

ARTICLES OF INCORPORATION

EXHIBIT "B"

ARTICLES OF INCORPORATION
OF

FILED
In the Office of the
Secretary of State of Texas

OCT 10 2005

DEER VALLEY HOMEOWNERS' ASSOCIATION **Corporations Section**

I, the undersigned, being of the age of eighteen years or more, acting as incorporator of a corporation under the Texas Non-Profit Corporation Act, as it may be amended, do hereby adopt the following Articles of Incorporation of such corporation:

Article 1. Name. The name of the corporation is Deer Valley Homeowners' Association (hereinafter called the "**Corporation**" or the "**Association**").

Article 2. Type of Corporation. The Corporation is a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act and has no capital stock.

Article 3. Duration. The Corporation shall have perpetual duration.

Article 4. Definitions. In addition to the definitions set forth herein, capitalized terms that are not defined herein shall have the meaning as defined in the Declaration of Covenants, Conditions and Restrictions for Deer Valley, recorded or to be recorded in the public land records of Tarrant County, Texas, as it may be amended from time to time (the "**Declaration**"), which definitions are incorporated herein by this reference.

Article 5. Registered Office and Agent. The initial registered office of the Corporation is 1603 LBJ Freeway, Suite 700, Dallas, Texas 75234 and the initial registered agent at such address is Karen Clary.

Article 6. Incorporator. The name and address of the incorporator is Anne Burdette at 1603 LBJ Freeway, Suite 700, Dallas, Texas 75234.

Article 7. Purpose of Corporation. The Corporation does not contemplate pecuniary gain or benefit, direct or indirect, to its Members. In way of explanation and not of limitation, the purposes for which it is formed are: (i) to be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws, and as provided by law; and (ii) to provide an entity for the furtherance of the interests of the owners of property subject to the Declaration.

Article 8. Powers of the Corporation. In furtherance of its purposes, the Corporation shall have the following powers, which, unless indicated otherwise by the Declaration or the Bylaws, may be exercised by the Board of Directors: (i) all of the powers conferred upon nonprofit corporations by the laws of the State of Texas in effect from time to time; (ii) all rights and powers conferred on property owners' associations by the laws of the State of Texas; and (iii) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in these Articles of Incorporation, the Bylaws, the Declaration or the laws of the State of Texas.

Article 9. Membership. The Corporation shall be a membership corporation without certificates or shares of stock. All Owners, by virtue of their ownership of a Lot subject to the Declaration, are Members of the Association and such membership is appurtenant to, and

inseparable from, ownership of the Lot.

Article 10. Voting. All Members shall have the same voting rights as provided in the Declaration and the By-laws, except that Declarant shall be entitled to 10 votes for every Lot owned by Declarant. Cumulative voting is not allowed.

Article 11. Board of Directors. The business and affairs of the Corporation shall be conducted, managed, and controlled by a Board of Directors. The Board of Directors may delegate such operating authority to such companies, individuals, or committees as it, in its discretion, may determine. The method of election (except for the initial Board of Directors below), removal and filling of vacancies, and the term of office shall be as set forth in the Bylaws. The Board of Directors shall consist of 3, 5 or 7 members. The initial Board of Directors shall consist of the following 3 members:

Tom Bepko	1603 LBJ Freeway, Suite 700, Dallas, Texas 75234
Greg Lusk	1603 LBJ Freeway, Suite 700, Dallas, Texas 75234
Wendy Hazelwood	1603 LBJ Freeway, Suite 700, Dallas, Texas 75234

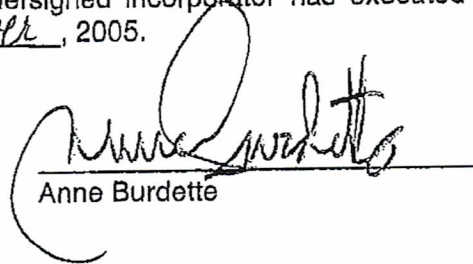
Article 12. Limitation on Directors' and Officers' Liability and Indemnification. Except as provided below in this paragraph, an officer, director or committee member of the Association is not liable to the Association or its Members for monetary damages or acts or omissions that occur in the person's capacity as an officer, director or committee member, except to the extent a person is found liable for: (i) a breach of the officer's, director's or committee member's duty of loyalty to the Association or its Members; (ii) an act or omission not in good faith that constitutes a breach of duty of the officer, director or committee member to the Association; (iii) an act or omission that involves intentional misconduct or a knowing violation of the law; (iv) a transaction from which the officer, director or committee member receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the person's office or position; or (v) an act or omission for which the liability of an officer, director or committee member is expressly provided by an applicable statute. The liability of officers, directors and committee members of the Association may also be limited by the Charitable Immunity and Liability Act of 1987, Chapter 84, Texas Civil Practice and Remedies Code, as amended. The foregoing limitation on the liability of an officer, director or committee member does not eliminate or modify that person's liability as a Member of the Association.

