

MARY LOUISE GARCIA

COUNTY CLERK



100 West Weatherford Fort Worth, TX 76196-0401

PHONE (817) 884-1195

PROPERTY MANAGEMENT LLC
5751 KROGER DRIVE STE 203
KELLER, TX 76244

Submitter: PROPERTY MANAGEMENT LLC

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

Filed For Registration: 8/11/2017 11:48 AM

Instrument #: D217184860

OPR

47

PGS

\$196.00

By: Mary Louise Garcia

D217184860

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.

**FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATION**

By: Dawn Kelly
Name: Dawn Kelly
Title: Registered Agent

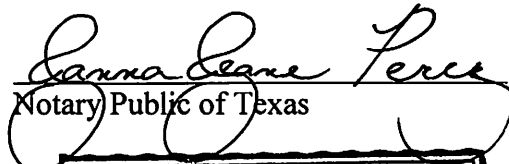
ACKNOWLEDGMENT


STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared Dawn Kelly authorized agent of **THE HOMEOWNERS ASSOCIATION OF DISTRICT AT UPTOWN, INC.** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that (s)he executed the same for the purposed and consideration therein expressed on behalf of said corporation.

SUBSCRIBED AND SWORN TO BEFORE ME on this 1st day of August, 2017


Notary Public of Texas



ARBITRATION NOTICE: ARTICLE XI OF THIS DECLARATION CONTAINS COVENANTS THAT REQUIRE AN OWNER OF PROPERTY SUBJECT TO THIS DECLARATION, IN CERTAIN CIRCUMSTANCES, TO SUBMIT ANY DISPUTE WITH OR CLAIM AGAINST CERTAIN OTHER PARTIES TO BINDING ARBITRATION.

FIRST AMENDMENT TO
THE DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR THE DISTRICT AT UPTOWN

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE DISTRICT AT UPTOWN (this "Amended Declaration"), made this 31st day of July 2017, by THE HOMEOWNERS ASSOCIATION OF THE DISTRICT AT UPTOWN, INC. and hereby replaces, in its entirety, the Original DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE DISTRICT AT UPTOWN, recorded on September 21, 2010 in the Tarrant County Real Property Records as Document Number D210231092.

RECITALS

WHEREAS, Declarant was the owner of a certain approximately 5.347 acre tract of real property situated in the City of Keller (the "City"), County of Tarrant (the "County"), State of Texas, as described in the plat thereof (the "Plat") attached hereto as Exhibit "A" and recorded in Cabinet A, Page 11945-46 of the Plat Records of Tarrant County, Texas (being collectively called the "Property"); and Declarant did create on the Property a live/work community with platted lots, open spaces, entry features and other common facilities for the benefit of the Owners (hereinafter defined).

WHEREAS, Declarant did cause to be incorporated under the Non-Profit Corporation Act of the State of Texas (the "Act") a non-profit corporation to be known as The Homeowners Association of The District at Uptown, Inc. (the "Association").

WHEREAS, The Homeowners Association of the District at Uptown, Inc. desires to provide for the efficient preservation of the values and amenities within the Property and for the maintenance of open spaces and other common facilities. To this end, the HOA desires to impose upon the Property the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration, and to maintain the non-profit corporation established by the

Declarant, which is assigned the powers of maintaining and administering the common areas and facilities in accordance with the terms of this Declaration.

WHEREAS, a Board of Directors was elected by the members of the Association on or about October 1, 2015, to take over the duties of the Declarant.

NOW THEREFORE, the Association for and in consideration of, and expressly for the benefit of, and to bind, its successors in interest, does hereby agree and declare that the Property, including any additions thereto as may hereafter be made hereof, shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens sometimes referred to collectively as the (the "Covenants") hereinafter set forth which shall run with the land and shall be binding upon all parties having any right, title, or interest in or to the Property, or any part thereof, and their heirs, successors, representatives and assigns, and shall remain in full force and effect for the term set forth herein. The Covenants hereinafter set forth are covenants running with the Property at law as well as in equity.

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.1 The following words when used in this Declaration shall have the following meanings:

- a. **Architectural Committee**: shall mean the committee as described in Article IX of this Declaration.
- b. **Assessments**: shall mean and refer to the regular annual assessments, the special assessments and the default assessments described in Article IV hereof to be levied by the Association, as determined by the Board of Directors as specified herein.
- c. **Association**: shall mean and refer to The Homeowners Association of The District at Uptown, Inc., a Texas non-profit corporation, its successors and assigns.
- d. **Board of Directors "the Board"**: shall mean the governing body of the Association, the election and procedures of which shall be as set forth in the Articles of Incorporation and the Bylaws of the Association.
- e. **Common Property**: shall mean and refer to all property, real or personal, owned or held by the Association for the common use and enjoyment of the Members of the Association.
- f. **Declarant**: shall mean and refer to UPTOWN HOME PARTNERS, L.P., a Texas limited partnership ("UHP").

- g. Design Guidelines: shall mean the design guidelines proposed and adopted by the Architectural Committee as the design standards, procedures, rules and guidelines for the construction of Improvements on the Property, as described in Article IX hereof.
- h. Drainage Channel Improvements: shall mean all of the improvements to the Common Property necessary to allow water to properly drain from the Property. Such improvements shall include grading of embankments, headwalls, and other structures built within the Common Property.
- i. Dwelling Unit: shall mean and refer to any building or portion of a building situated upon any Lot in the Property which is designed and intended for use and occupancy as a live/work residence by a single person, a couple, a family or a permitted family size group of persons.
- j. Exempt Property: shall mean and refer to the following portions of the Property: (i) all land and Improvements owned by the United States of America, the State of Texas, the County or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental (rather than a proprietary) capacity; (ii) all land and Improvements owned (including legal and beneficial ownership whether now or in the future) by the Association or constituting a portion of the Common Areas; (iii) all land and Improvements which are exempt from the payment of ad valorem real property taxes by any applicable taxing authority; and (iv) such other lands and/or Improvements and/or Lots which are specifically exempted from the payment of annual or special assessments in accordance with this Declaration or a special resolution of the Board.
- l. Improvement: shall mean, without limitation, any structure, vegetation or appurtenance thereto including without limitation, buildings, walkways, irrigation systems, trash areas, drainage systems, recreational facilities, pools, gazebos, roads, trails, bikeways, driveways, parking areas, fences, all types of walls, stairs, decks, all types of landscaping and plantings, antennae, the paint or other coloring on all exterior surfaces, windbreaks, patio covers, railings, fountains, sculptures, gates, poles, signs, storage areas, exterior air conditioning and water softening fixtures or equipment. The Design Guidelines may identify additional items that are Improvements.
- m. Lot or Lots: shall mean, with respect to the Property, each lot shown on the Plat for the Property.
- n. Member: shall mean and refer to each Owner as provided herein in Article II of this Declaration.

