

42

AFTER RECORDING RETURN TO:

Robert D. Burton
Winstead, PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
Email:

WESTMINSTER TITLE AGENCY
2557 SW Grapevine Pkwy, Ste 100
Grapevine, Texas 76051

**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

BROUGHTON

**THIS DOCUMENT AMENDS AND RESTATES THAT CERTAIN DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BROUGHTON
RECORDED IN VOLUME 16073, PAGE 335, OFFICIAL PUBLIC RECORDS OF
TARRANT COUNTY, TEXAS, AS AMENDED.**

Declarant: TOLL DALLAS TX LLC, a Texas limited liability company

This Amended and Restated Declaration of Covenants, Conditions and Restrictions may be used only in connection with the residential community known as Broughton in Tarrant County, Texas and the operation of Broughton Maintenance Association, Inc.

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS.....2

ARTICLE 2. USE AND CONSTRUCTION RESTRICTIONS.....5

 2.01 General.....5

 2.02 Subdividing.....6

 2.03 Hazardous Activities.....6

 2.04 Insurance Rates.....6

 2.05 Noise.....6

 2.06 Animals - Household Pets.....7

 2.07 Rubbish and Debris.....7

 2.08 Maintenance and Use.....7

 2.09 Minimum Square Footage.....8

 2.10 Structure Materials; Exterior Items and Surfaces.....8

 2.11 Driveways & Garages.....9

 2.12 Fences and Walls.....9

 2.13 Landscaping.....10

 2.14 Mailboxes and Address Plaques.....11

 2.15 Antennae.....11

 2.16 Location of Permitted Antennas.....11

 2.17 Signs.....12

 2.18 Tanks.....12

 2.19 Temporary Structures.....13

 2.20 Unsightly Articles; Vehicles.....13

 2.21 On Street Parking; Use of Common Area.....13

 2.22 Mobile Homes, Travel Trailers and Recreational Vehicles.....14

 2.23 Basketball Goals; Permanent and Portable.....14

 2.24 Compliance with Restrictions.....14

 2.25 Liability of Owners for Damage to Common Area.....15

 2.26 No Warranty of Enforceability.....15

 2.27 No Tennis or Recreational Courts; Playscapes.....15

 2.28 Approval for Construction; Additional Restrictions.....15

 2.29 Use.....15

 2.30 Rentals.....16

 2.31 Alteration or Removal of Improvements.....16

 2.32 Construction Activities.....17

 2.33 Clotheslines; Window Air Conditioners.....17

 2.34 Dumping.....17

 2.35 Restriction on Use of Common Area.....17

 2.36 Declarant Exemption.....17

ARTICLE 3. BROUGHTON MAINTENANCE ASSOCIATION, INC.....18

 3.01 Organization.....18

3.02	Membership.....	18
3.03	Governance	19
3.04	Voting Rights	19
3.05	Powers.....	19
3.06	Acceptance of Common Area.....	22
3.07	Indemnification	22
3.08	Insurance	23
3.09	Protection of Declarant's Interests	23
ARTICLE 4.	INSURANCE	23
4.01	Insurance	23
4.02	Restoration	24
4.03	Mechanic's and Materialmen's Lien.....	24
ARTICLE 5.	COVENANT FOR ASSESSMENTS	25
5.01	Assessments.....	25
5.02	Maintenance Fund.....	25
5.03	Regular Annual Assessments.....	25
5.04	Special Assessments.....	25
5.05	Individual Assessments.....	26
5.06	Amount of Assessment.....	26
5.07	Late Charges.....	26
5.08	Owner's Personal Obligation for Payment of Assessments.....	26
5.09	Assessment Lien and Foreclosure.....	26
5.10	Exempt Property.....	28
5.11	Fines and Damages Assessment	28
ARTICLE 6.	COMMITTEE.....	29
6.01	Construction of Improvements	29
6.02	Architectural Control by Declarant	29
ARTICLE 7.	MORTGAGE PROVISIONS.....	32
7.01	Notice of Action.....	32
7.02	Examination of Books	33
7.03	Taxes, Assessments and Charges.....	33
ARTICLE 8.	GENERAL PROVISIONS.....	33
8.01	Term	33
8.02	Eminent Domain	33
8.03	Amendment	34
8.05	Enforcement.....	35
8.06	Higher Authority.....	35
8.07	Severability.....	35
8.08	Conflicts.....	35
8.09	Gender.....	35
8.10	Damage and Destruction.....	35

8.11 Notices36
8.12 View Impairment36
ARTICLE 9. EASEMENTS36
9.02 Reserved Easements.....36
9.03 Easements.....37
ARTICLE 10. SPECIAL DECLARANT RIGHTS.....37
10.01 Special Declarant Rights.....37
10.02 Assignment of Declarant's Rights.....38

Unofficial Copy

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BROUGHTON

RECITALS:

A. Broughton Limited Partnership, a Texas limited partnership ("**Broughton**"), previously executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Broughton recorded in Volume 16073, Page 335, Official Public Records of Tarrant County, Texas, as amended (the "**Original Declaration**").

B. Pursuant to the terms and provisions of the certain Assignment of Declarant's Rights, recorded as Document No. D211241212, Official Public Records of Tarrant County, Texas, Toll Dallas TX LLC, a Texas limited liability company ("**Toll**"), presently holds the rights of the "**Declarant**" under the Original Declaration. Accordingly, all references herein to Declarant shall mean and refer to Toll Dallas TX LLC acting in such capacity, and its successors and assigns.

C. Pursuant to Section 5.15 of the Original Declaration, the Declarant, acting alone, being the owner of at least one (1) lot within the Addition (as defined in the Original Declaration) may, in its sole discretion, amend the Original Declaration.

D. Declarant desires to amend certain provisions of the Original Declaration, and restate the Original Declaration in its entirety, as set forth herein below.

NOW, THEREFORE, it is hereby declared that: (i) those portions of the Property (as defined below), which had heretofore been subjected to the Original Declaration, shall be held, sold, conveyed, used and occupied subject to the following covenants, conditions and restrictions which are for the purposes of protecting the value and desirability of the Property (as defined below) and which shall run with the Property and shall be binding upon all parties, their heirs, successors and assigns, having right, title or interest in or to the Property or any part thereof, and shall inure to the benefit of each owner thereof; (ii) all dedications, limitations, restrictions and reservations shown on a Plat (as defined below) and all grants and dedications of easements, rights-of-way, restrictions and related rights made prior to any portion of the Property becoming subject to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Broughton (this "**Declaration**") are hereby incorporated into this Declaration for all purposes as if fully set forth herein and shall be construed as adopted in each and every contract, deed or conveyance; (iii) each contract or deed conveying the Property shall conclusively be held to have been executed, delivered and accepted subject to this Declaration, regardless of whether the same is set out in full or by reference in said contract or deed; and (iv) upon the recording of this Declaration, the Original Declaration shall be amended, restated and replaced in its entirety by the terms and provisions of this Declaration.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

ARTICLE 1. DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

"Committee" means the committee created pursuant to this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot.

"Articles" means the Articles of Incorporation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

"Assessment" or **"Assessments"** means assessments imposed by the Association under this Declaration.

"Assessment Unit" has the meaning set forth in *Section 5.06*.

"Association" means Broughton Maintenance Association, Inc., a Texas non-profit corporation, created to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Declaration.

