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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

YOWELL RANCH

This Declaration of Covenants, Conditions and Restrictions for Yowell Ranch is made on the date hereinafter set forth by Declarant (as hereinafter defined).

Declarant is the owner of the Property (as herein defined). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. The Declaration is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Property. In furtherance of such plan, Declarant has caused or intends to cause the Yowell Ranch Homeowners' Association to be formed as a Texas nonprofit corporation to own, operate, and maintain the Common Maintenance Areas (as defined herein) and to administer and enforce the provisions of this Declaration.

Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any portion of the Property.

ARTICLE I
DEFINITIONS

1.1 **"ACA" or "Architectural Control Authority"** shall have the meaning provided such terms in Section 6.2 herein.

1.2 **"ACA Standards"** means standards adopted by the ACA regarding architectural and related matters, including, without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which may be either recommended or required by the ACA for use within the Property.

1.3 **"Articles"** means the Articles of Incorporation of the Association.

1.4 **"Association"** means Yowell Ranch Homeowners' Association, a Texas nonprofit corporation established for the purposes set forth herein.

1.5 **"Association Easement"** any easement intended for the construction, installation, operation, location or repair of any subdivision improvement, including, without limitation, any subdivision sign, monument or entry feature, retaining, screening or perimeter wall, drainage facility or other easement for the benefit of the Association shown on a Recorded plat of the Property or otherwise shown in any instrument of record, and including the easement for subdivision fencing reserved in Section 9.7 below.

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

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1.7 **"Builder"** means any person or entity who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business.

1.8 **"By-laws"** means the by-laws of the Association.

1.9 **"City"** means the City of Killeen.

1.10 **"Common Area"** and **"Common Areas"** means all areas (including the improvements thereon) within the Property owned or to be owned by the Association for the common use and enjoyment of the Members, including, without limitation, the real property described and/or depicted on Exhibit "B" attached hereto.

1.11 **"Common Expenses"** means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas.

1.12 **"Common Maintenance Areas"** means the Common Areas, if any, and any areas within public rights-of-way, easements (public and private), portion of a Lot, public parks, private streets, landscaping, entry features, fence or similar areas that either the Board deems necessary or appropriate to maintain for the common benefit of the Members or that is shown on a Recorded plat of the Property or portion thereof as being maintained by the Association.

1.13 **"County"** means the County of Bell.

1.14 **"Declarant"** means WBW Development, Ltd. and its successors and assigns as provided in Section 12.12 herein.

1.15 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Yowell Ranch, and any amendments and supplements thereto made in accordance with its terms.

1.16 **"Designated Interest Rate"** means the interest rate designated by the Board from time to time, subject to any interest limitations under Texas law. If the Board fails to designate an interest rate, then the interest rate shall be the lesser of 12% per annum or the highest rate permitted by Texas law. The Designated Interest Rate is also subject to the limitations in Section 12.6 herein.

1.17 **"Development Period"** means the period commencing upon the date of this Declaration and expiring upon the earlier of (i) when Declarant does not own any real property within the Property, or (ii) when Declarant executes a document stating the Development Period has terminated, which termination document may be executed during the period when Declarant still owns real property within the Property.

1.18 **"Dwelling"** means any residential dwelling situated upon any Lot.

1.19 **"Entry Signs"** means the entry feature signs for the subdivision that are or may be placed by the Declarant or its agents on the Common Area, Common Maintenance Areas and/or on the Association Easement, including, without limitation, the entry feature signs for the subdivision that are or may be placed on the real property described on Exhibit "D" attached hereto.

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1.20 **"Lot"** means any separate residential building parcel shown on a Recorded subdivision plat of the Property, but only if such parcel has in place the infrastructure (including utilities and streets) necessary to allow construction of a single-family home thereon. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.

1.21 **"Member"** means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in Article III herein.

1.22 **"Owner"** means the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract for deed, then the purchaser (rather than the fee Owner) will be considered the Owner.

1.23 **"Property"** means the real property described on Exhibit "A" attached hereto (other than areas dedicated to the City or County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.

1.24 **"Record," "Recording" or "Recorded"** means the filing of a legal instrument in the Public Records of Bell County, State of Texas, or such other place as may be designated as the official location for filing deeds, plats, and similar documents affecting title to real property.

ARTICLE II
PROPERTY RIGHTS

2.1 **Owners' Easements of Use and Enjoyment.** Every Owner will have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, subject to any limitations set forth herein, including, without limitation, the following:

a. **Rules**. The right of the Association to establish and publish rules and regulations governing the use of the Common Areas and/or the Lots.

b. **Suspension Voting Rights**. The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid.

c. **Conveyance of Common Area**. The right of the Association, subject to the provisions hereof, to dedicate, sell or transfer all or any part of the Common Areas. However, no such dedication, sale or transfer will be effective unless there is an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

d. **Mortgage Common Area**. The right of the Association, subject to the provisions hereof, to mortgage or lien all or any part of the Common Areas. However, the Common Areas cannot be mortgaged or liened without an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

2.2 **Prohibitions on Easement of Use and Enjoyment**. Each Owner's right and easement of use and enjoyment in and to the Common Area is further limited as follows:

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a. **No Transfer without Lot.** An Owner's right and easement of use and enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot.

b. **No Partition.** Except as provided in Section 2.1.c herein, the Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

2.3 **Right to Delegate Use and Enjoyment of Common Area.** Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the By-laws and any reasonable rules of the Board. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

ARTICLE III
MEMBERSHIP AND VOTING

3.1 **Membership - Owners.** Every Owner by virtue of ownership of a Lot will be a member of the Association. Membership will be appurtenant to and will not be separated from ownership of any Lot.

3.2 **Voting Rights.** The voting rights in the Association shall be as follows:

a. **Members other than Declarant.** Except as provided in Section 3.2(b) below, Members shall be entitled to one vote for each Lot owned. However, when more than one person or Member holds an interest in any Lot, only one vote in total may be cast per Lot as the Owners of such Lot determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Member is the person designated to cast the Lot's vote. If the Members fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.

b. **Declarant.** Declarant shall be entitled to ten (10) votes for each Lot owned by Declarant, regardless if the period is within or after the Development Period.

ARTICLE IV
ASSESSMENTS

4.1 **Obligation to Pay Assessments.** Subject to and except as provided in this Article IV, each Owner of any Lot by acceptance of a deed therefor, whether or not it will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges as provided in Section 4.3 herein, (ii) special assessments as provided in Section 4.6 herein, and (iii) specific assessments as provided in Section 4.7 herein.

4.2 **Rate of Assessments.** Both annual assessments and special assessments shall be fixed at a uniform rate for all Lots, regardless of a Lot's location or size or the value of the dwelling; provided, however, vacant Lots shall be subject to a lower rate as provided herein.

a. **Improved Lot.** A Lot that has thereon a Dwelling that has been occupied at any time (past or current) for residential purposes shall be assessed at the full rate.