- o. Master Association: shall mean Keller Town Center Property Owners Association, Inc., a Texas non-profit corporation created to maintain the landscaping and other amenities in the Keller Town Center, and established by the Master Association Declaration.
- p. Master Association Declaration: shall mean that certain Declaration and Bylaws for Keller Town Center Property Owners' Association dated effective March 5, 2002, recorded in Instrument No. D202094360, Official Records of Tarrant County, Texas.
- r. Merchant Builder: shall mean a person, corporation or legal entity who is in the business of constructing houses for profit, or for building a house for a third party who plans to own or reside in the home.
- s. Mortgage: shall mean a recorded mortgage or deed of trust creating a first lien on a Lot, which is held by a third party institutional lender to secure the performance of an obligation.
- t. Mortgagee: shall mean an institutional lender to whom a Mortgage is made or the assignee of the Mortgagee's rights by a recorded assignment. For purposes of this Declaration, the term Mortgage shall include a beneficiary of a deed of trust.
- u. Owner: shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot but, notwithstanding any applicable theory of mortgages or other security devices, shall not mean or refer to any Mortgagee or trustee under a Mortgage unless and until such Mortgagee or trustee has acquired title pursuant to foreclosure or any conveyance in lieu of foreclosure.
- v. Owners Protection Act: shall mean and refer to the Texas Residential Property Owners Protection Act, Chapter 209 (Sections 209.001, et. seq. of the Texas Property Code), as the same may be amended from time to time.
- w. Payment and Performance Lien: shall mean the lien described in Sections 4.9 and 4.10 hereof.
- x. Property: means, collectively, all of the real property encumbered by this Declaration.
- y. Residence: shall mean the primary Dwelling Unit on a Lot.
- z. Resident: shall mean and refer to each person (not otherwise an Owner or Member) authorized by an Owner to reside within such Owner's Dwelling Unit.

- aa. Supplemental Declaration: shall mean an instrument recorded to supplement, amend or modify this Declaration as set forth in Section 1.2.3 hereof, as such instrument is amended or restated.
- bb. Two-Thirds Member Vote: shall mean the approval of two-thirds (2/3) of all Members entitled to vote who either (i) are voting in person or by proxy at a meeting duly called for this purpose and at which the necessary quorum exists, or (ii) execute a written consent in lieu of a meeting for such purpose.

1.2 Interpretation.

1.2.1 General Rules: This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the maintenance of the Property. Any violation of this Declaration is a nuisance. The Covenants shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of the appropriate local governmental agencies. The Covenants shall be construed and governed by the laws of the State of Texas. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. The gender and singular or plural form of words in the Covenants shall be adjusted so that such form is appropriate to the context to which the words are applied. Except as otherwise expressly provided herein, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable. All references made in this Declaration to statutes are to those statutes as amended or restated or to subsequently enacted replacement statutes. Unless otherwise indicated, referenced to Articles, Sections and Exhibits are to Articles, Sections and Exhibits of this Declaration.

1.2.2 Intent of Association. The Association intends that the Property be maintained for Residential live/work purposes consistent with this Declaration, any applicable Supplemental Declarations, and the zoning ordinances of the City applicable to the Property.

1.2.3. Relationship to Supplemental Declarations. The Association may record one (1) or more Supplemental Declarations which may supplement this Declaration with such additional covenants, conditions, restrictions and land uses as The Association may deem appropriate for such portion of the Property. The provisions of any Supplemental Declaration may impose such additional, different or more restrictive conditions, covenants, restrictions, land uses and limitations as The Association may deem advisable, taking into account the particular requirements of such applicable portion of the Property. If there is any conflict between any Supplemental Declaration and this Declaration, the

provisions of the Supplemental Declaration shall control with respect to the real property annexed by such Supplemental Declaration.

1.2.4. Relationship to Other Governing Documents: If there are conflicts or inconsistencies between this Declaration and/or any Supplemental Declaration and the Design Guidelines, then the provisions of this Declaration and/or such Supplemental Declaration shall prevail.

1.2.5. Severability: The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision or portion of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provision hereof.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION;

ADDITIONS TO THE PROPERTY

- 2.1 Membership: Each and every Owner shall automatically be and must remain a Member of the Association, subject to the terms of this Declaration, the Articles of Incorporation and the Bylaws of the Association and the Associations rules and regulations. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to a Lot. Ownership of a Lot shall be the sole qualification for being a Member; provided, however, a Member's privileges in the Common Property may be regulated or suspended as provided in this Declaration, the Bylaws of the Association and/or the Association's rules and regulations, and as may be limited by the Texas Property Code. Any person or entity that holds an interest in and to a Lot merely as security for the performance of an obligation shall not be a Member until such time as the holder or its successor acquires title to the Lot through foreclosure or conveyance in lieu thereof.
- 2.2 Transfer: Membership of an Owner in the Association may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale or assignment of said Owner's interest in a Lot and then only to the purchaser or assignee as the new Owner thereof. Such membership shall not be severed by the encumbrance by an Owner of a Lot. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void and have no further force or effect. Owners shall notify the Association of any transfer of the fee title to a Lot. Such transfer shall automatically operate to transfer the membership to the new Owner thereof. In the event an Owner should fail or refuse to provide written evidence of transfer of the membership in the Association registered in such Owner's name to the transferee of such Owner's interest in

