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DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

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FOR

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THE GARDENS AT STERLING RIDGE

NEDERLAND, JEFFERSON COUNTY, TEXAS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**THE GARDENS AT STERLING RIDGE
(STERLING RIDGE GARDENS FINAL PLAT)**

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS

COUNTY OF JEFFERSON

WHEREAS, This Declaration of Covenants, Conditions, and Restrictions is made on April 28, 2016, by Nederland Sterling Ridge, LLC, a Texas Limited Liability Company, hereinafter referred to as either "the Declarant" or "the Developer", being one and the same, is the owner of all of that certain real property located in Jefferson County, Texas, described as follows:

All of Lots 1 thru 20 of the Sterling Ridge Gardens final plat, an addition to the City of Nederland, Jefferson County, Texas, being more fully described by metes and bounds on the Plat, together with additions thereto as may be made subject to the terms of this Declaration and any Supplemental Declaration of Covenants executed and filed, from time to time, by Declarant in the Official Public Records of Jefferson County Texas, for which a plat has been approved and filed, for a subdivision known as Sterling Ridge Gardens, also referred to as The Gardens at Sterling Ridge, a subdivision in Nederland, Jefferson County, Texas. The Plat has been filed under Clerk's file No. 2015037379 official public records of Jefferson County, Texas, to which reference is hereby made for all purposes ("Property"); and

WHEREAS, The Declarant has devised a general plan for the Property as a whole with specific provisions for particular parts and parcels of the Property. This general plan provides a common scheme of development designed to protect and safeguard the Property over a long period. This general plan will benefit the Property in general, the parcels and lots that constitute the Property, the Declarant, and each successive owner of an interest in the Property; and

WHEREAS, Declarant desires to create a residential community on the Property with residential lots and improvements, including Common Property for the benefit of Declarant and each successive Owner of the Property and to provide for the efficient preservation of the values and enjoyment of the amenities within the Property and for the maintenance of Common Property, as a part of the general plan of development Declarant desires to impose upon the Property the covenants, conditions, restrictions, easements, charges, and liens contained in this Declaration and to create the Association to which will be delegated and assigned the power of maintaining and administering the Property and Common Property in accordance with the terms of this Declaration; and

WHEREAS, Declarant has formed a non-profit corporation known as "The Gardens at Sterling Ridge Homeowners' Association" (the "Association") under the Nonprofit Corporation Act of the State of Texas (the "Act"); and

WHEREAS, the Declarant will convey the above described properties in accordance with both the doctrines of restrictive covenant and implied equitable servitude; and

WHEREAS, the Declarant desires to restrict the Property according to these covenants, conditions, and restrictions in furtherance of this general development plan as hereinafter set forth;

NOW, THEREFORE, it is hereby declared that all of the property described above shall be held, sold and conveyed, subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the above described real property, and shall be binding on all parties having any right, title or interest in or to the above described properties or any part thereof, their heirs, successors, and assigns, and which easements, restrictions, covenants, and conditions shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

The following words, when used in this Declaration, have the following meanings.

“Architectural Control Committee” means the Architectural Committee described in Article IX of this Declaration.

“Assessment” means the regular annual assessments, special assessments, and default assessments levied by the Association as determined by the Board of Directors.

“Association” means The Gardens at Sterling Ridge Homeowners’ Association, a Texas nonprofit corporation, its successors and assigns, which shall have the duty of maintaining, operating, and managing the Common Areas as provided in this Declaration.

“Board of Directors” or “Board” means the governing body of the Association, the election and procedures of which are set forth in the articles of incorporation and the bylaws of the Association.

“Builder” means any person or entity that (1) is actively engaged in the business of building homes for sale to third parties, (2) has acquired a Lot or Lots for the purpose of constructing Dwelling Unit(s) for sale to third parties, and (3) has constructed and sold at least two single family residences in the prior twelve months.

“Common Area”, “Common Property” means the portions of the Property, including any improvements thereon and any appurtenances thereto, that is held, managed or owned by the Association for common use and enjoyment.

“Declarant” shall mean and refer to Nederland Sterling Ridge, LLC, its successors and assigns. However, as used in this section, the term “assigns” shall not be construed to mean, refer to or include any person or entity which shall acquire one (1) or more of the Lots in the Addition, whether improved or unimproved, for occupancy or resale, unless the said Nederland Sterling Ridge, LLC, or its successor, shall expressly assign unto such assignee all of its rights and privileges as “Declarant” under the Declaration.