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b. **Vacant Lot**. A Lot that does not have thereon a Dwelling that has been occupied at any time (past or current) for residential purposes shall be assessed at the rate of 25% of the full rate.

c. **Lots Owned by Declarant – Exempt**. Notwithstanding any provision herein, during the Development Period all Lots owned by Declarant shall be exempt from all assessments (annual assessments, special assessments and/or specific assessments) and Declarant shall not be obligated to pay any assessments for the Lots.

4.3 **Annual Assessment – Increases**. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment shall be $300.00 per Lot. Thereafter, the annual assessment may be increased by the Board, provided that the Board gives written notice to the Members of the increase. The effective date of the increase shall not be sooner than 60 days from the date of the notice. No vote or other approval shall be required for the increase to be effective, unless the increase is more than 10% of the prior annual assessment. If the increase is more than 10%, then the increase may be disapproved by a 67% or greater vote of the votes cast, provided that the vote occurs within 60 days of the date of the increase notice.

4.4 **Date of Commencement of Annual Assessments; Due Dates**. The annual assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to a Builder or an entity that assumes the Declarant status as provided herein), unless the Board elects to commence the annual assessment earlier. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each assessment period. Written notice of the annual assessment shall be sent to an Owner of every Lot subject thereto. The due dates shall be established by the Board. The Board shall also establish whether the annual assessment shall be paid annually, quarterly or monthly.

4.5 **Declarant's Obligation to Pay Budget Deficits**. During the Development Period, Declarant is responsible to pay to the Association the difference between the Association's operating expenses and the assessments received by the Association (the **"Budget Deficit"**); provided that if the Budget Deficit is the result of the failure or refusal of an Owner or Owners to pay their annual assessment or special assessments, the Association will diligently pursue (the Declarant may also pursue at its option) all available remedies against such defaulting Owners and will promptly reimburse the Declarant the amounts, if any, so collected. Upon termination of the Development Period, Declarant's obligation to pay Budget Deficit attributable to the period of time after the Development Period shall cease.

4.6 **Special Assessments**. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to cover expenses which the Board determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget, provided, that any such special assessment must have an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

4.7 **Specific Assessments**. The Association shall have the power to levy specific assessments against a particular Lot to (i) cover costs incurred in bringing a Lot into compliance with this Declaration, (ii) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests, and/or (iii) collect any sums due by the Owner to the Association (other than annual assessments or special assessments or interest or late charges related thereto), including, without limitation, fines.

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4.8 **Purpose of Annual and Special Assessments - Reserve**. Annual assessments and special assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, inspection, repair and replacement of improvements to the Common Maintenance Areas.

4.9 **Personal Obligation to Pay Assessments**. Each assessment provided herein, together with interest at the Designated Interest Rate, late charges, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded first purchase money mortgage or beneficiary of a Recorded first deed of trust (meaning any Recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust), shall be liable for unpaid assessments which accrued prior to mortgagee's acquisition of title. In addition, no mortgagee shall be required to collect assessments.

4.10 **Capitalization of Association - Payment**. Upon acquisition of record title to a Lot by the first Owner thereof (other than Declarant or a Builder), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to two months of the full annual assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-laws.

4.11 **Failure to Pay Assessments; Remedies of the Association.** With respect to any assessment or other sum due herein not paid within 10 days after the due date, the Association shall have the right to: (i) charge a late fee, in an amount determined by the Board; (ii) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; and/or (iii) charge costs and fees related to the collection of the sum due. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Areas or abandonment of his or her Lot. The failure to pay assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

4.12 **Lien.**

a. **Creation of Lien**. The Association shall hereby have a continuing lien against each Lot to secure payment of delinquent assessments (annual assessments, special assessments and specific assessments), as well as interest at the Designated Interest Rate, late charges, and costs of collection, including, without limitation, court costs and attorneys' fees, and any other fees or charges that are authorized under or pursuant to this Declaration. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot, the amount of delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

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b. **Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial or nonjudicial foreclosure. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale. The Board may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board's meeting. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code, as amended. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, as amended, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the By-laws and applicable law, such as Chapter 209 of the Texas Property Code, as amended. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

c. **Subordination of Lien**. The lien of the assessments provided for herein is subordinate to the lien of any Recorded first purchase money mortgage or deed of trust against a Lot.

d. **Effect of Conveyance**. An Owner that conveys title to a Lot shall not be liable for assessments that are attributable to the period after the conveyance of the Lot, except as provided in Section 4.12(e) herein. However, a conveyance of title to a Lot shall not affect the assessment lien or relieve the Owner that conveys the Lot from personal liability for any assessments attributable to the period prior to the date of the conveyance, except as provided in Section 4.12(e) herein.

e. **Effect of Foreclosure.** The foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will extinguish the lien of such assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof shall not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term first in connection with a mortgage or deed of trust shall refer to the lien priority as compared to other mortgages or deeds of trust.

ARTICLE V
THE ASSOCIATION

5.1 **The Association - Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-laws, and this Declaration. The Association shall continue to exist until the Association is dissolved, regardless if the corporate status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Articles and the By-laws.

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5.2 **Board of Directors**. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Articles and the By-laws. The Board shall have the powers granted in this Declaration, the Articles, the By-laws, and all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein.

5.3 **Limitation on Liability**. The liability of an officer, director or committee member of the Association shall be limited as provided in the Articles.

5.4 **Indemnification**. Subject to the limitations and requirements of the Texas Business Organizations Code, as amended, and in the By-laws, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including, without limitation, attorneys' fees, reasonably incurred in connection with any threatened, initiated or filed action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which a director's, officer's or committee member's liability is limited under the Articles. Additionally, subject to the limitations and requirements of the Texas Business Organizations Code, as amended, and in the By-laws, the Association may voluntarily indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against such person in that capacity and arising out of that capacity.

5.5 **Insurance**.

a. **Required Coverages**. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, the following insurance coverage, if reasonably available:

(i) **Property Insurance – Common Area**. Blanket property insurance covering loss or damage on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership.

(ii) **General Liability Insurance**. Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf.

b. **Additional Insurance**. The Board may obtain additional insurance as the Board determines advisable, including, without limitation, directors and officers liability insurance, fidelity insurance and any insurance to comply with any applicable insurance requirements of any federal agency or secondary mortgage market entity, including, without limitation, the Federal Home Loan Mortgage Corporation ("**FHLMC**"), the Federal National Mortgage Association ("**FNMA**"), the U. S. Department of Veterans Affairs ("**VA**"), and the U.S. Department of Housing and Urban Development ("**HUD**"), to the extent applicable. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary the Board shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

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c. **Review of Policies**. The Board shall periodically review the types and amounts of insurance coverage for sufficiency.

5.6 **Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational, or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board. The Board may employ for the Association a management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority.