- a Lot, the Association shall have the right to record the transfer upon the books and records of the Association.
- 2.3 Classes of Membership; Voting Rights: The Association shall have two classes of voting membership to be designated respectively as Class A and Class B:
- a. Class A: Class A Members shall be all Owners with the exception of Merchant Builder. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
 - b. Class B: Class B Members shall be any bona fide Owner who is engaged in the process of constructing a residential dwelling on any Lot for sale to consumers. Class B Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. The Class B Membership as to a particular Lot owned by a Class B Member shall cease, and with respect to that particular Lot the Class B Member shall become a Class A Member on the earlier to occur of:
 - i. the date the Class B Member has owned title to that particular Lot for more than one (1) year or;
 - ii. on the tenth (10th) anniversary of the date of the Original Declaration, which is September 20, 2010.
- 2.4 Board of Directors: The Members of the Association shall elect the Board in accordance with the terms and conditions of the Articles of Incorporation, Bylaws of the Association, and subject to any requirements or restrictions set forth in the Texas Property Code. The Board shall, by majority rule, conduct the business of the Association, except when membership votes are required pursuant to this Declaration, the Articles of Incorporation, Bylaws of the Association or the Texas Property Code.
- 2.5 Notice and Quorum: Written notice of any meeting called for the purpose of taking any action authorized herein shall be sent to all Members, pursuant to the requirements set forth in the Texas Property Code, not less than ten (10) days or more than sixty (60) days in advance of the meeting. At any such meeting called the presence of Members or of proxies or voting representative entitled to cast ten percent (10%) of all the votes outstanding shall constitute a quorum. If the required quorum is not present, another meeting may be called, and at such subsequent meeting the quorum requirement shall be waived, and action may be taken by a vote of a majority of those present and voting. No

such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Additional procedures for quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with Texas law.

2.6 Intentionally Deleted:

2.7 Notice of Tenancy: In the event an Owner shall lease or permit another to occupy his Residence, the tenant or occupant shall not vote in the affairs of the Association, except when the Owner shall, by written notice to the Association, authorize the tenant or occupant to exercise the proxy vote of the Owner. The burden of providing such written notice shall be on the Owner.

2.8 Conflicts: The Association may make whatever rules and Bylaws it deems desirable to govern the Association and its Members; provided, however, any conflict between the rules and the Bylaws and the provisions of this Declaration shall be controlled by the provisions of this Declaration.

ARTICLE III

PROPRETY RIGHTS IN THE COMMON PROPERTY

3.1 Members Easements of Enjoyment: Subject to the provisions of Section 3.3, every Member and every Resident shall have a right and easement of use and enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with the title to every Lot; provided, however, such easement shall not give such person the right to make alterations, additions or improvements to the Common Property.

3.2 Title to the Common Property: The Declarant shall convey the fee simple title to the Common Property to the Association, or in the case where easements constitute part of the Common Property, Declarant shall assign and transfer such easements to the Association, in each case free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements and mineral interests outstanding and of record in the Real Property Records of the County. The Declarant specifically shall not convey or assign to the Association any mineral or gas interests in the Common Property. Those interests shall remain with the Declarant.

3.3 Extent of Members' Easement: The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Property (including limiting the number of guests of Members);

- b. Following the approval by a Two-Thirds Member Vote, the right of the Association, in accordance with its Articles, to borrow money for the purpose of improving the Common Property and facilities and in aid thereof to mortgage the Common Property;
- c. The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure;
- d. The right of the Association, as provided in its Bylaws or its rules and regulations, to suspend the right of any individual to use any of the Common Property for any period during which any assessment against a Lot owned by such Member or resided upon by such individual remains unpaid; and
- e. Following approval by a Two-Thirds Member Vote, the right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and upon such conditions as the Board of Directors of the Association may determine.

- 3.4 Easement from Owners to Association Over Private Roadways: A portion of some Lots extends approximately half-way into the paved private roadway ("Roadway") in front and/or at the side of each Dwelling Unit. Some Lots also include all or a portion of the alley to the rear of the Dwelling Unit within the boundaries of such Lot. Each Owner hereby grants an easement to the Association and to the general public for the purpose of vehicular passage and parking over that portion of the Roadway or alley included in such Owner's Lot. The Association accepts such easement, and agrees to (i) care for, preserve and maintain such Roadway and alley, and (ii) to indemnify, defend and hold harmless the Owners from and against any claims by third parties who suffer damage to property or personal injury while utilizing the Roadway and alley, unless such claim results from the negligence or misconduct of such Owner, a Resident in such Owner's Dwelling Unit, or any invitee, guest or agent of such Owner.

ARTICLE IV

ASSESSMENTS AND TRANSFER FEES

- 4.1 Creation of the Lien and Personal Obligation for Assessments: Each Owner of a Lot (by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance), for each Lot owned by any such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other entity designated by the Association): (a) annual assessments or charges, to be paid in installments should the Board of Directors of the Association elect, (b) special assessments for capital expenditures, such assessments to be fixed, established

and collected from time to time as hereinafter provided, and (c) default assessments which may be assessed against an individual Owner to reimburse the Association for extra maintenance and repair costs incurred as a result of the willful or negligent acts or omissions of such Owner, or the Owner's family, agents, guests and invitees, such default assessments to be fixed, established and collected from time to time as hereinafter provided. The regular annual assessments, special assessments and default assessments, together with such interest thereon and costs of collection thereof as hereinafter provided (collectively "Assessments"), shall be a charge and continuing lien upon each Lot against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due. The annual Assessments shall be payable as provided in this Article IV.