Article 13. Dissolution. The Corporation may be dissolved by vote or the written approval of not less than 67% of all outstanding votes (other than suspended votes) held by the Members as may be more specifically provided in the Bylaws or the Declaration and in accordance with the laws of the State of Texas. Upon dissolution of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation will be distributed to an appropriate public agency to be used for purposes similar to those for which this Corporation was created, or shall be granted, conveyed and assigned to a nonprofit corporation, association, trust or other organization to be devoted to such similar purposes. Any dissolution is subject to the terms of Article 15 hereof, if applicable.

Article 14. Amendment. Amendment of these Articles of Incorporation shall require approval of at least 67% of all outstanding votes (other than suspended votes) held by the Members.

Article 15. Conflict with Other Documents. In the event of a conflict between these Articles of Incorporation and the Declaration, the Declaration shall control. In the event of a conflict between these Articles of Incorporation and the Bylaws, these Articles of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this 21st day of September, 2005.


Anne Burdette

BYLAWS

EXHIBIT "C"

**BYLAWS
OF
DEER VALLEY HOMEOWNERS' ASSOCIATION**

**ARTICLE I
NAME, PRINCIPAL OFFICE AND DEFINITIONS**

1.1 **Name.** The name of the corporation is Deer Valley Homeowners' Association (the "Association").

1.2 **Principal Office.** The principal office of the Association shall be located in Tarrant County, Texas or in such other county in Texas as the Board of Directors determines. The Association may have such other offices, either within or outside the State of Texas, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 **Definitions.** In addition to the definitions set forth herein, capitalized terms that are not defined herein shall have the meaning as defined in the Declaration of Covenants, Conditions and Restrictions for Deer Valley, recorded or to be recorded in the public land records of Tarrant County, Texas, as it may be amended from time to time (the "Declaration"), which definitions are incorporated herein by this reference.

**ARTICLE II
ASSOCIATION; MEMBERSHIP AND MEETINGS**

2.1 **Membership.** The Owners shall be the members of the Association.

2.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

2.3 **Annual Meetings.** The first meeting of the Association, whether regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be at a time set by the Board of Directors.

2.4 **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board of Directors or upon a petition signed by Members representing at least 10% of the total votes in the Association.

2.5 **Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to an Owner of each Lot entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

2.6 **Voting.** The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference.

2.7 **Proxies.** At all meetings of Members, each Member may vote in person (or if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Texas law. All proxies shall be in writing specifying the Lot(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it is given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter or longer period is specified in the proxy.

2.8 **Quorum - Adjournment.** Except as provided in these Bylaws or in the Declaration, the presence, in person or by proxy, of Members representing 20% or greater of the total votes in the Association shall constitute a quorum at all meetings of the Association. If, however, such quorum shall not be present or represented at any meeting, the Members present at the meeting that are entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as stated above is present or represented.

2.9 **Action Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without notice and without a vote, if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 90 days of the earliest date that a notice regarding such consent is delivered by the Association, which date shall be designated in the notices. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. For votes taken by written consent as provided above, the date specified in the notice as the ownership date, which date shall not be more than 20 days prior to the date the notices are sent, shall be the date used for determining the ownership of the Lot for the written consent voting purposes. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE III BOARD OF DIRECTORS

3.1 **Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by Declarant, the directors shall be Members or Residents and no Owner and Resident representing the same Lot may serve on the Board of Directors at the same time. A "Resident" shall be any natural person 18 years of age or older whose principal place of residence is a Dwelling. In the case of a Member which is not a natural person, any

officer, director, partner, employee or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided no Member may have more than one such representative on the Board of Directors at a time, except for the Declarant.

3.2 Number of Directors. The Board of Directors shall consist of 3, 5 or 7 directors, as provided herein and as determined by the Board of Directors. The initial Board of Directors shall consist of 3 directors as identified in the Articles of Incorporation.