5.7 **Books and Records**. The books and records of the Association shall be made available to the Members for inspection as provided in the By-laws. In addition, Members may obtain copies, at a reasonable cost, of the books and records of the Association as provided in the By-laws.

5.8 **Dissolution of Association; Conveyance of Assets**. If the Association is dissolved other than incident to a merger or consolidation, the assets both real and personal of the Association, shall be conveyed as provided in the Articles.

5.9 **Enforcement – Notice**. The Association may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with and subject to the applicable procedures set forth in this Declaration, the By-laws and applicable law, including Chapter 209 of the Texas Property Code, as amended. Specifically, written notice and opportunity for a hearing must be given prior to the Association exercising its remedies if such notice and hearing is required by this Declaration, the By-laws and applicable law, including Chapter 209 of the Texas Property Code, as amended. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

a. **Fines**. The Association may impose reasonable monetary fines which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest, or invitee of the Owner of such Lot.

b. **Suspension of Voting Rights**. The Association may suspend an Owner's right to vote.

c. **Suspension of Rights to Use Common Area**. The Association may suspend any person's or entity's right to use any Common Area; provided, however, nothing herein shall authorize the Association to limit ingress or egress to or from a Lot.

d. **Right of Self-Help**. The Association may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration;

e. **Right to Require Removal**. The Association may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Association or its designee shall have the right to enter the Lot, remove

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the violation, and restore the property to substantially the same condition as previously existed, without such action being deemed a trespass.

f. **Levy Specific Assessment**. The Association may levy a specific assessment to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration.

g. **Lawsuit; Injunction or Damages**. The Association has the right, but not the obligation, to bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

h. **Perform Maintenance**. In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Association may record a notice of violation in the Records and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific assessment.

The decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Association's sole and absolute discretion, except that the Association shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Association may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

ARTICLE VI
ARCHITECTURAL CONTROLS

6.1 **No Improvements Unless Approved by Architectural Control Authority - Except Improvements by Declarant.** No building, fence, wall, outbuilding, landscaping, pool, detached building, athletic or play equipment or facility, structure or improvement will be erected, altered, added onto or repaired upon any portion of any Lot without the prior written consent of the ACA. However, ACA approval is not required for (i) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant to be exempt from the ACA approval requirements; (ii) any improvements to the interior of a Dwelling, except as provided herein; (iii) the painting or re-bricking of the exterior of any Dwelling in accordance with the same color or design as originally constructed by Declarant or in accordance with the approved color and design scheme approved by the ACA; (iv) improvements for which the Declaration expressly states that the ACA's prior approval is not required; or (v) repair or replacement of worn out or damaged improvements if such repair or replacement is with substantially similar materials. Any improvements pursuant to clauses (iii) and (v) immediately preceding must be in compliance with any applicable ACA Standards. Declarant hereby designates that Pulte Homes of Texas, L.P., a Texas limited partnership (**"Pulte"**), is exempt from the ACA approval requirements described above.

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6.2 **Architectural Control Authority.** The ACA shall have the sole and exclusive authority to perform the functions contemplated by the ACA in this Declaration. The purpose of the ACA is to enforce the architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The ACA will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The **"ACA"** or **"Architectural Control Authority"** shall be the following entity:

a. **Declarant - During Development Period.** The Declarant shall be the ACA during the Development Period, unless the Declarant in writing has terminated its rights as the ACA.

b. **Architectural Committee - After the Development Period**. The Architectural Committee shall be the ACA after the Declarant's right to act as the ACA has either expired or voluntarily been terminated.

6.3 **Architectural Committee**. A committee to be known as the "Architectural Committee" consisting of a minimum of 3 members will be established after the Declarant's right as the ACA has terminated. The members of the Architectural Committee will be appointed, terminated and/or replaced by the Board. The Architectural Committee will act by simple majority vote.

6.4 **Submission of Plans.** Prior to the initiation of construction of any work required to be approved by the ACA as provided in Section 6.1 above, the Owner (excluding Declarant and any Builder designated in writing to be exempt from the ACA approval requirements as provided herein) will first submit to the ACA a complete set of plans and specifications for the proposed improvements, including site plans, landscape plans, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACA for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates.

6.5 **Plan Review.**

a. **Timing of Review and Response**. Upon receipt by the ACA of all of the information required by this Article VI, the ACA will have 30 days in which to review said plans and other documents and materials submitted pursuant to Section 6.4 herein. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACA in form satisfactory to the ACA. If the ACA requests additional information and the applicant fails to provide such information prior to the date stated in the ACA's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACA consider the request. If the ACA fails to issue its written approval within 30 days after the ACA's receipt of all materials requested by the ACA to complete the submission, then such failure by the ACA to issue its written approval shall be deemed disapproved. The ACA may charge a reasonable fee for reviewing requests for approval.

b. **Approval Considerations - Aesthetics**. The proposed improvements will be approved if, in the sole opinion of the ACA: (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements

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within the Property; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not have an adverse impact on the Property. Decisions of the ACA may be based on purely aesthetic considerations. The ACA shall have the authority to make final, conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and their members change over time.

6.6 **Timing of Completion of Approved Items**. All work approved by the ACA shall be completed within one year after the approval by the ACA or such shorter period that the ACA may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACA. All work and related improvements shall be in compliance with the items approved by the ACA.

6.7 **Improvements Impact on Drainage**. With respect to any improvements performed on a Lot and/or any alterations to the grade of a yard, the Owner shall take proper precautions to insure that such improvements do not cause the surface water drainage on the Lot to (i) drain onto an adjoining Lot in an amount more than the drainage amount prior to the improvement or alteration, or (ii) collect near the foundation of the Dwelling. Although the ACA may comment on and/or deny the approval of plans because of the impact of the proposed improvements or alterations on surface water drainage, the ACA's comments or approval shall not constitute or be construed as a representation, warranty or guaranty that adverse surface water drainage problems will not occur and shall not be relied upon as such. The Owner is responsible for taking the necessary actions in order to avoid any surface water drainage problems, including, without limitation, engaging the services of a qualified consultant.

6.8 **No Waiver**. The approval by the ACA of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACA under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

6.9 **Variances**. The ACA may authorize variances from strict compliance with the requirements herein, in any ACA Standards or any required procedures: (i) in narrow circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence; or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. For purposes of this Section 6.9, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing as the sole or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance shall be contrary to the terms of this Declaration and no variance shall be effective unless in writing or estop the ACA from denying a variance in other circumstances.

6.10 **Architectural Control Authority Standards**. The ACA may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, ACA Standards. The ACA Standards may not conflict with the terms of this Declaration.

6.11 **Enforcement; Non-Conforming and Unapproved Improvements.** If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACA, in their sole and absolute discretion, such improvements will be in violation

of this Article VI to the same extent as if made without prior approval of the ACA. In addition to the Association's rights in Section 5.9 herein, the Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alternation to any improvement on any Lot that is not approved by the ACA.

