

Denton County
Cynthia Mitchell
County Clerk
Denton, Tx 76202

Instrument Number: 2011-58584

As

Recorded On: June 27, 2011

Restrictions

Parties: TERRACINA

Billable Pages: 54

To

Number of Pages: 54

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

Restrictions	223.00
Total Recording:	**223.00**

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Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2011-58584
Receipt Number: 804341
Recorded Date/Time: June 27, 2011 01:02:47P

User / Station: J Morris - Cash Station 1

Record and Return To:

ROBERT D BURTON
ARMBRUST & BROWN PLLC
100 CONGRESS AVE STE 1300
AUSTIN TX 78701

THE STATE OF TEXAS }
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed heron, and was duly RECORDED in the Official Records of Denton County, Texas.

County Clerk
Denton County, Texas

AFTER RECORDING RETURN TO:

Robert D. Burton
Armbrust & Brown, PLLC
100 Congress Ave., Suite 1300
Austin, Texas 78701

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

TERRACINA

Declarant: WOODS CHINN CHAPEL, LTD., a Texas limited partnership

This Declaration of Covenants, Conditions and Restrictions may be used only in connection with the residential community known as Terracina in Denton County, Texas and the operation of Terracina Residential Community, Inc.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

TERRACINA

This Declaration of Covenants, Conditions and Restrictions (the "**Declaration**") is made by **WOODS CHINN CHAPEL, LTD.**, a Texas limited partnership (the "**Declarant**"), and is as follows:

RECITALS:

A. Declarant is the owner of all platted lots located in Terracina, a subdivision located in Denton County, Texas, according to the map or plat recorded as Document No. 2011-114, in the Official Public Records of Denton County, Texas (the "**Property**").

B. Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property, with Declarant to act as Declarant pursuant to this Declaration.

C. By the filing of this Declaration, Declarant serves notice that the Property will be subjected to the terms and provisions of this Declaration.

NOW, THEREFORE, it is hereby declared: (i) that the Property (or any portion thereof) will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

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:

"**Architectural Control Committee**" or "**ACC**" 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.

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

"**Assessment Unit**" has the meaning set forth in *Section 5.05*.

"**Association**" means the Terracina Residential Community, Inc., a Texas non-profit corporation, which will be created by Declarant 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.

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

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

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

"**Common Area**" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations. Common Area includes any property that the Association holds under a lease, license, or any easement in favor of the Association.

"**Community Systems**" means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by Declarant or pursuant to any grant of easement or authority by Declarant within the Property.

"**Declarant**" means **WOODS CHINN CHAPEL, LTD.,** a Texas limited partnership, its successors or assigns; provided that any assignment(s) of the rights of **WOODS CHINN CHAPEL, LTD.,** as Declarant, must be expressly set forth in writing and recorded in the Official Public Records of Denton County, Texas.

"**Design Guidelines**" means the standards for design, construction, landscaping, and exterior items, if any, placed, on any Lot adopted pursuant to *Section 6.02(c)*, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design

guidelines applying to specific portions of the Property. Declarant may adopt the initial Design Guidelines. Notwithstanding anything in this Declaration to the contrary, Declarant 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 Denton County, Texas.

"**Homebuilder**" means an Owner (other than the Declarant) who acquires a Lot for the construction of a single family residence for resale to a third party.

"**Improvement**" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, 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, 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 any portion of the Property designated by Declarant or as shown as a subdivided lot on a Plat other than Common Area.

"**Manager**" has the meaning set forth in *Section 3.04(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.

"**Plat**" means a subdivision plat of any portion of the Property as recorded in the Official Public Records of Denton County, Texas, and any amendments thereto.

"**Property**" means all platted lots, located in Terracina, a subdivision located in Denton County, Texas, according to the map or plat recorded as Document No. 2011-114, in the Official

Public Records of Denton County, Texas, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 10.03* and *Section 10.04* of this Declaration.

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

"**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.

"**Town**" means the Town of Flower Mound, Texas.

INTENTIONALLY LEFT BLANK—DECLARATION CONTINUES ON FOLLOWING PAGE

TABLE 1: RESTRICTIONS	
Declaration (recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
Certificate of Formation:	The Certificate of Formation of the Association, which

(filed with the Secretary of State)	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 by Declarant)	The design standards and architectural and aesthetics guidelines adopted pursuant to *Article 6*, 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 *Section 3.04(a)*, which regulate use of property, activities, and conduct within the Property.
Board Resolutions: (adopted by the Board of the Association)	The resolutions adopted by Board which establish rules, policies, and procedures for internal governance and activities of the Association.