3.3 Directors - During Development Period. During the Development Period, all directors shall be selected and removed by Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant.

3.4 Directors - After Development Period. Following expiration of the Development Period, the directors shall be nominated and elected as follows:

a. **Nomination Procedures.** Prior to each election, the Board of Directors shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position. The Board of Directors shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations from the floor shall also be permitted.

b. **Nominating Committee.** Nominations for election to the Board of Directors may also be made by a nominating committee. The nominating committee, if any, shall consist of a Chairperson, who shall be a member of the Board of Directors, and three or more Members or representatives of Members. The Board of Directors shall appoint the members of the nominating committee not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced at each annual meeting. The nominating committee may make as many nominations for election to the Board of Directors as it shall in its discretion determine. In making the nominations, the nominating committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

c. **Election and Term.** At the first annual meeting after the expiration of the Development Period, all directors shall be elected by the Members to a term of 1 year. The number of directors to be elected at such meeting shall be determined by the then current Board of Directors. Upon the expiration of the term of office of each director elected by the Members, a successor shall be elected to serve a term of 1 year, unless the Board of Directors decides to allow one or more of the directors to be elected to serve for a term of 2 years. Unless removed as provided herein, the directors shall hold office until their respective successors shall be elected.

d. **Election Procedures.** Each Owner may cast the entire vote assigned to his or her Lot for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest

number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

e. **Removal.** Any director elected by the Members may be removed, with or without cause, by a 40% or greater vote of all outstanding votes entitled to be cast. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director. Any director who has 3 or more consecutive unexcused absences from the Board of Directors meetings, or who is more than 60 days delinquent (or is the representative of a Member who is delinquent more than 60 days) in the payment of any assessment or other charge due the Association, or who after notice and hearing is held to be in violation of the Declaration, may be removed by a majority of the other directors present at a regular or special meeting at which a quorum is present, and the Board of Directors may appoint a successor to fill the vacancy for the remainder of the term. In the event of death, disability or resignation of a director, the Board of Directors may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term.

3.5 **Compensation.** Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a 67% or greater vote at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board of the Directors prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.6 **Meetings of the Board of Directors.**

a. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as a majority of the directors shall determine, but at least 4 such meetings shall be held during each fiscal year with at least 1 per quarter. Notice of the time and place of a regular meeting shall be communicated to directors not less than 4 days prior the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

b. **Special Meetings.** Special meetings of the Board of Directors shall be held when called by the President or Vice President or by any 2 directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (i) as provided in Section 8.4 herein; (ii) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iii) by facsimile, computer or such other communication device. All such notices shall be given at the director's telephone number, fax number or sent to the director's address as shown on the records of the Association. Notices given by mail shall be deposited at least 7 business days prior to the time set for the meeting. Notices given by personal delivery, telephone, or other

electronic device shall be delivered or transmitted at least 72 hours before the time set for the special meeting.

c. **Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding a meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting.

d. **Telephonic Participation in Meetings.** Members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or committee by means of conference telephone or similar communication equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

e. **Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors, unless otherwise specified in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board of Directors cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

f. **Notice to Owners; Open Meetings.** Subject to the provisions of Section 3.6g, all meetings of the Board of Directors shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

g. **Action Without Meeting.** Any action to be taken at a meeting of directors or any action that may be taken at a meeting of directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

3.7 Powers of Directors. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles of Incorporation, and as provided by law. The Board of Directors may do or cause to be done all acts and things as are not directed by the Declaration, Articles of

Incorporation, these Bylaws, or Texas law to be done and exercised exclusively by the membership generally.

3.8 Duties of Directors. The duties of the Board of Directors shall include, without limitation:

- a. preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- b. levying and collecting such assessments from the Owners;
- c. providing for the operation, care, upkeep, and maintenance of the *Common Maintenance Areas*;
- d. designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- e. depositing all funds received on behalf of the Association in appropriate bank accounts or in other accounts approved by the Board of Directors, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;
- f. making and amending rules in accordance with the Declaration;
- g. opening the bank accounts on behalf of the Association and designating the signatories required;
- h. making or contracting for the making of repairs, additions, and improvements to or alterations of the *Common Maintenance Areas* in accordance with the Declaration and these Bylaws;
- i. enforcing the provisions of the Declaration and any rules or standards developed pursuant to the Declaration, the Articles of Incorporation, these Bylaws and bringing any legal proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;
- j. obtaining and carrying insurance as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- k. paying the cost of all services rendered to the Association;
- l. keeping books with detailed accounts of the receipts and expenditures of the Association;
- m. taking such actions as contemplated by the Board of Directors in the Declaration, these Bylaws and/or the Articles of Incorporation;

n. permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Property; and

o. indemnifying a director, officer or committee member, or former director, officer or committee member of the Association or any agent, contractor or management company of the Association to the extent such indemnity is required or permitted under Texas law, the Articles of Incorporation or the Declaration.