- 4.2 Capitalization of the Association: *Upon acquisition of record title to a Lot by the first Owner thereof, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of \$300.00. 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 sale escrow at the closing of each Lot and disbursed there from to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration.*
- 4.3 Purpose of Assessments: The Assessments levied by the Association shall be used (i) for the purposes of promoting the recreation, health, safety and welfare of the residents of the Property, and in particular for the improvement and maintenance of Common Property owned by the Association and for maintenance of the Roadway and alleys, or services and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Property, the Roadway, and the alleys, and the repair, replacement and additions thereto; (ii) for paying the cost of association management, labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Property; (iii) for carrying out the purposes of the Association as stated in this Declaration or in its Articles of Incorporation; (iv) for the costs of pest extermination for the Common Property and each Dwelling Unit; and (v) for payment of Master Association Assessments as set out in Subsection 4.13(a) below. The Board may at any time increase or decrease the amount of the annual Assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including maintenance of reasonable cash reserves. The Board is

obligated to maintain Assessments at a level sufficient to enable payment of all costs which are the Association's obligation.

4.4 Basis and Amount of Annual Assessments:

- a. Subject to Subsection 4.4(b) below, the annual Assessment for Class A Members shall be One Thousand Two Hundred and No/100 Dollars (\$1,200.00). Class B Members shall pay an amount equal to fifty percent (50%) of the Class A annual assessment at the time of each such annual Assessment.
- b. The annual Assessment may be increased or decreased annually by action of the Board, pursuant to the Articles of Incorporation, Bylaws of the Association, this Declaration and the Texas Property Code.

4.5 Special Assessments for Capital Improvements: In addition to the annual Assessments authorized by Section 4.4 above, the Association may levy in any Assessment year a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of any capital improvement upon the Common Property of the Roadway, including the necessary fixtures and personal property related thereto, for assessments levied by the Master Association, or for any shortage in funds necessary to pay the ordinary expenses of the Association.

4.6 Intentionally Deleted.

4.7 Date of Commencement of Annual Assessments; Due Date: Regular annual Assessments provided for herein shall commence as to each Lot on the date each Lot is acquired by a Merchant Builder or Resident. The amount of the annual Assessment which may be levied for the balance remaining in the first year of Assessment shall be an amount which bears the same relationship to the annual Assessments provided for in Section 4.4 as the remaining number of months in that year bear to twelve (12). The first annual Assessment, pro-rated to January 1st of the following year, shall be due and payable by the Resident at the closing date each Lot is sold to a Merchant Builder or Resident. Subsequent annual Assessments will be billed by the Association in December and payable annually. The due date or dates, if it is to be paid in installments, of any special Assessment under Section 4.5 or of any default Assessment under Section 4.1, shall be fixed in the respective resolution authorizing such Assessment. Notwithstanding anything contained to the contrary in this Section 4.7, it is hereby understood that the Board of Directors of the Association shall have the right to establish a payment date and payment period that is different from the annual payment date provided herein.

4.8 Duties of the Board with Respect to Assessments:

- a. The Board shall fix the date of commencement and the amount of the annual Assessment against each Lot for each Assessment period at least thirty (30) days in advance of such date or period.
- b. Written notice of the annual or any special Assessment shall thereupon be delivered via email, or mailed to every Owner subject thereto.
- c. The Board shall, upon an Owner's written request and payment of any reasonable fee previously set by the Board, furnish to any Owner liable for each Assessment a certificate in writing, setting forth whether such Assessment has been paid. Each such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board, or its managing agent for the issuance of such certificates.

4.9 Effect of Non-Payment of Assessments; Personal Obligation of the Owner; the Lien; Remedies of the Association:

4.9.1 Effective as of, and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each applicable Lot owned by an Owner for the benefit of the Association to secure the full and timely payment of each and all assessments and all other charges and monetary amounts and performance obligations due hereunder. Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any assessment, charge or fine or any part thereof levied by the Association against any Lot or the Owner or a Resident thereof is not paid on the date (or dates) when due, then the unpaid amount of such assessment, charge or fine shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the lesser of eighteen percent (18%) or the highest lawful rate of interest per annum allowed by Law, and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner which shall bind such Lot in the hands of the Owner and Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of obligation of an Owner to pay such assessment or other monetary obligation and demand the full payment thereof. The personal obligation of an Owner to pay such assessment or other monetary obligations, however, shall remain such Owner's personal obligation and shall not pass to the Owner's successors in title unless expressly assumed by them with such assumption approved by the Association. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any assessment provided for herein by non-use of the Common Property or abandonment of the Lot. No diminution or

abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independence covenant on the part of each Owner.

4.9.2. The Association may give written notification to the holder or any Institutional Mortgage on the Lot of a non-paying Owner of such Owner's default in paying any assessment, charge or fine.

4.9.3. If any assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative and legal costs involved in handling the account. The Association may, at its election, retain the services of any attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid assessment, charge, fine or any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association.

4.9.4. The Association may, at its discretion but subject to all applicable debt collection statutes, have prepared and filed, by an attorney, a lien affidavit in the Real Property Records of the County which specifically identifies the unpaid assessments, charges or fines owed and each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.

4.9.5 All agreements between any Owner and the Association, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Association should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual assessment amount or principal amount owing hereunder and other indebtedness, the excess shall be refunded to Owner. All

sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provision of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association.

- 4.10 Power of Sale: The lien described within the preceding Section 4.9 is and shall be a contractual Payment and Performance Lien, and may be foreclosed through appropriate proceedings at law or in equity by the Association, provided that as a condition precedent to enforce such lien upon any Lot owned by any Owner upon which there is an outstanding valid and subsisting first mortgage lien, said beneficiary shall give the holder of such first mortgage sixty (60) days written notice of such proposed action, such notice, as required by the Texas Property Code. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Lot covered by such first mortgage lien to holder thereof. Sale or transfer of a Lot shall not affect the Payment and Performance Lien described herein. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Each Owner hereby grants to the Association whether or not it is expressed in the deed or other instrument conveying such Lot to the Owner, a power of sale for the foreclosure of the Payment and Performance Lien, to be exercised in accordance with the Texas Property Code, as it may be amended from time to time.
- 4.11 Subordination of the Lien to Mortgages: The Payment and Performance Lien securing the payment of the Assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by an agreement, contract, mortgage or other instrument, except for:
- a. bona fide first mortgage liens for purchase money and/or home improvement purposes placed upon a Lot, including without limitation Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such Mortgage;
 - b. liens for ad valorem taxes or other public charges as are by applicable law made superior to the Association's lien; and
 - c. such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien; provided

however, such subordination shall apply only to the Assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien. Such sale shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien or any such subsequent Assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay Assessments and/or to hinder the Association in performing its functions hereunder.

