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AFTER RECORDING RETURN TO:

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

BAYOU 5TH

HARRIS COUNTY, TEXAS

Declarant: **URBAN INTOWNHOMES, LTD.**, a Texas limited partnership

This Declaration of Covenants, Conditions and Restrictions may be used only in connection with the residential community known as Bayou 5th in Harris County, Texas, and the operation of Bayou 5th Community Association, Inc., a Texas nonprofit corporation.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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BAYOU 5TH

This Declaration of Covenants, Conditions and Restrictions for Bayou 5th (the "**Declaration**"), is made by **URBAN INTOWNHOMES, LTD.**, a Texas limited partnership (the "**Declarant**"), and is as follows:

R E C I T A L S:

A. This Declaration is filed with respect to Lots 1 through 62, Block 1, Cage Street Landing, a subdivision located in Harris County, Texas, according to the map or plat recorded in Document No. 20150520149 [Film Code: 676523] in the Official Public Records of Harris County, Texas (collectively, the "**Property**").

B. The Declarant is an owner of a portion of the Property.

C. Fenway Development, Inc., a Texas corporation ("**Fenway**"), is the owner of a portion of the Property and the Common Area. Fenway executes this Declaration to evidence its consent to subject all the Lots it owns within the Property to the terms and provisions of the Declaration.

D. Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property.

E. By the Recording of this Declaration, Declarant serves notice that the Property is subject to the terms and provisions of this Declaration.

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

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

ARTICLE 1
DEFINITIONS

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

"Applicable Law" means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Property in effect at the time a provision of the Restrictions is applied, and pertaining to the subject matter of the Restriction provision, and all other ordinances and any other applicable building codes, zoning restrictions and permits or other applicable regulations. Statutes and ordinances specifically referenced in the Restrictions are "Applicable Law" on the date of the Restrictions, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

"**Architectural Control Committee**" or "**ACC**" means the committee created pursuant to this Declaration to review and approve or deny plans for the construction, placement, modification, alteration or remodeling of any Improvements on a Lot, Structure or Dwelling. As provided in *Article 9* below, the Declarant acts as the ACC and the ACC is not a committee of the Association until the Declarant has assigned its right to appoint and remove all ACC members to the Association in a Recorded written instrument.

"**Area of Common Responsibility**" means those portions of a Structure, Dwelling or Lot, if any, that are designated, from time to time, by this Declaration or the Association to be maintained, repaired, and replaced by the Association, as a common expense, as reflected in the Designation of Area of Common Responsibility and Maintenance Chart attached to this Declaration as Exhibit "A".

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

"**Assessment Unit**" has the meaning set forth in *Section 6.9.2*.

"**Association**" means **BAYOU 5TH COMMUNITY ASSOCIATION, INC.**, a Texas nonprofit corporation, which will be created by the Declarant to exercise the authority and assume the powers specified in *Article 5* and elsewhere in this Declaration. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and Applicable Law.

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

"**Bulk Rate Contract" or "Bulk Rate Contracts**" means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, water system services and any other services of any kind or nature which are considered by the Board to be beneficial to all or a portion of the Property or the Common Area. Each Bulk Rate Contract must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

"**Bylaws**" means the bylaws of the Association, which may be initially adopted and Recorded by Declarant or the Board of the Association and Recorded as part of the initial project documentation for the benefit of the Association. The Bylaws may be amended, from time to time, by the Declarant until expiration or termination of the Development Period. Any amendment to the Bylaws proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. Upon expiration of the Development Period, the Bylaws may be amended by a Majority of the Board.

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

"**City**" means the City of Houston, Texas.

"**Common Area**" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including any property or facilities (i) held by the Declarant or Fenway for the benefit of the Association or its Members or (ii) designated by the Declarant as Common Area in accordance with *Section 5.6*. Common Area also includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, Residents, and their guests, tenants and invitees, while other portions of the Common Area may be designated by the Declarant or the Board for the use and enjoyment of the Owners, Residents, and their guests, tenants and invitees, and members of the public.

"**Community Manual**" means the community manual of the Association, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the benefit of the Association and the Property. The Community Manual may include the Bylaws, Rules and Regulations and other policies governing the Association. The Bylaws, Rules and Regulations and other policies set forth in the Community Manual may be amended or supplemented, from time to time, by the Declarant until expiration or termination of the Development Period. Any amendment to the Bylaws, Rules and Regulations, and other policies governing the Association prosecuted by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. Upon

expiration or termination of the Development Period, the Community Manual may be amended by a Majority of the Board.

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

"**Declarant**" means **URBAN INTOWNHOMES, LTD.**, a Texas limited partnership, its successors or assigns; provided that any assignment(s) of the rights of **URBAN INTOWNHOMES, LTD.**, a Texas limited partnership, as Declarant, must be expressly set forth in writing and Recorded.

Declarant enjoys certain rights and privileges to facilitate the development, construction, and marketing of the Property, and to direct the size, shape and composition of the Property. These rights are described in this Declaration. Declarant may also assign, in whole or in part, all or any of the Declarant's rights established under the terms and provisions of this Declaration to one or more third-parties.

"**Design Guidelines**" means the standards for design, construction, landscaping, and exterior items proposed to be placed on any Lot, adopted pursuant to *Section 9.2.3*, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. At Declarant's option, Declarant may adopt or amend from time to time the Design Guidelines for the Property or any portion thereof. Notwithstanding anything in this Declaration to the contrary, Declarant will have no obligation to establish Design Guidelines for the Property or any portion thereof.

"**Development Period**" means the period of time beginning on the date when this Declaration has been Recorded, and ending twenty-four (24) months after the date that Declarant no longer owns any portion of the Property, unless earlier terminated by a Recorded written instrument executed by the Declarant. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

"**Dwelling**" means the single family residence located on a Lot, together with any garage incorporated therein, whether or not the Dwelling is occupied for residential purposes.

"**Fenced Yard Area**" means any portion of the yard area located on a Lot enclosed by a fence, if any.

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

"**Improvement**" means all physical enhancements and alterations to the Property, including but not limited to grading, clearing, removal of trees, alteration of drainage flow, and site work, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, balconies, porches, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, decks, walkways, landscaping, mailboxes, poles, signs, antennas, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

"Landscape Easement Area" means all portions of the Property, save and except the building footprint area of any Dwellings or Structures constructed thereon, the Fenced Yard Areas, and the Shared Driveways.

"Landscape Improvements" means all landscaping and related Improvements constructed by Declarant on the Landscape Easement Area in accordance with *Section 13.7* hereof, in its sole and absolute discretion. Notwithstanding anything in this Declaration to the contrary, Declarant shall have no obligation to construct any Landscape Improvements.

"**Lot**" means any portion of the Property designated by Declarant in a Recorded written instrument or as shown as a subdivided lot on a Plat other than Common Area.

"**Majority**" means more than half.

"**Manager**" has the meaning set forth in *Section 5.5.8*.

"Master Metered Lots" has the meaning set forth in *Section 2.32*.

"**Members**" means every person or entity that holds membership privileges in the Association.

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

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

"**Owner**" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

"**Plat**" means a Recorded subdivision plat of any portion of the Property and any amendments thereto.

"**Property**" means Lots 1 through 62, Block 1, Cage Street Landing, a subdivision located in Harris County, Texas, according to the map or plat recorded in Document No. 20150520149 [Film Code: 676523] in the Official Public Records of Harris County, Texas, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 14.3* and *Section 14.4* of this Declaration.

"**Rainwater Harvesting System**" means one or more rain barrels, tanks, or rainwater harvesting systems used to collect and store rainwater runoff from roofs or downspouts for Later reuse.

"**Record, Recordation, Recorded, and Recording**" means recorded or to be recorded in the Official Public Records of Harris County, Texas.

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

"**Restrictions**" means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, Community Manual, Rules and Regulations, or in any other rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time. *See Table 1* for a summary of the Restrictions.

"Rules and Regulations" means any instrument, however denominated, which is adopted by the Board for the regulation and management of the Property or the Common Area, including any amendments to those instruments.

"**Service Area**" means a group of Lots designated as a separate Service Area pursuant to this Declaration for purpose of receiving benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.37*.

"**Service Area Assessments**" means assessments levied against the Lots in a particular Service Area to fund Service Area Expenses, as described in *Section 6.7*.

"**Service Area Expenses**" means the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements.

"Shared Driveway" or "Shared Driveways" shall mean all "18' Shared Driveways" shown on the Plat, portions of which may be located on the Lots and certain "Flag Lots" as defined in *Section 2.34* of this Declaration. The Shared Driveways are hereby designated as

Common Area and an easement is hereby reserved in favor of each Owner and the Association over and across the Shared Driveways, as more particularly described in *Section 12.9* of this Declaration. The Shared Driveways will be maintained by the Association in good condition and repair, as determined from time to time by the Board, in accordance with Applicable Law.

"**Solar Energy Device**" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

"**Structure**" means a building containing two (2) or more Dwellings that: (i) is located on two (2) or more adjacent Lots; and (ii) has one (1) or more party walls separating the Dwellings comprising such building.

TABLE 1: RESTRICTIONS	
Declaration (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
Certificate of Formation (Recorded)	Establishes the Association as a Texas nonprofit corporation.
Bylaws (Recorded)	Governs the Association's internal affairs, such as elections, meetings, etc.
Community Manual (Recorded)	Establishes Rules and Regulations and policies governing the Association.
Design Guidelines (if adopted, Recorded)	Governs the design and architectural standards for the construction of Improvements and modifications thereto. The Declarant shall have no obligation to adopt the Design Guidelines.
Rules and Regulations (if adopted, Recorded)	Regulates the use of property, activities, and conduct within the Property or the Common Area.
Board Resolutions (adopted by the Board of the Association)	Establishes rules, policies, and procedures for the Property, Owners, and the Association.

ARTICLE 2
GENERAL AND USE RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

2.1 General.

2.1.1 Conditions and Restrictions. All Lots within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Restrictions.

NOTICE
The Restrictions are subject to change from time to time. By owning or occupying a

Lot, you agree to remain in compliance with the Restrictions, as they may change from time to time.

2.1.2 Ordinances. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with Applicable Law. Please be advised that the Restrictions do not purport to list or describe each restriction or ordinance or regulation which may be applicable to a Lot located within the Property. Each Owner is advised to review all ordinances, requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations, or encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

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

2.3 Single-Family Residential Use. The Lots shall be used solely for private single family residential purposes.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot, except an Owner or Resident may conduct business activities within a Dwelling so long as: (i) such activity complies with all Applicable Law; (ii) the business activity is conducted without the employment of persons other than the Residents of the Dwelling; (iii) the existence or operation of the business activity is not apparent or detectable by

sight, i.e., no sign may be erected advertising the business on any Lot, sound, or smell from outside the Dwelling; (iv) the business activity does not involve door-to-door solicitation of Residents within the Property; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents within the Property as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the Dwelling nor Lot will be considered open to the public. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a Dwelling shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Homebuilder.

Notwithstanding any provision in this Declaration to the contrary, until the expiration or termination of the Development Period:

(i) Declarant and/or its assignees may construct and maintain upon portions of the Common Area, any Lot, or portion of the Property owned by the Declarant or Fenway, such facilities and may conduct such activities, which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Dwellings constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its assignees shall have an easement over and across the Common Area for access and use of such facilities at no charge; and

(ii) Declarant and/or its assignees will have an access easement over and across the Common Area for the purpose of making, constructing and installing Improvements upon the Common Area and the Property.

2.4 Rentals. Nothing in this Declaration will prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that: (i) all rentals must be for a term of at least six (6) months; and (ii) no portion of a Lot (other than the entire Lot) may be rented. All leases shall be in writing, and the Board will have the authority to approve all leases in advance. Each lease must provide, or be deemed to provide, that the

Board shall have the right to terminate the lease upon default by the tenant in observing any provisions of the Restrictions. The Board may deny permission to lease any Lot on any reasonable grounds the Board may find. The Board shall have the right to require the Owner to deposit in escrow with the Association (in addition to any other deposits which may be required by the Owner so long as such additional deposit is not prohibited by law) an amount not to exceed one month's rental fee paid. Said deposit may be used by the Association to repair any damage to the Property resulting from acts or omission by the tenants (as determined in the sole discretion of the Board). Regardless of whether or not expressed in the applicable lease, all Owners shall be jointly and severally liable with the tenants of such Lot to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for any injury or damage to property caused by the negligence of the tenant of such Lot or for the acts or omissions of the tenant(s) of such Lot which constitute a violation of, or non-compliance with, the provisions of the Restrictions. All leases shall comply with and be subject to the provisions of the Restrictions and the provisions of same shall be deemed expressly incorporated into any lease of a Lot. This *Section 2.4* shall also apply to assignments and renewals of leases. No lease approved by the Board shall be amended or modified without the Board's approval. In making its determination as to whether to approve a lease of a Lot, the Board shall not discriminate on the grounds of race, gender, religion, national origin, familial status or physical or mental handicap; *provided, however*, nothing herein shall be construed to require the Association to furnish an alternate tenant to the Owner in the event the Board disapproves a lease or tenant. Upon entering into an agreement for the lease of a Lot, an Owner, other than Declarant, shall provide written notice to the Board, or its designee, of the lease agreement and furnish the names of the prospective tenant. The Board may require that the Owner deliver to the tenant, a copy of the Restrictions and obtain a written instrument executed by the tenant acknowledging receipt of the Restrictions which receipt will be provided to the Board. The Board shall have the right to charge an Owner a reasonable fee (not to exceed $500.00) as determined by the Board for the processing of leases of Lots.