"Board" means the Board of Directors of the Association.

"Bylaws" mean the Bylaws of the Association as adopted and as amended from time to time.

"City" means the City of Colleyville.

"Common Area" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including without limitation, all property designated as open space lots on the Final Plat of Broughton filed on October 22, 2002 in the Official Public Records of Tarrant County, Texas (the **"Original Plat"**). Common Area includes any property that the Association holds under a lease, license, or any easement in favor of the Association.

"Declarant" means TOLL DALLAS TX LLC, a Texas limited liability company, its successors, assigns, or affiliates; provided that any assignment(s) of the rights of TOLL DALLAS TX LLC, a Texas limited liability company, as Declarant, must be expressly set forth in writing and recorded in the Official Public Records of Tarrant County, Texas.

“Design Guidelines” means the standards for design, construction, landscaping, and exterior items, if any, placed on any Lot adopted pursuant to *Section 6.04(c)*, as the same may be amended by the Committee from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. Notwithstanding anything in this Declaration to the contrary, the Committee will have no obligation to establish Design Guidelines.

“Development and Sale Period” means the period of time that Declarant owns or has the option to acquire all or any portion of the Property. Declarant may terminate the Development and Sale Period by an instrument executed by Declarant and recorded in the Official Public Records of Tarrant County, Texas. The Development and Sale Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

“Improvement” means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature or altered, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping (including exterior lighting sculpture and other outdoor art, and outdoor recreational equipment), mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

“Lot” means each platted residential lot within the Property, but excludes Common Area.

“Manager” has the meaning set forth in *Section 3.05(h)*.

“Members” means every person or entity that holds membership privileges in the Association.

“Mortgage” or **“Mortgages”** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

“Mortgagee” or **“Mortgagees”** means the holder(s) of any Mortgage(s).

“Owner” means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage or an owner of only a mineral interest (with or without surface rights related solely to the mineral interest).

Person means any individual or entity having the legal right to hold title to real property.

Plat means a subdivision plat of any portion of the Property as recorded in the Official Public Records of Tarrant County, Texas, and any amendments or modifications thereto.

Property means Lots 1 through 53, Block A, and Lots 3 through 29, Block B, Broughton, a subdivision located in Tarrant County, Texas, according to the Original Plat recorded in Cabinet A, Slide 7868 and 7869, in the Official Public Records of Tarrant County, Texas.

Restrictions means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, or in any rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time. Table 1 includes a summary of the Restrictions.

Resident means an occupant or tenant of a Lot, regardless of whether the person owns the Lot.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

TABLE 1: RESTRICTIONS	
Declaration (recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
Articles of Incorporation: (filed with the Secretary of State)	The Articles of Incorporation of the Association, which establish the Association as a not-for-profit corporation under Texas law.
By-Laws: (adopted by the Association)	The By-Laws of the Association which govern the Association's internal affairs, such as elections, meetings, etc.
Design Guidelines: (if adopted)	The design standards and architectural and aesthetics guidelines adopted pursuant to <i>Article 5</i> , which govern new construction of Improvements and modifications thereto.
Rules: (adopted by the Board of the Association)	The use restrictions and rules of the Association adopted pursuant to <i>Section 3.05(a)</i> , which regulate use of property, activities, and conduct within the Property.
Board Resolutions: (adopted by the Board of the Association)	The resolutions adopted by the Board which establish rules, policies, and procedures for internal governance and activities of the Association.

ARTICLE 2.

USE AND CONSTRUCTION RESTRICTIONS

2.01 **General.** All Lots within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to: (i) the applicable conditions, restrictions, reservations, and easements contained in this Declaration; (ii) the Design Guidelines, as amended or modified as to such Lots; and (iii) any rules and regulations adopted by the Board.

Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with this Declaration and the Design Guidelines is not a substitute for compliance with such ordinances and regulations. Neither the Declaration nor the Design Guidelines purport to list or describe each restriction which may be applicable to a Lot located within the Property. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot prior to submitting plans to the Committee for approval. Furthermore, approval by the Committee should not be construed by the Owner that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the Committee.

2.02 **Subdividing.** Unless otherwise approved by the Declarant, Lot may be further divided or subdivided as to increase the number of Lots within the Property, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Board. Declarant may cause, without limitation, Lots to be combined, modified, and re-platted for the purpose of creating new Lot lines and boundaries.

2.03 **Hazardous Activities.**

(a) No activities may be conducted on or within the Property and no Improvements constructed on any portion of the Property which, in the opinion of the Committee, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, activities that are expressly prohibited include (1) the use or discharge of firearms or fireworks upon any portion of the Property, unless discharged in conjunction with an event approved in advance by the Board or such event is not prohibited by law; (2) the use of storage of gasoline, oil or any similar type of flammable liquids in other than closed tanks with capacities of five (5) gallons or less within an enclosed structure or permanently screened from view; provided, however, only such liquids and gases as are customarily used for residential purposes shall be allowed within the Property; (3) any activities which may be offensive or hazardous by reason of odor, fumes, dust, smoke, noise, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion; (4) hunting or trapping; (5) open fires, except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes; (6) the use of bows and arrows, crossbows, slingshots, darts or other projective devices; or (7) the discharge or leakage of any type of hazardous or toxic chemical or material, such as oil, fertilizers, pesticides or herbicides; provided, however, only such materials as are customarily used for residential purposes shall be allowed within the Property. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

(b) No fertilizers, pesticides or herbicides other than those generally available for consumer use and approved by a local, state, or federal agency, such as the Food and Drug Administration, for the purpose intended shall be placed, used or stored on any Lot. All Owners using any such materials shall strictly comply with all laws and instructions provided with such materials and shall take proper precautions placing, using and storing such materials so that such materials are contained at all times and do not result in the unnecessary discharge thereof onto any other Lot.

2.04 **Insurance Rates.** Nothing may be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area or the Improvements located thereon, without the prior written approval of the Board.

2.05 **Noise.** No horns, whistles, bells, or other sound devices (other than security

devises used exclusively for security purposes) may be located, used, or placed on any of the Property. No noise or other nuisance will be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

2.06 **Animals - Household Pets.** No animals, including snakes, pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Property. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner's residence, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by law. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the owner, upon written notice, may be required to remove the pet from the Property.

2.07 **Rubbish and Debris.** No rubbish or debris of any kind may be placed or permitted to accumulate on or within the Property, and no odors will be permitted to arise therefrom so as to render all or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view of all adjacent property and public and private rights-of-way; provided, however, that garbage containers shall be permitted to be placed outside of enclosed structures and may be removed from screened areas a maximum of two (2) times each week, for no longer than twenty-four (24) hours each time for garbage collection. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.08 **Maintenance and Use.** No Owner or Resident shall carry on, or permit to be carried on, any practice on his Lot or on the Property which unreasonably interferes with the quiet enjoyment and proper use of another Owner of his Lot or the Common Area, or which creates or results in a hazard or nuisance on the Property. The Owner of each Lot will have the duty and responsibility, at its sole cost and expense, to keep such Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Board, in its sole discretion, will determine whether a violation of the maintenance obligations set forth in this Section 2.08 has occurred. Such maintenance includes, but is not limited to the following, which must be performed in a timely manner, as determined

by the Board, in its sole discretion:

- (a) Prompt removal of all litter, trash, refuse, and wastes.
- (b) Lawn mowing.
- (c) Tree and shrub pruning.
- (d) Watering.
- (e) Keeping exterior lighting and mechanical facilities in working order.
- (f) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (g) Keeping sidewalks and driveways in good repair.
- (h) Complying with all government, health and police requirements.
- (i) Repainting of all Improvements.
- (j) Repair of exterior damage, and wear and tear to Improvements.