- 4.12 Omissions of Assessments: The omission of the Board, before the expiration of any year, to fix the Assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed by the Board.
- 4.13 Master Association: The Property shall be subject to the jurisdiction of the Master Association which is responsible for maintenance of landscaping and other amenities in the Keller Town Center, as more particularly defined in the Master Association Declaration.
- a. Master Association Assessments: The Master Association requires the payment of annual assessments, and in some instances additional unplanned expenses, by each record owner of a fee or an undivided fee simple interest in real property under its jurisdiction. Consequently, each Owner is a member of the Master Association and is subject to the terms, conditions, and provisions of the Master Association Declaration. However, pursuant to this Article, the annual budget prepared and delivered to each Owner by the Board of Directors setting forth the anticipated expenses for the ensuing year, shall include the annual assessments owed by each Owner to the Master Association. Such Master Association assessments shall be included in the annual Assessments paid by each Owner to the Association. Any additional unplanned expenses as allocated by the Master Association shall constitute a Special Assessment and may be collectible as such.
- b. Master Association Voting Rights: The Master Association provides that all members of the Master Association shall have an equitable voting right based on the amount of property owned in Keller Town Center. Each member/entity is entitled to one (1) vote per acre of land (rounded to a whole number) owned in the Keller Town Center. Owners of less than one (1) acre in Keller Town Center shall be entitled to one (1) vote. Accordingly, each Owner, as the owner of an undivided interest in fee simple interest in

real property subject to the Master Association's jurisdiction, is entitled to one (1) vote in the Master Association.

- 4.14 **Transfer and Resale Certificate Fees:** The Association, or its managing agent, shall issue, upon request a Resale Certificate which shall conform to the requirements of the Texas Property Code. The Association, and/or its managing agent may charge a fee for the completion and delivery of such resale certificate which may also include a transfer fee.

ARTICLE V

GENERAL POWERS AND DUTIES OF

BOARD OF DIRECTORS OF THE ASSOCIATION

- 5.1 **Powers and Duties:** The affairs of the Association shall be conducted by the Board. The Board, for the benefit of the Association, the Property and Common Areas and the Residents, may provide and may pay for out of the assessment funds provided for in Article IV above, any of the following:
- a. Care, preservation and maintenance of the Roadway, alleys, and the Common Areas (including, without limitation, the proper maintenance of and replacement of seasonal plantings in all entryways), the furnishing and upkeep of any desired personal property for use in or on the Common Areas;
 - b. Recreational and social programs and activities for the general benefit of the Residents;
 - c. Supplementing, if and to the extent deemed necessary, appropriate and affordable by the Board, the police, fire, ambulance, garbage and trash collection and similar services within the Property traditionally or more generally provided by local governmental agencies, with the understanding, however, that in no event shall the Board supplement any such services to the extent that such supplemental services are not permitted by application of ordinances of the City;
 - d. The services of any person or firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association. The Board is specifically authorized to hire and employ one or more managers, secretarial, clerical, staff and support employees;

- e. Legal and accounting services and all costs and expenses reasonably incurred by the Board or the Architectural Committee; and
- f. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alteration, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

- g. To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Areas owned by the Association;
- h. To enter into agreements or contracts with insurance companies, local governmental agencies, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Property; (ii) monthly escrow and impound payments by a mortgagee; (iii) utility installation, consumption and service matters; and (iv) the escrow or impounding of monies sufficient to timely pay any assessment applicable to any Lot (or other applicable portion of the Property);
- i. To borrow funds secured by such assets of the Association as deemed appropriate by the lender and the Board;
- j. To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- k. To protect or defend the Common Property from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;
- l. To make reasonable rules and regulations for the use, operation, and protection of the Common Areas and to amend them from time to time and to enter into concession agreements regarding food, beverage, vending and other products and services within the Common Property;
- m. To prepare an annual operating budget, to make all books and records of the Association available for inspection by Owners as required by the Texas Property Code, to establish the annual Assessment;

- n. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property; and
- o. To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner or Resident for violation of such provisions or rules. The Board is specifically authorized and empowered to establish (and to revise and amended from time to time) a monetary fines system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted individual Owner assessment secured by the continuing Payment and Performance Lien herein established.

5.2 **Board Powers:** The Board shall have the exclusive right and obligation to perform the functions of the Board on behalf of the Association except as otherwise provided in this Section 5.2.

5.3 **Maintenance Contracts:** The Board, on behalf of the Association, shall have full power and authority to contract for performance, on behalf of the Association, services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

5.4 **Insurance Policies:** The Board, on behalf of the Association, shall obtain and maintain such policies of insurance as it may reasonably determine as may be required in order to adequately insure all obligations, assets and properties of the Association and insure against general public liability, casualty loss, and errors and omissions of the officers and directors of the Association. All such policies shall be maintained with companies authorized to transact business in the State of Texas, as may be reasonably determined by the Board.

5.5 **Liability Limitations:** Neither any Owner nor the directors and officers and managers of the Association, shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or otherwise. Neither, the Association, its directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. Except as otherwise provided herein to the contrary, the Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages

occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

- 5.6 Reserve Funds: The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.

