the other adjoining Lot(s).

(ii) Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner or Resident of a Lot which is adjacent to such Party Wall, or his or her agents, servants, tenants, guests, invitees, licensees, or members of his or her family, shall be rebuilt or repaired by the Owners of the adjacent Lots to as good a condition as in which such Party Wall existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible.

(iii) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in this Section, to perform the

necessary repair or rebuilding, then the Association and the adjacent Owner each may, but will not be obligated to, cause such repairs or rebuilding to be performed in the manner as provided in this Section and the cost thereof shall be charged to such Owner as his personal obligation and shall be a continuing lien on the Owner's Lot.

(d) Change in Party Wall. Any Owner of a Lot who proposes to modify, rebuild, repair or make additions to any structure upon his Lot in any manner which requires the extension, alteration or modification of any Party Wall shall first obtain the written consent thereto, as to said Party Wall, of the Owner of the other adjacent Lot and the Architectural Reviewer, in addition to meeting any other requirements which may apply. In the event that a Party Wall is altered, regardless of whether all required consents have been obtained, any express or implied warranties made by the Declarant concerning the structural integrity of the Party Wall or any of the Lots adjacent to the Party Wall shall be null and void and the Owner who alters the Party Wall shall be responsible for any and all damage caused to any of the adjacent Lots or improvements thereto.

(e) Arbitration. In the event of a disagreement between Owners of Lots adjoining a Party Wall with respect to their respective rights or obligations as to such Party Wall, upon the written request of either of said Owners to the other the matter shall be submitted to the dispute resolution provisions of **Article XIV**.

5.8 Fences.

(a) Declarant/Builder Fencing. To the extent Declarant or a Builder constructs a fence which fully or partially encloses the rear or side yard of a Lot, then the Owner of that Lot must at all times maintain such fence in accordance with the terms of this Declaration, unless that Owner obtains the Architectural Reviewer's written approval to modify, replace, relocate or remove such fence in accordance with the provisions of this Declaration.

(b) Maintenance of Fencing. Each Owner shall maintain the portion of fencing on such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto (as deemed necessary by the Board, in its sole and absolute discretion), except that Owners adjoining a Common Fence (as provided in **Section 5.8(d)** herein shall share in the cost of such maintenance as a Party Wall in accordance with the terms of Section 5.7

(c) No Changes/Repairs. All repairs and replacements to any fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in this **Section 5.8(c)**, no fencing may be changed or modified without the prior written consent of the Architectural Reviewer. This includes the prohibition against changing the height of the fencing and the fencing materials.

(d) Common Fencing. Side and rear yard fences that are installed by Declarant or

the Builder of the Dwelling to separate adjacent Lots as a common boundary fence (each, a “**Common Fence**”) shall be maintained jointly by the Owners whose Lots adjoin such Common Fence as a Party Wall in accordance with the terms of **Section 5.7** above. An Owner is not released from the joint maintenance obligation even if an Owner constructs a second fence along or near the Common Fence, unless the other Owner agrees to such release in writing and such release is approved by the Architectural Reviewer.

ARTICLE VI.

INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance.

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

(i) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements within the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes; provided, however, that this coverage may include and provide for a deductible in a commercially reasonable amount as determined by the Board from time to time.

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employer’s liability insurance, if and to the extent required by law;

(iv) Directors’ and officers’ liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all

Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6) of the total annual assessments then in effect, plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of individuals serving without compensation; and

(vi) Such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance specified above shall be Common Expenses and shall be included in the Base Assessment, except that premiums for property insurance relating to Limited Common Area may be Limited Common Area Expenses if reasonably separable and economically feasible. Further, premiums for all insurance specified above which is obtained or maintained by the Association in connection with any Neighborhood, Neighborhood Facility or Neighborhood Services shall be a Neighborhood Expense.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one (1) or more qualified individuals, at least one (1) of whom must be familiar with insurable replacement costs in the metropolitan Houston area. All Association policies shall provide for a certificate of insurance to be furnished, upon request, to each Member insured, to the Association and each Mortgagee.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of **Section 6.1(a)**. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Limited Common Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners or Residents, or their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible as a Benefitted Assessment against such Owner(s) and their Lots pursuant to **Article VIII**.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Texas which satisfies the requirements of Fannie Mae, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, Residents, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

(vii) provide a waiver of subrogation under the policy against each Owner and each Resident;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one (1) or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the directors, committee members, officers, employees, and the Association's manager, the Owners, Residents and their respective tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the

Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless: (i) at least eighty percent (80%) of the total votes in the Association or, in the case of Limited Common Area, of at least eighty percent (80%) of the votes of Owners of Lots which have a right to use the Limited Common Area, and (ii) the Declarant, during the Development Period, decide within sixty (60) days after the loss not to repair or reconstruct. However, if either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended for such period as the Board may deem appropriate until such funds or information are available. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction and expenses in making and administering the claim, or after such settlement as is necessary and appropriate, shall be, at the Board's election, either: (i) retained in the Association's reserve account; or (ii) distributed among all Owners, if such proceeds are for Common Area, among all Owners who have the right to use the Limited Common Area, if such proceeds are for Limited Common Area in equal amounts for each Lot owned.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for sharing in the cost of the premiums for the applicable insurance coverage under **Section 6.1(a)**.

6.2 Owner's Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless: (i) the Association is expressly required to maintain insurance for the Lots; (ii) the Association voluntarily carries such insurance, or (iii) a Local Area Association, as provided in **Article XV**, is responsible for maintaining such insurance. If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Benefitted Assessment against the benefitted Lot and the Owner thereof pursuant to **Section 8.8**.

Each Owner further covenants and agrees that if the Owner is required to carry property insurance for his or her Lot, in the event of damage to or destruction of structures on or comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with **Article IX**, regardless of whether the insurance proceeds are sufficient to pay the cost of such work. Alternately, upon approval of the Board, the Owner shall clear the Lot and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE VII.
SUPPLEMENTAL DECLARATIONS; ADDITION AND WITHDRAWAL OF
PROPERTY

7.1 Incorporation of Supplemental Declaration. Upon recordation of a Supplemental Declaration in the Public Records, such Supplemental Declaration will, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Declaration, to the extent not in conflict with this Declaration, but will apply only to those portion or portions of the Properties described in and covered by such Supplemental Declaration.

7.2 Addition of Property.

(a) Declarant may, at any time and from time to time, add additional property to the Properties and, upon the filing of a notice of addition of land, such land will be considered part of the Properties for purposes of this Declaration. Such added property will be considered part of the Properties subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the Persons subject to this Declaration will be the same with respect to such added property as with respect to the lands originally covered by this Declaration.

(b) To add property to the Properties, Declarant will be required only to execute and record in the Public Records a notice of addition of land (which notice may be contained within any Supplemental Declaration affecting such land) containing the following provisions:

(i) A reference to this Declaration, which reference will state the volume and initial page number in the Public Records wherein this Declaration is recorded;

(ii) A statement that such property will be considered part of the Properties for purposes of this Declaration such that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added property; and

(iii) A legal description of the added property.

7.3 Withdrawal of Property.

(a) Declarant may, at any time and from time to time, reduce or withdraw from the Properties, including the Properties, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association: (i) any portions of the Properties which have not been included in a Plat; (ii) any portion of the Properties included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portions of the Properties included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal, this Declaration and the covenants conditions, restrictions and obligations set forth herein (and in any applicable Supplemental Declaration) will no longer apply to the portion of the Properties withdrawn.

(b) To withdraw property from the Properties hereunder, Declarant will be required only to execute and record in the Public Records, a notice of withdrawal of land containing the following provisions:

(i) A reference to this Declaration, which reference will state the volume and initial page number in the Public Records wherein this Declaration is recorded;

(ii) A statement that the provisions of this Declaration will no longer apply to the withdrawn property; and

(iii) A legal description of the withdrawn property.

7.4 Amendment. This **Article VII** shall not be amended during the Development Period without the prior written consent of Declarant.

7.5 Post-Development Period Authority. After the Development Period, the Association may add and annex real estate to the Properties or withdraw and transfer real estate from the Properties pursuant to action approved by a vote of a majority of the votes represented by Voting Members present at a duly called annual or special meeting of the Members.

ARTICLE VIII. **ASSESSMENTS**

8.1 Creation of Assessments. The Association may levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be six (6) types of assessments. (i) Base Assessments to fund Common Expenses for the general benefit of all Lots; (ii) Neighborhood Assessments; (iii) Limited Common Area Assessments for Limited Common Area Expenses; (iv) Special Assessments; (v) Benefitted Assessments and (vi) Fines and Damages Assessments. Each Owner, by accepting a deed for any portion of the Properties, is deemed to covenant and agree to pay these assessments. These assessments shall be in addition to and distinct from any assessments levied by a Local Area

Association.

The Charges levied by the Association pursuant to the authority granted in this **Article VIII**, shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and other residents of the Properties to the fullest extent authority or responsibility is granted to the Association hereunder and to discharge all rights, privileges, and duties assigned or allowed to the Association hereunder. Without limiting the generality of the foregoing, Charges may be used for the leasing, acquisition, improvement, maintenance, and operation of the Properties and the provision of services and facilities devoted to this purpose and related to the use and enjoyment of the Properties, including, without limitation, as specified in **Articles II, IV and V**; the administration of architectural standards and review, including, without limitation, as specified in **Article IX**; the administration and enforcement of the Governing Documents as defined in **Section 1.22**; the administration and exercise of privileges, licenses, and easements granted to or reserved by the Association, including, without limitation, as provided in **Article X**; payment of taxes and governmental assessments on the Common Area; payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Governing Documents; payment of sums due in connection with street lights or other utilities serving the Properties for which the Association has responsibility hereunder; payment of management fees to a property manager; the employment of attorneys, architects, accountants, and other professionals to represent or assist the Association as deemed necessary or appropriate by the Board; the cost of utilities and fuel used in operating facilities in the Common Area; the maintenance and upkeep of all streets and/or roadways in the Property until such time as responsibility for their maintenance is assumed by the Governmental Authorities or other governmental authority; and for the accumulation of reserves to carry out the purposes and duties of the Association, the Board, or the Architectural Reviewer as provided for in the Governing Documents.