ARTICLE 2
GENERAL AND 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. Please be advised that 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 ACC for approval. Furthermore, approval by the ACC 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 ACC.

NOTICE

This Declaration, the Design Guidelines, and the rules and regulations adopted by the Board are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with this Declaration, the Design Guidelines, and the rules and regulations, as they may change from time to time.

2.02 **Conceptual Plans.** All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Homebuilder or other developer of any portion of the Property makes any representation or warranty concerning such land uses and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that the Property is a master planned community, the development of which is likely to extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to changes in the Conceptual Plans as they may be amended or modified from time to time.

The Property is a community which may be developed over a number of years. Changes may be made to the plans for the Property from time to time.

2.03 **Subdividing.** No Lot may be further divided or subdivided, 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 ACC.

2.04 **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 Architectural Control 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; (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, vision, 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 an 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 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.

2.05 **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, the improvements located thereon, without the prior written approval of the Board.

2.06 **Mining and Drilling**. No portion of the Property maybe used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted by the Declarant or a Homebuilder in conjunction with the construction of Improvements and/or the development of the Property.

2.07 **Water Bodies.** By acceptance of a deed to a home or a lot, each owner acknowledges that the water levels of all water bodies, if any, may vary. There is no guarantee by the Declarant or the Association that water levels will be constant or aesthetically pleasing at any particular time. In fact, water levels may be non-existent from time to time.

2.08 **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. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but will not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.09 **Animals - Household Pets**. No animals, including 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 Owner may keep more than four (4) cats and dogs, in the aggregate, of which no more than two (2) can be dogs, unless otherwise approved by the Board. 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.

2.10 **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 twelve (12) 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.

2.11 **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 Architectural Control Committee, in its sole discretion, will determine whether a violation of the maintenance obligations set forth in this *Section 2.11* has occurred. Such maintenance includes, but is not limited to the following, which must be performed in a timely manner, as determined by the Architectural Control Committee, 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.

2.12 **Minimum Square Footage**. The square footage for each residence, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages, shall be no less than two-thousand and seven hundred (2,700) square feet

2.13 **Antennae**. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any solar energy system, may be erected, maintained or placed on a Lot without the prior written approval of the Architectural Control 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 Architectural Control Committee, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

2.14 **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 Architectural Control 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 Architectural Control 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, you are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the Architectural Control Committee from time to time. Please contact the Architectural Control Committee for the current rules regarding installation and placement.

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

(a) signs which are part of the Declarant or a Homebuilder's overall marketing or construction plans or activities for the Property.

(b) permits as may be required by legal proceedings.

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

(d) 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.

(e) 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.

Representatives of the Association may remove any sign not otherwise permitted by this *Section 2.15* or approved in advance by the ACC.

2.16 **Tanks**. Unless installed by the Declarant or a Homebuilder in conjunction with development of the Property for residential purposes, the Architectural Control 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 Architectural Control 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.

2.17 **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 Architectural Control 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 Architectural Control 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, Homebuilders shall be permitted to maintain sales and/or construction trailers.

2.18 **Unsightly Articles; Vehicles**. No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, 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. Each single family residential structure constructed within the Property shall have sufficient garage space, as approved by the Architectural Control Committee, to house all vehicles to be kept on the Lot. Notwithstanding the forgoing 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, 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 Architectural Control Committee.

2.19 **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.

2.20 **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.

2.21 **Basketball Goals; Permanent and Portable**. Permanent basketball goals are not permitted to be placed on any Lot. Portable basketball goals are permitted but must be stored in the rear of the Lot or inside garage from sundown to sunrise. Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals must be approved by the Architectural Control Committee prior to being placed on any Lot.

2.22 **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 5.10* 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 Architectural Control 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 fifteen (15) 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 asses 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 the this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner will indemnify and hold harmless the Association and its officers, directors, 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.

If you fail to comply with the Restrictions, including this Declaration, the Design Guidelines, and any rules adopted by your association, you can be fined or a claim may be pursued against you in court.

2.23 **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 will be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as Assessments.

2.24 **No Warranty of Enforceability**. Neither the Declarant nor a Homebuilder 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 and each Homebuilder harmless therefrom.