ARTICLE VI

EASEMENTS; PARTY WALLS

- 6.1 Easement Reserved for the Association: Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot and the Property for the carrying out by the Association of its rights, functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as minimum inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association.
- 6.2 Intentionally Deleted:
- 6.3 Rights Reserved to Governmental Authorities and Utility Companies: Full rights of ingress and egress shall be had by any governmental authority having jurisdiction over the Property, and any utility company which provides utilities to the Property, at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. All claims for damages, if any arising out of the construction, maintenance and repair of utilities or on account of temporary or other inconvenience caused, or any utility company or governmental authority, or any of their agents or servants are hereby waived by each Owner and the Association.
- 6.4 Universal Easement: Each Lot and its Owner is hereby declared to have an easement over all adjoining Lots and Common Property for the purpose of accommodating any encroachment due to engineering error, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of any encroachment, settling or shifting. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of any encroachments so long as they exist. Each of the easements

referred to in this Section 6.4 shall be deemed to be established upon the recordation of the Original Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot. Notwithstanding the foregoing, in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

6.5 Intentionally Deleted:

- 6.6 A. Side Yard for Attached Dwelling Units: Certain of the Attached Dwelling Units have an exterior door opening onto a fenced side yard ("Side Yard") near either the front or the rear of such Dwelling Unit. The Side Yard is divided by the shared property line of the adjacent Lots ("Shared Property Line"). A fence attached to the exterior wall of each Dwelling Unit and running perpendicular to the Shared Property Line ("Dividing Fence") roughly divides the Side Yard into a front half and rear half, and the aforementioned exterior door of one Dwelling Unit opens into the front half of the Side Yard, while the exterior door of the other Dwelling Unit opens into the rear half of the Side Yard. Each Owner grants to the Owner on the other side of the Shared Property Line an easement over the first Owner's portion of the Side Yard (either front or rear) for the Second Owner's use and enjoyment, and such second Owner accepts such easement and agrees to maintain such first Owner's portion of the Side Yard in a neat and orderly manner (including landscaping, watering and mowing any grass thereon). Neither Owner shall have the right to use any portion of the other Owner's exterior walls for any purpose that would deface or cause damage to such exterior wall. The portion of the Dividing Fence located on a Lot is owned by the Owner of such Lot and shall be maintained by such Owner.
- 6.6 B. Side Yard for Detached Patio Dwelling Units: Certain of the Patio Dwelling Units have an exterior door opening onto a fenced side yard ("Side Yard") in the rear of such Dwelling Unit. The Side Yard is divided by the shared property line of the adjacent Lots ("Shared Property Line"). A fence attached to the exterior wall of each Dwelling Unit and running perpendicular to the Shared Property Line ("Dividing Fence") roughly divides the Side Yard. Each Owner grants to the Owner on the other side of the Shared Property Line an easement over the first Owner's portion of the Side Yard for the second Owner's use and enjoyment, and such second Owner accepts such easement and agrees to maintain such first Owner's portion of the Side Yard in a neat and orderly manner (including landscaping, watering and mowing any grass thereon). The maintenance also includes assuring that the drainage of the lot as was originally graded and approved by the city is not disturbed. In the event the drainage is changed in a way that blocks the drainage, the Owner agrees to regrade the side yard and clear any structure that blocks the drainage. Neither Owner shall have the right to use any portion of the other Owner's exterior walls for any purpose that would deface or cause damage to such exterior wall.

The portion of the Dividing Fence located on a Lot is owned by the Owner of such Lot and shall be maintained by such Owner.

6.7 Party Walls:

a. **General Rules of Law Apply:** Each wall which is built as a part of the original construction of a Dwelling Unit and placed substantially on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than non-structural alterations to the interior surfaces of such walls (i.e., the surfaces of such walls facing the interior of a residential unit); provided, however, that under no circumstances shall any alterations or attachments be made to any party wall surface that would create or result in the creation of any in-the-wall speakers, intercoms, or other sound systems of any type or function, or any in-the-wall alarms, whether as part of a security system or otherwise, or any other device, item, component or system designed for the creation or emission of sound.

b. **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

c. **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

d. **Weatherproofing.** Notwithstanding any other provision of this Section, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

e. **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

f. **Arbitration.** In the event any dispute arises which concerns a party wall or the provisions of this Section, the decision shall be resolved pursuant to Article XI.

ARTICLE VII

PROTECTIVE COVENANTS

7.1 Live/Work Purpose Only. Each Lot and Dwelling Unit shall be used exclusively for (i) single-family residential purposes and (ii) home office, which shall include professional services (such as medical, legal, accounting, insurance, real estate brokerage, and similar business) and internet sales and services (provided there is specifically prohibited the sale of materials and goods that are typically inventoried or are taken from the Dwelling Unit by customers). No apartment house (although the renting of a Dwelling Unit by the Owner is allowed), lodging house, rooming house, hospital, sanitarium, or other multiple-family dwelling shall be erected, placed, permitted or maintained on any Lot, or on any part thereof. All users must be in compliance with City zoning ordinances, and shall not conflict with the Master Association Declaration or any other recorded restriction. No improvement or structure whatever, other than a private Dwelling Unit and patio walls, may be erected, placed or maintained on any Lot. All parking spaces shall be used exclusively for the parking of passenger automobiles, except as expressly permitted in Section 7.6.

7.2 Rubbish, etc. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of the surrounding property. No unmowed grass (as determined by the Board), weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon the Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Any shrubs or landscaping on the lots should be maintained so that it will be kept alive and properly watered and pruned.

7.3 Animals. No animals, reptiles, livestock, poultry or birds of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, not to exceed a total of four such animals, provided that they are not kept, bred or maintained for any commercial purpose. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. Horses, reptiles, ponies, goats, sheep, hogs, pigs, monkeys, chickens, ducks, peacocks, pigeons and guinea fowl shall not be deemed as household pets and are expressly prohibited. Notwithstanding the foregoing, however, no individual dogs or other animals deemed by the Board in its sole discretion to be dangerous to persons or other animals shall be raised, bred or kept on any Lot. Owners of dogs shall adhere to city leash laws and shall make reasonable efforts to keep excessively barking dogs indoors. The Board shall establish reasonable standards from time to time regarding what is excessive barking. Residents and Owners who walk their dogs within the Property are required to clean up after them.