3.9 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board of Directors shall obtain Member approval in the same manner provided for Special Assessment as specified in the Declaration if the total amount of such borrowing, together with all other debt incurred within the previous 12 month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

ARTICLE IV OFFICERS

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The President and Secretary shall be elected from among the members of the Board of Directors; other officers may, but need not be members of the Board of Directors. Any two or more offices may be held by the same person, except for the offices of President and Secretary.

4.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

4.3 Term. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for 1 year, unless he or she shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

4.4 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

4.5 Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

4.7 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors, including, without limitation, the following:

a. **President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Board of Directors and the Members and shall see that orders and resolutions of the Board of Directors are carried out.

b. **Vice President.** The Vice President shall act in place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board of Directors.

c. **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board of Directors.

d. **Treasurer.** The Treasurer shall receive and deposit, in appropriate bank accounts or in other accounts approved by the Board of Directors, all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; sign all checks of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

4.8 **Authorized Agents.** Except when the Declaration, these Bylaws or the Articles of Incorporation require execution of certain instruments by certain individuals, the Board of Directors may authorize any person to execute instruments on behalf of the Association. In the absence of such Board of Directors' resolution, the President and the Secretary are the only persons authorized to execute instruments on behalf of the Association. However, only the President and/or Secretary shall have the authority to sign a mortgage or deed of trust relating to the Common Area.

ARTICLE V ASSOCIATION MATTERS

5.1 **Committees.** The Board of Directors may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board of Directors may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Management.** The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

5.3 Right to Contract. The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational, or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board of Directors.

5.4 Accounting Standards. The following management standards of performance shall be followed unless the Board of Directors by resolution specifically determines otherwise: (i) accrual accounting, as defined by generally accepted accounting principles, shall be employed; (ii) accounting and controls should conform to generally accepted accounting principles; (iii) cash accounts of the Association shall not be commingled with any other accounts; (iv) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; any thing of value received shall benefit the Association; and (v) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors.

5.5 Accounting Reports. Unless the Board of Directors by resolution specifically determines otherwise, the Board of Directors shall obtain the following reports:

a. **Quarterly Reports.** Commencing at the end of the quarter in which the first Lot with a Dwelling thereon is conveyed, financial reports shall be prepared for the Association at least quarterly containing (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis; (ii) a variance report reflecting the status of all accounts in an actual versus approved budget format; (iii) a balance sheet as of the last day of the preceding period; and (iv) a delinquency report listing all Owners who are delinquent in paying any assessment at the time of the report and describing the status of any action to collect such assessments which remain delinquent.

b. **Annual Reports.** An annual report consisting of at least the following, which shall be made available to all Members within 6 months after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board of Directors determines, by an independent public accountant.

5.6 Enforcement of Declaration. The Association shall have the power, as provided in the Declaration and in accordance with all applicable laws, regulations, rules and statutes, to impose sanctions for any violation of any duty imposed under the Declaration (and any rules promulgated pursuant thereto), these Bylaws and the Articles of Incorporation and any amendment thereto.

a. **Notice, Opportunity to Cure and Hearing.** Prior to imposition of any sanction, lawsuit or enforcement of the terms of the Declaration, the Board of Directors or its designee shall: (i) deliver written notice to the Owner of the Lot related to or connected with the alleged violation, if such delivery of notice is desired by the Board of Directors or is required by law, statute, regulation or rule, (ii) inform the Owner of its opportunity to cure the alleged violation if such cure period is desired by the Board of Directors or is otherwise required by law, statute, regulation or rule, and (iii) inform the

Owner of its right to a hearing if such hearing is desired by the Board of Directors or is required by law, statute, regulation or rule.

b. **Optional Courtesy Letter.** The Association may, at its option and in its sole and absolute discretion, voluntarily provide the Owner of the Lot related to or connected with the alleged violation with a courtesy letter informing the Owner of the violation. The foregoing courtesy letter is not required to be given by the Association and such notice shall not constitute the written notice described Section 5.6a above. The Board of Directors or its designee shall have the sole and exclusive right to determine under which facts and circumstances the Association may elect to send a courtesy letter.

c. **No Waiver.** In the event the Board of Directors decides, in its discretion, not to take enforcement action, such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenant, restriction, or rule.