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of The Gardens at Sterling Ridge, an Addition to the City of Nederland, Jefferson County, Texas, as recorded in the Official Public Records of Real Property of Jefferson County, Texas, together with any Supplemental Declaration(s) hereafter filed of record in the same office by Declarant, its successors or assigns, for the purpose of bringing additional property within the scheme of the Declaration and within the jurisdiction of the Association, as provided in this Declaration.

"Developer" shall mean and refer to Nederland Sterling Ridge, LLC, a Texas limited liability company, and its successors and assigns.

"Dwelling Unit", "Dwelling" means any building or portion of a building, situated upon a Lot or Lots, designed and intended for use and occupancy as a residence by a single person, a couple, a family, or a permitted family-size group of persons.

"Front Yard" shall mean and refer to a space on the lot facing a Street (as hereinafter defined) and extending across the front of the Lot between the Side Lines (as hereinafter defined) and being the horizontal distance between the Street Line (as hereinafter defined) and the Dwelling or any projection thereof other than the projection of the usual steps and eave overhangs.

"Garage" shall mean and refer to a building detached from the Dwelling or a portion of a Dwelling in which motor-driven vehicles are stored.

"Height" shall mean and refer to the measurement from the average established grade at the Street Line abutting the Lot or, if higher, from the highest ground level of the two points where the Front Setback Line (as hereinafter defined) intersects the two Side Lines of the Lot, to the highest point of the improvement being measured.

"Mortgage", "deed of trust", or "trust deed" shall mean and refer to a pledge of a security interest in or the creation of a lien upon a Lot and/or Dwelling Unit.

"Lot" means, with respect to any Property for which a subdivision map or plat (including the Plat) has been recorded in the Map Records of Jefferson County, Texas, each lot shown on such recorded subdivision plat. "Lot" shall not be deemed to include any portion of the "Common Area" (defined herein as any Common Area shown on the Plat) in the Subdivision, regardless of the use made of such area.

"Member" shall mean and refer to each and every person or entity who holds membership in the Association, as provided in the Declaration and further defined below and in Article II of this Declaration.

"Owner" means the record owner (including a Builder), whether one or more persons or entities, of the fee simple title of any Lot but notwithstanding any applicable theory of mortgages or other security devices, does not mean a mortgagee or trustee under a mortgage or deed of trust unless and until such mortgagee or trustee has acquired fee simple title pursuant to foreclosure or a conveyance in lieu of foreclosure. A person or entity holding or claiming an interest in a Dwelling Unit or Lot under an executory contract, contract for deed, option to purchase, lease, or license is not considered an Owner.

"Plat" means the plat or any replat of the Property or any portion thereof filed in the Map Records of Jefferson County, Texas.

"Property" has the meaning given to it in paragraph 1 of the Recitals above.

"Rear Line" shall mean the opposite of the Street Line.

"Resident" means each person (not otherwise an Owner or Member) authorized by an Owner to reside within such Owner's Dwelling Unit.

"Side Line" Shall mean and refer to any boundary line of a Lot which is not a Street Line or Rear Line.

"Street" shall mean and refer to the roadways dedicated by the Developer according to the Plat of record.

"Street Line" shall mean and refer to that boundary line of a Lot which is also the boundary line of a Street.

"Subdivision" shall mean and refer to the Lots located within the Plat of Sterling Ridge Gardens filed in the Jefferson County Records under Clerk's File Number 2015037379.

"Two-Thirds Member Vote" means two-thirds (2/3rd) of the Members (regardless of class) at a meeting duly called at which at least 51% of all Members (regardless of class) are in attendance in person or by written proxy. If a Member wishes to use a written proxy it must be filed with the Association at least twelve (12) hours before the meeting called for purposes of the vote.

**ARTICLE II
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:
ADDITIONS TO THE PROPERTY**

2.01 Membership. Every person or entity who is a record owner of any Lot is automatically a Member of the Association, subject to the terms of this Declaration, the Articles of Incorporation, and the bylaws of the Association and the Association's rules and regulations. Membership of an Owner in the Association is appurtenant to and may not be separated from the interest of such Owner in and to a Lot. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of a Lot is the sole qualification for being a Member; however, a Member's privileges in the Common Property may be regulated or suspended as provided in this Declaration, the bylaws of the Association, and/or the Association's rules and regulations. Regardless of the number of persons who may own a Lot (such husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, the Directors of the Association shall also be Members of the Association (as more particularly described in the Bylaws). The voting rights of the Members are set forth in the Bylaws of the Association.