7.4 Intentionally Deleted.

7.5 Signs and Picketing. No sign or emblem of any kind may be kept or placed upon any Lot or mourned, painted or attached to any Dwelling Unit, fence or other improvement upon such Lot so as to be visible from public view except the following:

a. **For Sale Signs.** An Owner may erect one (1) sign on his Lot, not exceeding 2' x3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of such Lot advertising the property for sale. Not more than two Open House signs may be used by an Owner and placed on the Lot or city right of way as long as they do not violate city ordinances.

b. **For Rent Signs.** An Owner may erect and maintain a sign or signs deemed reasonable and necessary for the leasing of a Residence.

c. **Political Signs.** 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 sign shall not be erected more than thirty (30) days in advance of the election to which they pertain and shall be removed within ten (10) days after such election.

d. **Business Signs.** Each Owner may install one (1) sign on the exterior of the Dwelling Unit (in the location, of a size, color and design, and utilizing the hardware and fixtures designated by the Architectural Committee) stating the name of the business (if any) conducted by Owner in the Dwelling Unit. The Architectural Committee shall have the sole discretion in determining whether any such sign is unsuitable, and in such event such Owner shall immediately remove its sign.

7.6 Parking and Prohibited Vehicles.

a. **Parking.** Vehicles shall be parked only in the garage or driveway serving the Dwelling Unit, or in such other paved areas as have been approved by the Board of Directors for parking vehicles. The paved parking spaces throughout the Property are not "reserved" for the nearest Owner, but are intended as community spaces for all Owners, their guest, utility company employees, etc. No garage shall be modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the Architectural Committee. Garage doors visible from any street within the Property shall remain closed except during ingress or egress or when the garage is actively being used by the Owner or occupant. On-street parking is reserved for visitors, invitees, customers and guests of the Owners unless otherwise approved by the Board. Owners should make every effort to park their vehicles in their garages, and garage doors should be kept closed except during ingress and egress.

b. **Prohibited Vehicles.** Commercial vehicles, vehicles larger than ¼ ton, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial

purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current licenses shall not be permitted on the Property except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the Property must be removed within seventy-two (72) hours thereof. For purposes of this Section 7.6(b), a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property for such period of time as is reasonably necessary to provide service or to make a delivery to a Dwelling Unit or the Common Property. Any vehicle parked in violation of this section or parking rules promulgated by the Board may be towed at the Owners expense.

7.7 Manufacturing, Industrial, or Institutional Use. No Lot, and no building erected or maintained on any Lot, shall be used for manufacturing, industrial or institutional purposes. Home offices are permitted within the zoning rules and regulations imposed by the City and as otherwise provided herein. No Owner shall be allowed to have an employee, staff member, or any other hired personnel work out of a Dwelling Unit, other than short term jobs such as plumber, painters, electricians, cleaners, pet grooming services and similar third party contractors.

7.8 House Numbers. House numbers and similar matter used in the Property must be harmonious with the overall character and aesthetics of the community.

7.9 Detached Buildings. No detached accessory buildings shall be erected, placed or constructed upon any Lot without the prior consent of the Architectural Committee.

7.10 Fences.

a. No fence, wall or hedge shall be erected, placed or altered on any Lot without the approval of the Architectural Committee. All clotheslines, wood piles, tool sheds, air-conditioning equipment, sanitation facilities or other service facilities must be enclosed with fences, walls or landscaping, as may be required by the Architectural Committee, so as not to be generally visible by the public unless otherwise approved by the Architectural Committee in writing. Any storage sheds approved by the Architectural Committee shall be painted the same color as the trim of the house, and roofs shall be the same material as the main structure.

b. The Architectural Committee may promulgate specific Design Guidelines governing the composition and location of screening walls, fences and hedges to be located upon Lots. Screening walls shall be incorporated into and be harmonious with the overall landscaping plan developed for the Property.

c. No chain link, wire or open fencing is allowed other than approved fencing material by the Board. Wood fencing utilizing a design and material approved by the Architectural Committee between homes will be allowed, however no wood fencing shall face any street or rear of the lot. Wood fencing with approval design utilizing stained wood caps and slat design and incorporates metal posts that are placed in wood caps so as to make them invisible may be approved. Fences facing rear yards and streets shall use wrought iron material that is approved by the Architectural Committee.

d. Intentionally Deleted.

7.11 Antennae, Satellite Dishes and Solar Collectors. No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot unless (a) such apparatus is erected and maintained in such a way that it is screened from public view at a point in the center of the public street right-of-way directly in front of the Dwelling Unit erected on such Lot, and (b) the Owner has received the prior written approval from the Architectural Committee to the size, location and screening of such apparatus. Solar panels are allowed pursuant to the terms of the Texas Property Code and require approval by the Architectural Committee.

7.12 Chimneys. All exterior fireplace chimneys shall be architecturally compatible with the principal finish material of the exterior walls of the Dwelling Unit or as otherwise approved in writing by the Architectural Committee.

7.13 Clotheslines. No clotheslines shall be erected or installed and no clothing, linens or other material shall be aired or dried so as to be visible from the street.

7.14 Window Treatment. No aluminum foil, reflective film, signs, decals, pictures or other offensive treatment, as determined by the Architectural Committee, shall be placed on windows or glass doors.

7.15 Temporary Structures. No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residential structure to be built thereon, shall be placed on any Lot, either temporarily or permanently, and no residence house, garage or other structure appurtenant thereto, shall be moved upon any Lot from another location.

7.16 Trash Receptacles and Collection. All trash receptacles shall be screened by fences or shrubbery so as not to be generally visible by the public, unless otherwise approved by the Architectural Committee in writing. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the applicable governmental authority, and/or the Association, in connection with the storage and removal of trash and garbage. All Lots shall at all times be kept in a healthful, sanitary and attractive condition. No Lot shall be used or

maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers within the garage of the Dwelling Unit until the day trash is to be picked up, when the containers will be moved to the area designated for pick-up. The containers shall be maintained in a clean and sanitary condition. No Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot. All woodpiles, yard equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Dwelling Units, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon.

7.17 Swimming Pools. No above-ground swimming pools shall be permitted.

7.18 Truck Parking Limits. Trucks or other vehicles exceeding (with attached trailers) twenty feet (20') in length or ¾ ton shall not be permitted to park overnight on the streets, driveways or on any Lot.