2.09 **Minimum Square Footage.** The total air-conditioned living area in the main residential structure on a Lot, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be not less than 3,000 square feet.

2.10 **Structure Materials, Exterior Items and Surfaces.** The exterior walls (excluding doors and windows), below the first floor ceiling plate, of each main residential structure constructed or placed on a Lot shall have the minimum coverage of not less than eighty percent (80%) brick or brick veneer, stone or stone veneer, or stucco that is approved by the Committee. No single wall of any main residential structure constructed or placed on a Lot shall be less than seventy-five percent (75%) brick or brick veneer, stone or stone veneer, or stucco that is approved by the Committee, unless the wall is on an outdoor or open porch, patio, breezeway or courtyard. The exterior portion of any fireplace chimney shall be one hundred percent (100%) brick or brick veneer, stone or stone veneer, or stucco that is approved by the Committee. No material on the exterior of any building or other structure or Improvement except wood, hardboard or stucco, shall be stained or painted without the prior written approval of the Committee. All wood, hardboard or stucco used on the exterior of a main residential structure and/or any ancillary structures or Improvements located on a Lot must be painted or stained in a color compatible with the exterior design and materials used in the exterior construction of the main residential structure located on such Lot, and as approved by the Committee.

The minimum roof pitch required is 8:12, except for porch, shed or other architectural roofing elements. All roofs of the main residential structure and/or any other buildings or

structures located on a Lot are required to have a minimum thirty (30) year warranty shingle or equivalent. The color of roof shingles shall be weathered wood or a similar color. All roofing materials must be fireproof, and are subject to approval of the Committee. The use of various roofing materials within the Property shall be permitted including 3-tab composition roofs rated for a minimum thirty (30) year life and/or tile roofs; provided, however, no roofing material, except for exact-kind replacement material, shall be installed without first obtaining the Committee's prior written approval.

In addition, roofs of buildings may be constructed with "Energy Efficiency Roofing" with the advance written approval of the Committee. For the purpose of this Section, "Energy Efficiency Roofing" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. The Committee will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in the Restrictions. In conjunction with any such approval process, the Owner should submit information which will enable the Committee to confirm the criteria set forth in this Section. Any other type of roofing material shall be permitted only with the advance written approval of the Committee. Any wood shingles must be rated by the Texas Department of Insurance as meeting fire retardant standards.

2.11 Driveways & Garages. Unless otherwise approved by the Committee, each residence shall have a detached or an attached garage suitable for parking not less than two (2) or more than four (4) standard size automobiles, which garage conforms in design and materials with main structure. Any garages with vehicular access doors or openings facing a public right-of-way must be set back a minimum of twenty feet (20') from the building setback line parallel to the public right-of-way which such garage vehicular access doors or openings are facing. Any vehicular access doors facing a public right-of-way must be cedar-clad and stained either clear or medium brown, unless otherwise approved in writing by the Committee. Garage doors shall be closed at all times except to allow entry and exit of vehicles and persons and except cleaning of or storing in the garage is occurring. All driveways shall be surfaces with concrete or other substance approved by the Committee. All driveways must be accessed from the front of the lot unless otherwise approved by the Committee. All driveways and driveway aprons or parking aprons must be kept free of any storage of vehicles or other material and must be kept clean of any dirt, debris, or stain. For purposes of this Section, "storage" shall mean the parking or placing of any object or material for more than one day.

2.12 Fences and Walls. Any fence or wall shall: (i) comply with City requirements, including those regarding height, location and materials; (ii) not extend nearer to the front street than five (5') feet behind the front of the house without the prior written approval of the

Committee; (iii) be constructed according to architectural design, materials, finish, and methods, including site installation, approved by the Committee; (iv) be constructed so that the sides containing the structural supports are not visible from any public right-of-way unless approved by the Committee; (v) be not less than six (6') feet in height or more than eight (8') feet in height as measured from existing ground level unless approved by the Committee; (vi) be constructed on the property lines, except for front facing fences, which shall comply with subclause (ii) above, and except for any fence located parallel to the side property line of a corner lot adjacent to a street, which shall be set along or adjacent to the side yard setback line, and board-on-board construction with a 2x6 cap, using cedar pickets and metal poles; and (vii) constructed using cedar pickets and stained either a clear or medium brown. Notwithstanding the foregoing, fencing on the back of lots facing greenbelts and any fencing visible from a public right of way shall be constructed of wrought iron fencing five (5') foot in height. Fences may be privately installed but must be constructed to professional levels of quality approved by the Committee. The design and specifications for building fences to the extent not specifically provided herein may be specified by the Committee.

2.13 **Landscaping.** Each Lot shall include at least (a) two (2) trees with a caliper of three inches (3") or greater within the front yard of each Lot, at least two (2) trees with a caliper of three inches (3") or greater within the side yard of each corner Lot, and at least two trees of this caliper shall be maintained within the front yard of each Lot and at least two additional trees of this caliper shall be maintained in the side yard of each corner Lot, at all times thereafter, and (b) otherwise comply with any Design Guidelines promulgated by the Committee (collectively, the "Minimum Landscaping Requirements"); provided however, neither Declarant or the Committee shall have any right or obligation to review and/or approve, and the Minimum Landscaping Requirements shall not govern or apply to any landscaping installed by an Owner on a Lot in areas screened (by fencing or otherwise) and not visible from any other Lot, street, public right-of-way or common area within the Property. Any trees required to be installed on a Lot pursuant to the Minimum Landscape Requirements shall be replaced by the Lot Owner if said tree(s) does/do not survive. Tree type may be selected by the Committee and a list of approved landscaping materials may be incorporated into the Minimum Landscaping Requirements established by the Committee. Declarant or the Association shall have the right (but has no obligation) to grade, plant and/or landscape and maintain, repair, replace and/or change such grading, planting and landscaping on any portion of the Lot which is located outside the building, setback or sight lines, including all public rights-of-way and easements located on or contiguous to any Lot, as established by the Plat, this Declaration or any governmental entity. Landscaping of a Lot, which must include a sprinkler system in the front yard (and on corner Lots, sprinkler systems for side yards visible from any public right-of-way), shall be completed within thirty (30) days after the date on which the house receives a Certificate of Occupancy from the City. Each Owner of a Lot shall use reasonable efforts to preserve, keep and maintain the landscaping in a healthy and attractive condition. No wooden retaining walls shall be permitted in the front yard or where visible from any public right-of-way. No exterior spotlighting shall be permitted which creates a nuisance as determined by the Board for adjacent homeowners.

2.14 **Mailboxes and Address Plaques.** Mailboxes, mail stations, and address plaques shall be constructed and located in accordance with the specifications of the Committee and according to requirements of the City and the U.S. Postal Service. There presently exists a uniform standard of mailboxes, mail stations, and address plaques, and future mailboxes, mail stations, and address plaques, and any replacements thereof, shall be in conformity with existing standards, as reasonably determined by the Committee.