Charges shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment, and any Limited Common Area Assessment for a Lot shall be due and payable in advance on the first day of the Association's fiscal year; provided, that, upon the first conveyance of a Lot to a purchaser for value, the pro rata portion of such assessments for the balance of the fiscal year shall be due and payable upon conveyance of the Lot. If any Owner is delinquent in paying any Charges levied on his or her Lot, the Board may accelerate and require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request by an Owner, furnish to any Owner liable for any type of Charge a certificate in writing signed by an Association officer setting forth whether such Charge has been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself or herself from liability for Charges by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay Charges is a separate and independent covenant on the part of each Owner. No diminution or abatement of Charges or set-off shall be claimed or allowed for any alleged failure of the

Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Notwithstanding the foregoing, or any provision in this Declaration to the contrary, except as otherwise provided in the Agreement Regarding Restrictive Covenants, in no event shall any Lot owned by CWR be subject to the levy of Charges as provided in this Declaration unless and until such time as a completed residence has been constructed on such Lot.

8.2 Declarant's Obligation for Assessments. During the Development Period, Declarant may annually elect either to pay assessments on all of its Lots that remain unsold throughout the entire fiscal year or to pay the shortage for such fiscal year. For purposes hereof, the "shortage" shall be the difference between:

(a) the amount of all income and revenue of any kind received by the Association, including but not limited to, assessments collected on all other Lots, use fees, advances made by Declarant, and income from all other sources; and

(b) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds.

Calculation of the shortage shall be performed on a cash basis of accounting. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. If the Declarant elects, or is deemed to elect, to pay the shortage for a particular fiscal year and there is no shortage for such fiscal year, then the Declarant shall not be obligated to pay any amounts to the Association under this Section with respect to such fiscal year. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses and Limited Common Area Expenses. The payment of assessments or the shortage may be reduced or abated by the agreed value of any such services or materials provided in accordance with any such contract or agreement with the Association.

Each Owner is hereby advised that the amount of Assessments levied by the Association, as well as the amount of Declarant's required contribution as provided herein, will vary over time. Specifically, accounting for the fact that the community's amenity facilities will be under construction and not yet open during the Association's initial operating period, the Association's budgeted expenses (and corresponding level of Assessments) during such period will be lower than they will be once the community's amenity facilities have been completed and the Association assumes responsibility for operation and maintenance thereof.

8.3 Computation of Base Assessment. The Board shall prepare a budget covering the

Common Expenses estimated to be incurred during the year to which the proposed budget applies and may make amendments thereto from time to time. The annual budget, as well as any amendment to the budget for a particular year, shall be prepared and available to Members not less than thirty (30) days before the date on which it is to take effect. Failure to meet this thirty (30) day requirement for budget preparation shall not invalidate any budget or amendment; provided, however, that no budget or amendment shall be effective or used as a basis for an annual or amended levy of assessments until thirty (30) days after it is prepared and available to Members. Additionally, upon the written petition of Members representing at least twenty percent (20%) of the votes in the Association delivered to the Board prior to a budget becoming effective, the Board shall call a Special Meeting of the Association for purposes of discussing, but not approving, the proposed annual budget, and the proposed annual budget shall not take effect unless and until such Special Meeting of the Association has been held. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in **Section 8.6**, but shall not include expenses incurred during the Development Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs.

The Base Assessment shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under **Section 8.12** on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

During the Development Period, the budget must only be approved by the Declarant. After the Development Period, a budget and a proposed assessment may be disapproved at a meeting of the Members upon the vote of Voting Members representing at least two thirds (2/3) of the total Association vote. If the proposed budget is disapproved or the Board fails for any reason to establish the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue until a new budget is prepared as provided herein.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of amounts which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such payments shall be disclosed as a line item in the budget. The payment of such amounts in any year shall not obligate the Declarant to continue such payments in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

8.4 Computation of Neighborhood Assessments. The Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year and make amendments thereto from time to time. The Board shall be entitled to set such budget only to the extent that (a) the Governing Documents specifically authorize the Board to assess certain

costs as a Neighborhood Expense, or (b) the Association expects to incur expenses to provide additional services for a Neighborhood. Such budget shall include any capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. The annual budget for each Neighborhood, as well as any amendment to the budget for a particular year, shall be prepared and available to Owners of Lots within such Neighborhood not less than thirty (30) days before the date on which it is to take effect.

Neighborhood Expenses shall be allocated equally among all Lots within the Neighborhood benefitted thereby and levied as a Neighborhood Assessment. If specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by the Owners of a majority of the Lots within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on Lots or other structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefitted Lots in proportion to the benefit received. Such proportion shall be specified in the Supplemental Declaration applicable to such Neighborhood, or if not so specified, shall be approved by the Owners of a majority of the Lots within the Neighborhood, and Declarant, as long as Declarant owns any real estate within such Neighborhood.

After the Development Period, portions of a budget and proposed assessment for a Neighborhood may be disapproved by a majority vote of the Voting Members who represent Lots in the Neighborhood for which the Neighborhood budget applies, as provided in this paragraph. The right to disapprove a portion of a budget and proposed assessment provided for herein shall apply only to those line items in the Neighborhood budget which are attributable to services requested by Owners within the Neighborhood. In the event the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine the Neighborhood budget for any year, then and until such time as such budget shall have been determined as provided herein, the Neighborhood budget in effect for the immediately preceding year shall continue for the current year.

8.5 Computation of Limited Common Area Assessment. The Board shall prepare a separate budget covering the estimated Limited Common Area Expenses for each Limited Common Area on whose behalf Limited Common Area Expenses are expected to be incurred during the year to which the proposed budget applies and may make amendments thereto from time to time. The Board shall be entitled to set such budget only to the extent that (a) the Governing Documents specifically authorize the Board to assess certain costs as a Limited Common Area Expense, or (b) the Association expects to incur expenses to provide additional services for such Limited Common Area. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Limited Common Area Expense, if any. The annual budget for Limited Common Area Expenses, as well as any amendment to the budget for a particular year, shall be prepared and available to Owners of Lots benefitted by such Limited Common Area not less than thirty (30) days before the date on which it is to take effect.

Limited Common Area Expenses shall be allocated equally among all Lots benefitted thereby.

If the Board fails for any reason to establish the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue until a new budget is prepared as provided herein.

8.6 Reserve Budget and Capital Contribution. The Board shall, upon such intervals as the Board deems appropriate, prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The reserve budget may be amended from time to time as circumstances require. Such reserve budget may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in Base Assessment and Limited Common Area Assessments reserve contributions in amounts sufficient to meet these projected needs. So long as the Board exercises business judgment in determining an adequate amount of reserves, the amount of the reserve fund shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes, and for each Limited Common Area. During the Development Period, neither the Association nor the Board shall adopt, modify, limit or expand such policies without the Declarant's prior written consent.

8.7 Special Assessments. In addition to other authorized assessments, the Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including unbudgeted capital expenditures. Any such Special Assessment may be levied against all Lots, if such Special Assessment is for Common Expenses or against Lots which have the right to use Limited Common Area, if such Special Assessment is for Limited Common Area Expenses. Special Assessments may be levied against the Lots within a Neighborhood if the Special Assessment is for Neighborhood Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

There shall be no obligation to call a meeting for the purpose of considering Special Assessments except on petition of the Voting Members or Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within thirty (30) days after notice of the Special Assessment. A statement detailing the proposed expenses to be defrayed through any Special Assessment shall be prepared and available to Members not less than thirty (30) days before the date on which the Special Assessment is to take effect.

8.8 Benefitted Assessments. The Board may levy "Benefitted Assessments" against particular Lots for expenses incurred or to be incurred by the Association, as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing

benefits, items or Special Services to the Lot or Residents thereof, which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing a Lot or Lots into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Residents of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, to the extent required by applicable law, before levying any Benefitted Assessment under this subsection (b).

(c) as may be otherwise provided in this Declaration or any Supplemental Declaration.

8.9 Fines and Damages Assessments. The Board may assess fines against an Owner for violations of any restriction set forth in the Governing Documents which have been committed by an Owner, a Resident of such Owner's Lot, or the Owner or Resident's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this **Section 8.9** will be considered an assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or Limited Common Area or any facilities located therein by the Owner or the Owner's Residents, family, guests, agents, occupants, or tenants. The managing agent will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Governing Documents and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

The procedure for assessment of fines and damage charges will be as follows:

(a) the Association, acting through an officer, Board member or the managing agent, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;

(b) the notice of the fine or damage charge must describe the violation or damage;

(c) the notice of the fine or damage charge must state the amount of the fine or damage charge;

(d) the notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and

(e) the notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation (if the violation is capable of being remedied) and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar

violation within the preceding six (6) months.

Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges will be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest, all costs of collection and attorney's fees as herein provided, secured by the lien granted to the Association pursuant to **Section 8.10** of this Declaration.