ARTICLE VI ASSESSMENTS

As more fully provided in the Declaration each Member is obligated to pay to the Association annual and special assessment (and specific assessments if applicable) which are secured by a continuing lien upon the Lot against which the assessment is made. If an assessment is not paid as provided in the Declaration, then the Association shall be entitled to the remedies provided in the Declaration, these Bylaws and the Articles of Incorporation.

ARTICLE VII AMENDMENTS

7.1 **Amendment by Declarant or Board of Directors.** During the Development Period and subject to any applicable provisions in the Declaration, the Declarant may amend these Bylaws without approval of the Board of Directors or any Members. In addition, after the expiration of Development Period, Declarant or the Board of Directors may amend these Bylaws if such amendment (i) is necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) is necessary to comply with the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U. S. Department of Veterans Affairs, the U. S. Department of Housing and Urban Development, or any other applicable governmental agency or secondary mortgage market entity; (iii) is necessary to clarify or to correct technical, typographical or scrivener's errors; or (iv) or any other purpose; provided, however, any such amendment must not have a material adverse effect upon any right of any Owner.

7.2 **Amendment by Members.** Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of at least 51% of all outstanding votes entitled to be cast. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

7.3 **Validity and Effective Date of Amendments.** Amendments to these Bylaws shall become effective upon the date of the amendment, unless a different date is specified in the amendment. Any procedural challenge to an amendment must be made within 3 months of

its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

ARTICLE VIII MISCELLANEOUS

8.1 Fiscal Year. The fiscal year of the Association shall be determined by the Board of Directors. If the Board of Directors fails to adopt a certain fiscal year, then until the Board of Directors adopts a specific fiscal year the fiscal year shall be January 1st to December 31st of every year, except that the first fiscal year shall begin on the date of incorporation.

8.2 Conflicts. In the event of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the event of any conflict between the Declaration and these Bylaws, the Declaration shall control.

8.3 Books and Records,

a. Inspection by Members. The Board of Directors shall make the books and records of the Association available for inspection and copying by any Member, or the duly appointed representative of any Member. The files and records of an attorney or accountant who performs services for the Association are not records of the Association and are not subject to inspection by Members. The Board of Directors may deny the request to review particular records to the extent the Board of Directors determines that the Member is not entitled to such documents as a matter of law.

b. Rules of Inspection. The Board of Directors may establish reasonable rules with respect to: (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing copies of documents requested.

c. Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical property owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

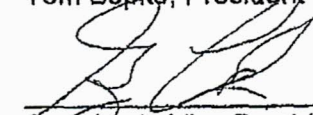
8.4 Notices. Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements and other communications under the Declaration or these Bylaws shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly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

IN WITNESS WHEREOF, we being all of the officers of the Association have executed these Bylaws on the dates set forth below.

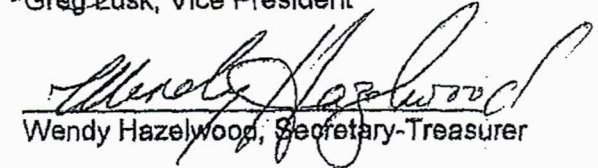
Date: 9/28/05


Tom Bepko, President

Date: 9-28-05


Greg Lusk, Vice President

Date: 9-28-05


Wendy Hazelwood, Secretary-Treasurer

u:\hoa documents\deer valley\bylaws.doc



CENTEX HOMES
1603 LBJ FRWY #504

DALLAS TX 75234

Submitter: CENTEX HOMES

SUZANNE HENDERSON
TARRANT COUNTY CLERK
TARRANT COUNTY COURTHOUSE
100 WEST WEATHERFORD
FORT WORTH, TX 76196-0401

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

Filed For Registration: 05/18/2006 09:15 AM
Instrument #: D206149865
OPR 19 PGS \$84.00

By: _____



D206149865

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

COPY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

DEER VALLEY

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

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

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

ARTICLE I DEFINITIONS

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

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

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

1.4 "Association" means Deer Valley Homeowners' Association, a Texas nonprofit corporation, established for the purposes set forth herein.