2.25 **No Tennis or Recreational Courts; Playscapes**. No tennis, recreational or sport courts shall be constructed on any Lot unless expressly approved by the Architectural Control Committee. The Architectural Control 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 Architectural Control Committee. The Architectural Control Committee may prohibit the installation of playscapes or similar recreational facilities on any Lot.

2.26 **Approval for Construction; Additional Restrictions**. No Improvements may be constructed upon any Lot without the prior written approval of the Architectural Control 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 Architectural Control Committee. No aboveground pools may be erected or maintained at any time.

2.27 **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 attached private garage for each residence constructed thereon, fencing and such other Improvements as are necessary or customarily incident to residential use. 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. If zoning regulations change to expand the scope of activities that Owners may pursue lawfully within the Lot, an Owner may apply to the Board for approval to commence the permitted use of his Lot. Each application shall be considered by the Board on an individual basis. Once the Board has given its approval to a particular use of a Lot, it may not revoke the approval as long as the nature and scope of the approved use remains unchanged. No Owner shall permit his Lot to be used or occupied for any prohibited purpose.

2.28 **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. All leases shall be in writing, and the Board will have the authority to approve all leases in advance. Each lease must provide, or be deemed to provide, that the Board shall have the right to terminate the lease upon default by the tenant in observing any provisions of the Restrictions. The Board may deny permission to lease any Lot on any reasonable grounds the Board may find. The Board shall have the right to require the Owner to deposit in escrow with the Association (in addition to any other deposits which may be required by the Owner so long as such additional deposit is not prohibited by law) an amount not to exceed one month's rental fee paid. Said deposit may be used by the Association to repair any damage to the Property resulting from acts or omission by the tenants (as determined in the sole discretion of the Board). 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 Documents. 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. No lease approved by the Board shall be amended or modified without the Board's approval. In making its determination as to whether to approve a lease of a Lot, the Board shall not discriminate on the grounds of race, gender, religion, national origin, familial status or physical or mental handicap; *provided, however*, nothing herein shall be construed to require the Association to furnish an alternate tenant to the Owner in the event the Board disapproves a lease or tenant. Upon entering into an agreement for the lease of a Lot, an Owner other than Declarant 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. The Board shall have the right to charge an Owner a reasonable fee (not to exceed $500.00) as determined by the Board for the processing of leases of Lots.

2.29 **Fences**. The design, construction materials, height and location of all fences must be approved by the Architectural Control Committee. Specifically, on each Lot, all fences must be constructed of four feet (4') tall wrought iron or powder coated tubular steel, in a location, design and height approved in advance by the Architectural Control Committee. In no event may any fence or wall be erected, placed or altered on a Lot nearer to the front street than the front wall of each residence constructed on a Lot. In the event of any disagreement on whether the location of a fence complies with the foregoing sentence, the decision of the Architectural Control Committee will be final and conclusive.

2.30 **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 Architectural Control Committee. 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 or other Lots without the prior consent of the Board except in case of an emergency. All such work may only be performed by a person who shall deliver to the Board prior to commencement of such work, in form satisfactory to the Board:

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

(b) indemnities of the Board, Architectural Control 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.

2.31 **Garbage Containers**. The Architectural Control Committee will have the right to specify a specific location on each Owner's Lot in which garbage containers must be placed for trash collection service.

2.32 **Drainage**. There may be no interference with the established drainage patterns over any of the Property, except by the Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Architectural Control Committee.

2.33 **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 and any Homebuilder) upon any Lot within the Property. No Improvement constructed by Declarant need be approved in advance by the Architectural Control 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 Architectural Control 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.

2.34 **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, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant or a Homebuilder) 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 ACC. Window air conditioners are prohibited.

2.35 **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.

2.36 **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.

2.37 **Homebuilder 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 or Homebuilders from performing such work as may be necessary in the completion of the Property, or any portion thereof. The restrictions in this Article shall not be binding on Declarant or Homebuilders in the performance of any work required in order to complete construction of the Property, or any portion thereof.

ARTICLE 3
TERRACINA RESIDENTIAL COMMUNITY, INC.

3.01 **Organization.** The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate 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: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot; (2) the Owner's address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name and phone number of any resident other than the Owner.