8.10 Assessment Lien and Foreclosure. Each Charge, together with such interest thereon and costs of collection as herein provided, will be the personal obligation of the Owner of the Lot against which the Charge is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot. The continuing assessment lien granted to the Association will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for tax liens and all sums secured by a Mortgage, provided such Mortgage was recorded in the Public Records before the delinquent Charge was due. The Association will have the power to subordinate the aforesaid Charge lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the assessment lien granted hereunder, prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the officers of the Association and will be recorded in the Public Records. Each Owner, by accepting a deed or ownership interest to a Lot, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the assessment lien granted hereunder. Such lien for payment of Assessments may be enforced by the non-judicial foreclosure of the defaulting Owner's Lot by the Association in like manner as a real property mortgage with power of sale under Tex. Prop. Code § 51.002. (For such purpose, Joshua D. Bernstein of Travis County, Texas, is hereby designated as trustee for the benefit of the Association, with the Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Charge and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Charges remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any Mortgage, the lien for any Charges that were

due and payable before the foreclosure sale will be extinguished, provided that past-due Charges will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Charges becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described herein, the Association will, upon the request of the Owner, execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer of the Association. In addition to the lien hereby retained, in the event of non-payment by any Owner of any Charge and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any service provided under a Bulk Contract or any other service provided by the Association, including but not limited to utility or cable services, provided through the Association and not paid for directly by an Owner or occupant to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Any utility or cable service will not be disconnected or terminated on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by applicable law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Charges thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot, and on the date of such conveyance, Charges against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than a Mortgage or assessment liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no administrative transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

8.11 Late Charges and Interest. Any Charge which is not paid to the Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at eighteen (18%) percent (or the maximum allowed by law, if less), per annum from the due date to the date when paid. Further, the Owner of any Lot subject to a Charge which is delinquent for thirty (30) days or more may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be a charge

upon the Lot owned by such Owner, collectible in the manner as provided for collection of Charges, including foreclosure of the lien against such Dwelling; provided, however, such charge will never exceed the maximum charge permitted under applicable law. In such event, the Association shall also be entitled to charge and recover from the delinquent Owner the reasonable attorney's fees and collection costs it incurs.

8.12 Date of Commencement of Assessments. No Charges shall accrue with respect to any Lot until such Lot is shown as a subdivided lot on a Plat recorded in the Public Records. The obligation to pay Charges shall commence as to each Lot on the first day of the month following: (i) the month in which the Lot is made subject to this Declaration, or (ii) the month in which the Board first determines a budget and levies Charges pursuant to this **Article VIII**, whichever is later. The first annual Base Assessment, Neighborhood Assessment, and Limited Common Area Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time Charges commence on the Lot.

8.13 Failure to Assess or Provide Notice. Failure of the Board to prepare a budget, to fix assessment amounts or rates or to provide notice shall not be deemed to be a waiver, modification, or release of any Owner from the obligation to pay Charges. In such event, each Owner shall continue to pay Base Assessments, Neighborhood Assessments, Limited Common Area Assessments, Benefitted Assessments and Fines and Damages Assessments on the same basis as during the last period for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.14 Exempt Property. The following area within the Properties will be exempt from the Charges provided for in this **Article VIII**:

- (a) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Public Records;
- (b) The Common Area and the Limited Common Area; and
- (c) Any portion of the Properties not yet included in a Plat.

8.15 Utility Costs Billed to Owners. Certain utility charges incurred in connection with the use, operation and maintenance of the Common Area may not be separately metered to the Common Area. By way of example, such charges may include utility charges for electrical or water service used in connection with the use, operation and maintenance of the Common Area. If such charges are metered to an individual Lot rather than being separately metered for the Common Area, then the following shall apply:

- (a) If, in the opinion of the Board, each Owner is sharing in a fair and equitable manner the cost of such service, then no adjustment shall be made and each Owner shall pay his own bill; or
- (b) If, in the opinion of the Board, the Owner of a Lot is being billed disproportionately for costs allocable to the Common Area, then the Association shall

pay, or reimburse such Owner, an amount equal to the portion of the bill which in the reasonable determination of the Board is properly allocable to the Common Area, as the case may be, and the amount thereof shall be Common Expenses or Limited Common Area Expenses hereunder, as applicable.

Any determinations or allocations made hereunder by the Board shall be final and binding on all parties.

8.16 Application of Payments. The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order (or as otherwise provided in the Association policies regarding the application of payments): Fines and Damages Assessments, Benefitted Assessments, Special Assessments, Neighborhood Assessments, Limited Common Area Assessments, and (lastly) Base Assessments. 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 Association'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 Owner's account.

8.17 Initial Capital Contribution.

(a) Each Owner (other than Declarant) of a Lot with completed residential improvements thereon will pay a one-time initial contribution to the Association (the "**Initial Contribution**"), which amount shall be due upon the transfer of title to the Lot. Upon the purchase of a Lot with completed residential improvements from Declarant or another Builder, the Initial Contribution initially shall be \$1,500, such amount being comprised of: (i) a contribution to the Association's reserve fund in an initial amount of \$1,000; and (ii) a working capital contribution to the Association in an initial amount of \$500. Upon the resale of a Lot with completed residential improvements (*i.e.*, a purchase other than the initial purchase from Declarant or another Builder), the Initial Contribution shall be a working capital contribution to the Association in an amount determined from time to time by the Board in its sole and absolute discretion; however, the total amount of such Initial Contribution shall not exceed one-third of one percent (1/3%) of the "**Selling Price**" of the Lot. For purposes hereof, the "Selling Price" of a Lot shall be the total price paid to purchase the Lot (excluding any governmental transfer fees or taxes imposed on the transfer). The Initial Contribution need not be uniform among all Lots, and the Board is expressly authorized to levy initial capital contributions of varying amounts depending on the size, use and general character of the Lots then being made subject to such levy.

(b) Notwithstanding the foregoing provision, the following transfers will not be subject to the requirement to pay the Initial Contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the

Owner's spouse, child, or parent. Additionally, an Owner who is a Builder will not be subject to the requirement to pay the Initial Contribution; however, the Initial Contribution will be payable by any Owner who acquires a Lot from a Builder for residential living purposes or by any Owner who: (i) acquires a Lot and is not in the business of constructing single-family residences for resale to a third party; or (ii) who acquires the Lot for any purpose other than constructing a single-family residence thereon for resale to a third party. In the event of any dispute regarding the application of the Initial Contribution to a particular Owner, the Board's determination regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this **Section 8.17**. The Initial Contribution will be in addition to, not in lieu of, any other Charges or other charges levied in accordance with this **Article VIII** and will not be considered an advance payment of such Charges. Except as otherwise provided herein, the Initial Contribution will be due and payable to the Association immediately upon each transfer of title to the Dwelling, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Association will have the power to waive the payment of any Initial Contribution attributable to a Lot by the execution and recordation in the Public Records of a waiver notice executed by a majority of the Board.

ARTICLE IX.

ARCHITECTURAL STANDARDS

9.1 Purpose. The Properties derive their unique character from the cooperation of all Owners in upholding minimum design, landscaping, and aesthetic standards. This Article explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Lots. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

9.2 Architectural Reviewer. The purposes of this Article shall be undertaken by the Architectural Reviewer. Until expiration or termination of the Development Period, the Architectural Reviewer shall mean Declarant or its designee. Upon expiration or termination of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Architectural Control Committee appointed by the Board as provided in **Section 9.4** below. In furtherance of the purposes of this Article, the Architectural Reviewer may, but will not be obligated to, adopt Design Guidelines as more fully set forth in **Section 9.6(b)** below.

9.3 Architectural Control By Declarant.

(a) Declarant as Architectural Reviewer. During the Development Period, neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any improvements. Until expiration or termination of the Development Period, the Architectural Reviewer is Declarant or its designee.

(b) Declarant's Rights Reserved. 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 that Declarant has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market the Properties. Accordingly, each Owner agrees that, during the Development Period, no improvements will be started or progressed without the prior written approval of Declarant, which approval may be granted or withheld in Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other Person or any organization. Declarant may designate one or more Persons from time to time to act on its behalf in reviewing and responding to applications.

(c) Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to an architectural control committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

(d) Member Involvement. The Declarant, in its capacity as the Architectural Reviewer, shall be entitled to take any and all action it deems appropriate to encourage participation and Member involvement in the architectural review process established hereunder. Such action may include, without limitation, the establishment of one or more advisory committees to the Architectural Reviewer, or the appointment of one or more Voting Members to serve on an advisory basis to the Architectural Reviewer.

(e) Declarant Exemption. During the Development Period, Declarant shall be exempt from all architectural review and approval requirements imposed by this Declaration or any other Governing Documents.

9.4 Architectural Control by Association. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through an architectural control committee (the "ACC"), will assume jurisdiction over architectural control and will have the powers of the Architectural Reviewer hereunder.

(a) ACC. The ACC will consist of at least three (3) but not more than seven (7) Persons appointed by the Board. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Governing Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners

or Residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

9.5 Prohibition of Construction, Alteration and Improvement. Except as otherwise expressly provided herein, no improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof, may occur unless approved in advance by the Architectural Reviewer. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an improvement, provided that such action is not visible from any other portion of the Properties or the Properties.