2.5 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ACC; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the ACC.

2.6 Hazardous Activities. No activities may be conducted on or within the Property or the Common Area and no Improvements may be constructed on or within any portion of the Property which, in the opinion of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Property or the Common Area unless discharged in conjunction with an event approved in advance by the Board and no open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property or the Common

Area may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

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

2.8 Mining and Drilling. Except for the Third Party Oil, Gas and Mineral Interests defined below, no portion of the Property or the Common Area may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property or the Common Area by the Declarant. This *Section 2.8* shall not apply to minerals, resources and groundwater, or some portion thereof or some interest therein, that may have been conveyed or reserved by third parties prior to Declarant's ownership of the Property (the "**Third Party Oil, Gas and Mineral Interests**"). No representation or warranty, express or implied, is made as to the ownership of the minerals, resources and groundwater or any portion thereof or any interest therein.

2.9 Noise. No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any portion of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.10 Clotheslines; Window Air Conditioners. No clotheslines and no outdoor clothes drying or hanging shall be permitted within the Property, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Dwellings, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of Dwellings, or any part thereof, nor relocated or extended, without the prior written consent of the ACC. Window air conditioners are prohibited.

2.11 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term

"domestic household pet" shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, goats, exotic snakes or lizards, ferrets, monkeys, chickens or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner may keep more than four (4) cats and dogs, in the aggregate, of which no more than two (2) may be dogs, unless otherwise approved by the Board. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner's Dwelling, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and vaccinated as required by Applicable Law. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property.

2.12 Rubbish and Debris. As determined by the Board, no rubbish or debris of any kind may be placed or permitted to accumulate on or within the Property, and no odors will be permitted to arise therefrom so as to render all or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or Residents. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.13 Trash Containers. Trash containers and recycling bins must be stored inside the garage of the single-family Dwelling constructed on the Lot. The Board shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

2.14 Antennas. Except as expressly provided below, no exterior radio or television antennas or aerial or satellite dish or disc, shall be erected, maintained, or placed on a Lot without the prior written approval of the ACC; provided, however, that:

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

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution

services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television or radio broadcast signals;

(collectively, (i) through (iii) are referred to herein as the "**Permitted Antennas**") may be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the ACC, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

2.15 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, or any other portion of the Property. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Property, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ACC are as follows:

(i) Attached to the back of the principal single-family Dwelling constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

(ii) Attached to the side of the principal single-family Dwelling constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The ACC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

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

2.16 Signs. During the Development Period, no Owner, other than Declarant, is permitted to place any "for sale" or "for lease" signs on any Lot, including signs placed in the interior or on the exterior of a residence. Unless otherwise permitted by Applicable Law, no sign of any kind may be displayed to the public view on any Lot without the prior written approval of the ACC, except for:

(i) signs which are expressly permitted pursuant to the Design Guidelines or Rules and Regulations;

(ii) signs which are part of Declarant's or Homebuilder's overall marketing, sale, or construction plans or activities for the Property;

(iii) one (1) temporary school "spirit" sign placed on the Lot. The sign must be professionally made and shall be limited to maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade at the spot where the sign is located may not exceed four (4) feet. The sign must be removed within five (5) business days following the athletic season for which the sign relates;

(iv) permits as may be required by legal proceedings or a governmental entity;

(v) political signs may be erected provided the sign: (a) is erected no earlier than the 90th day before the date of the election to which the sign relates; (b) is removed no later than the 10th day after the date of the election to which the sign relates; and (c) is ground-mounted. Only one (1) sign may be erected for each candidate or measure. In addition, signs which include any of the components or characteristics described in Section 259.002(d) of the Texas Elections Code are prohibited;

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

(vii) an Owner or Resident will be permitted to post a "no soliciting" and "security warning" sign near or on the front door to their Dwelling, provided, that the sign may not exceed twenty-five (25) square inches.

2.17 Flags – Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university ("**Permitted Flag**") and is permitted to install a flagpole no more than five feet (5') in length affixed to the front of a Dwelling near the principal entry or affixed to the rear of a Dwelling ("**Permitted Flagpole**"). Only two (2) Permitted Flagpoles are allowed per Dwelling. A Permitted Flag or Permitted Flagpole need not be approved in advance by the ACC. Approval by the ACC is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot ("**Freestanding Flagpole**"). Freestanding flagpoles are not allowed in the front yard of any Lot. To obtain ACC approval of any Freestanding Flagpole, the Owner shall provide the ACC with the following information: (a) the location of the Freestanding Flagpole to be installed on the Lot; (b) the type of Freestanding Flagpole to be

installed; (c) the dimensions of the Freestanding Flagpole; and (d) the proposed materials of the Freestanding Flagpole (the **"Flagpole Application"**). A Flagpole Application may only be submitted by an Owner. The Flagpole Application shall be submitted in accordance with the provisions of *Article 9* of this Declaration.

2.18 Flags – Installation and Display. Unless otherwise approved in advance and in writing by the ACC, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

(i) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;

(ii) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;

(iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');

(iv) The flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;

(v) The display of a Permitted Flag, or the location and construction of a Permitted Flagpole or Freestanding Flagpole must comply with all Applicable Law, easements and setbacks of record;

(vi) Each Permitted Flagpole and Freestanding Flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction thereof and harmonious with the Dwelling;

(vii) Any Permitted Flag, Permitted Flagpole and Freestanding Flagpole must be maintained in good condition and any deteriorated Permitted Flag or deteriorated or structurally unsafe Permitted Flagpole or Freestanding Flagpole must be repaired, replaced or removed;

(viii) A Permitted Flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity, as determined by the ACC in its reasonable discretion, which shall not be aimed towards or directly affect any neighboring Lot; and

(ix) Any external halyard of a Permitted Flagpole or Freestanding Flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the Permitted Flagpole or Freestanding Flagpole.

2.19 Tanks. The ACC must approve any tank used or proposed in connection with a Dwelling, including tanks for storage of fuel, water, oil, or liquid petroleum gas (LPG). No elevated tanks of any kind may be erected, placed or permitted on any Lot without the advance written approval of the ACC. All permitted tanks must be screened from view in accordance with a screening plan approved in advance by the ACC. This provision will not apply to a tank used to operate a standard residential gas grill.

2.20 Temporary Structures. No tent, shack, or other temporary building, Improvement, or structure shall be placed upon the Property without the prior written approval of the ACC; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for Declarant, Homebuilders, architects, and foremen during actual construction may be maintained with the prior approval of Declarant (unless placed by Declarant), approval to include the nature, size, duration, and location of such structure.

2.21 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Board will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks larger than 3/4 ton pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles, and garden and lawn maintenance equipment must be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas and compost piles must be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash must be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible on any Lot or to be parked on any roadway within the Property or the Common Area. Motorcycles shall be operated in a quiet manner.

Parking of commercial vehicles or equipment, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than: (a) in enclosed garages; and (b) behind a fence so as to not be visible from any other portion of the Property is prohibited; provided, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Dwelling.

Mobile homes are prohibited. Notwithstanding the foregoing, sales trailers or other temporary structures installed by the Declarant, Homebuilder or expressly approved by the ACC shall be permitted.

2.22 Basketball Goals; Permanent and Portable. Permanent basketball goals are not permitted within the Property. Portable basketball goals, when not in use, must be located so

that they are not visible from the street. Basketball goals must be properly maintained and painted, with the net in good repair.

2.23 Garages. All garages shall be maintained for the parking of automobiles, may not be used for storage or other purposes which preclude its use for the parking of automobiles, and no garage may be permanently enclosed or otherwise used for habitation.

2.24 Decorations and Lighting. Unless otherwise permitted by *Section 2.16(vi)*, no decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be placed on the Dwelling or on any other portion of a Lot which is visible from any street, unless such specific items have been approved in writing by the ACC. Customary seasonal decorations for holidays are permitted without approval by the ACC but shall be removed within thirty (30) days of the applicable holiday. Outside lighting fixtures shall be placed so as to illuminate only the yard of the applicable Lot and so as not to affect or reflect into surrounding residences or yards. No mercury vapor, sodium or halogen light shall be installed on any Lot which is visible from any street unless otherwise approved by the ACC.

2.25 Shared Driveways and Driveway Parking. Unless otherwise approved by the Declarant or the Board, no vehicle may be parked on any road or street, including, without limitation, the Shared Driveways, within the Property unless in the event of an emergency. "Emergency" for purposes of the foregoing sentence shall mean an event which jeopardizes life or property. "Parked" as used herein shall be defined as a vehicle left unattended by a licensed operator for more than thirty (30) consecutive minutes. No vehicle may be parked on a Shared Driveway or driveway constructed on a Lot if the vehicle, when parked, would obstruct or otherwise block ingress and egress. This provision will not apply to Declarant or its designee during the Development Period.

2.26 Compliance with Restrictions. Each Owner, his or her family, Residents of a Dwelling, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of the Restrictions and may result in a fine against the Owner in accordance with *Section 6.14* of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board on behalf of the Association, the ACC or by an aggrieved Owner. The result of every act or omission that violates any provision of the Restrictions is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand

until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **Each such Owner shall indemnify and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 2.26* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence**.

2.27 Liability of Owners for Damage to Common Area. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Area of Common Responsibility or the Common Area without the prior written approval of the Board and the Declarant during the Development Period. Each Owner shall be liable to the Association for any and all damages to: (i) the Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, including but not limited to the Area of Common Responsibility, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other Resident of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage shall be an Individual Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided in *Section 6.12* of this Declaration.

2.28 Party Walls. A fence or wall located on or near the dividing line between two (2) Lots or Dwellings constructed upon such Lots and intended to benefit both Lots constitutes a "**Party Wall**" and, to the extent not inconsistent with the provisions of this *Section 2.28*, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions and are subject to the following:

2.28.1 Encroachments & Easement. If the Party Wall is on one Lot due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this *Section 2.28*. Each Lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

2.28.2 Right to Repair. If the Party Wall is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall. No Party Wall may be constructed, repaired, or rebuilt without the advance written approval of the ACC in accordance with *Article 9* of this Declaration.

2.28.3 Maintenance Costs. The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Public Records of Harris County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this *Section 2.28* is appurtenant to the Lot and passes to the Owner's successors in title.

2.28.4 Roofs, Foundation, Fences. Common roofs, foundations and fences which form a part of single family residences will be dealt with in the same fashion as Party Walls, as set forth in this *Section 2.28*.

2.28.5 Alterations. The Owner of a Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining Lot or Dwelling. The Party Wall will always remain in the same location as when erected unless otherwise approved by the Owner of each Lot sharing the Party Wall and the ACC.

2.29 Injury to Person or Property. Neither the Association nor Declarant nor Fenway or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Resident or their guests: (a) to supervise minor children or any other person; (b) to fence or otherwise enclose any Lot or Common Area; or (c) to provide security or protection to any Owner, Resident, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Lot, each Owner agrees that the limitations set forth in this *Section 2.30* are reasonable and constitute the exercise of ordinary care by the Association and Declarant. EACH OWNER AGREES TO RELEASE AND HOLD HARMLESS THE ASSOCIATION AND DECLARANT AND DECLARANT'S AGENTS, FENWAY AND FENWAY'S AGENTS, FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE PROPERTY TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, HIS TENANT, HIS GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE

ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.

2.30 Safety and Security. Each Owner and Resident of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property or the Common Area. The Association may, but shall not be obligated to, maintain or support certain activities within the Property or the Common Area designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property or the Common Area, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems or any gate, mechanism or system for limiting access to the Property or the Common Area, cannot be compromised or circumvented; or that any such system 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 shall be responsible for informing any Residents of such Owner's Lot that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to property, including any Dwellings or Improvements constructed upon any Lot and the contents thereof, resulting from acts of third parties.

2.31 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any Restrictions. Any Owner acquiring a Lot in reliance on the Restrictions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

2.32 Master Water Meter and Fire Hydrants. Lots 35 through 39 and Lots 55 through 62 as shown on the Plat include certain water and sewer lines, and fire hydrants, that are owned and maintained by the Association (the "**Master Metered Lots**"). During the Development Period, the Declarant, and the Board thereafter may, from time to time, add additional Lots to or remove Lots from the Master Metered Lots. The City requires that the Master Metered Lots be served through a "master" meter (the "**Master Meter**"). Each Owner of Lots 1 through 34 and Lots 40 through 54 as shown on the Plat understand that fire hydrants which may serve their Lots are owned and maintained by the Association and that each such Lot is individually metered, and not served by the Master Meter.