(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 *Section 3.02(a)* above and subject to the following restrictions and reservations:

(i) The right of the Association to suspend the Member's voting rights and 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 Association 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 Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;

(iv) The right of the Association to make reasonable rules and regulations regarding the use of the Common Area and any Improvements thereon; and

(v) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

3.03 **Voting Rights.** The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members will be calculated as set forth below. **Notwithstanding any provision to the contrary in this Declaration, as provided in *Section 3.03(b)* below, until expiration or termination of the Development and Sale Period, Declarant will be entitled to appoint and remove all members of the Board.**

(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) Assessment 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) In addition to the votes to which Declarant is entitled by reason of *Section 3.03(a)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development and Sale Period. Notwithstanding any provision to the contrary in this Declaration, until expiration or termination of the Development and Sale Period, Declarant will be entitled to appoint and remove all members of the Board. Declarant may terminate its right to appoint and remove one

or all the Board members by the recordation of a termination notice executed by Declarant and recorded in the Official Public Records of Denton County, Texas.

(c) When more than one person or entity owns a portion of the fee simple interest in any Lot, 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 3.03*.

(d) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) remain past due, for any period during which such Owner or such Owners' Lot(s) are in violation of this Declaration.

3.04 **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.

When you acquire a Lot, you will be required to comply with the terms of this Declaration, the Design Guidelines, and any rules and regulations adopted by the Board.

(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 twenty-four (24) hours written notice),

without being liable to any Owner or Resident, upon any Lot and into any Improvement thereon 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 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, will be deemed a special Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Assessments. 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. 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; 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 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 RELEASE 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 3.04(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, rights-of-way or mortgages, out of, 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**"), which may include Declarant or any affiliate of Declarant, 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) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area or other property, or to provide any service, including

but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise.

3.05 **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 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. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Such property will be accepted by the Association and thereafter will be maintained as Common Area by the Association for the benefit of the Property and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment to the extent conveyed in error or needed to make minor adjustments in property lines.

3.06 **Indemnification.** To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Certificate 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.

3.07 **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.

3.08 **Control by Declarant.** Declarant, or its successors or assigns, will have the absolute right to appoint members of the Board and their successors (any appointment of a successor will be a deemed removal of the Board member being replaced by such appointment) until expiration or termination of the Development and Sale Period. Declarant, at its option, may assign or delegate, in whole or in part, its rights and powers to the Association, the Board or any other entity provided such designation is in writing.

3.09 **Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 3.04* hereinabove, the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the occupant of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the occupant of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

3.10 **Community Systems**. The Association is specifically authorized to provide, or to enter into contracts to provide, central telecommunication receiving and distribution systems

(e.g. cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Property ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

3.11 **Notices and Disclaimers as to Security Systems**. NEITHER THE DECLARANT, A HOMEBUILDER, NOR THE ASSOCIATION, OR THEIR SUCCESSORS OR ASSIGNS GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS NOTIFY AUTHORITIES OF FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY RECEIVING SECURITY SERVICES THROUGH THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT NEITHER THE DECLARANT, A HOMEBUILDER, NOR THE ASSOCIATION, OR ANY OR THEIR SUCCESSORS OR ASSIGNS ARE INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE LOT AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the party of a security service provider to perform any of its obligations with respect to security services and, therefore, every Owner or occupant of property receiving security services through the Community Systems agrees that neither the Declarant, a Homebuilder, nor the Association, or their successors or assigns assumes liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of: (a) any failure of the Owner's security system; (b) any defective or damaged equipment, device, line or circuit; (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees; or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every Owner and Resident obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of the Declarant, a Homebuilder, the Association, or their successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding Two Hundred Fifty U.S. Dollars

($250.00), which limitation apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Declarant, a Homebuilder, or the Association, or their successors or assigns. Further, in no event will Declarant, a Homebuilder , the Association, or their successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

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.

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) days after the occurrence 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) will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in the Declaration for

Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **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 Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

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, as it 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, 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 annually on or before the first day of the month at the beginning of the fiscal 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 **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.

5.06 **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 a charge upon the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under applicable law.

5.07 **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.

5.08 **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 5.06* and interest as provided in *Section 5.07* 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 aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens; (ii) all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question and (iii) home equity loans or home equity lines of credit which are secured by a second mortgage lien or second deed of trust lien of record; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was recorded in the Official Public Records of Denton County, Texas before the delinquent Assessment was due. 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 Denton 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. Such lien for payment of Assessments may be enforced by the non-judicial foreclosure of the defaulting Owner's Lot by the Association in like manner as a real property mortgage with power of sale under Tex. Prop. Code § 51.002. (For such purpose, Robert D. Burton, of Travis County, Texas, is hereby designated as trustee for the benefit of the Association, with the Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will

report to said Mortgagee any unpaid 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 5.08*, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such 12 day period) to such Owner, in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by a Owner or occupant to the utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by applicable law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any 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; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant to a Homebuilder.