9.6 Architectural Approval.

(a) Submission and Approval of Plans and Specifications. Construction plans and specifications for any construction of improvements or modifications to existing improvements on a Lot, or, when an Owner desires solely to re-subdivide or consolidate a Lot, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines (if any) or any additional rules adopted by the Architectural Reviewer together with any review fee which is imposed by the Architectural Reviewer in accordance with **Section 9.6(b)**. No re-subdivision or consolidation will be made, nor any improvement placed or allowed on any Lot, until the plans and specifications and the Builder which the Owner intends to use to construct the proposed structure or improvement have been approved in writing by the Architectural Reviewer. The Architectural Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Architectural Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Architectural Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Architectural Reviewer, in its sole discretion, may require. Site plans must be approved by the Architectural Reviewer prior to the clearing of any Lot, or the construction of any improvements. The Architectural Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Architectural Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(b) Design Guidelines; Authority to Charge Review Fee. Declarant will have the power, but will not be obligated, to adopt the initial Design Guidelines. The Architectural Reviewer will have the power, but will not be obligated, from time to time to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines. In the event of any conflict between the terms and provisions of the

Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the Architectural Reviewer will have the power and authority, but not the obligation, to impose a fee equal to the sum of (i) an administrative fee not to exceed \$100 per submission, and (ii) all costs which the Architectural Reviewer reasonably expects to incur in connection with the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. The Architectural Reviewer will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the Architectural Reviewer. The Architectural Reviewer will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(c) Failure to Act. In the event that any plans and specifications are submitted to the Architectural Reviewer as provided herein, and the Architectural Reviewer fails to either approve or reject such plans and specifications for a period of sixty (60) days following such submission, the plans and specifications will be deemed **disapproved**.

(d) Variances. The Architectural Reviewer may grant variances from compliance with any of the provisions of this Declaration, any Supplemental Declaration or the Design Guidelines (if any), including, but not limited to, restrictions upon impervious cover, height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Architectural Reviewer, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and, if Declarant has assigned its rights to the ACC, must be approved by at least a majority of the members of the ACC. Each variance may also be recorded in the Public Records; provided, however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the Architectural Reviewer, Declarant, the Board or the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any Supplemental Declaration will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration, or any Supplemental Declaration, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or any Supplemental Declaration.

(e) Duration of Approval. The approval of the Architectural Reviewer of any final plans and specifications, and any variances granted by the Architectural Reviewer will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion

thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Architectural Reviewer, and the Architectural Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this **Section 9.6(e)** and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(f) No Waiver of Future Approvals. The approval of the Architectural Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Architectural Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Architectural Reviewer.

(g) Non-Liability of Architectural Reviewer. THE ARCHITECTURAL REVIEWER WILL HAVE SOLE DISCRETION WITH RESPECT TO TASTE, DESIGN, AND ALL STANDARDS SPECIFIED BY THIS ARTICLE. THE ARCHITECTURAL REVIEWER WILL HAVE NO LIABILITY FOR ITS DECISIONS MADE IN GOOD FAITH AND WHICH ARE NOT ARBITRARY OR CAPRICIOUS. THE ARCHITECTURAL REVIEWER WILL NOT BE RESPONSIBLE FOR: (i) ERRORS IN OR OMISSIONS FROM THE PLANS AND SPECIFICATIONS SUBMITTED TO THE ARCHITECTURAL REVIEWER; (ii) SUPERVISING CONSTRUCTION FOR THE OWNER'S COMPLIANCE WITH APPROVED PLANS AND SPECIFICATIONS; OR (iii) THE COMPLIANCE OF THE OWNER'S PLANS AND SPECIFICATIONS WITH GOVERNMENTAL CODES AND ORDINANCES, STATE AND FEDERAL LAWS. THE ARCHITECTURAL REVIEWER WILL NOT BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL REVIEWER'S DUTIES UNDER THIS DECLARATION, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILFUL MISCONDUCT OR BAD FAITH OF THE ARCHITECTURAL REVIEWER OR ONE OR MORE INDIVIDUALS ACTING ON ITS BEHALF, AS THE CASE MAY BE.

ARTICLE X.

USE RESTRICTIONS

10.1 General Restriction. The Properties shall be used only for residential, recreational, and related purposes, which may include, without limitation, offices for any managing agent or agents retained by the Association or business offices for the Declarant or the Association consistent with the Governing Documents.

10.2 Signs.

(a) No sign of any kind may be displayed to the public view on any Lot without the prior written approval of the Architectural Reviewer, except for:

(i) signs which are part of Declarant's overall marketing or construction plans or activities for the Properties;

(ii) one small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the principal residence constructed upon the Lot;

(iii) permits as may be required by legal proceedings; and

(iv) permits as may be required by any governmental entity.

(b) Unless otherwise permitted pursuant to this **Section 10.2**, no "For Sale", "For Rent", "For Lease", or similar sign advertising a Lot for sale or for lease may be placed on any Lot or any portion of the Properties without the prior consent of the Architectural Reviewer.

(c) An Owner will be permitted to post a "no soliciting" sign near or on the front door to the principal residence constructed upon the Lot, provided, that the sign not exceed twenty-five (25) square inches. Except for signs which are part of Declarant's overall marketing or construction plans or activities for the Properties, no sign may be displayed in the window of any improvement located on a Lot.

10.3 Compliance with Setbacks. The location of all improvements on a Lot must comply with the minimum setbacks shown on the applicable Plat for such Lot; provided, however, that in no event shall the side set-back for any Lot be greater than five feet (5'). For the purpose of this restriction, eaves, steps, and open and covered porches will not be considered as part of a building; however, this Section will not be construed to permit any portion of any improvement on any Lot to encroach upon another Lot or other portion of the Properties.

10.4 Vehicles and Parking.

(a) No automobile, truck, commercial vehicle, recreational vehicle, motorcycle, other motorized vehicle or cart, boat, trailer, or other wheeled vehicle or equipment, whether motorized or not motorized, shall at any time be parked or stored on any portion of the Properties other than in a garage. For purposes of this Declaration, "commercial vehicle" shall include any vehicle bearing any commercial or business markings or which is used, in whole or in part, for any commercial or business purpose, regardless of its markings or configuration. Notwithstanding the foregoing, vehicles may be parked or placed on the paved driveway of a Lot as follows:

(i) If the Owner or lawful occupants of the Lot have two private, personal, non-commercial vehicles and a golf cart or other approved electric powered vehicle for neighborhood transportation ("NEV"), one of the passenger vehicles or the NEV may be parked on the driveway when the other two vehicles are in the garage;

(ii) Automobiles, trucks, commercial vehicles, recreational vehicles boats,

watercraft, trailers or other wheeled vehicles may be parked on driveways for up to a total of 48 hours during any consecutive seven (7) days, or as expressly and specifically permitted by the Board in writing or in rules and regulations adopted by the Board.

(iii) All vehicles, personal property, or equipment parked or left on driveways shall at all times be operable and properly licensed and inspected as required by applicable law. The Board may request and the Owner shall provide evidence or verification of operability or proper license or inspection, from time to time.

(b) The Board shall have the authority to adopt additional rules and regulations regarding the presence and use of vehicles on any portion of the Properties, including, without limitation, parking or periods during which Lot garage doors must be closed.

10.5 Occupants Bound. All provisions of the Governing Documents shall also apply to all Residents, tenants, lessees, guests, and invitees of any Lot ("**Occupant**"). Every Owner shall cause all Occupants to comply with the foregoing, and every Owner shall be responsible for all violations, losses, or damages caused by an Occupant, notwithstanding the fact that such Occupant is fully liable and may be sanctioned for any violation. In addition to all other remedies available to the Association pursuant to the terms and provisions of this Declaration in the event of a violation by an Occupant, the Association may require that the Occupant be removed from and not allowed to return to the Properties and/or that any lease, agreement or permission given allowing the Occupant to be present be terminated.

10.6 Animals and Pets.

(a) No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Properties, except that for each Lot there shall be permitted up to a total of three (3) dogs or three (3) cats or a combination of dogs and cats not to exceed three (3) in total, no more than two (2) birds, and a reasonable number, as determined by the Board, of other usual and common household pets, subject to compliance with applicable local laws, codes and ordinances. In no event, however, shall monkeys, snakes, pigs, or ferrets be permitted in any Lot.

(b) Fecal waste deposited by any pet on portions of the Properties other than the Lot of the Owner must be immediately removed and properly disposed of by the Owner. Fecal waste deposited by any pet on or around the Lot of its Owner must be cleaned up and removed at least once every seven (7) days. Pets which are permitted to roam free, or which, in the sole discretion of the Board, make objectionable noise, endanger the health or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties shall be removed from the Properties upon request of the Board. If the Owner fails to honor such request, the pet may be removed by the Board.

(c) The Board may adopt reasonable rules designed to minimize damage and disturbance to other Owners and Residents, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and

facilities of the Lot and fair share use of the Common Area; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties in compliance with the rules in effect prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of Residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No pets shall be kept, bred, or maintained for any commercial or business purpose.

10.7 Noise and Odors. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to unreasonably disturb the peace, quiet, safety, comfort, or serenity of the Residents and invitees of other Lots. No activity shall be carried on upon any portion of the Properties, which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to Persons using the Common Area or to the Residents and invitees of other Lots, as may be determined in the sole discretion of the Board.

10.8 Unightly or Unkempt Conditions. All portions of a Lot outside of enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Properties. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Properties. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Properties, except in a barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior or exterior fireplace. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Properties or which result in unreasonable levels of sound or light pollution. The determination as to whether a condition or activity violates this section shall be made by the Board acting in its sole discretion.

10.9 Antennae and Other Structures. Except as expressly provided below, no exterior radio (including HAM radio) or television or other antennae or aerial (including those related to cellular telephone or other forms of communication) or satellite dish, wind turbine, nor any solar energy system, may be erected, maintained or placed on a Lot without the prior written approval of the Architectural Reviewer; provided, however, that: (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or (ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or (iii) an antenna that is designed to receive television broadcast signals; collectively, (i) through (iii) are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Architectural Reviewer, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant

and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Properties.

10.10 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Dwelling and may not encroach upon any street, Common Area, Limited Common Area, or any other portion of the Properties. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Properties, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Architectural Reviewer are as follows: (i) attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then (ii) attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street. The Architectural Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

10.11 Fences and Dog Runs. No wall, dog run, animal pen, or fence of any kind shall be constructed on any Lot, except as approved by the Architectural Reviewer in accordance with **Article IX** of this Declaration.