2.33 Windows and Window Coverings. Sheets, newspapers, aluminum foil, cardboard, and similar items may not be used as temporary window coverings. No reflective screens, awnings, reflective glass, mirrors, or similar reflective materials of any type shall be placed or installed inside or outside of any windows of a Dwelling without the prior written approval of the ACC. Window drapes must be lined in a black or white, non-patterned material.

2.34 Flag Lots. Certain Lots are referenced on the Plat to be restricted to shared vehicular access along the staff portions of two or more adjacent Lots (the "**Flag Lots**"). The Flag Lots include staff portions which are restricted for ingress and egress only. No building, structure, wall or fence shall be constructed within the staff portions of any Flag Lot. For purposes of this Declaration, the staff portions of a Flag Lot shall be designated as a "**Shared Drivewa**y". Any reference to Shared Driveways herein shall also refer to include the staff portions of the Flag Lots as shown on the Plat.

2.35 Water Quality Facilities, Drainage Facilities and Drainage Ponds. The Property may include one or more water treatment plant, waste water treatment plant, water quality facilities, sedimentation, drainage and detention facilities, or ponds which serve all or a portion of the Property and are inspected, maintained and administered by the Association or a governmental entity in accordance with all Applicable Law. Access to these facilities and ponds is limited to persons engaged by the Association or a governmental entity to periodically maintain such facilities. Each Owner is advised that the water treatment plant, wastewater treatment plant, water quality facilities, sedimentation, drainage and detention facilities, and ponds are an active utility feature integral to the proper operation of the Property and may periodically hold standing water. Each Owner is advised that entry into the water treatment plant, waste water treatment plant, water quality facilities, sedimentation, drainage and detention facilities, or ponds may result in injury and is a violation of the Rules and Regulations.

2.36 Swimming Pools and Hot Tubs. Unless otherwise approve in advance and in writing by the ACC, swimming pools and hot tubs are not permitted, including but not limited to a balcony, patio or Fenced Yard Area.

2.37 Provision of Benefits and Services to Service Areas.

2.37.1 Designation by Declarant. Declarant, in any Recorded written notice, may assign Lots to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots in addition to those which the Association generally provides to the Property. Declarant may unilaterally amend any Recorded written notice to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots within the Service Area as a Service Area Assessment.

2.37.2 Petition by Owners. In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Lots; or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots within the proposed Service Area, the Board will investigate the

terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot among all Service Areas receiving the same service). Notwithstanding the foregoing, until expiration or termination of the Development Period, the Declarant shall have the right to withhold its consent for any petition to designate Lots as a Service Area in Declarant's sole and absolute discretion. If approved by the Board, the Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise acceptable to the Board. The cost and administrative charges associated with such benefits or services will be assessed against the Lots within such Service Area as a Service Area Assessment.

2.37.3 Addition or Removal of Additional Components of Improvements or Lots. The Association may, from time to time, include additional components of Improvements or Lots or remove components of Improvements or Lots from a Service Area; however, unless otherwise approved by the Declarant during the Development Period, in no event may the Association at any time remove from any Service Area components of any Improvements or Lots previously designated as a Service Area under this Declaration. During the Development Period, any addition to a Service Area must also be approved by the Declarant. After expiration or termination of the Development Period, any addition or removal of components of Improvements or Lots must be approved by two-thirds (2/3) of the total number of votes held by all Lots within a Service Area. During the Development Period, the Service Area may be modified or amended by the Declarant, acting alone. Any modification or amendment to the Service Area must be Recorded.

ARTICLE 3
CONSTRUCTION RESTRICTIONS

3.1 Approval for Construction. Unless prosecuted by the Declarant, no Improvements shall hereafter be placed, maintained, erected, or constructed upon any Lot without the prior written approval of the ACC in accordance with *Article 9* of this Declaration.

3.2 Construction Activities. The Restrictions will not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant or a Homebuilder) upon or within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of the Restrictions by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area.

In the event that construction upon any Lot does not conform to usual practices in the area as determined by the ACC in its sole and reasonable judgment, the ACC will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the ACC may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all reasonable expenses incurred in connection therewith.

3.3 Drainage. There shall be no interference with the established drainage patterns over any of the Property, including the Lots, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved in advance by the ACC. Specifically, and not by way of limitation, no Improvement, including landscaping, may be installed which impedes the proper drainage of water between Lots or within the Property.

3.4 Roofing. Roofs of buildings may be constructed with Energy Efficiency Roofing with the advance written approval of the ACC. For the purpose of this *Section 3.4*, "**Energy Efficiency Roofing**" means shingles that are designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (iii) provide solar generation capabilities. The ACC will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (a) resemble the shingles used or otherwise authorized for use within the community; (b) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (c) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in the Restrictions. In conjunction with any such approval process, the Owner should submit information which will enable the ACC to confirm the criteria set forth in this *Section 3.4*. Any other type of roofing material shall be permitted only with the advance written approval of the ACC. Notwithstanding the foregoing provision, in the event the roof is included within an Area of Common Responsibility in accordance with the terms and provisions of *Article 7* hereof for maintenance by the Association and an Owner installs Energy Efficiency Roofing in accordance with this *Section 3.4*, the Association may assign the responsibility for maintenance of Owner's roof to the Owner, in the Association's sole discretion, and the Association will be relived of any of its maintenance responsibilities with respect to the Owner's roof.

3.5 Solar Energy Device. A Solar Energy Device may be installed with the advance written approval of the ACC, in accordance with the procedures and requirements set forth below:

3.5.1 Application. To obtain ACC approval of a Solar Energy Device, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate

depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application. The Solar Application shall be submitted in accordance with the provisions of *Article 9* of this Declaration.

3.5.2 Approval Process. The ACC will review the Solar Application in accordance with the terms and provisions of *Article 9* of this Declaration. The ACC will approve a Solar Energy Device if the Solar Application complies with *Section 3.5.3* below **UNLESS** the ACC makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.5.3*, will create a condition that substantially interferes with the use and enjoyment of property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on Common Area or property owned or maintained by the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.5* when considering any such request.

3.5.3 Approval Conditions. Unless otherwise approved in advance and in writing by the ACC, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the Dwelling located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the Dwelling, the ACC may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the Solar Energy Device if installed in the location designated by the ACC. If the Owner desires to contest the alternate location proposed by the ACC, the Owner should submit information to the ACC which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the Dwelling located on the Owner's Lot, then: (a) the Solar Energy Device may not extend higher than or beyond the roofline; (b) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; and (c) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

3.6 Rainwater Harvesting Systems. A Rainwater Harvesting System may be installed with the advance written approval of the ACC.

3.6.1 Application. To obtain ACC approval of a Rainwater Harvesting System, the Owner shall provide the ACC with the following information: (a) the proposed installation location of the Rainwater Harvesting System; and (b) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "**Rain System Application**"). A Rain System Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Rain System Application.

3.6.2 Approval Process. The decision of the ACC will be made in accordance with *Article 9* of this Declaration. Any proposal to install a Rainwater Harvesting System on Common Area must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.6* when considering any such request.

3.6.3 Approval Conditions. Unless otherwise approved in advance and in writing by the ACC, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

(i) The Rainwater Harvesting System must be consistent with the color scheme of the Dwelling constructed on the Owner's Lot, as reasonably determined by the ACC.

(ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.

(iii) The Rainwater Harvesting System is in no event located between the front of the Dwelling and any adjoining or adjacent street.

(iv) There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the ACC. See *Section 3.6.4* for additional guidance.

3.6.4 Guidelines. If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, or another Owner's Lot, the ACC may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, Common Area, or another Owner's Lot. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, or

another Owner's Lot, any additional requirements imposed by the ACC to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the ACC.

3.7 Xeriscaping. As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping ("**Xeriscaping**") upon written approval by the ACC. All Owners implementing Xeriscaping shall comply with the following:

3.7.1 Application. Approval by the ACC is required prior to installing Xeriscaping. To obtain the approval of the ACC for Xeriscaping, the Owner shall provide the ACC with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction; and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The ACC is not responsible for: (a) errors or omissions in the Xeriscaping Application submitted to the ACC for approval; (b) supervising installation or construction to confirm compliance with an approved Xeriscaping Application; or (c) the compliance of an approved application with Applicable Law.

3.7.2 Approval Conditions. Unless otherwise approved in advance and in writing by the ACC, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the ACC. For purposes of this *Section 3.7*, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the ACC determines that: (a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or (b) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property Owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.

(ii) No Owners shall install gravel, rocks or cacti that in the aggregate encompass over ten percent (10%) of such Owner's front yard or ten percent (10%) of such Owner's back yard.

(iii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Lots, as reasonably determined by the ACC.

3.7.3 Process. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this *Section 3.7* when considering any such request.

3.7.4 Approval. Each Owner is advised that if the Xeriscaping Application is approved by the ACC, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the ACC may require the Owner to: (a) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the Property; or (b) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

3.8 Compliance with Setbacks. No Dwelling or any other permanent structure or Improvement may be constructed on any Lot nearer to a street or a Shared Driveway than the minimum building setback lines shown on the Plat and no building shall be located on any utility easements. The ACC may require additional setbacks in conjunction with the review and approval of proposed Improvements in accordance with *Article 9* of the Declaration.

ARTICLE 4
DISCLOSURES

This *Article 4* discloses selective features of the Property or the Common Area that may not be obvious to potential Owners and Residents. Because features may change over time, no disclosure in this *Article 4* should be relied upon without independent confirmation.

4.1 Service Contracts. Declarant may have contracted, on behalf of the Owner, for one or more services to be provided by vendors to the Dwellings on a contract basis, such as

intrusion monitoring and cable television. In that event, whether or not an Owner chooses to use the service, the Owner is required to pay for its share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Regular Assessments or Utility Assessments or Individual Assessments. However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.

4.2 Adjacent Thoroughfares. The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

4.3 Fire Sprinkler Disclosure. The Structures and/or Dwellings may be constructed with a fire sprinkler system. If sprinklers are present, water lines and sprinkler heads may be in the ceilings above rooms in the Dwelling. This disclosure is given because damage to, or a malfunction of, a water line or sprinkler head may harm or destroy real and personal property. Each Owner is solely responsible for all of the following:

(i) determining the location and proper care of the sprinkler equipment, water lines and sprinkler heads in their Dwelling;

(ii) preserving the integrity and functionality of the portion of the fire sprinkler system in their Dwelling;

(iii) instructing each Resident, invitees and contractors about the care and protection of the sprinkler system, including any applicable rules adopted by the Board;

(iv) any damage to their Dwelling, an adjoining Dwelling, Common Area, and/or any personal property (such as furnishings and clothing) caused by the functioning or malfunctioning of any component of the sprinkler system in or serving their Dwelling; and

(v) complying with any municipal or other regulatory inspection requirements, at such Owner's expense.

Components of a fire sprinkler system may be located in the attic portion of the Dwelling. If the attic is also the location of air conditioning equipment or other equipment that requires periodic servicing or repair, to ensure protection of the water lines and sprinkler heads, the Owner is advised to closely supervise all persons using the attic.

The Association does not inspect or fix water lines and sprinkler heads, if any, in your Dwelling.

4.4 Adjacent Use. No representations are made regarding the use of adjacent property.

4.5 Outside Conditions. Since in every neighborhood there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Property that an Owner or Resident may find objectionable, and it shall be the sole responsibility of an Owner or Resident to become acquainted with neighborhood conditions that could affect the Property.

4.6 Concrete.

4.6.1 Cracks. Minor cracks in poured concrete, including foundations, garage floors, sidewalks, driveways and patios, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of a Structure and/or Dwelling.

4.6.2 Exposed Floors. This *Section 4.6.2* applies to Structures and/or Dwellings with exposed concrete floors. This notice is given because Owners may be inexperienced with concrete and expect it to be as forgiving as wood or sheetrock. In deciding whether, when, and how to fill cracks in exposed concrete floors, an Owner is hereby made aware that the color and texture of the fill material may not match the rest of the concrete floor. On some exposed concrete floors, fill materials make minor cracks more noticeable than if the cracks had been left in their natural state. In addition, an Owner is hereby made aware that any specification for polished concrete means that the concrete will be polished, but this does not mean an Owner will be able to actually see their reflection in the floor.