2.15 **Antennae.** Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, may be erected, maintained or placed on a Lot without the prior written approval of the Committee; provided, however, that:

(a) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that are one meter or less in diameter;

(b) 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

(c) an antenna that is designed to receive television broadcast signals; (collectively, (a) through (c) 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 Committee, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property.

2.16 **Location of Permitted Antennas.** A Permitted Antenna may be installed solely on the Owner's Lot and may not encroach upon any street, Common Area, or any other portion of the Property. 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 Property, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Committee are as follows:

(a) Attached to the back of the 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

(b) Attached to the side of the 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 Committee may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

Satellite dishes one meter or less in diameter, e.g., DirectTV or Dish satellite dishes, are permitted, HOWEVER, Owners are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the Committee from time to time. Please contact the Committee for the current rules regarding installation and placement.

2.17 **Signs.** No sign of any kind may be displayed to the public view on any Lot without the prior written approval of the Committee, except for:

(a) Signs which are part of the Declarant's overall marketing or construction plans or activities for the Property;

(b) "For Sale" signs on a Lot placed thereon by the Owner of such Lot;

(c) permits as may be required by legal proceedings;

(d) permits as may be required by any governmental entity;

(e) political signs may be erected provided the sign: (i) is erected no earlier than the 90th day before the date of the election to which the sign relates; (ii) is removed no later than the 10th day after the date of the election to which the sign relates; and (iii) is ground-mounted. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited;

(f) a "no soliciting" sign near or on the front door to the residence constructed on the Lot, provided, that the sign not exceed twenty-five (25) square inches; and

(g) a religious item on the entry door or door frame of a residence (which may extend beyond the outer edge of the door frame), provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches.

(h) Representatives of the Association may remove any sign not otherwise permitted by this Section 2.17 or approved in advance by the Committee.

2.18 **Tanks.** Unless installed by the Declarant in conjunction with development of the Property for residential purposes, the Committee must approve any tank used or proposed in connection with a single-family residential structure, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No elevated tanks of any kind may be erected, placed or permitted on any Lot without the advance written approval of the Committee. All tanks must be screened so as not to be visible from any other portion of the Property. This provision will not apply to a tank used to operate a standard residential gas grill.

2.19 **Temporary Structures.** No tent, shack, or other temporary building, improvement, or structure may be placed upon the Property without the prior written approval of the Committee; 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. Any outbuilding permitted hereunder may not be used for habitation, no window heating or air conditioning unit may be installed to serve any permitted outbuilding, and no utilities, including electricity, gas, cable, or telephone, may be extended to serve any permitted outbuilding. The Committee will be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall be permitted to maintain sales and/or construction trailers.

2.20 **Unightly Articles; Vehicles.** No article deemed to be unsightly by the Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats or other aquatic vehicles, tractors, campers, wagons, buses, motorcycles, motor scooters, all terrain vehicles and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Notwithstanding the foregoing provision, all terrain vehicles, motor scooters, and motorized mini-bikes may not be used on the Property or on any road or street within the Property. Lot Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. Service areas, storage areas, compost piles shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any roadway within the Property.

Recreational vehicles, i.e., motor homes and travel trailers, may not be parked or stored in such manner as to be visible from any other portion of the Property for any period in excess of forty-eight (48) consecutive hours during each three (3) month period.

No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Committee.

2.21 **On Street Parking; Use of Common Area.** No vehicle may be parked on any road or street within the Property for more than twenty-four (24) hours unless in the event of an emergency. "Emergency" for purposes of the foregoing sentence shall mean an event which jeopardizes life or property. "Parked" as used herein shall be defined as a vehicle left

unattended by a licensed operator for more than thirty (30) consecutive minutes. Except as otherwise designated by Declarant or the Board, motor vehicles including, but not limited to, mini-bikes, snowmobiles and motorcycles, may not be driven on the Common Area by any Owner, occupant or guest.

2.22 **Mobile Homes, Travel Trailers and Recreational Vehicles.** No mobile homes may be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time.

2.23 **Basketball Goals; Permanent and Portable.** Permanent basketball goals are not permitted to be placed on any Lot. Portable basketball goals are permitted. Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals must be approved by the Committee prior to being placed on any Lot.

2.24 **Compliance with Restrictions.** Each Owner shall maintain their Lot and any and all Improvements thereon in a safe, clean and sanitary manner and condition and in good order and repair. Each Owner, Resident, and their family, occupants of a residence, tenants, and the guests, invitees, and licensees of the preceding must comply strictly with the provisions of the Restrictions, the Declaration and Bylaws as the same may be amended from time to time. Failure to comply with any of the Restrictions will constitute a violation of the Restrictions, may result in a fine against the Owner or Resident in accordance with *Section 5.11* 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 Declarant, the Manager, the Board on behalf of the Association, the Committee, 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 Restrictions, 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. The Association shall have the right (but not the obligation) to enter upon a Lot to maintain such Lot or Improvements located thereon after giving the Owner at least thirty (30) calendar days written notice to cure any maintenance problems or deficiencies. In the event that the Association exercises its right of entry for maintenance purposes, the Association shall have the right to assess the particular Owner for the cost of such maintenance. The Association, by its Board, shall have the right to establish rules governing the maintenance of any Lot or Improvement. 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 Assessments and may be collected by any means provided in this Declaration for the collection of Assessments; provided, however, no such lien shall be subject to nonjudicial foreclosure. Each such Owner will indemnify and hold harmless the Association and its officers, directors, committee members, 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 (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. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.25 **Liability of Owners for Damage to Common Area.** No Owner or Resident may in any way alter, modify, obstruct, add to, store items in or on or otherwise perform any work upon the Common Area without the prior written approval of the Board. Each Owner and/or Resident will be liable to the Association for any and all damages to: (i) the 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 the Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage may be levied as an Individual Assessment.

2.26 **No Warranty of Enforceability.** The 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.

2.27 **No Tennis or Recreational Courts; Playscapes.** No tennis, recreational or sport courts shall be constructed on any Lot unless expressly approved by the Committee. The Committee may prohibit the installation of a tennis, recreational or sport court on any Lot. Playscapes or any similar recreational facilities may not be constructed on any Lot without the advance written approval of the Committee. The Committee may prohibit the installation of playscapes or similar recreational facilities on any Lot.

2.28 **Approval for Construction; Additional Restrictions.** No Improvements may be constructed upon any Lot without the prior written approval of the Committee. Without limitation on the foregoing, no Owner shall erect or permit to be erected on any Lot any fence, in-ground pool, tennis court or other outdoor game court, storage shed or other exterior building, addition or improvement, without the prior written consent and design approval of the Committee. No aboveground pools may be erected or maintained at any time.

2.29 **Use.** All Lots, unless dedicated to the Association as Common Area, must be improved and used solely for single family residential use, inclusive of one private garage, in accordance with *Section 2.11* herein, for each residence constructed thereon, fencing and such other Improvements as are necessary or customarily incident to residential use and that are in accordance with this Declaration. Each residence within the Property shall be occupied by no more persons than the maximum permitted by law. No commercial, industrial, recreational or professional activity not permitted by the present zoning or other applicable laws or

ordinances, shall be pursued on any Lot at any time. No Owner shall permit his Lot to be used or occupied for any prohibited purpose. This Section 2.29 shall in no event be interpreted to prevent Declarant from exercising any right reserved in the Declaration for the benefit of the Declarant and/or Declarant's marketing, sales, development or improvement of the Property or any portion thereof.