10.12 Exterior Lighting. Except for seasonal holiday decorative lights, which may be displayed between November 15 and January 15 only, all exterior lights must be approved by the Architectural Reviewer in accordance with **Article IX** of this Declaration.

10.13 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure may be placed within the Properties without the prior written approval of the Architectural Reviewer in accordance with **Article IX** of this Declaration; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure.

10.14 Storage. Placement or storage of furniture, fixtures, appliances, machinery, equipment or other goods and chattels on the Common Area is prohibited. Placement or storage of furniture, fixtures, appliances, machinery, equipment or other goods and chattels not in active use on any portion of a Lot which is visible from outside the Lot shall not be permitted, except as approved by the Architectural Reviewer in accordance with **Article IX** of this Declaration.

10.15 Subdivision of Lot and Time-Sharing. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Reviewer in accordance with **Article IX** of this Declaration; provided, however, the Declarant, its successors and assigns hereby expressly reserve the right unilaterally to subdivide, change the boundary line of, and re-plat any Lot(s) owned by Declarant, its successors and assigns during the Development Period. No Lot shall be made subject to any type of timesharing, fraction-sharing,

or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years. However, the Declarant hereby reserves the right for itself and its assigns to operate such a program.

10.16 Firearms/Fireworks. The discharge of firearms or fireworks within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, paintball markers, and other firearms of all types, regardless of size. Nothing herein shall be construed to prohibit the Declarant or the Association from using portions of the Common Area from time to time to put on a fireworks show.

10.17 Wetlands, Lakes, and Other Water Bodies. The lakes, ponds, streams and other water bodies within the Properties are primarily aesthetic and intended for limited uses such as recreational fishing, canoeing, and kyacking, pursuant to rules and regulations established by the Board. **Motorized passenger water vehicles of any type are expressly prohibited.** In addition, use of lakes, ponds, streams, or other water bodies within the Properties is expressly restricted by separate governmental regulations, restrictions, agreements, and ordinances, all of which must be observed by all Persons who make use of the lakes, ponds, streams, or other water bodies within the Properties, as those governmental regulations, restrictions, agreements, and ordinances may be changed from time to time. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of any use of lakes, ponds, streams or other bodies of water within or adjacent to the Properties.

10.18 Business Use and Leasing.

(a) No commercial activity, business trade, or similar activity shall be conducted in or from any Lot, except that an Owner or Resident may conduct ancillary business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. "Business and trade" shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

(b) This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties, including the operation of a timeshare or similar program.

(c) The leasing of a Lot shall not be considered a business or trade within the meaning of this subsection. "Leasing," for purposes of this Declaration, is defined as occupancy of a Lot by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Lots may be leased only in their entirety. Except by the Declarant, no fraction or portion of any Lot may be leased or rented. There shall be no subleasing of Lots or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing and shall contain such terms as the Board may prescribe from time to time. All leases shall provide that they may be terminated in the event of a violation of the Governing Documents by a tenant or a tenant's family, guests or invitees, and the Board, in its discretion, may require termination by the Owner and eviction of the tenant in such event.

(d) All leases shall be for an initial term of no less than six (6) months, except with the prior written consent of the Board. The Owners may not amend this provision to prohibit leasing of Lots authorized by Declarant for rental to transient tenants and for a term less than six (6) months until the end of the Development Period. Any Owner who leases a Lot pursuant to the authority set forth herein is specifically referred to **Section 10.2** which, among other things, regulates signage in connection with the leasing of Lots.

(e) Notice of any lease, together with a complete copy of the lease and such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Governing Documents. The Board may adopt reasonable rules regulating or restricting leasing and subleasing.

(f) The barter, sale, or exchange of new or used personal property at any Lot (by way of description and not limitation, such events are commonly referred to as "yard sales," "moving sales," "attic sales," or "garage sales") will be allowed only if (a) sponsored by the Association, or (b) expressly authorized in writing by the Board. The Association may, but it is not required to, adopt rules and regulations regarding such sales.

10.19 Occupancy. The Board may adopt rules regarding the occupancy of Lots. If the rules fail to establish occupancy standards, no more than two (2) Persons per bedroom may occupy a Lot, subject to the exception for familial status. The Association's occupancy standard for Residents who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (i.e., the fewest people per Lot) permitted by the U.S. Department of Housing and Urban Development. A Person may not occupy a Lot if the Person constitutes a direct threat to the health or safety of other Persons, or if the Person's occupancy would result in substantial physical damage to the property of others

10.20 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Architectural Reviewer in accordance with **Article IX** of this Declaration or as required by the

applicable governing jurisdiction and, if applicable, the private collection contractor. In no event shall such containers be maintained so as to be visible from outside the Lot unless they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

10.21 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot and no clothes, sheets, blankets or laundry of any kind shall be hung outside on any portion of the Properties.

10.22 ATV's, and Unlicensed Motorized Vehicles Regulated. The operation of ATV's or other unlicensed or motorized vehicles within the Properties is prohibited except as expressly permitted in writing by the Board.

10.23 Unlawful Acts or Omissions. Any act or omission which is in violation of any law, code, ordinance, governmental rule or regulation, shall not be done, permitted or allowed to remain or continue.

10.24 Bird and Squirrel Houses. No Lot shall be allowed to have more than three (3) bird houses and/or feeders. Permitted bird houses and feeders shall all be hung from an approved structure or mounted on a single pole. In no event shall any permitted bird house or feeder be hung or mounted higher than the height of the eave of the residence on the Lot. With the exception of the foregoing, Residents shall not house or feed wildlife or create or maintain conditions or structures which attract wildlife to the Properties.

10.25 Flagpoles. No Lot shall be allowed to have a free standing flagpole of any type. Flags on Lots must be flown only on poles mounted to the side of the residence by a bracket. Notwithstanding the foregoing, one portable, removable United States flag may be displayed in a respectful manner and consistent with 36 U.S.C. Sections 171-178, as amended, on each Lot.

10.26 Above-Ground Pools. The installation of an above-ground swimming pool (perimeter extended higher than surrounding, natural grade) on any Lot is prohibited. The foregoing does not apply to indoor or outdoor jacuzzis and hot-tubs included within a deck, screened from view from neighboring Lots and installed with the prior approval of the Architectural Reviewer in accordance with **Article IX** of this Declaration.

10.27 Irrigation/Wells. No sprinkler or irrigation system of any type which would draw water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties. All sprinkler and irrigation systems shall be subject to approval by the Architectural Reviewer in accordance with **Article IX** of this Declaration. Private wells are prohibited on the Properties. The provisions of this Section shall not apply to wells or irrigation systems installed or authorized by Declarant or the Governmental Authorities.

10.28 Drainage-and Septic Systems. Catch basins and drainage areas are for the purpose

of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the Properties for the purpose of altering drainage and water flow; provided, such easement right shall not be exercised in such a manner as to unreasonably interfere with the use of any Lot without the affected Owner's consent. Private septic or sewage disposal systems are prohibited on the Properties.

10.29 Air Conditioning Units. Except as may be permitted by the Architectural Reviewer, no window air conditioning units or window fans may be installed in any Lot.

10.30 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains and similar items must be approved by the Architectural Reviewer in accordance with **Article IX** of this Declaration.

10.31 Compliance with Governing Documents. Each Occupant must comply strictly with the provisions of the Governing Documents as the same may be amended from time to time. Failure to comply with any of the Governing Documents will constitute a violation of the Governing Documents may result in a Fines and Damages Assessment against the Owner in accordance with the terms and provisions of this Declaration, and will give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the managing agent, the Board on behalf of the Association, the Architectural Reviewer, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but will not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Governing Documents, and the Owner whose violation has been so remedied will be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot will be secured by the liens reserved in this Declaration for Charges and may be collected by any means provided in this Declaration for the collection of Charges, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner will indemnify and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this **Section 10.31** (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct.

10.32 Liability of Owners for Damage to Common Area and Limited Common Area. No Owner may in any way alter, modify, add to or otherwise perform any work upon the Common Area or Limited Common Area without the prior written approval of the Board. Each Owner will be liable to the Association for any and all damages to: (i) the Common Area or

Limited Common Area and any improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage will be a Fines and Damages assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided for in this Declaration.

10.33 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Declaration. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE XI. **EASEMENTS**

11.1 Easements of Encroachment. The Declarant reserves to itself and grants to the Association and to each Lot reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Easements for Utilities.

(a) There are hereby reserved to the Declarant during the Development Period, and granted to the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, telecommunications systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to the Properties subject to the limitations herein.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the

Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Resident.

Declarant specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the structures on any Lot, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant during the Development Period.

(b) There is hereby reserved to the Declarant during the Development Period, the non-exclusive right and power to grant such specific easements in, over and across the Properties as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Properties.

11.3 Easements to Serve Additional Property. During the Development Period, the Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Properties, whether or not such real estate is made part of the Properties. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such real estate. Declarant further agrees that if the easement is exercised for permanent access to such real estate and such real estate or any portion thereof benefitting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such real estate.

11.4 Easements for Cross-Drainage. The Declarant hereby reserves for itself and grants to the Association an easement across every Lot and all Common Area for the natural drainage (or drainage consistent with the grading and/or drainage plans for the Properties or the developed drainage conditions) of storm water runoff from other portions of the Properties. No Person shall alter the drainage on any Lot to materially hinder, block or increase the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property, the Architectural Reviewer, and, during the Development Period, the Declarant.

11.5 Right of Entry. The Declarant hereby grants to the Association an easement of access and right, but not the obligation, to enter all portions of the Properties, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers, or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry into a structure on a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof, which shall not be

unreasonably withheld. This easement includes the right to enter any Lot to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any structure on a Lot without permission of the Owner, except by emergency personnel acting in their official capacities.