4.7 Construction Activities. Declarant will be constructing portions of the Property and engaging in other construction activities related to the construction of Structures, Dwellings, and Common Area. Such construction activities may, from time to time, produce certain conditions on the Property, including, without limitation: (a) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (b) smoke; (c) noxious, toxic or corrosive fumes or gases; (d) obnoxious odors; (e) dust, dirt or flying ash; (f) unusual fire or explosion hazards; (g) temporary interruption of utilities; and/or (h) other conditions that may threaten the security or safety of persons within the Property or the Common Area. Notwithstanding the foregoing, all Owners and Residents agree that such conditions on the Property or the Common Area resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

4.8 Moisture. Improvements within a Structure and/or Dwelling may trap humidity created by general use and occupancy. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and

glass. If left unattended and not properly maintained by Owners and Residents, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

4.9 Mold and/or Mildew. Mold and/or mildew can grow in any portion of a Structure and/or Dwelling that is exposed to elevated levels of moisture including, but not limited to, those portions of a Structure and/or Dwelling in which HVAC condenser units are located. Each Owner is advised to regularly inspect the Owner's Dwelling for the existence of mold, mildew and/or water intrusion (except when the water intrusion is part of the normal functioning of Improvements and appliances such as showers, sinks, dishwashers and other similar appliances and Improvements) and/or damage.

4.10 Encroachments. Improvements may have been constructed on adjoining lands that encroach onto the Property. Declarant gives no representations or warranties as to property rights, if any, created by any such encroachments.

4.11 Budgets. Any budgets of the Association provided by the Declarant are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.

4.12 Light and Views. The natural light available to and views from a Dwelling or Lot can change over time due to among other things, additional development and the removal or addition of landscaping. **NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.**

4.13 Schools. No representations are being made regarding which schools may now or in the future serve the Property.

4.14 Urban Environment. The Property is located in an urban environment. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, and other generators of sound and vibrations typically found in an suburban area. In addition to sound and vibration, there may be odors and light in urban areas.

4.15 Water Runoff. The Property may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. In addition, water may pond on various portions of the Property or the Common Area having impervious surfaces, such as rooftop terraces, patios, and balconies, as applicable.

4.16 Photography of the Property. Declarant retains the right to obtain and use photography of the Property for publication and advertising purposes.

4.17 Changes to Street Names and Addresses. Declarant retains the right to change, in its sole discretion, the Property name and the street names and addresses in or within the Property including the street address of the Dwellings and/or Lots before or after conveyance to any third-party.

4.18 Plans. Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Improvements to be constructed on any Lot are merely approximations and do not necessarily reflect the actual as-built conditions of the same.

4.19 Location of Utilities. Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

4.20 Wood. Natural wood has considerable variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. It is these variations in wood that add to its aesthetic appeal. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some minor irregularities will be apparent. Additionally, wood and wood products may be subject to warping, splitting, swelling and/or delamination, and surfaces may weather differently due to the type of wood, its location in or on a Dwelling, and other factors. Wood floors may require more maintenance than some man-made materials. Owners of Dwellings with wood floors should educate themselves about wood floor care.

4.21 Stone. Veins and colors of any marble, slate or other stone if any, within a Dwelling, may vary drastically from one piece of stone to another. Each piece is different. Marble, granite, slate and other stone can also have chips and shattering veins, which look like scratches. The thickness of the joints between marble, granite, slate and other stone and/or other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble and other stone finishes may be dangerously slippery and Declarant assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use of professionally approved and applied sealant is needed to ensure proper maintenance of the marble, granite, slate and other stone and it is the Owner's responsibility to properly maintain these materials. Marble, granite and other stone surfaces may scratch, chip or stain easily. Such substances, as part of their desirable noise attenuating properties, may flex or move slightly in order to absorb impacts. Such movement may in turn cause grout to crack or loosen or cause some cracking in the stone flooring which may need to be repaired as part of normal home maintenance.

4.22 Chemicals. Each Structure and Dwelling will contain products that have water, powders, solids and industrial chemicals, which will be used in construction. The water,

powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. Declarant is not responsible for any illness or allergic reactions that a person may experience as a result of mold, mildew, fungus or spores. It is the responsibility of the Owner to keep their Dwelling clean, dry, well ventilated and free of contamination.

4.23 Marketing. Declarant's use of a sales center and/or model homes or reference to other construction by Declarant is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of the Dwellings available for purchase. A Structure and/or Dwelling may not conform to any model in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Likewise, any model of a Structure and/or Dwelling is intended only to demonstrate approximate size and basic architectural features. The Structures and/or Dwellings, as completed, may not conform to the models displayed by Declarant. Declarant may also have shown prospective purchasers model homes, floor plans, sketches, drawings, and scale models of Structures and/or Dwellings ("**Promotional Aids**"). Owner understands and agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the Structures and/or Dwellings.

ARTICLE 5
BAYOU 5TH COMMUNITY ASSOCIATION, INC.

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

5.2 Membership.

5.2.1 Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot. Within thirty (30) days after acquiring legal title to a Lot, if requested by the Board, an Owner must provide the Association with: (i) a copy of the recorded deed by which the Owner has acquired title to the Lot; (ii) the Owner's address, email address, phone number, and driver's license number, if any; (iii) any Mortgagee's name and address; and (iv) the name, phone number, and email address of any Resident other than the Owner.

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

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

(i) The right of the Declarant, or the Declarant's designee, to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

(ii) The right of the Association to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such member is in violation of any provision of the Restrictions;

(iii) The right of the Declarant during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;

(iv) With the advance written approval of the Declarant during the Development Period, the right of the Board to grant easements or licenses over and across the Common Area;

(v) With the advance written approval of the Declarant during the Development Period, the right of the Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;

(vi) The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to promulgate Rules and Regulations regarding the use of the Common Area and any Improvements thereon; and

(vii) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

5.3 Governance. As more specifically described in the Bylaws, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board until the tenth (10th) anniversary of the date this Declaration is Recorded. Not later than the tenth (10th) anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board shall hold a**

meeting of Members of the Association for the purpose of electing one-third (⅓) of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds (⅔) of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

5.4 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board (except as provided by *Section 5.3*) and on all other matters to be voted on by the Members will be calculated as set forth below.

(i) Owner Votes. The Owner of each Lot will have one (1) vote for each Lot so owned.

(ii) Declarant Votes. In addition to the votes to which Declarant is entitled by reason of *Section 5.4(i)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

(iii) Co-Owner Votes. When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 5.4*.

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

5.5.1 Rules and Regulations, Bylaws and Community Manual. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such Rules and Regulations, policies, Bylaws and the Community Manual, as applicable, which are not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property or the Common Area (including the operation, maintenance and preservation thereof) or the Association. Any Rules and Regulations, policies, the Bylaws and the Community Manual and any modifications thereto proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

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

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

5.5.4 Assessments. To levy and collect Assessments, as provided in *Article 6* below.

5.5.5 Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot and into any Dwelling thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and/or Dwelling and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 6* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing these Restrictions before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 5.5.5.* (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

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

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

(i) Parks, parkways or other recreational facilities or structures;

(ii) Shared Driveways, Landscape Easement Area, perimeter fencing, roads, sidewalks inside of perimeter fencing, signs, street lights, walks, driveways, trails and paths;

(iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;

(iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(v) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this *Section 5.5.7* must be approved in advance and in writing by the Declarant. In addition, the Association is (with the advance written approval of the Declarant during the Development Period) and the Declarant are expressly authorized and permitted to convey easements over and across Common Area for the benefit of property not otherwise subject to the terms and provisions of this Declaration.

5.5.8 Manager. To retain and pay for the services of a person or firm (the "**Manager**"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board or its Manager may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

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

5.5.10 Other Services and Properties. To obtain and pay for any other property, services, permits or other governmental approvals, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Restrictions or as determined by the Board.

5.5.11 Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, including but not limited to the Common Area, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

5.5.12 Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, Improvement, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

5.5.13 Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Association hereunder must be approved in advance and in writing by the Declarant.

5.5.14 Allocation of Votes. To determine votes when permitted pursuant to *Section 5.4* above.

5.5.15 Authority with Respect to the Restrictions. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Restrictions. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 5.5.15* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

5.5.16 Membership Privileges. To establish Rules and Regulations governing and limiting the use of the Common Area and any Improvements thereon. All Rules and Regulations governing and limiting the use of the Common Area and any Improvements thereon must be approved in advance and in writing by the Declarant during the Development Period.

5.6 Conveyance of Common Area to the Association. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant, and its assignees, and Fenway, and its assignees, reserve the right, from time to time and at any time, to designate, convey, assign or transfer by written and Recorded instrument property being held by the Declarant or Fenway for the benefit of the Association. Upon the Recording of a designation, the portion of the property identified therein will be considered Common Area for the purpose of this Declaration and the Association shall have an easement over and across the Common Area necessary or required to discharge the Association's obligations under this Declaration, subject to any terms and limitations to such easement set forth in the designation. Declarant, and its assignees, and Fenway, and its assignees, may also assign, transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, for the Property and the general public, or otherwise, as determined in the sole and absolute discretion of the Declarant or Fenway. All or any real or personal property assigned, transferred and/or conveyed by the Declarant or Fenway to the Association shall be deemed accepted by the Association upon Recordation, and without further action by the Association, and shall be considered Common Area without regard to whether such real or personal property is designated by the Declarant or Fenway as Common Area. If requested by the Declarant or Fenway, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Upon Declarant's written request, the Association will re-convey to Declarant or Fenway any unimproved real property that Declarant or Fenway originally conveyed to the Association for no payment.

5.7 **Indemnification**. To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such person is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (i) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not

act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

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

5.9 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 5.5* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments (Regular, Special, Utility or Individual, as the case may be) against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such twelve (12) day period), in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the Resident of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

5.10 Community Systems. The Association is specifically authorized to provide, or to enter into contracts with other persons or entities to provide Community Systems. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control. In addition, until expiration or termination of the Development Period, any contracts entered pursuant to this *Section 5.10* must be approved in advance and in writing by the Declarant.

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

5.12 Administration of Common Area. The administration of the Common Area by the Association shall be in accordance with the provisions of Applicable Law and the Restrictions, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant or Fenway to insure title to any portion of the Common Area.

5.13 Shared Driveways and Sidewalks. The Shared Driveways shall provide perpetual access across the Property for the Association, the Owners and Residents, and their invitees, police and other emergency vehicles, public and private utility maintenance and service personnel, solid waste collection services, the U.S. Postal Service, and government employees in pursuit of their official duties. Access to the Shared Driveways for the persons and entities referenced in the preceding sentence shall be reasonably provided by the Association. Any Shared Driveways and sidewalks inside the perimeter fencing located within the Property are Common Area and are administered and maintained by the Association. The Association, acting through the Board, has the express authority to adopt, amend, repeal, and enforce Rules and Regulations for use of the Shared Driveways, including but not limited to: (i)

identification of vehicles used by Owners, Residents and their guests; (ii) designation of parking or no-parking areas; (iii) limitations or prohibitions on curbside parking; (iv) removal or prohibition of vehicles that violate applicable Rules and Regulations; and (v) fines for violations of applicable Rules and Regulations.

5.14 Notices and Disclaimers as to Security Systems. NEITHER THE DECLARANT, A HOMEBUILDER, NOR THE ASSOCIATION, OR THEIR SUCCESSORS OR ASSIGNS GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS NOTIFY AUTHORITIES OF FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR RESIDENT OF PROPERTY RECEIVING SECURITY SERVICES THROUGH THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT NEITHER THE DECLARANT, A HOMEBUILDER, NOR THE ASSOCIATION, OR ANY OF THEIR SUCCESSORS OR ASSIGNS ARE INSURERS OF THE OWNER OR RESIDENT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE LOT AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the party of a security service provider to perform any of its obligations with respect to security services and, therefore, every Owner or Resident of property receiving security services through the Community Systems agrees that neither the Declarant, a Homebuilder, nor the Association, or their successors or assigns assumes liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of: (a) any failure of the Owner's security system; (b) any defective or damaged equipment, device, line or circuit; (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees; or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every Owner and Resident obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of the Declarant, a Homebuilder, the Association, or their successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding Two Hundred Fifty U.S. Dollars ($250.00), which limitation apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Declarant, a Homebuilder, or the Association, or their successors or assigns. Further, in no event will Declarant, a Homebuilder, the Association, or their successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

5.15 Right of Action by Association. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 15.1.1* below, relating to the design or construction of Improvements on a Lot (whether one or more). This *Section 5.15* may not be amended or modified without Declarant's written and acknowledged consent and Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, which must be part of the Recorded amendment instrument.

ARTICLE 6
COVENANT FOR ASSESSMENTS

6.1 Assessments.

6.1.1 Established by the Board. Assessments established by the Board pursuant to the provisions of this *Article 6* will be levied against each Lot in amounts determined pursuant to *Section 6.9* below. The total amount of Assessments will be determined by the Board pursuant to *Sections 6.3*, 6.4, 6.5, *6.6*, *6.7*, *6.8*, *6.9* and/or *6.14*.

6.1.2 Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon (such lien, with respect to any Lot not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot is created). The Association may enforce payment of such Assessments in accordance with the provisions of this *Article 6*.