6.12 **Limitation of Liability**. Neither the Declarant, the Association, the Board, nor the ACA shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board, the ACA nor any member of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling and/or Lot. The ACA and its members shall be defended and indemnified by the Association as provided in Section 5.4 herein.

ARTICLE VII
USE RESTRICTIONS AND COVENANTS

7.1 **Single Family Residential Use**. All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees; and (iv) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threatens the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (i) through (iv) above in this Section 7.1 shall be made by the Board in their sole and absolute discretion. The business activity prohibition will not apply to the use by Declarant or any Builder (i) of any Dwelling as a model home, construction office and/or sales office, or (ii) of any Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot; any of which uses may be for the benefit of real property owned by Declarant or any Builder located within or outside of the Property.

7.2 **Parking of Motor Vehicles.** No vehicles or similar equipment will be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such vehicle (i) has less than 1 ton carrying capacity; (ii) has less than 3 axles; (iii) is in operating condition; and (iv) is generally in daily use as a motor vehicle on the streets and highways of the State of Texas. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement, provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board as intended for such vehicular use. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot or a street within the Property, except within an enclosed garage. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or portions of any Lot that are visible from any street within the Property.

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7.3 **Trailers, Boats, Commercial and Recreational Vehicles.** No campers, boats, trailers, motor homes, travel trailers, camper bodies, golf carts, recreational vehicles, non-passenger vehicles, vehicles with 3 or more axles or greater than 1 ton carrying capacity, and/or equipment or accessories related thereto may be kept on any Lot, unless such item is operable and such item is (i) kept fully enclosed within a garage located on such Lot; (ii) kept fully screened from view by a screening structure or fencing approved by the ACA; (iii) temporarily parked on any street within the Property or on a Lot for the purpose of loading or unloading; or (iv) a commercial vehicle that is in use for the construction, maintenance or repair of a Dwelling or Lot in the immediate vicinity. The Board will have the absolute authority to determine from time to time whether an item is in operable condition and complies with the requirements in clauses (i) through (iv) above in this Section 7.3. Upon an adverse determination by the Board, the Owner will cause the item to be removed and/or otherwise brought into compliance with this Section 7.3. Notwithstanding any provision herein, no trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time.

7.4 **Fences.**

a. **Required Fencing**. The backyard of each Lot must be fully enclosed with a perimeter fence.

b. **Type of Fencing**. All perimeter fences will be wood, brick and/or masonry. No other type of fencing shall be permitted. All fencing shall comply in all respects (including size and location) with applicable City requirements, including, without limitation the City. All perimeter fences shall be six feet in height unless another height is approved by the ACA and shall be a color approved by the ACA. Unless approved by the ACA, fences may not be stained or painted, except that fences may be stained with a clear stain or with the same color stain as originally applied by the Declarant. The portion of all fences which exterior or side faces a street adjoining such Owner's Lot (front, side or rear streets, but not alleys) or which exterior or side faces a Common Area, open space, park or other recreational area adjoining such Owner's Lot (which area may be separated by an alley) shall have the smooth surface of the fence materials facing the applicable street or Common Area. The fence posts and bracing boards on such front, side and rear fences shall face the interior of the fenced yard.

c. **Location of Fence**. UNLESS APPROVED BY THE CITY AND THE ACA, no fence or wall will be placed (i) on any Lot in a location nearer the street than the front building setback line for such Lot, or (ii) on those certain corner Lots whose rear boundary line adjoins any portion of another Lot's front yard of a Lot behind the corner Lot, in a location nearer to the front building setback line for the street that is in front of the adjoining Lot. The foregoing shall not limit or restrict fences erected in conjunction with model homes or sales offices. In addition to the foregoing, easements may also restrict the placement of fences.

d. **Maintenance of Fencing**. Except with respect to subdivision fencing described in Section 9.7 below, each Owner shall maintain the portion of fencing on such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto (as deemed necessary by the Board, in its sole and absolute discretion), except that Owners adjoining a Common Fence (as provided in Section7.4.f) herein shall share in the cost of such maintenance as provided in Section 7.4.f herein. The Association shall be responsible to maintain the subdivision fencing described in Section 9.7 below.

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e. **No Changes / Repairs**. All repairs and replacements to the perimeter fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in this Section 7.4.e, no fencing (including, without limitation, the subdivision fencing described in Section 9.7 below) may be changed or modified without the prior written consent of the ACA. This includes the prohibition against changing the height of the fencing and the fencing materials.

f. **Common Fencing**. Except for the subdivision fencing described in Section 9.7 below, side and rear yard fences that are installed by Declarant or the builder of the Dwelling to separate adjacent Lots as a common boundary fence (the **"Common Fence"**) shall be maintained jointly by the Owners whose Lot adjoins such Common Fence and the costs associated therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation even if an Owner constructs a second fence along or near the Common Fence, unless the other Owner agrees in writing otherwise and the ACA's approval is obtained. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of one-half (1/2) of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of one-half (1/2) of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term **"Arbitration"** shall mean binding arbitration pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners.

7.5 **Common Retaining Wall.**

a. **Maintenance of Common Retaining Wall**. Any retaining walls that are installed by Declarant on a common boundary of two Lots or that are located on a Lot, but adjacent to (within 3 feet) and generally parallel with another Lot (a **"Common Retaining Wall"**) shall be maintained jointly by the Owner(s) whose Lot the Common Retaining Wall is located on and the Owner whose Lot is adjacent to the Common Retaining Wall (depending upon which is applicable) and the costs associated therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation unless the other Owner agrees in writing to such release. The Common Retaining Wall shall be maintained in the same location, size, style and design and with the same materials, unless both Owners agree in writing otherwise and the ACA's approval is obtained. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Retaining Wall and/or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of ½ of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of ½ of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made.

b. **Easement for Common Retaining Wall**. Common Retaining Walls may not be located exactly on the common boundary line between two Lots. Therefore, there is hereby created an easement in and on the Lot where the Common Retaining Wall is actually located. The easement area shall be limited to the area that is within 3 feet of the common boundary line. The easement shall be for the benefit of the Owner of the Lot that adjoins the Common Retaining Wall so that such Owner can maintain the Common Retaining Wall as provided in Section 7.5.a.

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7.6 **Outbuildings, Sheds and Detached Buildings**. No detached accessory buildings, including, but not limited to, detached garages and storage buildings, and sheds shall be erected, placed or constructed upon any Lot, unless (i) the building is APPROVED BY THE ACA prior to the installation or construction of the building; (ii) such building is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition; (iii) the exterior paint and roofing materials of such building shall be consistent with the existing paint and roofing materials of the Dwelling; (iv) the building is located within a backyard that has a fence that completely encloses the backyard; (v) the height of the walls (excluding the roof) is not greater than 8 feet; (vi) the total height of the building (including walls and roof) is not greater than 10 feet; and (vii) the building is less than 200 square feet of floor space. In addition, the Owner is required to comply with any applicable City requirements, including, without limitation, any necessary permits.