11.6 Easements for Maintenance and Enforcement. The Declarant hereby grants to the Association and its authorized agents, a perpetual easement and right to enter all portions of the Properties, including each Lot to: (i) perform its maintenance responsibilities under **Article V**, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry into a structure on a Lot shall be only during reasonable hours and after notice to and permission from the Owner which shall not be unreasonably withheld. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Declarant grants to the Association an easement and the right to enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefitted Assessment.

11.7 Easements for Exterior Landscaping and Maintenance. The Declarant hereby grants to the authorized agents of the Association the right to enter upon those portions of the Lot outside of the home thereon to furnish services required or permitted to be furnished by the Association hereunder or under any Supplemental Declaration. Any damage caused by the exercise of this Easement shall be repaired by the Association at its expense.

11.8 Rights to Stormwater Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section may not be amended without the consent of the Declarant or its successor, and the rights created in this Section shall survive termination of this Declaration.

11.9 Subdivision Entry and Perimeter Fencing Easement. Declarant hereby reserves for itself and the Association, an easement over and across the Properties for the installation, maintenance, repair or replacement of certain subdivision entry facilities and perimeter fencing which serves the Properties. Declarant will have the right, from time to time, to record a written notice in the Public Records which identifies the subdivision entry facilities and perimeter fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities and perimeter fencing as Common Area or Special Common Area by written notice executed by Declarant recorded in the Public Records. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or improvement constructed thereon.

11.10 Easements for Special Events. Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, non-exclusive easement over the Common Area or applicable Limited Common Area for the purpose of conducting parades; running, sailing, fishing, biking or other sporting events; educational, cultural, artistic, musical and entertainment activities; and other activities of general community interest at such locations and times as Declarant or the Association, in their reasonable discretion, deem appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Residents of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement.

11.11 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a Mortgage, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

ARTICLE XII.

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first lien Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of thirty (30) days, or any other violation of the Declaration or Bylaws relating to such Lot

or the Owner or Resident which is not cured within thirty (30) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

12.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

12.4 Failure of Mortgagee to Respond. Any Eligible Holder who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Eligible Holder within thirty (30) days of the date of the Association's request, provided such request is delivered to the Eligible Holder by certified or registered mail, return receipt requested.

12.5 Examination of Books and Records. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

12.6 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien Mortgages under applicable law will relate only to the individual Lots and not to any other portion of the Properties.

ARTICLE XIII. **SPECIAL DECLARANT RIGHTS**

13.1 Special Declarant Rights.

(a) This **Article XIII** sets forth certain rights and powers reserved to the Declarant in connection with its development and marketing of the Properties. Such rights, collectively, are referred to herein as the ("**Special Declarant Rights**").

(b) The Special Declarant Rights include all rights and powers designated herein as being rights and powers of the Declarant to be exercised, during the Development Period, including, without limitation, the following rights:

(i) To complete, modify, revise or eliminate any improvements indicated on Plats, development plans filed with the Declaration, or the Master Plan; or to modify the Master Plan and/or Plats as reserved in **Sections 1.30 and 1.40.**

(ii) To add or withdraw real property from the terms of this Declaration as provided in **Article VII**;

(iii) To maintain sales offices, management offices, and advertising signs on the Properties, as set forth in **Section 13.2**;

(iv) To use easements through the Common Area for the purpose of making improvements within the Properties, as set forth in **Section 13.3**;

(v) To use the Common Area for special events as set forth in **Section 11.10** without the payment of any fee or charge;

(vi) To exercise architectural control, as set forth in **Article IX**;

(vii) To furnish maintenance services, including, without limitation, watering of grass and other landscaping on portions of the Properties at Declarant's expense; and

(viii) To unilaterally amend this Declaration as provided in **Section 16.2**.

(c) The rights and powers designated herein as being rights and powers of the Declarant to be exercised during the Development Period including, without limitation, the right and power to appoint and remove any director or officer of the Association as provided in **Section 3.3(b)**.

13.2 Models, Sales Offices and Management Offices. During the Development Period and for the period of twenty-four (24) months thereafter, the Declarant and Builders authorized by Declarant may maintain and carry on upon any Lot owned by Declarant or a Builder or any portion of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots or other real estate, including, but not limited to, business offices, signs, model units, marketing trails, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities. Except as provided below, the Declarant's or Builder's right to use the Common Area for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Area by Owners.

13.3 Easement to Inspect and Right To Correct. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Properties, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with public codes

and ordinances. This Section may not be construed to create a duty for Declarant, the Association, any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Properties, including without limitation, all Common Areas and the Owner's Lot and all improvements thereon for the purposes contained in this Section.

13.4 Construction of Improvements/Removal of Property. The Declarant and its employees, agents and designees shall also have a right and easement during the Development Period over and upon all of the Common Area for the purpose of: (i) making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion; or (ii) removing peat moss, dirt, gravel, trees, bushes, or other landscaping, and other material as the Declarant deems appropriate in its sole discretion. The Declarant shall not be obligated to pay or otherwise account to the Association for any material removed from the Common Area under (ii) above.

13.5 Other Covenants Prohibited. During the Development Period, no Person shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the Properties without Declarant's prior written consent. Any instrument recorded without such consent shall result in such instrument being void and of no force and effect unless subsequently approved in writing by the Declarant and recorded in the Public Records.

13.6 Master Planned Community. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Properties, acknowledges awareness that Del Webb Sweetgrass is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to: (i) zoning or changes in zoning or to uses of, or changes in density of, the Properties during the Development Period; or (ii) changes in any conceptual or master plan for the Properties, including, but not limited to, the Master Plan; provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time).

13.7 Vacation Getaways. The Declarant may, in its discretion, construct residential improvements for temporary residency in or adjacent to the Properties and designate such improvements as "**Vacation Getaways.**" Vacation Getaways located outside of the Properties shall not be Lots hereunder, and their owners shall not be Members of the Association; provided, however, persons residing in such Vacation Getaways shall have access to the Common Area in consideration of the payment of such fees as provided by a contract or a Covenant to Share Costs. Additionally, during the Development Period, the Declarant shall be entitled to grant rights of access to the Common Area to prospective purchasers of Lots and other third parties in consideration of the payment of such fees as provided by a contract, or for no consideration, as the Declarant deems appropriate in its sole discretion.

Owners of Vacation Getaways located within the Properties shall be Members of the Association. The Declarant may transfer or lease Vacation Getaways and make Vacation Getaways available for use by guests selected in its discretion. Residents of the Vacation Getaways shall have a non-exclusive easement for use, access, and enjoyment in and to the Common Area, including but not limited to any recreational facilities within the Common Area. The Board shall assign activity or use privilege cards to the Declarant on behalf of all owners of Vacation Getaways for the purpose of exercising such easement. Vacation Getaways shall remain Vacation Getaways until the Declarant otherwise provides in written notice to the owner of such Vacation Getaway and to the Association.

13.8 Equal Treatment. During the Development Period, the Association shall not, without the prior written consent of the Declarant, adopt any policy, rule or procedure that:

(a) Limits the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas;

(b) Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Areas in promotional materials;

(c) Limits or prevents purchasers of new residential housing constructed by the Declarant, any Builder, their successors, assigns and/or affiliates in Del Webb Sweetgrass from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the Bylaws;

(d) Impacts the ability of the Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Del Webb Sweetgrass, as such plans are expressed in the Master Plan, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by the Declarant and limiting the establishment by the Declarant of easements necessary to complete Del Webb Sweetgrass shall be expressly included in this provision. Easements that may be established by the Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

(e) Impacts the ability of the Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

The Association shall not exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Properties) to interfere with the rights of the Declarant set forth in this Declaration or to impede access to any portion of the Properties over the streets and other Common Areas within the Properties.

13.9 Sales By Declarant. Notwithstanding the restriction set forth in **Section 2.5**,

Declarant reserves the right to sell Lots to Persons between the ages of 50 and 55, inclusive years of age; provided, such sales shall not affect Del Webb Sweetgrass' compliance with all applicable state and federal laws under which the Properties may be developed and operated as an age-restricted community.

13.10 Activity Cards for Marketing or Promotion. During the Development Period, the Declarant may, in its sole discretion, issue Activity Cards to persons or entities as part of its sales, marketing, or promotional activities.

ARTICLE XIV. DISPUTE RESOLUTION

14.1 Alternative Methods for Resolving Disputes. Declarant, the Association, and their respective officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that each shall act diligently and in good faith to resolve those claims, grievances, or disputes described in **Section 14.2 ("Claims")** using the procedures set forth in **Section 14.3** prior to filing suit in any court.

14.2 Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design, construction, operation or maintenance of improvements on the Properties shall be subject to the provisions of **Section 14.5**.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not constitute a Claim and shall not be subject to the provisions of **Section 14.3**:

(a) any suit, action or proceeding by the Association against any Bound Party to collect Charges payable pursuant to the provisions of **Article VIII**, or to enforce the provisions thereof, or otherwise to enforce the terms and provisions of the Governing Documents;

(b) any suit, action or proceeding by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of **Article VII** and **Article XIII**;

(c) counterclaims brought by the Association in proceedings instituted against it;

(d) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(e) any suit by an Owner concerning the aesthetic judgment of the Architectural Reviewer, the Association, or Declarant pursuant to their authority and powers under **Article IX**;

(f) any suit in which any indispensable party is not a Bound Party;

(g) any internal administrative process for the possible imposition of fines or suspension of rights, services or privileges as provided under **Section 4.3**; and

(h) any suit as to which any applicable statute of limitations would expire within ninety (90) days of giving the Notice required by **Section 14.3(a)**, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in **Section 14.3**.