6.1.3 Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. Any subsidy and the characterization thereof will be disclosed as a line item in the annual budget prepared by the Board and attributable to such Assessments. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

6.2 Maintenance Fund. The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Declaration. The funds of the Association may be used for any purpose authorized by the Restrictions and Applicable Law.

6.3 Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net

expenses of the Association (the "**Regular Assessments**") which sets forth: (i) an estimate of the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under the Restrictions, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Restrictions; (ii) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, giving due consideration to any expected income and any surplus from the prior year's fund; and which (iii) excludes the operation, maintenance, repair and management costs and expenses associated with any Service Area. Regular Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment by any Owner, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such Regular Assessments will be due and payable to the Association annually on or before the first day of the month, or in such other manner as the Board may designate in its sole and absolute discretion.

6.4 Special Assessments. In addition to the Regular Assessments provided for above, the Board may levy special assessments (the "**Special Assessments**") whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any Special Assessments will be at the sole discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units.

6.5 Utility Assessments. This *Section 6.5* applies to utilities serving the Master Metered Lots and consumed by the Owners and/or Residents of the Master Metered Lots that are billed to the Association by the utility provider, and which may or may not be sub-metered by or through the Association. The Board may levy a utility assessment (the "**Utility Assessment**") against each Owner and the Owner's Master Metered Lot. The Board may allocate the Association's utility charges among the Master Metered Lots by any conventional and reasonable method. The levy of a Utility Assessment may include a share of the utilities for the Common Areas, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or sub-metering services. The Board may, from time to time, change the method of utility allocation, provided the method of allocation is reasonable.

6.6 Individual Assessments. In addition to any other Assessments, the Board may levy an individual assessment (the "**Individual Assessment**") against an Owner and the

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

6.7 **Service Area Assessments**. Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year which may include a reasonable provision for contingencies and an appropriate replacement reserve. The total amount of assessments levied to pay for Service Area Expenses for each Service Area (the "**Service Area Assessments**") will be allocated either: (i) equally; (ii) based on Assessment Units; or (iii) based on the benefit received among all Lots within the benefited Service Area, as determined in the absolute discretion of the Board. All amounts that the Association collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general funds.

6.8 **Working Capital Assessment**. Each Owner (other than Declarant) of a Lot will pay a one-time working capital assessment (the "**Working Capital Assessment**") to the Association in such amount as may be determined by the Declarant or the Board, until expiration or termination of the Development Period, and the Board thereafter. The Working Capital Assessment hereunder will be due and payable to the Association upon the transfer of a Lot (including both transfers from Declarant to the initial Owner, and transfers from one Owner of a Lot to a subsequent Owner of a Lot). Each Working Capital Assessment will be collected from the transferee of a Lot upon the conveyance of the Lot from one Owner (including Declarant) to another (expressly including any reconveyance of the Lot upon resale or transfer thereof). Such Working Capital Assessment need not be uniform among all Lots, and Declarant or the Board, as applicable, is expressly authorized to levy Working Capital Assessments of varying amounts depending on the size, use and general character of the Lots then being made subject to such levy. The Association may use the working capital to discharge operating expenses. The levy of any Working Capital Assessment will be effective only upon the Recordation of a written notice, signed by the Declarant or a duly authorized officer of the Association, setting forth the amount of the Working Capital Assessment and the Lots to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer

by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who (a) is a Homebuilder; or (b) acquires a Lot for the purpose of resale to a Homebuilder (a "**Development Owner**") will not be subject to the Working Capital Assessment; however, the Working Capital Assessment will be payable by any Owner who acquires a Lot from a Homebuilder or Development Owner for residential living purposes or by any Owner who: (I) acquires a Lot and is not in the business of constructing single-family residences for resale to a third party; or (II) who acquires the Lot for any purpose other than constructing a single-family residence thereon for resale to a third party. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, the Declarant's, during the Development Period, and thereafter the Board's, determination regarding the application of the exemption will be binding and conclusive without regard to any contrary interpretation of this *Section 6.8*. The Working Capital Assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such Assessments. The Working Capital Assessment hereunder will be due and payable by the transferee to the Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any Working Capital Assessment attributable to a Lot (or all Lots) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

6.9 Amount of Assessment.

6.9.1 Assessments to be Levied. The Board shall levy Assessments against each "Assessment Unit" (as defined in *Section 6.9.2* below). Unless otherwise provided in this Declaration, Assessments levied pursuant to *Section 6.3* and *Section 6.4* shall be levied uniformly against each Assessment Unit allocated to a Lot. Service Area Assessments levied pursuant to *Section 6.7* will be levied either: (i) equally; (ii) based on Assessment Units allocated to the Lots within the Service Area; or (iii) based on the benefit received among all Lots within the Service Area to which such Service Area Assessment relates.

6.9.2 Assessment Unit. Each Lot shall constitute one "Assessment Unit" unless otherwise provided in *Sections 6.8.3* and *6.8.4*.

6.9.3 Assessment Exemption. Notwithstanding anything in this Declaration to the contrary, no Assessments shall be levied upon Lots owned by Declarant or Fenway.

6.9.4 Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Property or any Lot from any Assessments levied or charged pursuant to this *Article 6*; or (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Property. Declarant or the Board may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

6.10 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

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

6.12 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this *Article 6* is, together with late charges as provided in *Section 6.10* and interest as provided in *Section 6.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 6.1.2* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens and governmental assessment liens; (ii) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question; (iii) home equity loans or home equity lines of credit which are secured by a Recorded second mortgage lien or Recorded second deed of trust lien of record; or (iv) as otherwise required by Applicable Law; provided that, in the case of subparagraphs (ii), (ii) and (iii) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination shall be signed by an authorized officer, agent, or attorney of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the authorized officers, agents, or attorneys of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the

Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 6.12*, the Association will upon the request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an authorized officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or Resident to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Resident can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for

taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant or Fenway to a third party.

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

6.13 Exempt Property. The following areas will be exempt from the Assessments provided for in this *Article 6*:

(i) All area dedicated and accepted by public authority;

(ii) The Common Area; and

(iii) Any portion of the Property owned by Declarant or Fenway.

6.14 Fines and Damages Assessment.

6.14.1 Board Assessment. The Board may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, a Resident, or the Owner or Residents guests, agents or invitees pursuant to the Fine and Collection Policy adopted by the Board. Any fine and/or charge levied in accordance with this *Section 6.14* will be considered an Individual Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities caused by the Owner, Resident, or their guests, agents, or invitees. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Rules and Regulations and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

6.14.2 Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 6.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 6.1.2* of this Declaration. The fine and/or damage charge will be considered an Assessment for the purpose of this *Article 6* and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 6*.

ARTICLE 7
MAINTENANCE AND REPAIR OBLIGATIONS

7.1 Overview. Generally, the Association maintains the Common Area, and the Owner maintains his Lot and the Structure and/or Dwelling located thereon. If any Owner fails to maintain his Lot and the Structure and/or Dwelling located thereon, the Association may perform the work at the Owner's expense. This Declaration assigns portions of the Structures, Dwellings and Lots to the Area of Common Responsibility. The Area of Common Responsibility is maintained by the Association and not the Owner. On the date of this Declaration, the initial designation of components of Structures, Dwellings, and Lots included within the Area of Common Responsibility is attached hereto as Exhibit "A".

7.2 Association Maintains. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a common expense, the portions of the Property or the Common Area listed below, regardless of whether the portions are on an Owner's Lot:

(i) the Common Area (including the Shared Driveways, Landscape Easement Area, sidewalks inside the perimeter fencing, and perimeter fencing);

(ii) the Area of Common Responsibility (including any portion of the Shared Driveways, Landscape Easement Area, sidewalks inside the perimeter fencing, and perimeter fencing located on an Owner's Lot);

(iii) any real and personal property owned by the Association not otherwise designated as a Common Area;

(iv) any property adjacent to the Property or the Common Area if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property; and

(v) any area, item, easement or service the maintenance of which is assigned to the Association by this Declaration or in accordance with any Recorded easement or Recorded Plat of the Property.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that: (i) such maintenance responsibility is assigned to an Owner under this Declaration; (ii) such maintenance responsibility is otherwise assumed by or assigned to an Owner; or (iii) such property is dedicated to any local, state or federal government or quasi-governmental entity; provided, however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Area or the Area of Common Responsibility by an Owner or Resident that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Resident and the Owner and Resident shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner or Resident of any Lot or any other person or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Area or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner or Resident of a Lot has put the Association on written notice of a specific leak or flow from any portion of the Common Area and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner or Resident of any Lot for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Common Area or any Lot. The Association shall not be liable to any Owner or Resident, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this *Section 7.2* where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

7.3 Area of Common Responsibility. The Association, acting through its members only, has the right but not the duty to designate, from time to time, portions of a Structure, Dwelling, and Lot as an Area of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense. A designation applies to every Lot having the identified feature. The cost of maintaining the Area of Common Responsibility is added to the annual budget and assessed uniformly against all Lots as a Regular Assessment, unless, after expiration of the Development Period, the Owners of at least a Majority of the Lots decide to assess the costs as Individual Assessments.

7.3.1 Easement. The Association is hereby granted an easement over and across each Structure, Lot and Dwelling to the extent reasonably necessary or convenient for the Association or its designee to maintain, repair and/or replace the Area of Common Responsibility. Unless otherwise agreed to by the Owner of the Lot to be accessed, access to the Area of Common Responsibility is limited to Monday through Friday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual maintenance activities. If the Association damages any Improvements located

within a Structure, Lot or Dwelling in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

7.3.2 Change in Designation. The Association may, from time to time, include additional components of Structures, Lots and Dwellings within the Area of Common Responsibility; however, unless otherwise approved by the Declarant during the Development Period, in no event may the Association at any time remove from the Area of Common Responsibility components of Structures, Lots or Dwellings previously designated as an Area of Common Responsibility under this Declaration. During the Development Period, any addition to the Area of Common Responsibility must also be approved by the Declarant. After expiration or termination of the Development Period, any addition must be approved by the Owners of two-thirds of the votes in the Association. During the Development Period, the Area of Common Responsibility may be modified or amended by the Declarant, acting alone. Any modification or amendment to the Area of Common Responsibility must be recorded in the Official Public Records of Harris County, Texas.

7.4 Inspection Obligations.

7.4.1 Contract for Services. In addition to the Association's general maintenance obligations set forth in this Declaration, the Association shall, at all times, contract with (subject to the limitations otherwise set forth in this Declaration) or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services for the Area of Common Responsibility.

7.4.2 Schedule of Inspections. Such inspections shall take place at least once every three (3) years. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

7.4.3 Notice to Declarant. During the Development Period, the Association shall, if requested by Declarant, deliver to Declarant ten (10) days advance written notice

of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

7.5 Owner Responsibility. Every Owner is responsible for the maintenance, repair and replacement of all Improvements located on such Owner's Lot, unless such Improvements are maintained by the Association as an Area of Common Responsibility. Every Owner has the following responsibilities and obligations for the maintenance, repair and replacement of their Lot:

(i) to maintain, repair, and replace the Structure and/or Dwelling located on the Owner's Lot and any Improvements, except for the Area of Common Responsibility;

(ii) to not do any work or fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto;

(iii) to be responsible for his own willful or negligent acts and those of his or the Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Area or the property of another Owner, or any component of the Property for which the Association has maintenance and/or insurance responsibility;

(iv) to perform his or her responsibilities in such manner so as not to unreasonably disturb other Owners and Residents;

(v) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and

(vi) to pay for the cost of repairing, replacing or cleaning up any item that is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants or guests, with the cost thereof to be added to and to become part of the Owner's next chargeable Assessment.

SEE EXHIBIT "A"
IF IT'S NOT AN AREA OF COMMON RESPONSIBILITY, THEN IT'S THE OWNER'S INDIVIDUAL RESPONSIBILITY.

7.6 **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by the Board, who shall delegate such maintenance responsibility to either the Association or the individual Owner(s), as determined by the Board in its sole and absolute discretion.

ARTICLE 8
INSURANCE

8.1 **Property Insurance-Association.** The Association will insure the Common Area and property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies. The Association will maintain a commercial general liability insurance policy covering the Common Area - expressly excluding the liability of each Owner and Resident within his Dwelling – for bodily injury and property damage. In addition to insuring the Common Area against casualty loss, the Association may also, but is not obligated to, maintain property insurance on the Dwellings as originally constructed, if reasonably available. Such coverage will not include any Improvements or betterments (including wall coverings and fixtures) made by or on behalf of any Owner other than those made by the Declarant, and will also exclude furnishings and other personal property within the Dwelling. In insuring Dwellings, the Association may be guided by types of policies customarily available for similar types of properties. The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The Association may maintain directors and officer's liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

8.2 **Owner's Responsibility for Insurance**.

8.2.1 Liability Insurance by Owners. Each Owner will obtain and maintain general liability insurance, A-rated or higher, on his Lot and all Improvements located thereon. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an Owner fails to maintain required insurance, or to provide the Association with proof of same, the Board may obtain insurance on behalf of the Owner who will be obligated for the cost as an Individual Assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. If an Owner fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as an Individual Assessment.