Yes, the Association *can* foreclose on your Lot!
If you fail to pay assessments to the Association, you may lose title to your Lot if the

Association forecloses its assessment lien.

5.09 **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 Denton County, Texas; and

(b) The Common Area.

5.10 **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 Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities located by the Owner or the Owner's family, guests, agents, occupants, or tenants. The 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 5.07* 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*.

5.11 **Working Capital Assessment**. Upon the transfer of a Lot, a working capital fee in an amount equal to two (2) months of Regular Assessments will be paid by the transferee to the Association for the Association's working capital fund. Upon termination of the Development and Sale Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Lot. Each working capital contribution will be collected upon the conveyance of the Lot from one Owner to another (expressly including any re-conveyances of the Lot upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; or (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who: (i) is a Homebuilder; or (ii) acquires a Lot for the purpose of resale to a Homebuilder (a "**Development Owner**") will not be subject to the Working Capital Assessment; however, the Working Capital Assessment will be payable by any Owner who acquires a Lot from a Homebuilder or Development Owner for residential living purposes or by any Owner who: (i) acquires a Lot and is not in the business of constructing single-family residences for resale to a third party; or (ii) who acquires the Lot for any purpose other than constructing a single-family residence thereon for resale to a third party. Contributions to the working capital fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use working capital fees collected hereunder to pay operational expenses of the Association until the termination of the Development and Sale Period and such working capital fees collected will be considered as a maintenance reserve fund for the Association to maintain the Common Areas after the termination of the Development and Sale Period.

5.12 **Budget Operating Deficit.** Until the conveyance of title to the first Lot to a residential home buyer or a Homebuilder, as the case may be, the Declarant shall be solely responsible for all Association-related expenses. Following the first conveyance, the owners of the Lots to whom title shall have been conveyed shall be responsible for payment of any Assessments in accordance with the Association's budget and the Declarant shall pay the

difference between the total amount collected from the Owners and the actual amount of operating expenses incurred and/or accrued during the Association's fiscal year under the budget. Any expenses incurred beyond budgeted amounts shall be paid by the Declarant, however Declarant shall have the right to treat such amounts as a receivable from the Association due and payable to the Declarant by the Association at a later time when funds are available.

5.13 **Town Authority**. The Town shall be allowed, but not obligated, to repair and maintain the Common Area or areas otherwise maintained by the Association, or to remove any landscape systems, features or elements within the Common Area or otherwise maintained by the Association, if the Association fails to maintain such Common Area or other areas in accordance with the terms and provisions of this Declaration, or in accordance with any applicable Town ordinance or regulation. The costs incurred by the Town to maintain and/or repair the Common Area or areas otherwise maintained by the Association, or remove any facilities from the Common Area or areas otherwise maintained by the Association, will be payable by the Association upon demand. In addition, and not in limitation of any of the provisions in this *Section 5.13*, the Town may avail itself of any other enforcement actions available to the Town pursuant to applicable law in the event the Association fails to maintain the Common Area or areas otherwise maintained by the Association in accordance with the terms and provisions of this Declaration, or in accordance with any applicable Town ordinance or regulation.

5.14 **Town Release and Indemnity**. THE ASSOCIATION AGREES TO RELEASE AND HOLD THE TOWN, ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER, WHETHER REAL OR ASSERTED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES TO PERSONS OR PROPERTY INCLUDING DEATH, RESULTING FROM OR IN ANY WAY CONNECTED WITH THE MAINTENANCE, REPAIR OR REMOVAL OF ACTIVITIES CONTEMPLATED BY *SECTION 5.13* ABOVE. SHOULD THE TOWN EXERCISE ITS RIGHTS AS SPECIFIED ABOVE IN *SECTION 5.13*, THE ASSOCIATION AND EACH OWNER WITHIN THE PROPERTY SHALL INDEMNIFY AND HOLD THE TOWN HARMLESS FROM ANY AND ALL COSTS, EXPENSES, SUITS, DEMANDS, LIABILITIES OR DAMAGES, INCLUDING ATTORNEY'S FEES AND COSTS OF SUITS, INCURRED OR RESULTING FROM THE TOWN'S REMOVAL OF ANY LANDSCAPE SYSTEMS, FEATURES OR ELEMENTS THAT CEASE TO BE MAINTAINED BY THE ASSOCIATION OR FROM THE TOWN'S PERFORMANCE OF ANY DUTIES OR RESPONSIBILITIES OF THE ASSOCIATION.