1.5 "Association Maintenance Fencing" means that certain fencing installed by Declarant as described and/or depicted on Exhibit "C" attached hereto.

1.6 "Board" means the Board of the Association.

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

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

1.9 **"City"** means the City of Fort Worth, Texas.

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

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

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

1.13 **"County"** means the County of Tarrant, Texas.

1.14 **"Declarant"** means Centex Homes and its successors and assigns as provided in Section 12.12 herein.

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

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

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

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

1.19 **"Entry Signs"** means the entry feature signs for the subdivision that are placed by the Declarant or its agents on the Common Area and/or on the Common Maintenance Areas described and/or depicted on Exhibit "D" attached hereto.

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

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

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

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

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

ARTICLE II PROPERTY RIGHTS

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

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

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

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

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

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

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

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

2.3 **Right to Delegate Use and Enjoyment of Common Area.** Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the By-laws and any reasonable rules of the

Board. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

ARTICLE III MEMBERSHIP AND VOTING

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

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

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

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

ARTICLE IV ASSESSMENTS

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

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

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

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

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

4.3 Annual Assessment - Increases. Until January 1st of the year immediately

following the conveyance of the first Lot to an Owner, the annual assessment shall be \$136.00 per Lot. Thereafter, the annual assessment may be increased by the Board, provided that the Board gives written notice to the Members of the increase. The effective date of the increase shall not be sooner than 60 days from the date of the notice. No vote or other approval shall be required for the increase to be effective, unless the increase is more than 10% of the prior annual assessment. If the increase is more than 10%, then the increase may be disapproved by a 67% or greater vote of the votes cast, provided that the vote occurs within 60 days of the date of the increase notice.

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

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

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

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

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

4.9 Personal Obligation to Pay Assessments. Each assessment provided herein, together with interest at the Designated Interest Rate, late charges, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and

severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded first purchase money mortgage or beneficiary of a Recorded first deed of trust (meaning any Recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust), shall be liable for unpaid assessments which accrued prior to mortgagee's acquisition of title. In addition, no mortgagee shall be required to collect assessments.

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

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

4.12 Lien.

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

b. **Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial or nonjudicial foreclosure. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale. The Board may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board's meeting. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code, as amended. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, as

amended, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the By-laws and applicable law, such as Chapter 209 of the Texas Property Code, as amended. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

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

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

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

ARTICLE V THE ASSOCIATION

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

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

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

5.4 **Indemnification.** Subject to the limitations and requirements of the Texas Nonprofit Corporation Act, as amended, and in the By-laws, the Association shall indemnify every officer,

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

5.5 Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

e. **Right to Require Removal.** The Association may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Association or its designee shall have the right to enter the Lot, remove the violation, and restore the property to substantially the same condition as previously existed, without such action being deemed a trespass.

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

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

h. **Perform Maintenance.** In addition to any other enforcement rights, if an

Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Association may record a notice of violation in the Records and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific assessment.

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

ARTICLE VI ARCHITECTURAL CONTROLS

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

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

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

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

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

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

6.5 **Plan Review.**

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

b. **Approval Considerations - Aesthetics.** The proposed improvements will be approved if, in the sole opinion of the ACA: (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements within the Property; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not have an adverse impact on the Property. Decisions of the ACA may be based on purely aesthetic considerations. The ACA shall have the authority to make final, conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and their members change over time.

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

shall be in compliance with the items approved by the ACA.

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

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

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

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

6.11 Enforcement; Non-Conforming and Unapproved Improvements. If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACA, in their sole and absolute discretion, such improvements will be in violation of this Article VI to the same extent as if made without prior approval of the ACA. In addition to the Association's rights in Section 5.9 herein, the Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alteration to any improvement on any Lot that is not approved by the ACA.