8.2.2 Property Insurance - Owner. Unless otherwise obtained by the Association, as provided below, each Owner will be obligated to maintain property insurance on the Structure and/or Dwelling located on such Owner's Lot and any Improvement on such Owner's Lot and/or Dwelling, in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Each Owner will provide the Association with proof or a certificate of insurance as requested, from time to time, by the Board. Notwithstanding the foregoing, the Board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. If an Owner fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as an Individual Assessment. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of his Dwelling and/or Structure, subject to the right of the Association to supervise, approve or disapprove, repair or restoration during the course thereof. If an Owner fails to repair or restore damage as required by this *Section 8.2.2*, the Association may affect the necessary repairs and levy an Individual Assessment against the Owner and Lot for the cost thereof, after giving an Owner reasonable notice of the Association's intent to do so.

8.3 Owner's Liability for Insurance Deductible. If repair or restoration of Common Area or any Improvement thereon is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE 9
ARCHITECTURAL CONTROL COMMITTEE

Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in *Section 9.2.1* below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a single person to exercise the rights of the ACC. No Improvement constructed or caused to be constructed by the Declarant will be subject to the terms and provisions of this *Article 9* and need not be approved in accordance herewith.

9.1 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC.

9.2 Architectural Control Committee.

9.2.1 Composition. The ACC will be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant may assign its right to appoint all members of the ACC to the Association by Recorded written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the ACC. Any assignment by Declarant of the right to appoint and remove all members of the ACC may be withdrawn until expiration of twenty-four (24) months after the expiration of the Development Period. If Declarant withdraws its assignment of the right to appoint and remove all members of the ACC, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant's right to appoint all members of the ACC will automatically be assigned to the Association upon the expiration of twenty-four (24) months after the expiration of the Development Period. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the ACC. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the ACC unless the sub-committee exercising such duties and responsibilities is dissolved by Declarant. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with Declarant until such time as Declarant has assigned its right to appoint members of the ACC to the Association. The ACC will have the right to employ consultants and advisors as it deems necessary or appropriate.

9.2.2 Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with *Section 9.2.3* to the ACC at the offices of Declarant or at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for proposed

Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

Notwithstanding any provision to the contrary in this Declaration, the ACC may issue an approval to Homebuilders for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval of Improvements set forth in this Declaration.

9.2.3 Design Guidelines. Declarant may adopt the initial Design Guidelines and, during the Development Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines, if any. Upon expiration or termination of the Development Period, the ACC, or any sub-committee thereof created pursuant to *Section 9.2.1*, will have the power, from time to time, to amend, modify, or supplement the Design Guidelines, if any; provided, however, that any amendment to the Design Guidelines made by a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee, and during the Development Period, any such amendment, modification or supplement must be approved in advance and in writing by the Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines, if any, and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

9.2.4 Actions of the Architectural Control Committee. The ACC may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the ACC, except the granting of variances. In the absence of such designation, the vote of a Majority of all of the members of the ACC taken at a duly constituted meeting will constitute an act of the ACC.

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

9.2.6 Variances. The ACC may grant variances from compliance with any of the provisions of the Design Guidelines, if any, or this Declaration, when, in the opinion of the ACC, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and must be signed by at least a Majority of the members of the ACC. Each variance must also be Recorded; provided however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the ACC, including the Declarant or its designee, the Association, or the Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines, if any, will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines, if any, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the Design Guidelines, if any.

9.2.7 Duration of Approval. The approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion within either: (i) one year after issuance of approval of such plans and specifications; or (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this *Section 9.2.7* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

9.2.8 No Waiver of Future Approvals. The approval of the ACC to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different

person, nor will such approval or consent be deemed to establish a precedent for future approvals by the ACC.

9.2.9 Non-Liability of Committee Members. NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION.

ARTICLE 10
MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this *Article 10* apply to the Declaration and the Bylaws of the Association.

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

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

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

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

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

10.3 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Lots and not to any other portion of the Property.

ARTICLE 11
GENERAL PROVISIONS

11.1 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January 1, 2069, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this *Section 11.1* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living, as of the date that this document is first Recorded, descendants of Elizabeth II, Queen of England.

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

11.3 Amendment. This Declaration may be amended or terminated by the Recording, of an instrument executed and acknowledged by: (a) Declarant acting alone; or (b) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes entitled to be cast by members of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. Specifically, and not by way of limitation, Declarant may unilaterally amend this Declaration: (i) to bring any provision

into compliance with any Applicable Law; (ii) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (iv) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

11.4 Enforcement. Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce, by a proceeding at law or in equity, the Restrictions. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of the Restrictions. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Property or the Common Area is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein. The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, the Restrictions. Failure to enforce any right, provision, covenant, or condition set forth in the Restrictions will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Declarant or the Association to enforce the terms and provisions of the Restrictions shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS, OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE RESTRICTIONS.

11.5 Recovery of Costs. The costs of curing or abating a violation of the Restrictions are the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Restrictions or the restraint of violations of the Restrictions, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

11.6 Higher Authority. The terms and provisions of this Declaration are subordinate to Applicable Law. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

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

11.8 Conflicts. If there is any conflict between the provisions of this Declaration, the Certificate, the Bylaws, or any Rules and Regulations adopted pursuant to the terms of such documents, the provisions of this Declaration, the Certificate, the Bylaws, and the Rules and Regulations, in such order, will govern.

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

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

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

11.12 Damage and Destruction. The Association shall undertake the following actions subsequent to damage or destruction to all or any part of the Common Area covered by insurance:

11.12.1 Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under

such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 11.12.1*, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

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

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

11.12.4 Special Assessment. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 6*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

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

11.13 No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the portion of the Property or the Common Area in question has been removed from the provisions of this Declaration pursuant to *Section 14.4* below. This *Section 11.13* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

11.14 View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space or Common Area within the Property will be preserved without impairment. Neither the Declarant, the ACC, nor the Association shall have any obligation to relocate, prune, or thin trees or perform other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other

landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

ARTICLE 12
EASEMENTS

12.1 Owner's Easement of Enjoyment. Every Owner is granted a right and easement of enjoyment over the Common Area and to use of Improvements thereon, subject to other rights and easements contained in the Restrictions. An Owner who does not occupy a Dwelling delegates this right of enjoyment to the Residents of his Dwelling, and is not entitled to use the Common Area.

12.2 Owner's Maintenance Easement. Each Owner is hereby granted an easement over and across any adjoining Dwelling and Lot, and the Common Area to the extent reasonably necessary to maintain or reconstruct such Owner's Dwelling, subject to the consent of the Owner of the adjoining Lot and Dwelling, and the consent of the Board as provided below, or the consent of the Board in the case of Common Area, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Lot and/or Dwelling or Common Area. Requests for entry into an adjoining Lot and/or Dwelling must be made to the Owner of such Lot in advance. The consent of the adjoining Lot Owner will not be unreasonably withheld; however, the adjoining Lot Owner may require that access to its Lot and/or Dwelling be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Area for the purpose of maintaining or reconstructing any Dwelling must be made in advance to the Board. The consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common Area be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. In addition, the Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Common Area during any such maintenance or reconstruction. If an Owner damages an adjoining Lot, Dwelling or Common Area in exercising the easement granted hereunder, the Owner will be required to restore the Lot, Dwelling or Common Area to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Lot or Dwelling.

Notwithstanding the foregoing, no Owner shall perform any work to any portion of his or her Dwelling or Lot if the work requires access to, over or through the Common Area or other Lots and/or Dwellings without the prior consent of the ACC except in case of an emergency. All such work may only be performed by a person who shall deliver to the ACC prior to commencement of such work, in a form satisfactory to the Board:

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

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

(iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and

(iv) all other information and assurances which the Board may reasonably require.

12.3 Owner's Ingress/Egress Easement. Each Owner is hereby granted a perpetual easement over the Property, including the Lots (but excluding any portion of the Lot enclosed by a private fence installed by the Declarant or approved by the ACC creating a private yard space for the Lot Owner), as may be reasonably required, for ingress to and egress from his Dwelling, but subject to any Rules and Regulations adopted from time to time by the Board.

12.4 Owner's Encroachment Easement. Every Owner is granted an easement for the existence and continuance of any encroachment by his Dwelling on any adjoining Lot, Dwelling or Common Area now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a Dwelling, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands.

12.5 Easement of Cooperative Support. Each Owner is granted an easement of cooperative support over each adjoining Lot and Dwelling as needed for the common benefit of the Property, or for the benefit of Dwellings in a Structure, or Dwellings that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Lot, each Owner: (i) acknowledges the necessity for cooperation in a townhome; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to his Dwelling and Lot when needed by the Association to fulfill its duties; and (iv) agrees to try refraining from actions that interfere with the Association's maintenance and operation of the Property.

12.6 Association's Access, Maintenance and Landscape Easement. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access, maintenance and entry over, across, under, and through the Property, including without limitation, each Lot and each Dwelling and all Improvements thereon for the following purposes:

(i) to perform inspections and/or maintenance that is permitted or required of the Association by the Restrictions or by Applicable Law;

(ii) to perform maintenance that is permitted or required of the Owner by the Restrictions or by Applicable Law, if the Owner fails or refuses to perform such maintenance;

(iii) to perform maintenance and repair, and to regulate use of all Shared Driveways, Landscape Easement Area, sidewalks inside the perimeter fencing, and the perimeter fencing located within the Property;

(iv) to enforce the Restrictions;

(v) to exercise self-help remedies permitted by the Restrictions or by Applicable Law;

(vi) to respond to emergencies;

(vii) to have the exclusive right to maintain landscaping and make, erect or install non-structural improvements (such as fences, irrigation systems, lighting systems, walking or biking paths, and the like) in or on those portions of each Owner's Lot (but excluding any portion of such Lot enclosed by a private fence installed by the Declarant or approved by the ACC creating a private yard space for the Lot Owner);

(viii) to grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property; and

(ix) to perform any and all functions or duties of the Association as permitted or required by the Restrictions or by Applicable Law.

12.7 Zero Lot Line Easement. The Property includes zero lot line structures. A zero lot line structure exists when one side elevation of a residence, garage or other ancillary structure is constructed on or immediately adjacent to the side boundary line of the Lot (the "**Zero Elevation**"). This is an intended feature of the Property. Due to the close proximity of the Zero Elevation to the side Lot line, the Owner of the Lot on which the Zero Elevation has been constructed (the "**Dominant Lot**") will periodically be required to access the Lot immediately adjacent to the Zero Elevation (the "**Adjacent Lot**"). Accordingly, each Owner of a Dominant Lot is hereby granted an easement over and across the Adjacent Lot but only to the extent reasonably necessary to maintain the residential improvements on the Dominant Lot, provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the Adjacent Lot.

12.8 Permitted Residential Encroachment Easement. Declarant or a Homebuilder may construct certain Improvements on a Lot that serve a Dwelling located on another Lot, which Improvements may include air conditioner condensing units and related pads, fencing, wiring, lines, conduits and devices (a "**Permitted Residential Encroachment**"). Each Owner is hereby granted an easement over and across the Lot on which the Permitted Residential

Encroachment has been constructed for: (i) the Permitted Residential Encroachment; and (ii) the reasonable maintenance and repair of any Permitted Residential Encroachment. In addition, the Board may require that Owners abide by reasonable rules with respect to use and protection of other Lots during any such maintenance. If an Owner damages another Lot or any Improvements constructed thereon in exercising the easement granted hereunder, the damaging Owner will be required to restore the damaged Lot or Improvements to the condition which existed prior to any such damage, at the damaging Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the damaging Owner is notified in writing of the damage by the Association or the Owner of the damaged Lot or Improvements.

12.9 Shared Driveways Easement. An easement over and across each Lot is hereby reserved by the Declarant for the benefit of the Association for the purpose of maintaining the Shared Driveways in good condition and repair, as determined, from time to time, by the Board, and in accordance with Applicable Law. In addition, Declarant hereby reserves an easement for vehicular and pedestrian ingress and egress over and across the two (2) "18' Shared Driveways" shown on the Plat. No vehicle may be parked on any Shared Driveway. "Parked" as used herein shall be defined as a vehicle left unattended for more than thirty (30) consecutive minutes. This provision will not apply to Declarant or its designee during the Development Period. Notwithstanding the foregoing, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed to be parked temporarily on a Shared Driveway during normal business hours for the purpose of serving any Lot or Common Area; provided, however, no such vehicle shall remain on a Shared Driveway overnight or for any purposes unless prior written consent of the Board is first obtained. The easement reserved herein by the Declarant is perpetual and appurtenant to each Lot. The easement reserved hereunder for the benefit of the Association shall be considered Common Area, and the Association shall discharge the expenses incurred to maintain, repair and replace the Shared Driveways through Assessments.