7.7 **Animals**. No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that a reasonable number of cats, dogs or other generally recognized household pets may be permitted on any Lot; however, those pets which are permitted to roam free, or in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board. If the animal owner fails to remove the animal from the Lot after the Board's request, the Board may remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the By-laws. All animals will be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal.

7.8 **Signs.** Except for Entry Signs, no sign or emblem of any kind, including "for rent" signs, may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following: (i) an Owner may erect one (1) sign on a Lot advertising the Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size; (ii) an Owner may temporarily place one (1) sign on a Lot advertising the "open house" of a Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during actual open house hours; (iii) an Owner may place one (1) sign on the inside of a window advertising a Dwelling "for rent", provided that the sign does not exceed one and one-half (1 1/2) feet by one and one-half (1 1/2) feet in size; (iv) signs or billboards may be erected by the Declarant or any Builder designated in writing by the Declarant as having the right to erect such signs or billboards; (v) an Owner may temporarily place 1 sign on a Lot advertising a "garage sale", provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during the garage sale hours; or (vi) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 60 days in advance of the election to which they pertain and are removed within 15 days after the election. The ACA may in the ACA Standards permit additional signs and/or place additional restrictions or limitations on the signs permitted in this Declaration, provided that such additional restrictions or limitations do not conflict with the terms herein. The Association will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing. Removal shall not subject the Association to any liability in connection with such removal. Declarant hereby designates that Pulte has the right to erect signs or billboards as described above.

7.9 **Trash; Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept,

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placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except solely on a day designated for removal of garbage, then such containers may be placed in the designated location for pick-up of such garbage and the container will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any Builder designated by Declarant. Declarant hereby designates that Pulte may store materials incident to construction of improvements on Lots during construction by Pulte as described above.

7.10 **Nuisances.** No noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics, will be carried on upon any Lot, nor will anything be done thereon which the Board determines, in its sole and absolute discretion, is or may become an unreasonable source of annoyance or nuisance to the Property.

7.11 **Antennae and Satellite Dishes.** Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of the Lot outside the Dwelling, except that (i) antennas, satellite dishes or other apparatuses that are one meter or less in diameter and that are designed to receive transmissions other than television broadcast signals shall be permitted; and (ii) antennas or satellite dishes designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACA (a **"Permitted Device"**), must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained. The ACA in the ACA Standards may include rules or provisions regarding the type of additional Permitted Devices and/or the placement of Permitted Devices, provided that such ACA Standards do not conflict with the terms of this Section 7.11 and do not unreasonably increase the cost of installation, maintenance or use of the Permitted Device. A Permitted Device that complies with the provisions of this Section 7.11 and the ACA Standards shall not require the ACA's approval prior to installation. However, the ACA shall be the sole and exclusive authority for purposes of determining if the item or device complies with the provisions of this Section 7.11 and the ACA Standards.

7.12 **Air-Conditioning Units.** Air-conditioning apparatuses must be installed on the ground behind the rear of the Dwelling, on the ground on the side of the Dwelling or such other location as may be approved by the ACA. No air-conditioning apparatus or evaporative cooler may be located in or on the front of any Dwelling or attached to any roof, wall or any window of any Dwelling.

7.13 **No Solar Collectors**. Except with the written permission of the ACA, no solar collector panels or similar devices may be placed on or around any Dwelling.

7.14 **No Temporary Structures as a Residence.** No structure of a temporary character, including, without limiting the generality thereof, any tent, shack, garage or barn will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent, that is erected in the back yard behind a fully screened fence, is permitted provided that such activity is on a temporary basis and does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board in its sole and absolute

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discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

7.15 **Sidewalks.** The Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot to the extent required by the City.

7.16 **Landscaping Maintenance.** At least one (1) tree shall be planted in the front yard and five (5) bushes prior to occupancy of a Dwelling located on a Lot. All yards must be sodded or grassed within a reasonable time period not to exceed seven (7) months after the initial conveyance of a Lot with a Dwelling thereon to an Owner other than a Builder. Decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front and side yard may not exceed 10% of the total area of the front and side yard. All trees, grass and other landscaping located on any Lot (or located adjacent to such Lot within the right-of-way of a street, alley or other right-of-way, including, for example, the area adjacent to a Lot between the sidewalk and the curb of the street) must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flower beds and planter areas. No hardscape, including, without limitation, edging may include any symbols, characters, numbers or letters, unless approved by the ACA. In no way will any landscaping installed by the Owner of the Lot, impede, hinder, or cause a negative impact for drainage for the Lot or adjacent Lots, this includes but is not limited to, flower beds, fountains, ponds, and gardens.

7.17 **Exterior Improvement Maintenance.** All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board, in its sole and absolute discretion.

7.18 **Garages.** Each Dwelling must have a garage that will accommodate a minimum of 2 automobiles. All garages must comply with City requirements. Garages may be used as Declarant's or a Builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant or Builder as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot.

7.19 **Clothes Hanging Devices.** No clothes hanging devices exterior to a Dwelling are to be constructed or placed on the Lot, except within the Dwelling.

7.20 **Window Treatment.** No Aluminum foil, newspaper, reflective film, bed sheets or similar linens, or similar treatment will be placed on windows or glass doors of a Dwelling.

7.21 **Oil and Gas Drilling or Mining.** No drilling, refining, quarrying or mining operation of oil, gas or other minerals of any kind will be permitted upon or from the surface of any Lot, nor will any oil derrick, well, tank, storage facility or other related equipment be permitted on any Lot. This section shall not prohibit subsurface drilling activities that begin upon and are conducted from the surface of real property not subject to these restrictions.

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7.22 **Mail Boxes.** Mailboxes shall be of similar type as originally installed, unless the ACA approves additional types of mail boxes.

7.23 **Athletic and Recreational Facilities.** No outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts may be placed on a Lot unless (i) such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed 12 feet in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACA may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling.

7.24 **Lighting; Exterior Holiday Decorations.** Lighting and/or decorations on a Lot may not be used or placed in a manner which, in the Board's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Dwelling that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six (6) weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

7.25 **Flags, Flagpoles, Lawn Decorations and Sculptures.** The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags, flagpoles and similar items on any portion of such Owner's Lot except the interior of the Dwelling, unless (i) such item is placed within a backyard completely enclosed by a fence which blocks the view of the item at ground level; and (ii) such item is no taller than the fence. Displays of American patriotism, school pride, and individuality are encouraged within reason and decorum; however, to maintain the overall aesthetic character of the community, the following restrictions shall govern the display of flags within the community. Permanent in-ground flagpoles are not permitted. Each Homeowner is authorized to mount two temporary or permanent flagstaffs on the front, rear or side of their residence by wall bracket. The flagstaffs should not to exceed six (6) feet in length. The suggested location for such bracket mounting is on the garage doorframe or near the garage door. No roof-mounted flagstaff is allowed. Multiple flag configurations and any flagstaff in excess of six (6) feet must be approved by the ACC prior to installation or display. The resident may use the flagstaff to display national ensigns such as the American or Texas flags; pennants, or banners such as school flags or sports team flags. Such flags may contain no more than twenty-four (24) square feet of material and must be of good taste and presentation.