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

ARTICLE VII USE RESTRICTIONS AND COVENANTS

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

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

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

7.4 Fences.

a. **Declarant / Builder Fencing.** To the extent Declarant or a Builder constructs a fence which fully or partially encloses a rear or side yard, then the Owner of that Lot must at all times maintain such fence in accordance with the terms of this Declaration, unless that Owner obtains the ACA's written approval to modify, replace, relocate or remove such fence in accordance with the provisions of this Declaration.

b. **Type of Fencing.** All perimeter fences will be wood and/ or brick. No other type of fencing shall be permitted. All fencing shall comply in all respects (including size and location) with applicable City requirements, including, without limitation the City. All perimeter fences shall be six (6) feet in height unless another height is approved by the ACA and shall be a color approved by the ACA. Unless approved by the ACA, fences may not be stained or painted, except that fences may be stained with a clear stain or with the same color stain as originally applied by the Declarant. The portion of all fences which exterior or side faces a street adjoining such Owner's Lot (front, side or rear streets, but not alleys) or which exterior or side faces a Common Area, open space, park or other recreational area adjoining such Owner's Lot (which area may be separated by an alley) shall have the smooth surface of the fence materials facing the applicable street or Common Area. The fence posts and bracing boards on such front, side and rear fences shall face the interior of the fenced yard.

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

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

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

f. **Common Fencing.** Except for Association Maintenance Fencing, side and rear yard fences that are installed by Declarant or the builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "Common Fence") shall be maintained jointly by the Owners whose Lot adjoins such Common Fence and the costs associated

therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation even if an Owner constructs a second fence along or near the Common Fence, unless the other Owner agrees in writing otherwise and the ACA's approval is obtained. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of one-half (1/2) of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of one-half (1/2) of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term "Arbitration" shall mean binding arbitration pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners.

7.5 Common Retaining Wall.

a. **Maintenance of Common Retaining Wall.** Any retaining walls that are installed by Declarant on a common boundary of two Lots or that are located on a Lot, but adjacent to (within 3 feet) and generally parallel with another Lot (a "Common Retaining Wall") shall be maintained jointly by the Owner(s) whose Lot the Common Retaining Wall is located on and the Owner whose Lot is adjacent to the Common Retaining Wall (depending upon which is applicable) and the costs associated therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation unless the other Owner agrees in writing to such release. The Common Retaining Wall shall be maintained in the same location, size, style and design and with the same materials, unless both Owners agree in writing otherwise and the ACA's approval is obtained. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Retaining Wall and/or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of 1/2 of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of 1/2 of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made.

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

7.6 Outbuildings, Sheds and Detached Buildings. No detached accessory buildings, including, but not limited to, detached garages and storage buildings, and sheds shall be erected, placed or constructed upon any Lot, unless (i) the building is APPROVED BY THE ACA prior to the installation or construction of the building; (ii) such building is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition; (iii) the exterior paint and roofing materials of such building shall be consistent with the existing paint and roofing materials of the Dwelling; (iv) the building is located within a backyard that has a fence that completely encloses the backyard; (v) the height of the walls (excluding the roof) is not greater than 8 feet; (vi) the total height of the building (including walls and roof) is not greater than 10 feet; and (vii) the building is less than 225 square feet of floor space. In addition, the Owner is required to comply with any applicable City requirements, including, without limitation, any necessary permits.

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

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

7.9 Trash; Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept, placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except solely on a day designated for removal of garbage, then such containers may be placed in the designated location for pick-up of such garbage and the container will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any Builder designated by Declarant.

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

7.11 Antennae and Satellite Dishes. Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes, or other apparatus for the transmission

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

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

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

7.14 No Temporary Structures as a Residence. No structure of a temporary character, including, without limiting the generality thereof, any tent, shack, garage or barn will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent, that is erected in the back yard behind a fully screened fence, is permitted provided that such activity is on a temporary basis and does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

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

7.16 Landscaping Maintenance. All yards must be sodded or grassed within a reasonable time period not to exceed seven (7) months after the initial conveyance of a Lot with a Dwelling thereon to an Owner other than a Builder. Decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front and side yard may not exceed 10% of the total area of the front and side yard. All landscaping located on any Lot, including grass lawns, must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from

the yard, including, without limitation, flower beds and planter areas. No hardscape, including, without limitation, edging may include any symbols, characters, numbers or letters, unless approved by the ACA.

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

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

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

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

7.21 Mining. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted upon or in any Lot, nor will oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas will be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

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

7.23 Athletic and Recreational Facilities. No outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts may be placed on a Lot unless (i) such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed 10 feet in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACA may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling.

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

7.25 Lawn Decorations and Sculptures. The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags and similar items on any portion of such

Owner's Lot except the interior of the Dwelling, unless (i) such item is placed within a backyard completely enclosed by a fence which blocks the view of the item at ground level; and (ii) such item is no taller than the fence.

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

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

7.28 Construction Activities. This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board in its sole good faith judgment, the Board will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

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

ARTICLE VIII COMMON AREAS

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

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

Area.