2.02

Transfer. Membership in the Association may not be severed from or in any way transferred, pledged, mortgaged, or alienated except upon the sale or assignment of said Owner's interest in a Lot and then only to the purchaser or assignee. Membership cannot be severed by an encumbrance. Owners shall notify the Association of the conveyance of the fee title to a Lot. A conveyance automatically transfers the membership to the new Owner. In the event an Owner fails or refuses to provide written evidence of such conveyance, the Association will have the right to record the transfer upon the books and records of the Association.

2.03

Non-Profit Association. The Gardens at Sterling Ridge Homeowners' Association, LLC, is a non-profit limited liability company which has been organized and shall be governed by the Certificate of Formation and Bylaws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said company.

2.04

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

2.05

Class of Membership. The Association has two classes of voting membership.

CLASS A. Class A Members are all Members with the exception of Declarant. Class A Members are entitled to one (1) vote for each Lot owned by the member. When more than one (1) person or entity holds such interest or interest in any Lot, all such parties are Members, and the vote for such Lot may be exercised as they, among themselves, determine, but in no event can more than one (1) vote be cast with respect to any such Lot.

CLASS B. The Class B Member is the Declarant. The Class B Member is entitled to eight (8) votes for each Lot owned by the Class B Member until the Class B Member has sold 20 Lots, at which time the Class B Member will be entitled to one (1) vote per Lot.

2.06

Additions to the Property. Additional tracts of land, together with the improvements situated thereon, may become subject to the Declaration and added to the Property in any of the following manners:

- (a) Declarant may, without the consent of any Owner and at its sole option, at any time within ten (10) years from the date of recordation of this Declaration, add to the Property all or any portion of any other real property (the "Additional Property"), by filing of record one or more Supplemental Declarations of Covenants, Conditions, and Restrictions, which extend the covenants conditions, and restrictions of this Declaration to the Additional Property. Any such Supplemental Declaration may contain additions and modifications of the covenants, conditions, and restrictions contained in this Declaration as necessary to reflect the different character, if any, of the Additional Property consistent with the concept of this Declaration. In no event, however, shall such Supplemental Declaration modify or add to the covenants established by this Declaration for the Property existing prior to the filing of any such Supplemental Declaration unless such modifications and additions are approved by a Two-Third Member Vote. Declarant

may make any such addition even though at the time such addition is made Declarant is not the Owner of any portion of the Property. Each Supplemental Declaration shall designate the number of separate tracts comprising the Additional Property which are to constitute lots and each lot or tract shall constitute a "Lot" within the meaning of this Declaration. All or any part of the Additional Property and improvements located thereon owned by Declarant or any interest held by Declarant in the Property may be conveyed, transferred, or assigned to the Association and designated as Common Property by the Declarant at its sole discretion and without the approval, assent, or vote of the Association or of its Members, provided that any property so conveyed must be free and clear of any and all encumbrances, taxes and assessments. Nothing contained herein requires Declarant to add Additional Property. Moreover, Declarant reserves the right to subject any Additional Property or any part thereof to one or more separate declarations of covenants, conditions, and restriction which subject the Additional Property to the jurisdiction of an association or other entity with powers and obligations similar to the Association and which may or may not be subject to the provisions of this Declaration.

- (b) The annexation of Additional Property can be accomplished by Declarant without the joinder of any other party.

ARTICLE III PROPERTY RIGHTS IN THE COMMON PROPERTY

3.01 Right of Enjoyment. Every Member shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every assessed Lot; however, such rights do not give Members the right to make alterations, additions, or improvements to the Common Property.

3.02 Title to the Common Property. The Declarant shall convey to the Association, by Special Warranty Deed, fee simple title to the Common Property, or in the case where easements constitute part of the Common Property, Declarant shall assign and transfer such easements to the Association; in each case free and clear of all encumbrances, other than the lien of taxes and assessments for the current year not yet due and payable, utility easements, pipelines, setback lines, mineral interests, and other matters filed in the Official Public Records of Jefferson County, Texas.