7.26 **No Lot Consolidation or Division**. No Owner, other than Declarant, may divide any Lot and/or consolidate any adjoining Lots and/or any portion thereof.

7.27 **Drainage Alteration Prohibited.** Unless approved by the ACA, no Owner will: (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling; or (ii) install landscaping or other improvements that may interfere with, obstruct or divert drainage flows established by the Declarant or any Builder. The foregoing shall not prevent or limit the Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot.

7.28 **Construction Activities.** This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a

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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 diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board in its sole good faith judgment, the Board will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

7.29 **Declarant and Builder Development and Construction.** Notwithstanding any other provision herein, Declarant, and its successors and assigns, and any Builders (during the hours deemed reasonable by such Builder), will be entitled to conduct on the Property all activities normally associated with, and convenient to, the development of the Property and the construction and sale of Dwellings on the Property.

7.30 **Dwelling Size; Building Materials**. All residences shall contain not less than 1,200 square feet of enclosed living space, exclusive of porches (open or covered), decks, and garages. All building materials shall be approved by the ACA, and only new building materials (except for used brick) shall be used for construction of any improvements. Exposed metal roof decks are prohibited. Other roofing materials may be used with the prior written consent of the ACA, which may specify a minimum quality or grade of materials. All projections from a Dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the color of the surface from which they project, or shall be of a color approved by the ACA. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any improvements.

7.31 **Masonry Requirements**. The masonry requirements for one-story and two-story, respectively, Dwellings shall be as follows:

a. **One-Story Dwellings**. The exterior walls of all one-story Dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which collectively comprise a 90% masonry veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors and trim work.

b. **Two-Story Dwellings**. The front exterior wall of all two-story Dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which, collectively, comprise a 90% masonry veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work. The side exterior walls of the first floor of all two-story Dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which, collectively, comprise a 90% masonry veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work.

7.32 **Owner's Obligation to Rebuild**. If all or any portion of a residence is damaged or destroyed by fire or other casualty, it will be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty or in a manner consistent with building plans approved by the ACA. Reconstruction must be undertaken within six (6) months after the damage occurs, and must be completed within twelve (12) months after the damage occurs, unless

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prevented by causes beyond the control of such Owner. The ACA will approve all plans for repair or reconstruction.

ARTICLE VIII
COMMON AREAS

8.1 **Association to Hold and Maintain.** The Association will own all Common Areas in fee simple title. The Association shall maintain, at the Association's cost, the Common Area and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas, at the Association's cost, to the extent the Board determines that such maintenance is desirable. The costs of such maintenance for the Common Areas and Common Maintenance Areas shall be the Association's responsibility, regardless if such cost was incurred during the Development Period.

8.2 **Use of Common Areas at Own Risk**. Each Owner, by acceptance of a deed to a Lot, acknowledges that the use and enjoyment of any Common Area recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board and committees, Declarant, and any Builder are not insurers of personal safety and that each person using the Common Area assumes all risks of personal injury and loss or damage to property, resulting from the use and enjoyment of any recreational facility or other portion of the Common Area.

8.3 **Condemnation of Common Area.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board determines, in its business judgment, including, without limitation, (i) to purchase additional Common Areas to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Area any improvements that were on condemned Common Area, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

8.4 **Damage to Common Area**. If the Common Area or improvements on the Common Maintenance Areas are damaged and if there are insurance proceeds sufficient to repair such damage to its prior condition, then the Association shall cause such damage to be repaired or reconstructed unless there is a 67% or greater vote of all outstanding votes entitled to be cast within 90 days after the loss not to repair or reconstruct. If said 67% vote is cast not to repair or reconstruct such damage and no alternative improvements are authorized, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

8.5 **Conveyance of Common Areas by Declarant to Association**. Declarant shall have the right to convey title to any portion of the Property owned by Declarant, or any easement interest therein, to the Association as Common Area, and the Association shall be required to accept such conveyance. Property conveyed by Declarant to the Association as Common Area shall be conveyed free and clear of monetary liens and encumbrances other than taxes and assessments imposed by governmental entities or districts authorized by Texas law. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the Records.

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8.6 **Annual Inspection of Common Area - Budget**. From the period commencing at the expiration of the Development Period until 10 years thereafter, the Association shall at least annually examine the condition of the Common Area to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer, or professional contractors such as landscapers and brick masons. Within 15 days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair, and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. An expert's report is a record of the Association that is available to Owners for inspection and copying.

8.7 **No Representations or Warranties Regarding Drainage Area(s)**. Declarant has informed the Association that the drainage area(s) located on or to be constructed upon the Common Area (the **"Water/Drainage Improvements"**) are intended primarily for drainage purposes and are not intended as a recreational feature or an amenity with certain specific aesthetic qualities. Declarant makes no representations or warranties regarding the Water/Drainage Improvements and Declarant hereby disclaims any and all representations and warranties regarding the Water/Drainage Improvements, including, without limitation, any implied warranties, including any warranty for fitness for a particular purpose and any warranty of good and workmanlike construction. THE ASSOCIATION HEREBY AGREES TO ACCEPT THE WATER/DRAINAGE IMPROVEMENTS IN THEIR "AS-IS" CONDITION.

8.8 **No Representations or Warranties Regarding Open Space**. Declarant has informed the Association that a portion of the Common Area described on Exhibit "E" attached hereto (the **"Open Space Area"**) may be improved with certain recreational features, but is intended primarily as open space, which may remain in a natural or semi-natural condition and not as a recreational feature or an amenity, and a drainage easement area. Declarant makes no representations or warranties that the Open Space Area will contain any particular recreational features or amenities or have any certain specific aesthetic qualities. Declarant makes no representations or warranties regarding the Open Space Area and Declarant hereby disclaims any and all representations and warranties regarding the Open Space Area, including, without limitation, any implied warranties, including any warranty for fitness for a particular purpose and any warranty of good and workmanlike construction. THE ASSOCIATION HEREBY AGREES TO ACCEPT THE OPEN SPACE AREA IN ITS "AS-IS" CONDITION.

ARTICLE IX
EASEMENTS

9.1 **Easement for Utilities on Common Area.** During the Development Period, the Declarant, on behalf of itself, reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for the construction, installation, use and maintenance for utilities, including, without limitation, water, sewer, electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements. The Association will also have the right to grant the easements described in this Section 9.1.