2.30 **Rentals.** Nothing in this Declaration will prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that: (i) all rentals must be for terms of at least six (6) months; and (ii) no portion of a Lot (other than the entire Lot) may be rented. Regardless of whether or not expressed in the applicable lease, all Owners shall be jointly and severally liable with the tenants of such Lot to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for any injury or damage to property caused by the negligence of the tenant of such Lot or for the acts or omissions of the tenant(s) of such Lot which constitute a violation of, or non-compliance with, the provisions of the Restrictions. All leases shall comply with and be subject to the provisions of the Restrictions and the provisions of same shall be deemed expressly incorporated into any lease of a Lot. This Section shall also apply to assignments and renewals of leases. Upon entering into an agreement for the lease of a Lot, an Owner shall provide written notice to the Board, or its designee, of the lease agreement and furnish the names of the prospective tenant. The Board may require that the Owner deliver to the tenant, a copy of the Restrictions and obtain a written instrument executed by the tenant acknowledging receipt of the Restrictions which receipt will be provided to the Board.

2.31 **Alteration or Removal of Improvements.** Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement or the removal of any Improvement may be performed only with the prior written approval of the Committee. Except as otherwise provided in *Section 9.01* below, no Owner shall perform or permit to be performed any work to any portion of his Lot or Improvement, which work may require access to, over or through the Common Areas without the prior consent of the Committee except in case of an emergency. No Owner shall perform or permit to be performed any work to any portion of his Lot or Improvement, which work may require access to, over or through Lots not owned by such Owner without the prior consent of the Lot Owner or the Committee except in case of an emergency. Except as otherwise provided in *Section 9.01* below, all such work may only be performed by a person who shall deliver to the Committee prior to commencement of such work, in form satisfactory to the Committee:

(a) releases of the Board, Committee, and the Association for all claims that such person may assert in connection with such work;

(b) indemnities of the Board, Committee, and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Areas or other Lots;

(c) certificates of insurance, including liability and workmen's compensation

coverage, in amounts and with companies reasonably acceptable to the Board; and

- (d) all other information and protections which the Board may reasonably require.

2.32 **Construction Activities.** This Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. No Improvement constructed by Declarant need be approved in advance by the Committee. No such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. If during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Committee may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection therewith.

2.33 **Clotheslines; Window Air Conditioners.** No clotheslines and no outdoor clothes drying or hanging shall be permitted within the Property, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the residence, except holiday-related items, and no awnings, canopies or shutters shall be affixed or placed upon the exterior walls or roofs of residences, or any part thereof, nor relocated or extended, without the prior written consent of the Committee. Window air conditioners are prohibited.

2.34 **Dumping.** No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal scrap, garbage or other waste, except that such material may be kept in areas of the Property designated for this purpose by Declarant (in connection with its construction) or by the Board, provided that these materials are kept in sanitary containers in a clean and sanitary condition. Owners shall place these containers for collection only in the designated areas and only on the day these refuse materials are to be collected. Empty containers shall be removed promptly after collection.

2.35 **Restriction on Use of Common Area.** The Board may prohibit or restrict the use of the Common Area from time to time, on a non-discriminatory basis, if and to the extent required for safety or other valid reasons.

2.36 **Declarant Exemption.** The provisions of this Article are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Property; the restrictions are not intended to prohibit the Declarant from (i) performing such work as may be necessary for the marketing, sale, development, or improvement of Property, or any portion thereof, or exercising any right reserved by Declarant under this Declaration to facilitate the marketing, sale, development or improvement of the Property or any portion thereof. The

restrictions in this Article shall not be binding on Declarant in the performance of any work required in order to complete construction of the Property, or any portion thereof.

**ARTICLE 3.
BROUGHTON MAINTENANCE ASSOCIATION, INC.**

3.01 **Organization.** The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas nonprofit corporation. Neither the Articles nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.02 **Membership.**

(a) Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

If you acquire a Lot you automatically become a member of the Association. Membership is Mandatory!

(b) Within thirty (30) days after acquiring legal title to a Lot, each Owner must provide the Association with a copy of the recorded deed by which the Owner has acquired title to the Lot.

(c) Every Member will have a right and easement of enjoyment in and to all of the Common Area and an access easement by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot, subject to the following restrictions and reservations:

- (i) The right of the Board to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such member is in violation of any provision of this Declaration;
- (ii) The right of the Board to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;
- (iii) The right of the Board to make reasonable rules and regulations regarding the use of the Common Area and any Improvements thereon; and
- (iv) The right of the Board to contract for services with any third parties on

such terms as the Board may determine.

3.03 **Governance.** The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, until one hundred and twenty (120) days after the 10th anniversary of the date the Original Declaration was recorded, Declarant will appoint and remove all members of the Board. Within one hundred and twenty (120) days after the 10th anniversary of the date the Original Declaration was recorded, the Board will call a meeting of Members of the Association for the purpose of electing one-third of the Board (the "Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant may appoint and remove two-thirds of the Board from and after the Member Election Meeting until expiration or termination of the Development and Sale Period.

3.04 **Voting Rights.** The right to cast votes and the number of votes which may be cast for election of members to the Board (except as provided by *Section 3.03*) and on all other matters to be voted on by the Members will be calculated as set forth below.

(a) The Owner of each Lot will have one (1) vote for each Lot so owned. 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; and (ii) each Lot resulting from the re-subdivision will be allocated one (1) Assessments Unit. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights and Assessments will continue to be determined according to the number of original Lots contained in such consolidated Lot.

(b) When more than one person or entity owns a portion of the fee simple interest in any Lot (not including the owner of only a mineral interest, with or without surface rights related solely to the mineral interest), all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 3.04*.

3.05 **Powers.** The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) **Rules and Bylaws.** To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property

(including the operation, maintenance and preservation thereof) or the Association.

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect assessments and to determine Assessment Units, as provided in *Article 5* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after thirty (30) calendar days written notice), without being liable to any Owner or Resident, upon any Lot for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Declaration or the Design Guidelines. The reasonable expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, and may be levied as an Individual Assessment. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or their successors or assigns. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. EACH SUCH OWNER AND RESIDENT HEREBY RELEASES THE ASSOCIATION, 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 3.05(E) (INCLUDING ANY COST, 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. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, or rights-of-way, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by any governmental authority.

(h) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon sixty (60) days written notice to the Manager. To the extent permitted by law, the Board may delegate any other duties, powers and functions to the Manager. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for the Property and/or Common Area, private or public recreational facilities, easements, roads, roadways, rights of ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law (including the Texas Non-Profit Corporation Act) or under the terms of the Restrictions or as determined by the Board.

(k) Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board.

(l) Property Ownership. To acquire, and own real and personal property, whether by grant, lease, easement, gift or otherwise.