3.03 Extent of Members' Rights. The rights of use and enjoyment created hereby are subject to the following:

- (a) The right of the Association to prescribe regulations governing the use, operation, and maintenance of the Common Property (including limiting the number of guests of Members);
- (b) The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Areas;

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- (c) Following the approval by a Two-Thirds Member Vote, the right of the Association, in accordance with its Articles, to borrow money for the purpose of improving Common Property and facilities and to mortgage the Common Property to secure a loan for such purposes;
- (d) The right of the Association, as may be also provided by its bylaws, to suspend the voting rights of any Member and to suspend the right of any individual (including Members, guests, and Residents) to use any of the Common Areas for any period during which any Assessment against a Lot owned by such Member remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;
- (e) The right of the Association to suspend the Member's right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Directors for the infraction or violation by such Member or related user of this Declaration or the "Rules and Regulations", as hereinafter defined, which suspension shall continue for the duration of such infraction or violation, plus a period not the exceed sixty (60) days following the cessation of curing of such infraction or violation; and,
- (f) Following approval by a Two-Thirds Member Vote, the right of an Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and upon such conditions as the Board of Directors of the Association may determine in its sole discretion.

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**ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS**

4.01 Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned by it within the Property, hereby covenants and agrees, and each purchaser of a Lot (by acceptance of a deed, whether or not it is so expressed in any such deed or other conveyance), hereby covenants and agrees to pay to the Association (or a payee designated by the Association):

- (a) Annual Assessments or charges, to be paid in installments as the Board of Directors of the Association may direct;
- (b) Special Assessments for capital expenditures, such assessments to be fixed, established, and collected from time to time as hereinafter provided; and
- (c) Default Assessments which may be assessed against an individual Owner to reimburse the Association for extra maintenance and repair costs incurred as a result of the willful or negligent acts or omissions of such Owner, or the Owner's family, agents, guests, and invitees, such default assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular annual Assessments, special Assessments, and default Assessments, together with such interest thereon and costs of collection

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thereof as hereinafter provided (collectively "Assessments"), shall be a charge and continuing lien upon each Lot against which such Assessment is made. Each Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, also are considered the continuing personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due. The annual assessments are payable provided in this Article IV.

4.02 Purpose of Assessments. The Assessments levied by the Association are to be used:

- (a) for the purpose of promoting the recreation, health, safety and welfare of the Owners of the Subdivision and other provisions of adjacent annexable areas which hereafter may become subject to the jurisdiction of the Association. Assessments shall be used for the improvement and maintenance of Common Property or services in furtherance of the these purposes and the performance of the Association's duties, including but not limited to maintenance of the cluster mailbox kiosk, landscaping, and monuments, signs, or other property, services and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Property including, but not limited to, the payment of taxes on and insurance in connection with the Common Property and the repair, replacement, maintenance, and additions thereto;
- (b) for paying the cost of labor, equipment (including the expense of leased equipment) and materials required for, and management and supervision of, the Common Property;
- (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article V hereafter, including, but not limited to, the payments by the Association of all charges payable in connection with electricity, gas, sewer, water, and garbage pick-up services, and installation, maintenance, and operation of lighting for the Common Property;
- (d) for determining the amount of the Assessments in accordance with this Declaration to such level as is reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including maintenance of reasonable cash reserves.

4.03 Basis and Amount of Assessments

- (a) Prior to January 1, 2016, the annual Assessment for each Lot owned by an Owner shall be \$500.00; Declarant shall pay \$37.50 for each Lot owned by Declarant; and any Builder shall pay \$250.00 for each Lot.
- (b) Beginning January 1, 2017, and each year thereafter, the annual Assessment for that year shall be set at the annual meeting of the Board of Directors. The annual Assessment for each Lot owned by Declarant, at the time of annual Assessment, shall be an amount equal to fifteen (15%) of the amount assessed against a single Lot owned by a Member other than Declarant or Builder, unless a Lot owned by Declarant is improved

with a Dwelling Unit that is occupied, in which event the annual Assessment for such Lot shall be equal to the annual Assessment assessed against a single Lot owned by another Member. The annual Assessment for each Lot owned by a Builder at the time of annual Assessment shall be an amount equal to fifty (50%) of the annual Assessment assessed against a single Lot owned by a Member other than Declarant or Builder, unless a Lot owned by a Builder is improved with a Dwelling Unit that is occupied, in which event the annual Assessment for such Lot shall be equal to the annual Assessment assessed against a single Lot owned by another Member;

- (c) Provided that the Board has received approval by a Two-Thirds Member Vote, the annual assessment for each Lot may exceed the amounts set forth in Section 4.03 (a) or (b) above, but will commence on January 1 of the year following the vote.