ARTICLE 13
DEVELOPMENT EASEMENTS

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

13.2 Community Systems Easement. The Property shall be subject to a perpetual non-exclusive easement for the installation and maintenance of, including the right to read, meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the

right, but not the obligation, to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Lots within the Property. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through the Association and paid for as part of the Assessments or paid directly to Declarant, any affiliate of Declarant, or a third party, by the Owner who receives the services. The Community Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any person or entity. The rights of Declarant with respect to the Community Systems installed by Declarant and the services provided through such Community Systems are exclusive, and no other person or entity may provide such services through the Community Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

13.3 Reserved Easements. All dedications, limitations, restrictions, easements, rights of way, licenses, leases, encumbrances and reservations shown on any Plat or otherwise Recorded against the Property and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third party prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said dedications, limitations, restrictions, easements, rights of way, licenses, leases, encumbrances, reservations and other grants for the purpose of developing the Property.

13.4 Improvements, Roadway and Utility Easements. Declarant hereby reserves unto itself and Declarant's agents and employees, a perpetual non-exclusive easement over, under, and across the Property, or any areas conveyed or maintained by the Association, including, but not limited to any Service Area, or any areas reserved or held as Common Area, for the installation, operation, maintenance, repair, relocation, removal and/or modification of any Improvements, roadways, walkways, pathways, street lighting, sewer lines, water lines, utility lines, drainage or storm water lines, and/or other pipelines, conduits, wires, and/or any public utility function on, beneath or above the surface of the ground that serve the Property, and any other property owned by Declarant or Fenway with the right of access to the same at any time. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in this *Section 13.4*. The exercise of the easement reserved herein will not extend to permitting

entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area or a Service Area.

13.5 Subdivision Entry and Fencing Easement. Declarant reserves for itself and the Association, an easement over and across the Property and any Common Area for the installation, operation, maintenance, repair, relocation, removal and/or modification of certain subdivision entry facilities and fencing, including perimeter fencing, which serves the Property or the Common Area. Declarant will have the right, from time to time, to Record a written notice which identifies the subdivision entry facilities, walls, and/or fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities, walls, and/or fencing as Common Area or Service Area by Recorded written notice. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

13.6 Landscape and Monument Sign Easement. Declarant hereby reserves for itself and the Association, an easement over and across the Property and the Common Area for the installation, operation, maintenance, repair, replacement, relocation, removal, and/or modification of landscaping, signs, and/or monument signs which serve the Property, the Common Area, and any other property owned by the Declarant or Fenway. Declarant will have the right, from time to time, to Record a written notice, which identifies those portions of the Property and the Common Area to which the easement reserved hereunder applies. Declarant may designate all or any portion of the easement areas reserved hereunder as Common Area. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or Dwelling.

13.7 Landscape Improvements Easement. Declarant reserves an easement over and across the Landscape Easement Area for the installation, operation, maintenance, repair, relocation, removal and/or modification of any Landscape Improvements it elects to construct within the Landscape Easement Area, in its sole and absolute discretion. Notwithstanding anything in this Declaration to the contrary, Declarant shall have no obligation to construct any Landscape Improvements within the Landscape Easement Area. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any residence or Improvement constructed on any Lot.

13.8 Utility Easement. Declarant, during the Development Period, and the Association thereafter, may grant permits, licenses, and easements over the Common Areas for utilities, and other purposes reasonably necessary for the proper operation of the Property. Declarant, during the Development Period, and the Association thereafter, may grant easements over and across the Lots and Common Areas to the extent necessary or required to provide utilities to Lots; provided, however, that such easements will not unreasonably interfere with the use of any Lot for residential purposes. A company or entity, public or

private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board and may not unreasonably interfere with the use of a Lot for residential purposes. Utilities may include, but are not limited to, water, sewer, irrigation, trash removal, electricity, gas, telephone, master or cable television, and security.

13.9 Easement to Inspect and Right To Correct. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for the Declarant's architect, engineer, other design professionals, builder and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any Structure, Improvement, Dwelling or condition that may exist on any portion of the Property or the Common Area, and a perpetual nonexclusive easement of access throughout the Property or the Common Area to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 13.9* may not be construed to create a duty for Declarant, the Association, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property or the Common Area, including without limitation, each Lot, Structure, and Dwelling, and all Improvements thereon for the purposes contained in this *Section 13.9*.

ARTICLE 14
DEVELOPMENT RIGHTS

14.1 Development by Declarant. It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, the right to direct the size, shape, and composition of the Property, the right to create and/or designate Lots and Common Areas and to subdivide all or any portion of the Property, subject to any limitations imposed on portions of the Property by any applicable Plat. Collectively, the rights reserved to the Declarant as set forth in this Declaration shall be known as the "**Development Rights**", and Declarant hereby reserves the right and privilege for itself, and/or its assigns, to exercise the Development Rights, and any other rights reserved on behalf of the Declarant as set forth in this Declaration until twenty-four (24) months after the expiration or termination of the Development Period, except the right to appoint and remove Board members and officers of the Association which shall be governed by the provisions set out in *Section 5.3*. These rights may be exercised with respect to any portions of the Property or the Common Area. As each portion of the Property is developed or

dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for such Property.

14.2 Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property or the Common Area. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 14.2* until twenty-four (24) months after expiration or termination of the Development Period.

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

(i) A reference to this Declaration, which reference will state the document number or volume and initial page number where this Declaration is Recorded;

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

(iii) A legal description of the added land.

14.4 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal and removal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

(i) A reference to this Declaration, which reference will state the document number or volume and initial page number where this Declaration is recorded;

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

(iii) A legal description of the withdrawn land.

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

ARTICLE 15
DISPUTE RESOLUTION

This *Article 15* is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Lots, Common Area, and/or Improvements can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Lots, and increase strife and tension among the Owners, the Board and the Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Lot and the Common Area, this *Article 15* requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, the proposed arrangement between the Association and any inspection company who will prepare the Common Area Report (as defined below) or perform any other investigation or inspection of the Common Areas and/or Improvements related to the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.

15.1 Introduction and Definitions. The Association, the Owners, Declarant, all persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this *Article 15* by written instrument delivered to the Claimant, which may include, but is not limited to, a Homebuilder, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Lots, Common Area or any Improvement within, serving or forming a part of the Property (individually, a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and the Common Area to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. This *Article 15* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of

the Board), and Owners holding 100% of the votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

15.1.1 "**Claim**" means:

(i) Claims relating to the rights and/or duties of Declarant, the Association, or the ACC, under the Restrictions.

(ii) Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant's control and administration of the Board, and any claim asserted against the ACC.

(iii) Claims relating to the design or construction of the Common Area or any Improvements located within or on the Property, including any Area of Common Responsibility located on a Lot.

(iv) Claims relating to any repair or alteration of the Common Area or any Improvements located within or on the Property.

15.1.2 "Claimant" means any Party having a Claim against any other Party.

15.1.3 "**Respondent"** means any Party against which a Claim has been asserted by a Claimant.

15.2 Mandatory Procedures. Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in *Section 15.8* below, a Claim must be resolved by binding arbitration.

15.3 Claim Affecting Common Areas. In accordance with *Section 5.14* of this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 15.1* above, relating to the design or construction of Improvements on a Lot (whether one or more), including any Area of Common Responsibility located on a Lot. Additionally, no Lot Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. Each Lot Owner, by accepting an interest in or title to a Lot, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. In the event the Association asserts a Claim related to the Common Area, as a precondition to providing the Notice defined in *Section 15.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 15*, or taking any other action to prosecute a Claim related to the Common Area, the Association must:

15.3.1 Obtain Owner Approval of Engagement.

The requirements related to Owner approval set forth in this Section 15.3.1 are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm or attorney engaged by the Association to prosecute a Claim relating to the design or construction of the Common Area, and any financial arrangements between the Association and the Inspection Company (defined below) or a law firm and/or attorney and the Inspection Company. The engagement agreement between the Association, the law firm or attorney, and/or the Inspection Company may include requirements that the Association pay costs, fees, and expenses to the law firm or attorney or the Inspection Company which will be paid through Assessments levied against Owners. The financial agreement between the Association, the law firm or attorney and/or the Inspection Company may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association, the law firm or attorney, and/or the Inspection Company is terminated, the Association elects not to engage the law firm or attorney or Inspection Company to prosecute or assist with the Claim, or if the Association agrees to settle the Claim. In addition, the financial arrangement between the Association, the law firm or attorney, and/or the Inspection Company may include additional costs, expenses, and interest charges. These financial obligations can be significant. The Board may not engage or execute an agreement with a law firm or attorney to investigate or prosecute a Claim relating to the design or construction of the Common Area or engage or execute an agreement between the Association and a law firm or attorney for the purpose of preparing a Common Area Report or performing any other investigation or inspection of the Common Area for a Claim related to the design or construction of the Common Area unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 15.3.1. In addition, the Board may not execute an agreement with an Inspection Company to prepare the Common Area Report or perform any other investigation or inspection of the Common Areas for a Claim related to the design or construction of the Common Area, unless the Inspection Company and the financial arrangements between the Association and the Inspection Company are approved by the Owners in accordance with this Section 15.3.1. For the purpose of the Owner approval required by this Section 15.3.1, an engagement, agreement or arrangement between a law firm or attorney and an Inspection Company, if such engagement, agreement or arrangement could result in any financial obligations to the Association, irrespective of whether the Association and law firm or attorney have entered into an engagement or other agreement to prosecute a Claim relating to the design or construction of the Common Area, must also be approved by the Owners in accordance with this Section 15.3.1. An engagement or agreement described in this paragraph is referred to herein as a "Claim Agreement".

Unless otherwise approved by Members holding eighty percent (80%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to enter into a Claim Agreement if the Claim Agreement includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney and/or the Inspection Company, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the Claim Agreement or engages another firm or third-party to assist with the Claim; (ii) if the Association elects not to enter into a Claim Agreement; (iii) if the Association agrees to settle the Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iv) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney or the Inspection Company; and/or (v) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney or the Inspection Company. For avoidance of doubt, it is intended that Members holding eighty percent (80%) of the votes in the Association must approve the law firm and attorney who will prosecute the Claim and the Inspection Company who will prepare the Common Area Report or perform any other investigation or inspection of the Common Area for a Claim relating to the design or construction of the Common Area, and each Claim Agreement. All Claim Agreements must be in writing. The Board shall not have the authority to pay any costs, expenses, fees, or other charges to a law firm, attorney or the Inspection Company unless the Claim Agreement is in writing and approved by the Owners in accordance with this *Section 15.3.1*.

The approval of the Members required under this *Section 15.3.1* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney and/or the Inspection Company; (b) a copy of each Claim Agreement; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association under any Claim Agreement; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association under any Claim Agreement; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment under any Claim Agreement occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm, attorney and/or the Inspection Company will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Common Area or Improvements on the Property). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Lots or the Common Area will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Common Area or Improvements affected by such testing and the estimated costs thereof, and an estimate of Assessments that may be levied against the

Owners for such repairs. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed Claim Agreement being approved by the Members. In the event Members holding eighty percent (80%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Claim and the Claim Agreement(s), the Board shall have the authority to engage the law firm and/or attorney, and the Inspection Company, and enter into the Claim Agreement approved by the Members.

15.3.2 Provide Notice of the Inspection.

As provided in *Section 15.3.3* below, a Common Area Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Common Area Report, the Association must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Area Report, the specific Common Areas to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

15.3.3 Obtain a Common Area Report.

The requirements related to the Common Area Report set forth in this *Section 15.3.3* are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Area Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Common Area Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Area Report is compromised.

Obtain a written independent third-party report for the Common Area (the "**Common Area Report**") from a professional engineer licensed by the Texas Board of Professional Engineers with an office located in Harris County, Texas (the "**Inspection Company**"). The Common Area Report must include: (i) a description with photographs of the Common Area subject to the Claim; (ii) a description of the present physical condition of the Common Area subject to the Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Area performed by the Association or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Common Area subject to the Claim. For the purpose of *subsection (iv)* of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Area Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office

located in Harris County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Area Report must be obtained by the Association. The Common Area Report will not satisfy the requirements of this Section and is not an "independent" report if: (i) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (ii) the costs and expenses for preparation of the Common Area Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Area Report is finalized and delivered to the Association; (iii) the law firm or attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association's agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Common Area Report. For avoidance of doubt, an "independent" report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Common Area Report is finalized and delivered to the Association.

15.3.4 Provide a Copy of Common Area Report to all Respondents and Owners.

Upon completion of the Common Area Report, and in any event no later than three (3) days after the Association has been provided a copy of the Common Area Report, the Association will provide a full and complete copy of the Common Area Report to each Respondent and to each Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Area Report which will include the date the report was provided. The Common Area Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

15.3.5 Provide a Right to Cure Defects and/or Deficiencies Noted on Common Area Report.

Commencing on the date the Common Area Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (a) inspect any condition identified in the Common Area Report; (b) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Area Report; and (c) correct any condition identified in the Common Area Report. As provided in *Section 13.7* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general contractors that

may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Area Report.