ARTICLE 6
ARCHITECTURAL CONTROL COMMITTEE

6.01 **Construction of Improvements.** No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, without the prior written approval of the Architectural Control Committee.

6.02 **Architectural Control Committee**.

(a) Composition. The Architectural Control Committee will be composed of not more than five (5) persons (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the Architectural Control Committee until six (6) months after expiration or termination of the Development and Sale Period. Declarant may at any time delegate this right to the Board by written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the Architectural Control Committee. Any delegation by Declarant of the right to appoint and remove all members of the Architectural Control Committee may be withdrawn until Declarant's right to appoint and remove all members of the Architectural Control Committee has expired under this *Section 6.02(a)*. If Declarant withdraws its delegation to the Board of the right to appoint and remove all members of the Architectural Control Committee, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the Architectural Control Committee. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the Architectural Control Committee. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the Architectural Control Committee unless the sub-committee exercising such duties and responsibilities is dissolved by Declarant. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with Declarant until such time as Declarant has delegated its right to appoint members of the Architectural Control Committee to the Board. The Architectural Control Committee will have the right to employ consultants and advisors as it deems necessary or appropriate.

(b) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation will be submitted in accordance with the Design Guidelines or any additional rules adopted by the Architectural Control Committee together with any review fee which is imposed by the Architectural Control Committee in accordance with *Section 6.02(c)* to the Architectural Control Committee at the offices of Declarant or such other address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a majority of the members of the Architectural Control Committee. The Architectural Control Committee

may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Architectural Control Committee or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Architectural Control Committee may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Architectural Control Committee, in its sole discretion, may require. Site plans must be approved by the Architectural Control Committee prior to the clearing of any Lot, or the construction of any Improvements. The Architectural Control Committee may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Architectural Control Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds. The Architectural Control Committee may approve plans and elevations on any Lot without regard as to whether such plans and elevations are similar or identical to plans and elevations approved for other Lots within the Property, including, without limitation, Lots that are next to or across from a Lot with a similar or identical plan.

(c) Design Guidelines. Declarant may adopt the initial Design Guidelines. The Architectural Control Committee, or any sub-committee thereof created pursuant to *Section 6.02(a)* (but any amendment to the Design Guidelines made by a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee), will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the Architectural Control Committee will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the Architectural Control Committee and used to defray the administrative expenses incurred by the Architectural Control Committee in performing its duties hereunder; provided, however, that any excess funds held by the Architectural Control Committee will be distributed to the Association at the end of each calendar year. The Architectural Control Committee will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the Architectural Control Committee. The Architectural Control Committee will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(d) Actions of the Architectural Control Committee. The Architectural Control Committee may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and

on behalf of the Architectural Control Committee, except the granting of variances. In the absence of such designation, the vote of a majority of all of the members of the Architectural Control Committee taken at a duly constituted meeting will constitute an act of the Architectural Control Committee.

(e) Failure to Act. In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and the Architectural Control Committee fails either to approve or reject such plans and specifications for a period of sixty (60) days following such submission, rejection of such plans and specifications by the Architectural Control Committee will be presumed. In furtherance, and not in limitation, of the foregoing, any failure of the Architectural Control Committee to act upon a request for a variance will not be deemed a consent to such variance, and the Architectural Control Committee's written approval of all requests for variances will be expressly required.

(f) Variances. The Architectural Control Committee may grant variances from compliance with any of the provisions of the Design Guidelines or this Declaration, including, but not limited to, restrictions upon 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 Architectural Control Committee. 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.

(g) Duration of Approval. The approval of the Architectural Control Committee of any plans and specifications ,and any variances granted by the Architectural Control Committee, will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion within either (i) one year after issuance of approval of such plans and specifications or (ii) such other period thereafter as determined by the Architectural Control Committee, in its sole and absolute discretion,, the Owner will be required to resubmit such plans and specifications or request for a variance to the Architectural Control Committee, and the Architectural Control Committee will have the authority to re-evaluate such plans and specifications in accordance with this *Section 6.02(g)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(h) No Waiver of Future Approvals. The approval of the Architectural Control Committee to any plans or specifications for any work done or proposed in connection

with any matter requiring the approval or consent of the Architectural Control Committee will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Architectural Control Committee.