Special Assessments for Capital Improvements. In addition to the annual Assessments authorized by Section 4.03 above, in any year the Association may levy a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, repair or replacement of any capital improvement upon the Common Property, including the necessary fixtures and personal property, provided that any such Assessment for capital improvements must be approved by a Two-Thirds Member Vote.

4.05 Date of Commencement of Assessment Due Date. The annual assessments provided for herein shall commence on the earlier of:

- (a) January 1, 2016; or
- (b) when the first Lot is sold. Assessments shall be prorated from the date of sale, with an Owner being allocated a portion of the Assessment due based on the rate charged to an Owner other than Declarant or a Builder under 4.03 above. The due date or dates, if the Board allows payment in installments, or any special Assessments under section 4.04 or of any default Assessment under Section 4.01, shall be fixed in a resolution by the Board. Unless otherwise determined by the Board, the due date for all annual Assessments shall be thirty days after notice of Assessment is mailed to Owners.

4.06 Duties of the Board with Respect to Assessments.

- (a) The Board shall determine the Assessment against each Lot and notify each Owner in writing at least thirty (30) days prior to the due date, and prepare a roster of the Lots and Assessments which shall be kept in the office of the Association and shall be open to inspection by any Owner;

4.07 The Board shall, upon an Owner's written request and payment of any reasonable fee set by the Board, furnish to an Owner liable for each Assessment a certificate in writing signed by an officer of the Association setting forth whether or not such assessment has been paid. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

Effect of Non-Payment of Assessment; Personal Obligation of the Owner, the Lien, Remedies of Association

- (a) If any Assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and the costs of collection as hereinafter provided, be a continuing lien (the "Lien") on the applicable Lot. The Lien shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the Assessments because of non-use of the Common Property or abandonment of the Lot.
- (b) In order to secure the full and timely payment of all Assessments and other amounts payable by each Owner hereunder, each Owner, by his acceptance of a deed or other conveyance of the Lot and regardless of whether or not such deed or other conveyance expressly contains such a provision, does hereby grant and convey unto the President (from time to time) of the Board of Directors (or its designated representative) in trust as Trustee (the "Trustee"), for the benefit of the Association, the Lot(s) owned by such Owner, subject to all easements and other encumbrances affecting such Lot, provided, that each such grant shall be subordinated to the liens of any Mortgage; and for these purposes the provisions of this Section 4.07(b) shall be deemed to have created a deed of trust (the "Deed of Trust") lien covering such Lot with a power of sale granted to the Trustee in accordance with the provisions of Chapter 51 of the Texas Property Code (the "Code") as it may be amended from time to time. The Deed of Trust created hereby shall be upon the same terms and conditions, and shall provide to the Association all of the rights, benefits and privileges of the Deed of Trust promulgated by the State Bar of Texas, and all amendments, modifications, and substitutions thereof, which form is hereby incorporated by reference for all purposes hereof. The Association, acting through its President or any Vice President, shall have the right in its sole discretion at anytime and from time to time, to appoint in writing a substitute trustee who shall succeed to all rights and responsibilities of the then acting Trustee.
- (c) Without limiting the remedies available upon the occurrence of a default by any Owner in the payment of any Assessment or other amount due and payable hereunder, the Association may, at its election and by and through the Trustee, sell or offer for sale the Lot owned by the defaulting Owner to the highest bidder for cash at public auction in accordance with the provisions of the Code. The Association may, at its option, accomplish such foreclosure sale in such manner as permitted or required by the Code or by any other present or future laws relating to the same. After the sale of any Lot in accordance with the provisions of this Section 4.07(c), the Owner of such Lot shall be divested of any and all ownership interest, and the proceeds of any such sale shall be applied in the following order of priority:
- (i) to the payment of the costs and expenses of taking possession of the Lot
 - (ii) to the payment of reasonable attorney fees and Trustee's fees
 - (iii) to the payment of costs of advertisement and sale

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- (iv) to the payment of all unpaid Assessments and other amounts payable by such Owner to the Association, and
- (v) to the defaulting Owner or to any other party entitled thereto. The Association shall have the right to be credited on the amount of its bid all of the Assessments and any other amount due and owing by the defaulting Owner to the Association as of the date of such sale.