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9.2 **Easement to Correct Drainage on Property.** For a period of 5 years after the Development Period, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where the Dwelling is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.3 **Easement for Right to Enter Lot.** If the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association will have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

9.4. **Easement for Right to Enter and Inspect Common Area.** For a period of 10 years after the date of the expiration of the Development Period, Declarant shall have the right, but not the obligation, to enter upon the Common Area for purposes of inspecting and repairing the Common Area and/or any improvements thereon at Declarant's expense; provided; however, nothing contained herein shall obligate Declarant to make any inspections or repairs.

9.5 **Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Dwellings and landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot 24 months after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.6 **Association Easement**. Declarant hereby reserves the Association Easement for the benefit of the Declarant and the Association for the purpose of placing, constructing and maintaining the Entry Signs, subdivision fencing described in Section 9.7 below, and landscaping located within or on a Lot. The real property subject to the Association Easement shall be conveyed subject to the Association Easement.

9.7 **Subdivision Fencing Easement**. Declarant hereby reserves the easement described in Exhibit "C" attached hereto for the benefit of the Declarant and the Association for the purpose of placing, constructing and maintaining the subdivision fencing located within or on a Lot described in Exhibit "C". The Lots described in Exhibit "C" shall be conveyed subject to such easement.

9.8 **Easement to Maintain Common Areas**. All Lots will be subject to an easement of ingress and egress for the benefit of the Association and its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be reasonably necessary for the repair, maintenance and improvement of the Common Areas.

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ARTICLE X
ANNEXATION AND WITHDRAWAL

10.1 **Annexation by Declarant.** While Declarant owns any real property subject to this Declaration, Declarant may, at its sole option, amend and expand the definition of Property by annexing real property into the Association and subjecting such real property to the terms hereof; provided; however, Declarant shall not have the right to annex real property that is located more than 1/2 of a mile from the Property (as such term may be amended), without a vote as provided in Section 10.2 below.

10.2 **Annexation by Association**. The Association may annex any real property into the Association and subject such real property to the terms hereof by an affirmative vote of 67% or greater of all outstanding votes that are entitled to be cast.

10.3 **Recording of Annexation**. The annexation of such real property shall be evidenced by a written Recorded document.

10.4 **No Duty to Annex**. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any real property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

10.5 **Withdrawal of Property**. While Declarant owns any real property subject to this Declaration, Declarant may amend this Declaration to withdraw any real property that does not have a Recorded plat from the definition of the Property and from the coverage of this Declaration, provided that the owner of real property to be withdrawn consents to such withdrawal.

ARTICLE XI
DISPUTE RESOLUTION

11.1 **Introduction & Definitions**. The Association, the Owners, Declarant, and all persons subject to this Declaration (individually a **"Party"** and collectively, the **"Parties"**) agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

a. **"Claim"** means any claim, grievance, or dispute between the Parties arising from this Declaration, the By-laws or the Articles for the Property or related to the Common Areas, except Exempt Claims as defined below, and including without limitation: (i) Claims arising out of or relating to the interpretation, application or enforcement of the Documents; (ii) Claims relating to the rights and/or duties of Declarant as Declarant under the Documents; and (iii) Claims relating to the design, construction or maintenance of the Property.

b. **"Claimant"** means any Party having a Claim against any other Party.

c. **"Exempt Claims"** means the following claims or actions, which are exempt from this Article: (i) the Association's claim for assessments, and any action by the Association to collect assessments; (ii) an action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court

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deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration; (iii) enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration; (iv) a suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article; and (v) a dispute that is subject to alternate dispute resolution - such as mediation or arbitration - by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

d. **"Respondent"** means the Party against whom the Claimant has a Claim.

11.2 **Mandatory Procedures**. Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

11.3 **Notice**. Claimant must notify Respondent in writing of the Claim (the **"Notice"**), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Declaration, By-laws or Articles other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section 11.3.

11.4 **Negotiation**. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

11.5 **Mediation**. If the Parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the Parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the Parties mutually agree. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

11.6 **Termination of Mediation**. If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed 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. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

11.7 **Allocation of Costs**. Except as otherwise provided in this Section 11.7, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

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11.8 **Enforcement of Resolution**. 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 the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

11.9 **General Provisions**. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not a party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

11.10 **Litigation Approval and Settlement**. In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial or administrative proceeding without the prior approval of Owners of at least 75 percent of the Lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceeding instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. Also, the Association may not initiate any judicial or administrative proceeding against Declarant without the approval of Owners of at least 75 percent of the Lots. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims. This Section 11.10 may not be amended without the approval of Owners of at least 75 percent of the Lots.

ARTICLE XII
MISCELLANEOUS

12.1 **Declaration Term - Perpetual.** Unless 90% of all outstanding votes that are entitled to be cast approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless Recorded.

12.2 **Amendments to Declaration**.

a. **Amendment by Declarant**. While Declarant owns any real property subject to this Declaration, Declarant, at its sole discretion and without a vote or the consent of any other party, shall have the right to amend this Declaration for the following purposes: (i) to add real property to the Property, (ii) to withdrawal real property from the Property, (iii) to create lots, easements, common areas, common maintenance areas, fencing and signage, (iv) to modify the use and covenant restrictions in Section VII herein, (v) to comply with the requirements of any governmental authority or institutional lender or underwriting lender, (vi) to resolve conflicts, clarify ambiguities and to correct misstatements, errors or omissions in this Declaration, and (vii) for any other purpose, provided, that such amendment made pursuant to this clause (vii) has no material adverse effect on any right of an Owner. Notwithstanding anything contained herein to the contrary, So long as Pulte holds a valid contract to purchase Lots within the Property or holds record title to one or more Lots within the Property, Declarant agrees that it shall not modify the Declaration in a

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manner that materially and adversely impacts such Lots or the Property without the prior written consent of Pulte.

b. **Amendment by Association**. The Association may amend this Declaration by an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

c. **Amendments to City Permission**. Amendments to Section 12.15 herein require the City's written consent.

12.3 **Enforcement by Association and/or Owner.** The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

12.4 **Remedies; Cumulative**. In the event any Lot does not comply with the terms herein or any Owner fails to comply with the terms herein, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the By-laws and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

12.5 **Notice to Association of Sale or Transfer**. Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice of the name and address of the purchaser or transferee, within 30 days after the date of such transfer of title, and such other information as the Board may reasonably require. With the Board's approval a number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of this Declaration, the By-laws, and/or Articles, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; transfer to, from, or by the Association; voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section 12.5 does not obligate the board or the manager to levy transfer-related fees.

12.6 **Limitation on Interest**. All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected, or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest

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exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to Owner.

12.7 **Construction and Interpretation**. This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

12.8 **Notices**. Except as otherwise provided in the By-laws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given three (3) days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice

12.9 **Not a Condominium**. This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

12.10 **Severability.** Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions which will remain, in full force and effect.