(i) Non-Liability of Committee Members. NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT OR BAD FAITH OF THE ARCHITECTURAL CONTROL COMMITTEE OR ONE OR MORE OF ITS MEMBERS, AS THE CASE MAY BE.

ARTICLE 7
MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this Article apply to the Declaration and the Bylaws of the Association.

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 Denton County, Texas, and continuing through and including January 1, 2055, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in writing by the Town and approved in a resolution adopted by Members entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Denton 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 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 Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot.

8.03 **Amendment.** This Declaration may be amended or terminated by the recording in the Official Public Records of Denton County, Texas, of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) 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 Denton County, Texas) and Members entitled to cast at least seventy percent (70%) of the number of votes entitled to be cast by members of the

Association. No amendment will be effective without the written consent of Declarant, its successors or assigns. Specifically, and not by way of limitation, Declarant may unilaterally amend this Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

8.04 **Town Amendment Approval.** Any amendment to this Declaration which alters the Association's responsibility pertaining to the use, operation, maintenance and/or supervision of the Common Area will be ineffective and of no force and effect.

8.05 **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.

8.06 **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.

8.07 **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.

NOTICE

Users of this Declaration and the Design Guidelines should periodically review statutes and court rulings that may modify or nullify the terms and provisions of those documents or their enforcement, or which may create rights or duties not contemplated therein.

8.08 **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.

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

8.10 **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.

8.11 **Acceptance by Grantees.** Each grantee of Declarant of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

8.12 **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 8.12(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.

8.13 **No Partition.** Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part will be permitted, nor will any person acquiring any interest in the Property or any part seek any such judicial partition unless the Property in question has been removed from the provisions of this Declaration pursuant to *Section 10.04* below. This *Section 8.13* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

8.14 **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.

8.15 **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.

8.16 **Safety and Security.** Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

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 and the right to such other temporary uses of 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. The Property shall be subject to a perpetual non-exclusive easement for the installation and maintenance, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the right, but not the obligation, to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Units within the Property. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through the Association and paid for as part of the Assessments or directly to Declarant, any affiliate of Declarant, or a third party, by the Owner who receives the services. The Community Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any Person. The rights of Declarant with respect to the Community Systems installed by Declarant and the services provided through such Community Systems are exclusive, and no other Person may provide such services through the Community Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

9.02 **Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Property becoming subject to 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 **Utility 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 any 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.

9.04 **Declarant as Attorney in Fact.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party. The aforesaid power shall be vested in Declarant, its successors and assigns, for a period of twenty-five (25) years from the date the first Lot is conveyed to an individual purchaser, or until the expiration or termination of the Development and Sale Period, whichever occurs first. Declarant hereby reserves for itself, its successors and assigns the right to execute on behalf of each Owner, Mortgagee, and third party claiming a legal or equitable

interest in the Common Area, any such agreements, documents, amendments or supplements to the Master Restrictions which may be required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

ARTICLE 10
DEVELOPMENT RIGHTS

10.01 **Development by Declarant.** It is contemplated that the Property will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to create and/or designate Lots and Common Areas and to subdivide with respect to any of the Property pursuant to the terms of this *Section 10.01*, subject to any limitations imposed on portions of the Property by any applicable Plat. These rights may be exercised with respect to any portions of the Property. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area.

10.02 **Special Homebuilder Rights.** Notwithstanding any provision of this Declaration to the contrary, Declarant during the Development and Sale Period, each Homebuilder, 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, 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) to 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, a Homebuilder shall be permitted to have live entertainment, and any noise created therefrom shall not be deemed a nuisance and shall not cause Homebuilder and its representatives, agents, associates, employees, tenants and guests to be deemed in violation of any provision of the Restrictions.

10.03 **Addition of Land.** Declarant may, at any time and from time to time, add additional lands to the Property and, upon the filing of a notice of addition of land, such land will be considered part of the Property for purposes of this Declaration, and such added lands will be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property, Declarant will be required only to record in the Official Public Records of Denton County, Texas, a notice of addition of land containing the following provisions:

(a) A reference to this Declaration, which reference will state the volume and initial page number of the Official Public Records of Denton County wherein this Declaration is recorded;

(b) A statement that such land will be considered Property for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and

(c) A legal description of the added land.