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

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

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

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

8.7 No Representations or Warranties Regarding Drainage Area. Declarant has informed the Association that the drainage areas located on or to be constructed upon the Common Area (the "Drainage Improvements") are intended primarily for drainage purposes and are not intended as a recreational feature or an amenity with certain specific aesthetic qualities. Declarant makes no representations or warranties regarding the Drainage Improvements and Declarant hereby disclaims any and all representations and warranties regarding the Drainage Improvements, including, without limitation, any implied warranties, including any warranty for fitness for a particular

purpose and any warranty of good and workmanlike construction. THE ASSOCIATION HEREBY AGREES TO ACCEPT THE WATER/RELATED IMPROVEMENTS IN THEIR "AS-IS" CONDITION.

8.8 No Representations or Warranties Regarding Open Space. Declarant has informed the Association that the Common Area or portions thereof as depicted and/or described on Exhibit "E" attached hereto (the "Open Space Area") is intended primarily as an unimproved open space to be maintained in a natural or semi-natural condition and not as a recreational feature or an amenity with certain specific aesthetic qualities. Declarant makes no representations or warranties regarding the Open Space Area and Declarant hereby disclaims any and all representations and warranties regarding the Open Space Area, including, without limitation, any implied warranties, including any warranty for fitness for a particular purpose and any warranty of good and workmanlike construction. THE ASSOCIATION HEREBY AGREES TO ACCEPT THE OPEN SPACE AREA IN ITS "AS-IS" CONDITION.

ARTICLE IX EASEMENTS

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

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

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

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

9.5 Temporary Easement to Complete Construction. All Lots will be subject to an

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

ARTICLE X ANNEXATION AND WITHDRAWAL

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

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

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

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

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

ARTICLE XI DISPUTE RESOLUTION

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

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

Property.

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

c. **"Exempt Claims"** means the following claims or actions, which are exempt from this Article: (i) the Association's claim for assessments, and any action by the Association to collect assessments; (ii) an action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration; (iii) enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration; (iv) a suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article; and (v) a dispute that is subject to alternate dispute resolution - such as mediation or arbitration - by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

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

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

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

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

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

11.6 Termination of Mediation. If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will

issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

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

11.8 Enforcement of Resolution. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

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

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

ARTICLE XII MISCELLANEOUS

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

12.2 Amendments to Declaration.

a. **Amendment by Declarant.** While Declarant owns any real property subject to this Declaration, Declarant, at its sole discretion and without a vote or the consent of any other party, shall have the right to amend this Declaration for the following purposes: (i) to add real property to the Property, (ii) to withdrawal real property from the Property, (iii) to create lots,

easements, common areas, common maintenance areas, fencing and signage, (iv) to modify the use restrictions and covenants in Section VII herein, (v) to comply with the requirements of any governmental authority or institutional lender or underwriting lender, (vi) to resolve conflicts, clarify ambiguities and to correct misstatements, errors or omissions in this Declaration, and (vii) for any other purpose, provided, that such amendment made pursuant to this clause (vii) has no material adverse effect on any right of an Owner.

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

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

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

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

12.6 Limitation on Interest. All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected, or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be

applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to Owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DECLARANT:
CENTEX HOMES,
a Nevada general partnership

By: Centex Real Estate Corporation,
a Nevada corporation,
Its: managing general partner

By: 

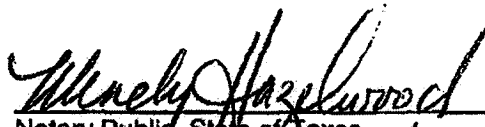
Anne Burdette
Vice President of Operations
Dallas Fort Worth Metro Division

Date: 9.27.05

STATE OF TEXAS }

COUNTY OF DALLAS }

The foregoing instrument was acknowledged before me on this the 29th day of September, 2005, by Anne Burdette (personally known to me), Vice President of Operations, Dallas Fort Worth Metro Division, of Centex Real Estate Corporation, a Nevada corporation, on behalf of the corporation in its capacity as managing general partner of Centex Homes, a Nevada general partnership.


Notary Public, State of Texas

Notary's Name, Printed:

Wendy Hazelwood

My Commission Expires: October 28, 2007

AFTER RECORDING RETURN TO:

Centex Homes
Attn: Legal Department
2800 Surveyor, Bldg. #1
Carrollton, Texas 75006-5143