14.3 Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("**Claimant**") against any other Bound Party ("**Respondent**") (collectively, the "**Parties**") shall notify each Respondent in writing (the "**Notice**"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) Claimant's proposed remedy; and

(iv) that Claimant will meet with Respondent to discuss good faith ways to resolve the Claim.

(b) Negotiation and Mediation. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in the Houston, Texas metropolitan area.

If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a written notice of termination of the mediation proceedings. The notice of termination of mediation shall set forth that the Parties are at an impasse and the date that mediation was terminated.

14.4 Allocation of Costs of Resolving Claims. Each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

14.5 Enforcement of Resolution. After resolution of any Claim through negotiation or mediation, if any Party fails to abide by the terms of any agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply with the procedures set forth in **Section 14.3** or **Section 14.8**. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one (1) non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

14.6 Attorneys' Fees. In the event of an action or proceeding instituted to enforce any of the obligations and provisions contained in the Governing Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such action or proceeding. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs awarded against an Owner shall also be a Benefitted Assessment under **Section 8.8(c)** with respect to that Owner's Lot(s).

14.7 Prerequisites to Actions Against Declarant. Prior to any Owner or the Association filing a civil action, undertaking any action in accordance with **Section 14.3**, or retaining an expert for any such action against Declarant or any Builder or subcontractor of any portion of Del Webb Sweetgrass, the Owner or the Board, as appropriate, shall notify and meet with the Members to discuss the alleged problem or deficiency. Moreover, prior to taking any action, the potential adverse party shall be notified of the alleged problem or deficiency and provided reasonable opportunity to cure the problem.

14.8 Consensus for Association Litigation. Except as provided in this **Section 14.8** after the Development Period, the Association shall not commence a judicial or administrative proceeding without first providing at least twenty-one (21) days written notice to its Members of a special meeting to consider such proposed action. Taking such action, except as otherwise provided in this **Section 14.8**, shall require the vote of Owners of seventy-five percent (75%) of

the total number of Lots in the Association. This Section shall not be amended: (i) without the written consent of the Declarant during the Development Period; and (ii) unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

ARTICLE XV.

OTHER HOMEOWNERS ASSOCIATIONS

15.1 In General. Declarant may determine, in its sole discretion, that it is necessary or appropriate to have a portion of the Properties administered by a homeowners association which is separate and apart from the Association hereunder. For example, the Declarant may record a Supplemental Declaration with respect to a portion of the Properties which will provide for the creation of a not-for-profit corporation to administer and maintain such portions of the Properties. An example of a situation where the Declarant may create a separate homeowners association to administer a portion of the Properties is where the homes which are made part of the Properties will require services which are quantitatively or qualitatively different than those which will be furnished by the Association hereunder with respect to the Common Area or Limited Common Area. For purposes hereof, any separate association created to administer the affairs of a portion of the Properties shall be referred to herein as a “**Local Area Association**.”

15.2 Relationship of the Association and the Local Area Associations. It is intended that each Local Area Association shall operate independent of the Association hereunder. Thus, to the extent that a Local Area Association is granted the power and authority to maintain Lots or portions of the Properties which serve Lots, the Association hereunder shall not be obligated to maintain such areas or furnish such services. Otherwise the provisions of this Declaration shall remain fully applicable to and enforceable against any portion of the Properties which is also subject to the jurisdiction of a Local Area Association, and each Owner shall remain a member of this Association as well as the Local Area Association. Nothing herein shall be deemed to restrict or limit the rights of the Architectural Reviewer as provided in **Article IX**.

ARTICLE XVI.

GENERAL PROVISIONS

16.1 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Properties, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Public Records, and continuing through and including January 1, 2070, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word “change” meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Public Records. Notwithstanding any provision in this **Section**

16.1 to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire (twenty one) 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

16.2 Amendment. This Declaration may be amended or terminated by the recording in the Public Records, of an instrument executed and acknowledged by: (i) during the Development Period, Declarant acting alone; or (ii) following the Development Period, by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (unless Declarant has relinquished such right by written instrument recorded in the Public Records) and Members entitled to cast at least seventy percent (70%) of the number of votes entitled to be cast by members of the Association. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant during the Development Period. No amendment will be effective without the written consent of Declarant, its successors or assigns, unless and until Declarant has relinquished such right by written instrument recorded in the Public Records. Without limitation on Declarant's right to amend the Declaration as provided hereinabove, Declarant may unilaterally amend this Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development; or (e) to correct errors or resolve inconsistencies or ambiguities in this Declaration or any Exhibit hereto or any Supplemental Declaration.

16.3 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration, expressly including its Special Declarant Rights, its to any Person and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other Person in any of its privileges, exemptions, rights, and duties hereunder.

16.4 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

16.5 Interpretation. The provision of this Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Properties, provided, however, that the provisions of this Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Properties. This Declaration will be construed and governed under the laws of the State of Texas.

16.6 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative

with any additional covenants and restrictions provided for in any Supplemental Declaration, and the Association may, but shall not be required to, enforce such additional covenants and restrictions. Nothing herein shall preclude any Supplemental Declaration or other recorded covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

16.7 Use of the Words "Del Webb Sweetgrass". No Person shall use the words Del Webb Sweetgrass or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the terms "Del Webb Sweetgrass" in printed or promotional matter where such term is used solely to specify that particular property is located within Del Webb Sweetgrass and the Association shall be entitled to use the words Del Webb Sweetgrass in its name.

16.8 Del Webb Marks. Any use by the Association of names, marks or symbols of Del Webb Corporation or any of its affiliates (collectively "**Del Webb Marks**") shall inure to the benefit of Del Webb Corporation and shall be subject to Del Webb Corporation's periodic review for quality control. The Association shall enter into license agreements with Del Webb Corporation, terminable with or without cause and in a form specified by Del Webb Corporation in its sole discretion, with respect to permissive use of certain Del Webb Marks. The Association shall not use any Del Webb Mark without Del Webb Corporation's prior written consent.

16.9 Compliance. Every Owner and Resident of any Lot shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, administrative imposition of fines and suspension of services or privileges provided in **Section 4.3** or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Lot Owner(s), subject, however, to the provisions of **Article XIV**.

16.10 Enforcement and Nonwaiver.

(a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce all of the provisions of this Declaration. The Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof.

(b) Every act or omission whereby any provision of the Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association.

(c) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Properties is hereby declared to be a violation of this Declaration and subject to all of the enforcement

procedures set forth herein.

(d) The failure to enforce any provision of the Governing Documents at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Governing Documents.

16.11 Construction. The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

16.12 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such written notice is received by the Board, notwithstanding the transfer of title. The transferor shall also provide the transferee with copies of the Governing Documents applicable to the Lot transferred before the sale is closed or the transfer finalized.

[SIGNATURE PAGE AND ACKNOWLEDGEMENTS FOLLOW]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this
3 day of March, 2011.

DECLARANT:

PULTE HOMES OF TEXAS, L.P., a Texas
limited partnership

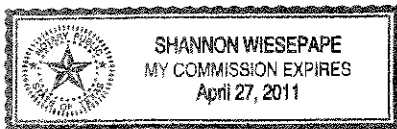
By: PN I, Inc., a Nevada corporation, its General
Partner

By: [Signature]
Printed Name: CHRIS CHEW
Title: DIVISION VICE PRESIDENT

THE STATE OF Texas §
COUNTY OF Harris §

This instrument was acknowledged before me on the 3 day of March, 2011
by Chris Chew, Division Vice President of PN I, Inc., a Nevada
corporation, General Partner of Pulte Homes of Texas, L.P., a Texas limited partnership, on
behalf of said corporation and limited partnership.

(Seal)

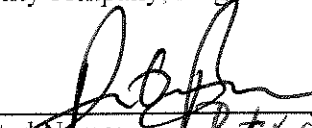


Shannon Wiesepepe
Notary Public Signature

**ACKNOWLEDGED, AGREED TO AND
CONFIRMED BY CWR:**

CW RICHMOND, L.P., a Texas limited partnership

By: CW Richmond GP, L.L.C., a Texas limited liability company, its general partner

By: 
Printed Name: Peter O. Barnhart
Title: Vice President

THE STATE OF Texas §
COUNTY OF Harris §

This instrument was acknowledged before me on the 3 day of March, 2011 by Peter O. Barnhart, Vice President of CW Richmond GP, L.L.C., a Texas limited liability company, General Partner of CW Richmond, L.P., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(Seal)



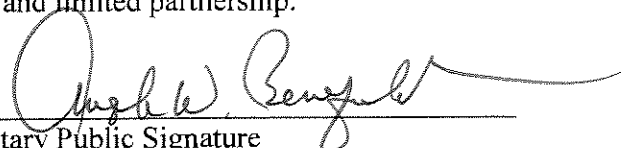

Notary Public Signature

EXHIBIT "A"