15.3.6 Hold Owner Meeting and Obtain Approval.

In addition to obtaining approval from Members for the terms of the attorney or law firm engagement agreement, the Association must obtain approval from Members holding eighty percent (80%) of the votes in the Association to provide the Notice described in *Section 15.5*, initiate the mandatory dispute resolution procedures set forth in this *Article 15*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Association to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 15.5*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

15.4 Claim by Lot Owners – Improvements on Lots. Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to a Lot Owner by the Declarant or a Homebuilder relating to the design or construction of any Improvements located on a Lot, then this *Article 15* will only apply to the extent that this *Article 15* is more restrictive than such Lot Owner's warranty, as determined in the sole discretion of the party that provided such warranty (either the Declarant or the Homebuilder). If a warranty has not been provided to a Lot Owner relating to the design or construction of any Improvements located on a Lot, then this *Article 15* will apply. Class action proceedings are prohibited, and no Lot Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this

Declaration. If a Lot Owner brings a Claim, as defined in *Section 15.1*, relating to the design or construction of any Improvements located on a Lot (whether one or more), as a precondition to providing the Notice defined in *Section 15.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 15*, or taking any other action to prosecute a Claim, the Lot Owner must:

15.4.1 Provide Notice of the Inspection.

As provided in *Section 15.4.2* below, an Owner Improvement Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Owner Improvement Report, the Owner must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Owner Improvement Report, the Improvements and areas of the Improvements to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

15.4.2 Obtain an Owner Improvement Report.

The requirements related to the Owner Improvement Report set forth in this Section 15.4.2 are intended to provide assurance to the Claimant and Respondent that the substance and conclusions of the Owner Improvement Report and recommendations are not affected by influences ***that may compromise the professional judgement of the party preparing the Owner Improvement Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Owner Improvement Report is compromised.***

Obtain a written independent third-party report for the Improvements (the "**Owner Improvement Report**") from an Inspection Company. The Owner Improvement Report must include: (i) a description with photographs of the Improvements subject to the Claim; (ii) a description of the present physical condition of the Improvements; (iii) a detailed description of any modifications, maintenance, or repairs to the Improvements performed by the Owner or a third-party, including any Respondent; (iv) specific and detailed recommendations regarding remediation and/or repair of the Improvements. For the purpose of *subsection (iv)* of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Owner Improvement Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Harris County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas

Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Owner Improvement Report must be obtained by the Owner. The Owner Improvement Report will not satisfy the requirements of this Section and is not an "independent" report if: (i) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Owner or proposes to represent the Owner; (ii) the costs and expenses for preparation of the Owner Improvement Report are not directly paid by the Owner to the Inspection Company no later than the date the Owner Improvement Report is finalized and delivered to the Owner; (iii) the law firm or attorney that presently represents the Owner or proposes to represent the Owner has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Owner's agreement with the law firm or attorney) the Owner for the costs and expenses for preparation of the Owner Improvement Report. For avoidance of doubt, an "independent" report means that the Owner has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Owner will directly pay for the report no later than the date the Owner Improvement Report is finalized and delivered to the Owner.

15.4.3 Provide a Copy of Owner Improvement Report to all Respondents.

Upon completion of the Owner Improvement Report, and in any event no later than three (3) days after the Owner has been provided a copy of the Owner Improvement Report, the Owner will provide a full and complete copy of the Owner Improvement Report to each Respondent. The Owner shall maintain a written record of each Respondent who was provided a copy of the Owner Improvement Report which will include the date the report was provided. The Owner Improvement Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

15.4.4 Right to Cure Defects and/or Deficiencies Noted on Owner Improvement Report.

Commencing on the date the Owner Improvement Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (a) inspect any condition identified in the Owner Improvement Report; (b) contact the Inspection Company for additional information necessary and required to clarify any information in the Owner Improvement Report; and (c) correct any condition identified in the Owner Improvement Report. As provided in *Section 13.7* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general contractors that may be utilized during such ninety (90) day period and any

additional period needed thereafter to correct a condition identified in the Owner Improvement Report.

15.4.5 Claims Pertaining to the Common Area.

Pursuant to *Section 15.3* above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, such Owner shall be required, since a Claim affecting the Common Area could affect all Owners, as a precondition to providing the Notice defined in *Section 15.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 15*, or taking any other action to prosecute a Claim, to comply with the requirements imposed by the Association in accordance with *Section 15.3.2* (Provide Notice of Inspection), *Section 15.3.3* (Obtain a Common Area Report), *Section 15.3.4* (Provide a Copy of Common Area Report to all Respondents and Owners), *Section 15.3.5* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Area Report), *Section 15.3.6* (Owner Meeting and Approval), and *Section 15.5* (Notice).

15.5 Notice. Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 15.6* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 15.6*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 15.6* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in *Section 15.7* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 15.7* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) if the Claim relates to the design or construction of the Common Area, a true and correct copy of the Common Area Report, and any and all other reports, studies, analyses, and recommendations obtained by the

Association related to the Common Area; (b) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (c) if the Claim relates to the design or construction of the Common Area, reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved the law firm and attorney and the Claim Agreement in accordance with *Section 15.3.1*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 15.3.6* above; and (e) reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Areas, the Notice will also include a true and correct copy of the Common Area Report. If the Claimant is not the Association and relates to the design or construction of Improvements on a Lot, the Notice will also include a true and correct copy of the Owner Improvement Report.

15.6 Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (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. If the Claim involves all or any portion of the Property, then 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.

15.7 Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (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. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent may submit the Claim to mediation in accordance with this *Section 15.7*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 15.8*.

15.8 Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 15.8*.

15.8.1 Governing Rules. If a Claim has not been resolved after mediation in accordance with *Section 15.7*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 15.8* and the American Arbitration Association (the "**AAA**") Construction Industry Arbitration Rules and Mediation Procedures and, if

applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "**AAA Rules**"). In the event of any inconsistency between the AAA Rules and this *Section 15.8*, this *Section 15.8* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

15.8.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 15.8* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

15.8.3 Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section 15.8.

15.8.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 15.8* and subject to *Section 15.9* below; **provided, however, attorney's fees and**

costs may not be awarded by the arbitrator to either Claimant or Respondent. In addition, for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code, except that the arbitrator may not award attorney's fees and/or costs to their Claimant or Respondent. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. **In no event may an arbitrator award speculative, special, exemplary, treble, or punitive damages for any Claim.**

15.8.5 Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Harris County, Texas. Unless otherwise provided by this *Section 15.8*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

15.9 Allocation of Costs. Notwithstanding any provision in this Declaration to the contrary, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

15.10 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 party to Claimant's Claim.

15.11 Period of Limitation.

15.11.1 For Actions by an Owner or Resident. The exclusive period of limitation for any of the Parties to bring any Claim, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the

Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner or Resident discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In the event that a court of competent jurisdiction determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area, the exclusive period of limitation for a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (a) two (2) years and one (1) day from the date that the Owner or the Association discovered or reasonably should have discovered evidence of the Claim; or (b) the applicable statute of limitations for such Claim. In no event shall this *Section 15.11.1* be interpreted to extend any period of limitations.

15.11.2 For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas, four (4) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 15.11.2* be interpreted to extend any period of limitations.

15.12 Funding the Resolution of Claims. The Association must levy a Special Assessment to fund the estimated costs to resolve a Claim pursuant to this *Article 15*. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Claim unless the Association has previously established and funded a dispute resolution fund

[SIGNATURE PAGE FOLLOWS]

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

DECLARANT:

URBAN INTOWNHOMES, LTD.,
a Texas limited partnership

By: URBAN INTOWNHOMES GP, LLC,
a Texas limited liability company,
its General Partner

By: _____
Printed Name: Frank M K Liu
Title: Manager

THE STATE OF TEXAS §
§
COUNTY OF Harris §

This instrument was acknowledged before me this 11th day of December, 2020, by Frank M K Liu, Manager of Urban InTownHomes GP, LLC, a Texas limited liability company, General Partner of URBAN INTOWNHOMES, LTD., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(SEAL)

PHALYCA KONG
My Notary ID # 129877481
Expires July 8, 2022

_____
Notary Public, State of Texas

RP-2020-633807

CONSENT AND JOINDER

The undersigned, as the owner of one or more Lots located within the Property: (a) consents to the execution and recordation of the foregoing Declaration of Covenants, Conditions and Restrictions for Bayou 5th (the "**Declaration**") against the Property; (b) ratifies, affirms and adopts the terms of the Declaration; and (c) agrees that the Lots owned by the undersigned which are located within the Property are and shall be subject to the terms and provisions of the Declaration.

Executed to be effective as of the effective date of the Declaration.

FENWAY DEVELOPMENT, INC.,
a Texas corporation

By: _____
Printed Name: Ross Wang
Title: Vice President

THE STATE OF TEXAS §
§
COUNTY OF Harris §

This instrument was acknowledged before me this 11th day of December, 2020, by Ross Wang, Vice President of Fenway Development, Inc., a Texas corporation, on behalf of said corporation.

(seal)

PHALYCA KONG
My Notary ID # 129877481
Expires July 8, 2022

_____
Notary Public, State of Texas

RP-2020-633807

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien created by a Supplemental Deed of Trust recorded as Document No. RP-2020-265417 in the Official Public Records of Harris County, Texas (the "**Lien**"), securing a note of even date therewith, executes this Declaration solely for the purpose of (a) evidencing its consent to this Declaration, and (b) subordinating the Lien to this Declaration, both on the condition that the Lien shall remain superior to the Assessment Lien in all events.

REGIONS BANK

By: Edward Sprigg

Printed Name: EDWARD SPRIGG

Title: SVP

THE STATE OF TEXAS §
§
COUNTY OF Harris §

This instrument was acknowledged before me on this 18th day of December, 2020, by Edward Sprigg, SVP of Regions Bank, a national association, on behalf of said national association.

MARIANA MELENDEZ
Notary ID #131053606
My Commission Expires
March 22, 2021

Notary Public, State of Texas

(seal)

RP-2020-633807

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien created by a Deed of Trust recorded as Document No. RP-2020-71601 in the Official Public Records of Harris County, Texas (the "**Lien**"), securing a note of even date therewith, executes this Declaration solely for the purposes of (a) evidencing its consent to this Declaration, and (b) subordinating the Lien to this Declaration, both on the condition that the Lien shall remain superior to the Assessment Lien in all events.

UVALDE CENTER I LTD.

By: _____
Printed Name: Ross Wang
Title: Manager

THE STATE OF TEXAS §
§
COUNTY OF Harris §

This instrument was acknowledged before me on this 11th day of December, 2020, by Ross Wang, Manager of Uvalde Center I Ltd., a Texas limited partnership, on behalf of said partnership.

PHALYCA KONG
My Notary ID # 129877481
Expires July 8, 2022

_____
Notary Public, State of Texas

(seal)

RP-2020-633807

EXHIBIT "A"

DESIGNATION OF AREA OF COMMON RESPONSIBILITY AND MAINTENANCE CHART

MAINTENANCE RESPONSIBILITY CHART

"All aspects" includes maintenance, repair, and replacement, as needed.

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Roof.	None.	All aspects.
Dwelling Foundation.	None.	All aspects.
Exterior painting.	None.	All aspects.
Exterior Dwelling components, including glass and appurtenant hardware.	None.	All aspects.
Windows, doors, garage doors.	None.	All aspects.
Dwelling interior, including improvements, fixtures, partition walls and floors within the Dwelling, and all other improvements within the Property not expressly listed on this Attachment and maintained by the Association.	None.	All aspects.
Private Driveways, if any.	None.	All aspects.
Shared Driveways (including the staff portions of the Flag Lots).	All aspects.	None.
Sidewalks inside of the perimeter fencing. [Note: sidewalks outside of the perimeter fencing to be maintained by the City.]	All aspects.	None.
Perimeter Fencing.	All aspects.	None.
Lot Fences, excluding any section that is also a portion of the perimeter fencing.	None.	All aspects subject to *Section 2.28*.

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Improvements, landscaping or irrigation within any Fenced Yard Area that has not been designated as a Service Area.	None.	All aspects.
Improvements, landscaping or irrigation within the Landscape Easement Area.	All aspects.	None.
Common Area.	All aspects.	None.
Private water and/or sewer lines (and any meters or equipment associated therewith excluding exterior water spigots and interior fire sprinklers) serving any Lot.	All aspects.	None.
Fire Hydrants.	All aspects.	None.

NOTE 1: The components listed in the first column are applicable only if they exist, and may not be construed to create a requirement to have such a component.

NOTE 2: If an Owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notices to the Owner.

RP-2020-633807

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e-Filed & e-Recorded in the

Official Public Records of

HARRIS COUNTY

TENESHIA HUDSPETH

COUNTY CLERK

Fees $398.00

RP-2020-633807

RECORDERS MEMORANDUM
This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

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.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.

COUNTY CLERK
HARRIS COUNTY, TEXAS