3.06 Acceptance of Common Area. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. All facilities, structures improvements, systems, area or grounds that are to be operated, maintained and/or administered by the Association, other than facilities, structures improvements, systems, area or grounds located in public easements or right of way, will be dedicated by easement or deeded in fee simple ownership interest to the Association. Specifically, and not by way of limitation, Declarant may reserve from such transfer and conveyance 100% of the mineral estate of the Common Area, the exclusive right to grant oil and gas leases of 100% of the mineral estate of the Common Area, and the right to retain bonuses, rentals or royalty attributable to the mineral estate of the Common Area. In addition, Declarant and its assignees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, or the Property and the general public, and the Association will accept such transfers and conveyances.

3.07 Indemnification. To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Articles or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. Notwithstanding anything in this Section 3.07 or elsewhere in the Restrictions to the contrary, in no event will the Association indemnify Broughton Limited Partnership, Evermore Corp., The David Bagwell Company, David S. Bagwell, Susan Bagwell, William Dale Crane, Cindy Brazil, Taylor Steele, or any employee or owner of Broughton Limited Partnership, Evermore Corp., The David Bagwell Company, or any entity in which David S. Bagwell, Susan Bagwell, William Dale Crane have an ownership interest (each and collectively, the "**Bagwell Parties**"), unless expressly approved in advance and in writing by the Board after the date this Declaration has been recorded in the Official Public Records of Tarrant County,

Texas, and provided further that if any of the Bagwell Parties is a Board member, such Board member may in no event cast a vote, or participate in, any such approval. Notwithstanding the foregoing sentence, the Board shall in no event have the authority to consent to indemnify any of the Bagwell Parties for a period commencing on the date Declaration has been recorded in the Official Public Records of Tarrant County, Texas until the expiration of thirty days after the Member Election Meeting without the consent of 51% of the Members.

3.08 **Insurance.** The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability or otherwise.

3.09 **Protection of Declarant's Interests.** Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development and Sale Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the marketing, sale, development, or improvement of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development and Sale Period.

ARTICLE 4. INSURANCE

4.01 **Insurance.** Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance. During the Development and Sale Period, Declarant reserves the right to satisfy the insurance obligations of the Association with a master insurance program controlled by Declarant.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot or any Improvements or personal property located on a Lot.

4.02 **Restoration.** In the event of any fire or other casualty, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) calendar days after written notice of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) shall be levied against the Owner and the Owner's Lot as an Individual Assessment. **EACH SUCH OWNER HEREBY RELEASES THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, 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 4.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

4.03 **Mechanic's and Materialmen's Lien.** Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this *Article 4*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

**ARTICLE 5.
COVENANT FOR ASSESSMENTS**

5.01 Assessments.

(a) Assessments established by the Board will be levied against each Lot in accordance with this *Article 5*.

(b) Each Owner of a Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in each such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association, Assessments as set forth herein. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, shall be a charge on and a continuing lien against the Lots upon which each such Assessment is made. Each such Assessment, together with interest thereon and costs of collections thereof, including reasonable attorneys fees, shall also be the personal obligation of the Owner of the Lot assessed at the time the Assessment is made. The Association may enforce payment of such Assessments in accordance with the provisions of this Article. Assessments liens may only be enforced by judicial foreclosure.

5.02 Maintenance Fund. The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration or the Bylaws as they may from time to time be amended.

5.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Declaration and the Bylaws, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the covenants and restrictions contained herein, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such regular Assessments will be due and payable to the Association quarterly on or before the first day of each calendar quarter beginning January 1st of each year, or in such other manner as the Board may designate in its sole and absolute discretion.

5.04 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such

special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration. The amount of any special Assessments will be at the reasonable discretion of the Board. In addition to the special Assessments authorized above, the Association may, in any fiscal year, levy a special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area. Any special Assessment levied by the Association will be levied against all Owners based on Assessment Units.

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

5.06 Amount of Assessment. Each Lot shall constitute one "Assessment Unit". The Board shall levy Assessments against each "Assessment Unit". Assessments levied pursuant to Sections 5.03 and 5.04 shall be levied uniformly against each Assessment Unit allocated to a Lot.

5.07 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment 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 levied as an Individual Assessment against the Lot owned by such Owner.

5.08 Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of 1 and 1/2% per month), together with all costs and expenses of collection, including reasonable attorneys fees.

5.09 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article is, together with late charges as provided in Section 5.07 and interest as provided in Section 5.08 hereof and all costs of collection, including attorney's fees as

herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 5.01(b)* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The Assessment lien provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon a Lot subject to Assessment. The Association will have the power to subordinate the aforesaid Assessment 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 Official Public Records of Tarrant County, Texas. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. 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 Assessment and /or for foreclosure of the aforesaid lien judicially. Assessments liens may only be enforced by judicial foreclosure. In any foreclosure proceeding, 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 Assessments 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 first-lien Mortgage securing indebtedness incurred to acquire such Lot, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments 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 first lien 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 Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 5.09*, 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. Such release will be signed by an officer of the Association. 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 Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments 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

first lien 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 a transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party.

5.10 **Exempt Property.** The following area within the Property will be exempt from the Assessments provided for in this Article:

- (a) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Public Records of Tarrant County, Texas; and
- (b) The Common Area.

5.11 **Fines and Damages Assessment.** The Board may assess fines against an Owner for violations of any restriction set forth in this Declaration, the Design Guidelines, or any rules adopted by the Board which have been committed by an Owner, an occupant of the Owner's Lot, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this section will be considered an Individual Assessment. 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 any facilities located by the Owner or the Owner's family, guests, agents, occupants, or tenants. The Board and any Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules 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 Manager, 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 as provided in *Section 5.08* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.01(b)* of this Declaration. Unless otherwise provided in this section, the fine and/or damage charge will be considered an Assessment for the purpose of this Article, and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 5*.

ARTICLE 6 COMMITTEE

6.01 **Construction of Improvements.** No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, without the prior written approval of the Committee.

6.02 **Architectural Control by Declarant.** During the Development and Sale Period, the Committee shall mean Declarant or its designee, and neither the Association or the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Declarant may designate one or more Persons from time to time to act on its behalf as the Committee in reviewing and responding to applications pursuant to this Article. During the Development and Sale Period no Improvements will be started or progressed without the prior written approval of the Committee, which approval may be granted or withheld at the Committee's sole discretion. In reviewing and acting on an application for approval, the Committee owes no duty to any other person or any organization.

(a) **Delegation by Declarant.** During the Development and Sale 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: (a) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (b) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

(b) Compensation; Fee for Review. No member of a Committee shall be entitled to compensation for its services; provided that the Committee may charge a reasonable fee (no more than \$250.00 per submission) to cover its costs in reviewing any plans and inspecting a Lot and/or Improvements constructed thereon, which fee shall be paid by an Owner to the Association at the time of submission of plans to the Committee for review and approval. No additional fee may be charged for re-submissions of plans previously submitted to the Committee for approval.

6.03 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 and Sale Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development and Sale 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 Committee hereunder.

(a) ACC. The ACC will consist of at least three (3) but not more than seven (7) persons appointed by the Board, pursuant to the Bylaws of the Association. 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 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.

(b) Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (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.