DESCRIPTION OF LAND

EXHIBIT A

January 19, 2006
Job No. 1081-0201-202

DESCRIPTION OF 495.538 ACRES

Being 495.538 acres of land located in the Jane H. Long League, Abstract 55, Fort Bend County, Texas, more particularly being all of the residue that certain called of 502.37 acre tract conveyed to H. B. Pyle by instrument of record in Volume 288, Page 185, Deed Records, of said Fort Bend County (F.B.C.D.R.), the ownership of the residue of said 502.37 acres listed as follows: John Bradford, individually, 6.25% undivided interest, Howard Pyle Bradford, individually, 6.25% undivided interest, and Bette Bradford Burton, individually, undivided 6.25% interest as evidenced by that certain Affidavit of Ownership of record under File No. 2003004172, Official Public Records, Fort Bend County, Texas, (F.B.C.O.P.R.); Howard Pyle Bradford, Floyd John Bradford and Bette Bradford Burton, Trustees, undivided 31.25% interest by instrument of record under File No. 1899110558, of said F.B.C.O.P.R.; Frank A. Males, Sr. as Trustee of The Males Trust, undivided 6.4383839% interest by instruments of record under File Nos. 2004016263 and 2005138583 of said F.B.C.O.P.R.; John T. Jakubik and Jane M. Jakubik as Co-Trustees of The Jakubik Family Trust, undivided 14.520202% interest by instruments of record under File Nos. 2003177924 and 2005138583, of said F.B.C.O.P.R.; Betty C. Tieman, as Trustee of The Tieman Trust, undivided 14.520202% interest by instruments of record under File Nos. 2004018407 and 2005138583 of said F.B.C.O.P.R.; and Frank Allen Males Jr. and Barbara Janet Males as Trustees of The Males Family Trust, undivided 14.520202% interest, by instruments of record under File Nos. 2004029875 and 2005138583 of said F.B.C.O.P.R., said 495.538 acres being more particularly described by meters and bounds as follows (all bearings based on the Texas State Plane Coordinate System, South Central Zone, NAD 83 (1993 adj.), based on Oak Hill Monument, having published grid coordinates of X=2999638.64, Y=13803374.58);

BEGINNING at a ½-inch iron pipe (top bent) found marking the most southerly corner of the residue of said 502.37 acres and the southwest corner of that certain called 1.928 acre tract conveyed to Dr. Stanley E. Thompson, et ux by instrument of record in Volume 536, Page 819, F.B.C.D.R., and on the northerly right-of-way line of F.M. 762 (a.k.a. Richmond Thompson Road) and from which a found 5/8-inch iron rod bears South 66° 16' 39" West, 0.28 feet;

495.536 Acres

January 19, 2006
Job No. 1061-0001-202

Thence, with the common line of said 502.37 acres and F.M. 762, North 37° 33' 57" West, 3227.40 feet to a ¾-inch iron pipe (control monument) found marking the most westerly corner of said 502.37 acres and being the most westerly southerly corner of that certain called 125.86 acre tract conveyed to Fort Bend County Club by instrument of record in Volume 273, Page 329, F.B.C.D.R.;

Thence, with the common line of said 502.37 and 125.86 acre tracts, North 45° 32' 48" East, 388.25 feet to a ¾-inch iron pipe (control monument) found for corner;

Thence, continuing with said common line, South 67° 43' 36" East, 1124.85 feet to a ¾-inch iron pipe (top bent) found for corner;

Thence, with the common line of aforementioned 502.37 and 125.86 acre tracts and the east line of Country Club Cemetery, North 16° 31' 22" East, 451.14 feet to a point for corner, an angle point in a fence;

Thence, with the east line of said Country Club Cemetery and the common line of said 502.37 and 125.86 acre tracts, North 23° 31' 29" East, 648.16 feet to a 5/8-inch iron rod with plastic cap marked "LJA ENG." set for corner;

Thence, with the common line of said 502.37 and 125.86 acre tracts, North 23° 10' 15" East, 916.88 feet to a 1-inch iron pipe (control monument) found for corner, same being the southwest corner of that certain tract of land conveyed to Joe C. Westendorff, et ux by instrument of record in File No. 1899020607, Official Public Records, of aforementioned Fort Bend County, (F.B.C.O.P.R.);

Thence, with the common line of said 502.37 acre tract and that tract of land in File No. 1989020607, South 65° 58' 29" East, 2491.50 feet to fence post found for corner, a reentrant corner of said 502.37 acre tract and the southeast corner of said tract of land in File No. 1989020607;

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Title Data LW 70116000 FB 2006030206.010

495.538 Acres

January 19, 2006
Job No. 1061-0001-202

Thence, continuing with said common line, North 23° 35' 37" East, 2783.01 feet to a 3/4-inch iron pipe found for corner, the northeast corner of said tract of land in File No. 1999020607 and the southeast corner of that certain called 97.831 acre tract conveyed to Joe C. Wessendorff by instrument of record in Volume 1284, Page 534, F.B.C.D.R.;

Thence, with the common line of aforementioned 502.37 and 97.881 acre tracts, North 25° 24' 47" East, 254.48 feet to a 2-inch iron pipe (control monument) found marking the most northerly corner of said 502.37 acre tract and being the southwest corner of that certain tract of land conveyed to Sam Mellon by instrument of record in Volume 382, Page 215, F.B.C.D.R.;

Thence, with the common line of said 502.37 acre tract and said tract of land in Volume 382, Page 215, South 68° 44' 13" East, 787.63 feet to a 5/8-inch iron rod with plastic cap marked "LJA ENG." set for corner;

Thence, continuing with said common line, South 65° 45' 16" East, 286.53 feet to a 2-inch iron pipe found marking the southeast corner of said tract of land in Volume 382, Page 215, and the southwest corner of that certain called 112.539 acre tract conveyed to Joe C. Wessendorff by instrument of record in Volume 2507, Page 2306, Official Records, of aforementioned Fort Bend County (F.B.C.D.R.);

Thence, with the common line of aforementioned 502.37 and 112.539 acre tracts the following three (3) courses:

- 1) South 60° 47' 37" East, 623.29 feet to a 25-inch hackberry found for corner;
- 2) South 64° 27' 17" East, 573.03 feet to a 5/8-inch iron rod with plastic cap marked "LJA ENG." set for corner;
- 3) South 65° 41' 06" East, 1311.54 feet to a fence post found marking the northeast corner of aforementioned 502.37 acre tract, the southeast corner of aforementioned 112.539 acre tract and on the west line of that certain called

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Title Data 08 10116020 PB 2066016008.011

495.538 Acres

January 19, 2006
Job No. 1001-0001-202

205.5148 acre tract conveyed to Joe C. Wessendorf, et ux by instrument of record in Volume 2289, Page 611, F.B.C.O.R.;

Thence, with the easterly line of said 502.37 acre tract and the westerly line of said 205.5148 acre tract, South 24° 37' 11" West, at 757.94 feet pass the common west corner of said 205.5148 acre tract and that certain called 72.839 acre tract conveyed to W. M. Wheless, III, Trustee by instrument of record in Volume 1097, Page 859, F.B.C.O.R. and from which a found 3/4-inch iron pipe bears South 65° 22' 49" East, 0.29 feet, at 1880.16 feet pass the common west corner of said 72.839 acre tract and that certain called 2.629 acre tract conveyed to Williams Way Partnership, LTD. by instrument of record in File No. 9680818, F.B.C.O.R. and from which a found 3/4-inch iron pipe bears South 65° 22' 49" East, 0.50 feet and continuing with the easterly line of said 502.37 acre tract and the westerly lines of said 2.629 acre tract and that certain called 49.36 acre tract conveyed to Williams Way Partnership, LTD. by instrument of record in said File No. 9680818, in all a total distance of 2699.78 feet to a fence post found for corner;

Thence, with the common line of said 502.37 and 49.36 acre tracts, South 63° 13' 03" East, 9.63 feet to a fence post found marking the northwest corner of that certain called 5.36 acre tract conveyed to Williams Way Partnership, LTD. by instrument of record in said File No. 9680818;

Thence, with the common line of said 502.37 and 5.36 acre tracts the following three (3) courses:

- 1) South 12° 15' 01" West, 41.25 feet to a 5/8-inch iron rod with plastic cap marked "LJA ENG." set for corner;
- 2) South 23° 12' 02" West, 882.75 feet to a fence post found for corner;
- 3) South 25° 17' 35" West, 310.13 feet to a fence post found marking the most easterly southeast corner of aforementioned 502.37 acre tract, the southwest corner of aforementioned 5.36 acre tract and on the north line of that certain

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Table Data ON 10716020 FB 2006110318.012

495.538 Acres

January 19, 2006
Job No. 1061-0001-202

called 458 acres conveyed to A. P. George by instrument of record in Volume 135, Page 280, F.B.C.D.R.;

Thence, with a south line of said 502.37 acre tract, the north line of said 458 acre tract and the north line of that certain called 41.3845 acre tract conveyed to Love Partnership Interests, L.P. by instrument of record in File No. 1999070538, F.B.C.O.P.R., North 88° 05' 11" West, 4148.83 feet to a 1/2-inch iron rod (control monument) found marking a reentrant corner of said 502.37 acre tract and the northwest corner of said 41.3845 acre tract;

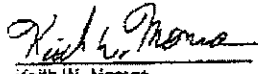
Thence, with the common line of said 502.37 and 41.3845 acre tracts, South 23° 28' 01" West, 2835.54 feet to a 5/8-inch iron rod with plastic cap marked "LIA ENG." set for corner, same being the northeast corner of aforementioned 1.928 acre tract;

Thence, with the common line of said 502.37 and 1.928 acre tracts, North 50° 45' 56" West, 232.65 feet to a 1/2-inch iron pipe found marking a reentrant corner of said 502.37 acre tract and the northwest corner of said 1.928 acre tract;

Thence, continuing with said common line, South 32° 34' 37" West, 262.57 feet to the POINT OF BEGINNING and containing 495.538 acres of land.

This description was prepared from a survey prepared by the undersigned dated January 19, 2006.

LIA Engineering & Surveying Inc.


Keith W. Monroe
Registered Professional Land Surveyor
Texas Registration No. 4797



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TITLE DATA ON 00716200 FB 2006010308.010

2st - Armbrust + Brown LLP
100 Congress Ave Ste 1300
Austin TX 78701

411620-2 02/20/2011

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



2011 Mar 25 01:35 PM

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Dianne Wilson COUNTY CLERK

FT BEND COUNTY TEXAS

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