12.11 **Rights and Obligations Run With Land.** The provisions of this Declaration are covenants running with the land and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed. Notwithstanding any provision herein, the rights of Declarant as provided herein shall not run with the land, but instead may only be transferred or assigned as provided in Section 12.12 herein.

12.12 **Assignment of Declarant's Rights**. Declarant may assign, in whole or in part, its rights as Declarant by executing a document assigning such rights. There may be more than one Declarant, if Declarant makes a partial assignment of the Declarant status.

12.13 **Disclaimer Regarding Security**. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees, and licensees that the Association, its Board and committees and the Declarant are not insurers and that each person

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using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

12.14 **Adjacent Land Use**. Although this Declaration may contain disclosures about the Property or its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective owner or resident must make his own inspection of the Property, its location and nearby land uses, and make inquiries of anything that concerns him. Declarant makes no representation of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what the plat shows as potential uses of adjoining land. Declarant and the Association can not and do not guaranty scenic views, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air.

12.15 **City Permission**. Permission is extended to the City for practical access over all Common Areas to enable the City to access public infrastructure at any time without liability when on official business. This practical access will also extend to the City, without liability, permission to remove obstructions on Common Areas, including, but not limited to any gate or any other type of obstacle that precludes the accomplishment of the official business. The Association, as owner of common use facilities, agrees to release, and hold harmless the City, any governmental entity, and public utility for damages to common facilities occasioned by the reasonable use of such common facilities by the City, governmental entity, or public utility and for damages and injury arising from the condition of said common use facilities.

12.16 **Attorneys' Fees and Court Costs**. If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

12.17 **Gender.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

12.18 **Headings.** The headings contained in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

12.19 **Conflicts.** In the event of conflict between this Declaration and any By-laws, rules, regulations or Articles, this Declaration will control.

12.20 **Exhibits**. All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

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IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the day and year written below.

DECLARANT:
WBW DEVELOPMENT, LTD.,
a Texas limited partnership

By: WBW Development Management, LLC,
a Texas limited liability company,
Its: general partner

By: _____
Bruce Whitis,
Manager / President

Date: January 15, 2010

STATE OF TEXAS }
}
COUNTY OF BELL }

The foregoing instrument was acknowledged before me on January 15, 2010, by Bruce Whitis, Manager / President of WBW Development Management, LLC, a Texas limited liability company, on behalf of the limited liability company in its capacity as general partner of WBW Development, Ltd., a Texas limited partnership.

NOTARY PUBLIC STATE OF TEXAS
ROBBIN ELIZARRARAZ
Notary Public
STATE OF TEXAS
My Commission
Expires 07/31/2012

_____
Notary Public, State of Texas
Notary's Name Printed: Robbin Elizarraraz
My Commission Expires: 07-31-2012

AFTER RECORDING RETURN TO:
WBW Development, Ltd.
Attn: Bruce Whitis
3000 Illinois Avenue, Suite 100
Killeen, Texas 76543

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EXHIBIT "A"

The Property

Lots 1 through 26 and Tracts 4 and 5, Block 1; Lots 1 through 15 and Tract 6, Block 2; Lots 1 through 97 and Tracts 1 and 3, Block 3; Lots 1 through 226, Block 4; and Lots 1 through 16 and Tract 2, Block 5 of the FINAL PLAT OF YOWELL RANCH PHASE ONE, an addition to the City of Killeen, Bell County, Texas, according to the map or plat of record in Cabinet D, Slide 276-B and C, Plat Records of Bell County, Texas.

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EXHIBIT "A"

The Property

Lots 1 through 26 and Tracts 4 and 5, Block 1; Lots 1 through 15 and Tract 6, Block 2; Lots 1 through 97 and Tracts 1 and 3, Block 3; Lots 1 through 226, Block 4; and Lots 1 through 16 and Tract 2, Block 5 of the FINAL PLAT OF YOWELL RANCH PHASE ONE, an addition to the City of Killeen, Bell County, Texas, according to the map or plat of record in Cabinet D, Slide 276-B and C, Plat Records of Bell County, Texas.

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EXHIBIT "B"

Common Areas

Tracts 4 and 5, Block 1; Tract 6, Bock 2; Tracts 1 and 3, Block 3; and Tract 2, Block 5 of the FINAL PLAT OF YOWELL RANCH PHASE ONE, an addition to the City of Killeen, Bell County, Texas, according to the map or plat of record in Cabinet D, Slide 276-B and C, Plat Records of Bell County, Texas.

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EXHIBIT "C"

SUBDIVISION FENCING EASEMENT

An easement for subdivision fencing for the benefit of the Declarant and the Association, (i) adjacent to Featherline Road, being five feet (5') in width, and located within and along the westerly boundary lines of Lot 1 of Block 1, Lot 1 and Lots 37 through 51 of Block 3, and Lots 1 through 8 of Block 5; and (ii) adjacent to Stagecoach Road, being five feet (5') in width, and located within and along the northerly boundary lines of Lots 22 through 26 of Block 1, and Lot 1 of Block 2 of the FINAL PLAT OF YOWELL RANCH PHASE ONE, an addition to the City of Killeen, Bell County, Texas, according to the map or plat of record in Cabinet D, Slide 276-B and C, Plat Records of Bell County, Texas.

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EXHIBIT "D"

Entry Signs

Tracts 4 and 5, Block 1; Tract 6, Bock 2; Tract 3, Block 3; and Tract 2, Block 5 of the FINAL PLAT OF YOWELL RANCH PHASE ONE, an addition to the City of Killeen, Bell County, Texas, according to the map or plat of record in Cabinet D, Slide 276-B and C, Plat Records of Bell County, Texas.

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EXHIBIT "E"

Open Space Area

Tract 1, Block 3 of the FINAL PLAT OF YOWELL RANCH PHASE ONE, an addition to the City of Killeen, Bell County, Texas, according to the map or plat of record in Cabinet D, Slide 276-B and C, Plat Records of Bell County, Texas.

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Bell County
Shelley Coston
County Clerk
Belton, Texas 76513

Instrument Number: 2010-00002251
As
Recordings

Recorded On: January 21, 2010

Parties: WBW DEVELOPMENT LTD

To YOWELL RANCH

Billable Pages: 36

Number of Pages: 37

Comment:

(Parties listed above are for Clerks reference only)

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

Recordings	151.00
Total Recording:	**151.00**

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*************** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT **************

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: 2010-00002251

Receipt Number: 69659

Recorded Date/Time: January 21, 2010 09:21:57A

User / Station: N Mitchell - Cash Station 1

Record and Return To:

AMERICAN ABSTRACT & TITLE CO
2501 B E ELMS RD
KILLEEN TX 76542

I hereby certify that this instrument was filed on the date and time stamped hereon and was duly recorded in the Real Property Records in Bell County, Texas

Shelley Coston
Bell County Clerk