10.04 **Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association: (i) any portions of the Property which have not been included in a Plat; (ii) any portion of the Property included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portions of the Property included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of the Owners of Lot(s) being withdrawn described in such Plat. Upon any such withdrawal and renewal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to record in the Official Public Records of Denton County, Texas, a notice of withdrawal of land containing the following provisions:

(a) A reference to this Declaration, which reference will state the volume and initial page number of the Official Public Records of Denton County wherein this Declaration is recorded;

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

(c) A legal description of the withdrawn land.

10.05 **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.

ARTICLE 11
DISPUTE RESOLUTION

11.01 **Agreement to Encourage Resolution of Disputes without Litigation**.

(a) Bound Parties. Declarant, the Association, including its officers, directors and committee members, Owners and all other parties subject to this Declaration (**"Bound Party,"** or collectively, the "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Development without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 11.02* in a good faith effort to resolve such Claim.

(b) Claim(s). As used in this Article, the term "Claim" or "Claims" will refer to any claim, grievance or dispute arising out of or relating to:

(i) The interpretation, application, or enforcement of the Declaration, the Design Guidelines, the Certificate, Bylaws, and rules and regulations adopted by the Board; or

(ii) The rights, obligations, and duties of any Bound Party under the Declaration, the Design Guidelines, the Certificate, Bylaws, and rules and regulations adopted by the Board; or

(iii) The design or construction of Improvements within the Development, other than matters of aesthetic judgment under *Article 6*, which will not be subject to review.

(c) Not Considered Claim(s). The following will not be considered a "Claim" or "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 11.02*:

(i) Any legal proceeding by the Association to collect assessments or other amounts due from any Owner;

(ii) Any legal proceeding by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;

(iii) The Association's enforcement of the easements, architectural control, maintenance and/or use restrictions under this Declaration;

(iv) Any legal proceeding which does not include Declarant or the Association as a party, if such action asserts a Claim which would constitute a cause of action independent of the Declaration, the Design Guidelines, the Certificate, Bylaws, and rules and regulations adopted by the Board;

(v) Any legal proceeding in which any indispensable party is not a Bound Party; and

(vi) Any legal proceeding as to which any applicable statute of limitations would expire pursuant to *Section 11.02(a)*, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

11.02 **Dispute Resolution Procedures**.

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") will give written notice to each Respondent and to the Board stating plainly and concisely:

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

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

(iii) The Claimant's proposed resolution or remedy; and

(iv) The Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

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

(c) Mediation.

(i) If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in *Section 11.02(a)* (or within such other period as the parties may agree upon), the Claimant will have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Denton County, Texas.

(ii) If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant will be deemed to have waived the Claim, and the Respondent will be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(iii) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant will thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iv) Each Party will bear its own costs of the mediation, including attorney's fees, and each Party will share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award will, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

11.03 **Initiation of Litigation by Association.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association will not initiate any judicial or administrative proceeding unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, excluding the votes held by Declarant, except that no such approval will be required for actions or proceedings:

(a) Initiated while Declarant owns any portion of the Property or the Development;

(b) Initiated to enforce the provisions of the Declaration, the Design Guidelines, the Certificate, Bylaws, and rules and regulations adopted by the Board, including collection of assessments and foreclosure of liens;

(c) Initiated to challenge *ad valorem* taxation or condemnation proceedings;

(d) Initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) To defend claims filed against the Association or to assert counterclaims in proceedings instituted against the Association.

This Section will not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment will also be approved by Declarant until the expiration or termination of the Development Period.

SIGNATURES APPEAR ON FOLLOWING PAGE

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

DECLARANT:

WOODS CHINN CHAPEL, LTD., a Texas limited partnership

By: Centamtar Terras, LLC, a Texas limited liability company, its general partner

By: _____
Printed Name: MEHRDAD MOAYED, -
Title: Manager

THE STATE OF TEXAS §

COUNTY OF Dallas §

This instrument was acknowledged before me this 2nd day of June, 2011 by Mehrdad Moayedi _____ of Centamtar Terras, LLC, a Texas limited liability company, general partner of Woods Chinn Chapel, Ltd., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(SEAL) P. Krumwiede
Notary Public, State of Texas
My Commission Expires:
March 31, 2015

_____
Notary Public Signature