6.04 Approval Process.

(a) Submission of Plans. Any party wishing to construct a residence, accessory building or other structure on a Lot shall submit two (2) copies of complete plans and specifications to the Committee for its approval prior to commencing construction. Such plans and specifications shall include engineering information, landscaping description, and construction plans showing the location and elevations of the proposed residence, accessory building or other structure and the materials to be used in constructing the same, all in sufficient detail to enable the Committee to evaluate the proposed residence, accessory building or other structure. The Committee may request additional information, including samples of proposed materials to aid it in its decision process. After receipt of a complete set of plans and specifications, the Committee shall promptly review the same and notify the Owner submitting

whether it approves the plans or whether it requires changes thereto. Alternately, the Committee may disapprove a set of plans by so noting thereon and returning it to the Owner submitting, accompanied by a statement of the reasons for disapproval. No construction shall be commenced on any portion of any Lot within the Property unless and until the plans for the residence, accessory building or other structure in question have been approved in writing by the Committee.

(b) Time for Review/Approval. The Committee shall approve or disapprove all plans properly submitted to it for construction within fifteen (15) days after the date it receives a complete set of plans and specifications therefore, if the Committee fails to specifically approve or disapprove of any plans within such fifteen (15) day period, then the Committee shall be deemed to have approved the plans submitted. The affirmative vote of a majority of the members of the Committee shall constitute approval of such Committee.

(c) Design Guidelines/Building Standards. The Committee may, but is not required to, from time to time, establish specific guidelines and building standards (collectively, the "Design Guidelines") to assist Owners in determining the type of residence, accessory building or other structure, improvement, modification, or alteration which may be constructed on a Lot within the Property. The Committee may amend or modify such Design Guidelines from time to time in its sole discretion. Such Design Guidelines shall supplement this Declaration and shall be general guides to permitted construction within the Property, but shall not diminish the authority of the Committee to approve plans as otherwise herein provided. Notwithstanding any provision to the contrary in the Declaration, the Committee may issue an approval to builders for the construction of residences and associated improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval set forth in the Declaration.

(d) Failure to Obtain Approval. The construction, replacement, installation, or placement of any residence, accessory building or other structure of any type on a Lot without the prior written approval (or deemed approval) from the Committee shall constitute grounds for the imposition by the Committee or the Association of an automatic fine against the Owner of said Lot not to exceed Fifty and No/100 Dollars (\$50.00) per day (charged in accordance with Section 5.05 of the Declaration) commencing upon the date on which the unapproved construction, replacement, installation or placement commenced and continuing until the earlier of the date on which such Owner has either (i) obtained Committee approval (or deemed approval) of such or construction, replacement, installation or placement of the offending residence, accessory building(s) or other structure(s), or (ii) removed such offending residence, accessory building(s) or other structure(s) and restored its Lot to substantially the same condition as existed prior to commencement of such construction, replacement, installation or placement thereof. A fine levied under this Section shall be charged to the Owner's assessment account, payable upon demand and secured by the Assessment Lien created in this Declaration.

(e) Limitation of Liability. Neither the Declarant, its officers, directors, partners, agents, employees, representatives, parent or subsidiaries, nor the Association, its directors,

officers, agents, employees, or representatives nor any Committee, including any of its respective members, shall be liable to any person or entity for any official act of an applicable Committee in connection with submitted plans and specifications. Notwithstanding any approval by the Declarant or the Committee, neither Declarant nor a Committee shall be responsible or liable to any person or entity with respect to any loss, liability, claim or expense which may arise by reason of such approval or the construction of a residence, accessory building or other structure on a Lot. Neither Declarant, the Association, the Board, the Committee shall be responsible in any way for any defects in any plans or specifications submitted, reviewed or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans or specifications. No approval of any plans by either the Committee or Declarant shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation, it being the responsibility of the Owner submitting any plans to assure compliance with all applicable laws. Conversely, the issuance of a building permit or any approval from any governmental authority shall not, under any circumstance, constitute any evidence that construction of a residence, accessory building or other structure complies with the terms and conditions contained in this Declaration or the Design Guidelines. Neither Declarant, members of a Committee shall have liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious

(f) Variances. The Committee may grant variances from compliance with any provisions of the Design Guidelines or this Declaration, including but not limited to restrictions upon the height, size, shape, floor areas, land area, placement of structures, set backs, building envelopes, colors, materials, or land use. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Committee. Notwithstanding the foregoing provision, the Committee may only grant a variance to the minimum square footage requirements set forth in *Section 2.09*, and the percentage masonry requirements in *Section 2.10*, if the variance is no more than 10% of minimum square footage and masonry requirements set forth in such sections. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines 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 the Design Guidelines 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 the Design Guidelines.

ARTICLE 7. MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property.

7.01 Notice of Action. An institutional holder, insurer, or guarantor of a first

Mortgage which provides a 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 Mortgage Holder"), will be entitled to timely written notice of:

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

(b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or occupant which is not cured within sixty (60) days; or

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

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

7.03 **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 Property.

ARTICLE 8. GENERAL PROVISIONS

8.01 **Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, 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 Official Public Records of Tarrant County, Texas, and continuing through and including January 1, 2061, 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 by Members entitled to cast at least eighty percent (80%) of the number of votes entitled to be cast by members of the Association; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Tarrant County, Texas. Notwithstanding any provision in this *Section 8.01* 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.

8.02 **Eminent Domain.** In the event the Association holds title to the Common Area

and it becomes necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Members. In the event any proceeds attributable to acquisition of Common Area are paid to Members, such payments will be allocated on the basis of Assessment Units and paid jointly to the Members and the holders of first Mortgages or deeds of trust on the respective Lot.

8.03 **Amendment.** This Declaration may be amended by the recording in the Official Public Records of Tarrant County, Texas, of an instrument executed and acknowledged by Declarant acting alone and unilaterally until expiration of the Development and Sale Period. For so long as the Declarant owns any Lot within the Property, the Declarant, without joinder of the Board, the Association, or the other Owners, may unilaterally amend this Declaration without the joinder or vote of any other party if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (iii) 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; or (ix) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development. For so long as the Declarant owns any Lot within the Property, Declarant may unilaterally amend this Declaration, without the joinder or vote of any other party, as may be necessary from time to time in Declarant's sole judgment, to correct or clarify errors, omissions, mistakes or ambiguities contained herein.

Except as otherwise permitted by above, this Declaration may be amended at any time by the recording in the Official Public Records of Tarrant County, Texas, of an instrument executed and acknowledged 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 Official Public Records of Tarrant County, Texas) and Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast by Members of the Association. During the Development and Sale Period, no amendment will be effective without the written consent of Declarant, its successors or assigns.

8.04 **Roadway and Utility Easements.** Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, relocated, constructed, erected, and maintained in and on any streets maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Common Area, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of repair and maintenance.

8.05 **Enforcement.** The Association or Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

8.06 **Higher Authority.** The terms and provisions of this Declaration are subordinate to federal and state law, and local ordinances. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

8.07 **Severability.** If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

8.08 **Conflicts.** If there is any conflict between the provisions of this Declaration, the Articles, the Bylaws, or any rules and regulations adopted pursuant to the terms of such documents, the provisions of this Declaration will govern.

8.09 **Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

8.10 **Damage and Destruction.**

(a) Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 8.10(a)*, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Any damage to or destruction of the Common Area will be repaired unless a majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) In the event that it should be determined by the Board that the damage or destruction of the Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat

and attractive condition.

(d) If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 5*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

(f) In the event that any proceeds of insurance policies are paid to Owners, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

8.11 **Notices.** Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

8.12 **View Impairment.** Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space within the Property will be preserved without impairment. Declarant and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

ARTICLE 9. EASEMENTS

9.01 **Right of Ingress and Egress.** Declarant, its agents, employees and designees will have a right of ingress and egress over and the right of access to the Common Area to the extent necessary to use the Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property.