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(b) If any Assessment or part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the maximum legal rate of interest allowed by law and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the Lien pursuant to Texas Property Code 51.002 (and any successor statute). There shall be added to the amount of such Assessment the costs of preparing and filing the suit (including reasonable attorney's fees) in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of court.

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(c) Each such Owner hereby expressly grants the Association power of sale. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association, or the Associations' agent, shall give notice of foreclosure sale as provided by the Texas Property Code as then amended. Upon request by Association, Trustee shall give any further notice of foreclosure sale as may be required by the Texas Property Code as amended and shall convey such Lot to highest bidder for cash by Special Warranty Deed. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and reasonable trustee's fees, second, from such proceeds there shall be paid to the Association an amount equal to the amount in default, and third, the remaining balance shall be paid to such Owner. Following any such foreclosures, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

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(d) In the event of non-payment by any Owner of any Assessment or other charge levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon thirty (30) days prior written notice hereof to such nonpayment Owner, exercise all other rights and remedies available at law or in equity.

(e) It is the intent of the provisions of this Article IV to comply with provisions of said Section 51.002 of the Texas Property Code relating to nonjudicial sales by power of sale,

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including any amendment of said Section 51.002 of the Texas Property Code. Hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Jefferson County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

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

4.09 Subordination of the Lien to Mortgages. The Lien securing the payment of the Assessments and other obligation provided for herein shall be superior to any and all other charges, liens, or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, Mortgage, or other instrument, except for:

- (a) Mortgages for purchase money, home improvements, or home equity loans (and refinances thereof) shall be superior to the Association's Lien;
- (b) Liens for ad valorem taxes or other public charges shall be superior to the Association's Lien if superiority is provided by applicable law; and
- (c) Such other liens which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's Lien;

Provided, however, subordination shall apply only to the Assessments which are due and payable prior to the foreclosure sale (whether public or private) pursuant to the terms and conditions of any Mortgage or tax lien. Such sale shall not relieve the Lot and its Owner from liability for the amount of any Assessment thereafter becoming due or from the Lien of any subsequent Assessment. Furthermore, subordination shall not apply where the Mortgage or tax lien is used as a device, scheme or artifice to evade the obligation to pay Assessments and/or to hinder the Association in performing its functions.

4.10 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessment, charge, and lien created herein:

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- (a) All Property dedicated to and accepted by the local public authority and devoted to public use;
- (b) All Common Property.

4.11 Handling of Assessments. The collection and management of the assessments and other charges levied hereunder shall be performed by the Association in a separate special account for these funds.

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4.12 Failure to set Assessments. The failure of the Board, before the expiration of any year, to fix the Assessments hereunder for that or the next year, shall not be a waiver or modification of Assessments for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new assessment is set by the Board.

4.13 Alternative Payment Schedule. In compliance with Section 209.0062 of the Texas Property Code, Owners may be entitled to make partial payment for delinquent amounts owed to the Association. The Association may impose a fee for administering a Payment Plan. Such fee, if any, will be listed on the Payment Plan form and may change from time-to-time. Interest will continue to accrue during a Payment Plan as allowed under the Declaration. The Association can provide an estimate of the amount of interest that will accrue under any proposed plan. All Payment Plans must be in writing on a form provided by the Association and signed by Owner.

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- (i) The Payment Plan becomes effective and is designated as "active" upon:
 - (1) receipt of a fully completed and signed Payment Plan form; and
 - (2) receipt of the first payment under the plan; and
 - (3) acceptance by the Association as compliant with this provision.
- (ii) Unless alternative payment plan terms are approved by the Association, a Payment Plan duration will consist of:
 - (1) Six (6) equal monthly payments for owners with an account balance of \$1000.00 or less; or
 - (2) Twelve (12) equal monthly payments for owners with an account balance of \$1000.01 or more.

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- (iii) Except if the owner is in default under a Payment Plan with the Association at the time the Association receives a payment from an owner, the payment will be applied to the owner's debt in the following order of priority:
 - (1) Any delinquent assessment;
 - (2) Any current assessment;
 - (3) Any attorney's fees or third party collection costs incurred by the Association solely with assessments or any other charge that could provide the basis for foreclosure;
 - (4) Any attorney's fees incurred by the Association that are not subject to (3) above;
 - (5) Any fines assessed by the Association;

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