9.02 **Reserved Easements.** All dedications, limitations, restrictions and reservations shown on the Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made prior to the recording of this Declaration are incorporated herein by

reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights of way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property.

9.03 **Easements.** Declarant hereby reserves unto itself and Declarant's successors and assigns a perpetual non-exclusive easement over and across the Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Property and any other property owned by Declarant; and (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and improvements described in (i) through (iii) of this Section 9.03. The exercise of the easement reserved herein will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

ARTICLE 10. SPECIAL DECLARANT RIGHTS

10.01 **Special Declarant Rights.** Notwithstanding any provision of this Declaration to the contrary, Declarant during the Development and Sale Period and its duly authorized representatives, agents, associates, employees, and successors and assigns will have the right and privilege:

(a) to use a sales center and model home, together with such other facilities as may be reasonably required, for sales and marketing relating to the Property, to show model homes to prospective purchasers of Lots, and to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, and other sales devices and banners for the purpose of aiding the sale of Lots and/or homes in the Property;

(b) to a non-exclusive easement for access and ingress to, egress from and use of the Common Area for the placement and maintenance of signs, banners, balloons, decorations, marketing materials and tables, convenient or incidental to the completion, renovation, improvement, development, or sale of any Lot and/or home, or any portion thereof;

(c) to maintain Improvements upon Lots as sales, model, management, business and construction offices;

(d) to maintain and locate construction trailers and construction tools and equipment within the Property; and

(e) a non-exclusive easement to use and enjoy the Common Area for special events, promotional activities and grand opening celebrations. In connection with the hosting of special events, promotional activities and grand opening celebrations in the area, Declarant shall be permitted to have live entertainment, and any noise created therefrom shall not be deemed a nuisance and shall not cause Declarant and its representatives, agents, associates, employees, tenants and guests to be deemed in violation of any provision of the Restrictions.

10.02 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 to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Tarrant County, Texas.

DECLARANT:

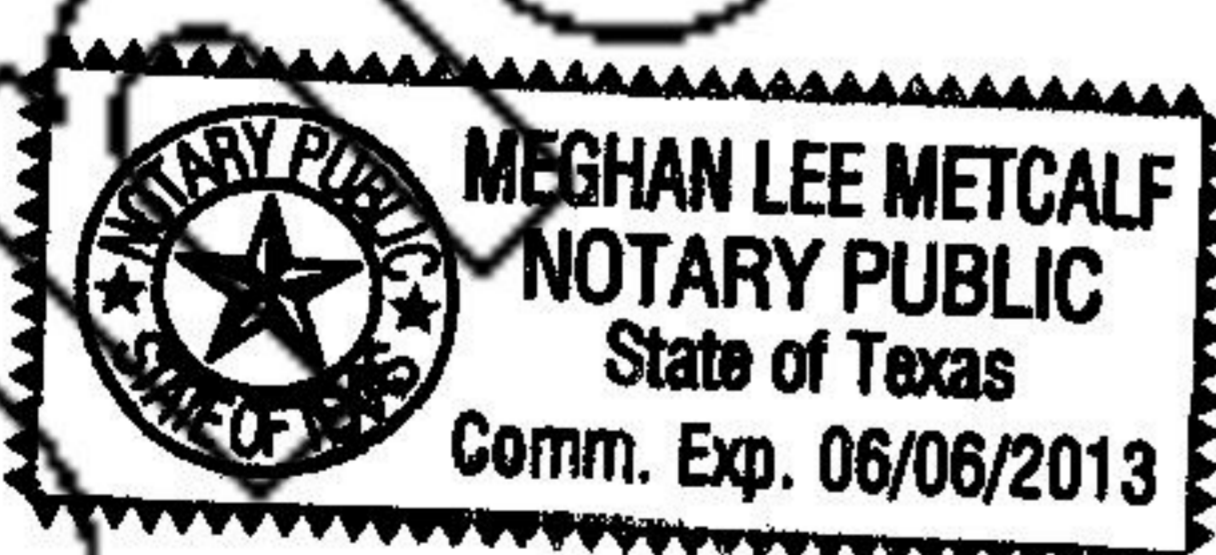
TOLL DALLAS TX LLC, a Texas limited liability company

By: [Signature]
Printed Name: Robert G. Paul
Title: Vice President

THE STATE OF TEXAS §
COUNTY OF Tarrant §

This instrument was acknowledged before me this 12th day of March, 2012 by Robert G. Paul, Vice President of Toll Dallas TX LLC, a Texas limited liability company, on behalf of said limited liability company.

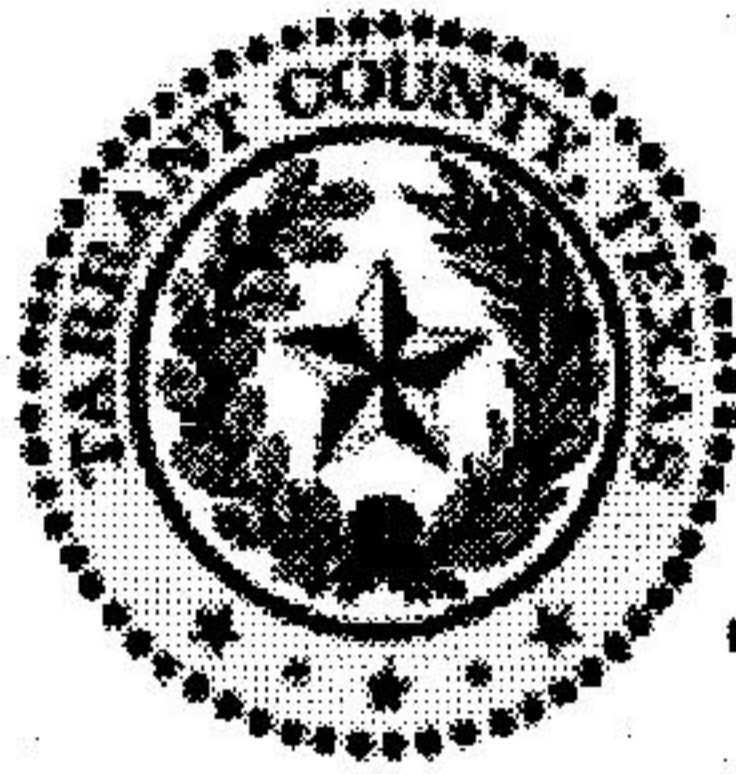
(SEAL)



[Signature]
Notary Public Signature

MARY LOUISE GARCIA

COUNTY CLERK



100 West Weatherford Fort Worth, TX 76196-0401

PHONE (817) 884-1195

WESTMINSTER TITLE AGENCY
2557 SW GRAPEVINE PKWY, STE 100
GRAPEVINE, TX 76051

Submitter: TOLL BROS INC

DO NOT DESTROY
WARNING - THIS IS PART OF THE OFFICIAL RECORD.

Filed For Registration: 3/13/2012 11:10 AM

Instrument #: D212060962

OPR

43

PGS

\$180.00

By: _____

Mary Louise Garcia

D212060962

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY
BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

Prepared by: SLDAVES