7.19 Utilities. Dwelling Units shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line. No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot. The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type, shall require the prior written approval of the Architectural Committee, except for a maximum of two (2) twenty pound (20lb) propane tanks for use in a barbeque or outdoor heater. All telephone, electric, cable or other service lines shall be installed underground and shall meet all requirements of the applicable governmental authority.

7.20 Paint. All painted or stained improvements and other painted or stained structures on each Lot shall be repainted by the Owner thereof at the Owner's sole cost and expense as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Lot or Dwelling Unit. The approval of the Architectural Committee otherwise required for improvements under Article VIII, shall not be required for such repainting so long as neither the color scheme nor the arrangement of the colors of any improvements, nor the color of any paint thereon is altered.

7.21 Athletic Facilities. Tennis court lighting and fencing shall not be allowed. Basketball goals, or backboards, or any other similar sporting equipment of either a permanent or temporary

nature shall not be placed within forty feet (40') from the front property line of any Lot in the subdivision, without the prior written consent of the Architectural Committee.

7.22 Quiet Enjoyment. No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. No loud speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on the exterior of any Dwelling Unit. The use and discharge of firecrackers and other fireworks is prohibited within the Property.

7.23 Air Conditioning Units. Any air conditioning unit installed on a Lot shall be located or screened so as not to be visible from any street within the Property.

7.24 Lighting. Except for traditional holiday decorative lights, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved by the Architectural Committee.

7.25 Exterior Sculpture and Similar Items. No exterior sculpture, fountains, flags, birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted unless approved by the Architectural Committee.

7.26 Certain Sales Prohibited. No garage sale, moving sale, rummage sale or similar activity unless sanctioned by the Association may be conducted in or from any Lot.

7.27 Traffic Sight Areas. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above the street shall be permitted to remain on any corner lot within fifteen feet (15') of the point formed by the intersection of the building set back lines of such Lot.

7.28 Mineral Production. No oil drilling, oil development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall 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 shall be permitted upon any Lot. The mineral rights shall be retained by the Declarant, and shall not be conveyed to the Association or any individual Owners.

7.29 Exterior Noise. No exterior loud speakers, horns whistles, bells or other sound devices (except security devices such as entry door and patio intercoms used exclusively to protect the Lot and improvements situated thereon) shall be placed or used upon any Lot unless approved by the Architectural Committee.

7.30 Garages. Garage doors may not be kept open for extended periods of time. Garage doors which are damaged or not kept in working order may be fixed by the Association and the Association may then exercise its right to pursue reimbursement from the Owner.

7.31 Lot Grading and Positive Drainage. Each Owner is responsible for maintaining the grade of its Lot according to the grade and elevations contained in Declarant's as-built plans for the Property. All landscaping improvements installed by the Owner must provide for positive drainage as detailed in the approved plans. The Association is empowered to enter a Lot and correct, at the Owner's expense, any grades which have been altered by Owner.

7.32 Business Hours. No commercial or business activity may be conducted at any Dwelling Unit on legal holidays or unless between the hours of 7 a.m. and 8 p.m. on weekdays and Saturdays and 10 a.m. to 6 p.m. on Sundays.

ARTICLE VIII

ARCHITECTURAL AND CONSTRUCTION RESTRICTIONS

8.1 Type of Residences. Only single family or attached Residences, not more than three stories shall be built or permitted on each Lot. All Residences shall have an attached enclosed garage. Carports on Lots are prohibited. No structure shall be moved from another location onto any Lot. All Residences and all Improvements thereon including, but not limited to, fences, driveways and sidewalks must be kept in good repair and must be painted or stained when necessary to preserve their attractiveness. Any change in the color of the paint on a Residence must be approved by the Architectural Committee.

8.2 Living Area Requirements. The gross air conditioned square footage of any single family Residence constructed on a Lot shall be not less than sixteen hundred (1,600) square feet, exclusive of porches and garages. The gross air conditioned square footage of an attached Residence constructed on a Lot shall be not less than 1,350 square feet exclusive of porches and garages.

8.3 Location of Residences on Lot. Each Residence located on a Lot in the Property shall be sited on the Lot to be within the setback parameters included in the zoning ordinance or

approved by city staff applicable to the Property ("Zoning Ordinance"). In all instances regarding conflicts between this document and the Zoning Ordinance, the more restrictive of the two (2) requirements shall prevail.

8.4 Intentionally Deleted.

8.5 Building Materials, Type of Construction. All Residences will have an exterior of eighty percent (80%) masonry veneer. For purposes of this Section, stucco shall not be considered a masonry product. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Architectural Committee. Every garage or accessory building (except a greenhouse) shall correspond in style and architectural and exterior building materials with the dwelling to which it is appurtenant. Notwithstanding the foregoing, the Architectural Committee is empowered to waive this restriction, if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the neighborhood. Exterior wall materials used on all Lots shall be restricted to those types and colors of materials approved by the Architectural Committee.

8.6 Driveways, Sidewalks, and Leadwalks. Owner shall provide and install, at its own expense, driveway approaches in conformance with all applicable regulatory requirements. For any break in the concrete curb along streets, Owners agrees to "saw-cut" the concrete curb and street slab when constructing such break in conformance with City rules and regulations. Owner shall maintain at Owner's expense the driveway to the street/alley occasioned by connecting the driveway thereto. Leadwalks must not exceed three and one-half feet (3.5') in width unless a masonry or other enhanced finish border is used for a width not to exceed a total of five feet (5'). Leadwalks within the public right-of-way must not exceed five feet (5') in width unless a masonry or other enhanced finish border is used for a width not to exceed a total of six feet (6').

8.7 Roof Material. All residential roofs shall be made of 30 year dimensional shingles, (Color and design to be approved by the Architectural Committee) concrete roof tiles, clay roof tiles or metal material.

8.8 Maximum Height. No building or structure erected, altered or placed on, within or in the Property shall exceed forty feet (40') in height (measured from the top of the foundation to the topmost part of the roof), provided however, that all applicable ordinances, regulations, and statutes with respect to the maximum height of buildings and structures shall, at all times, be complied with.

8.9 Garages. A garage must be constructed and maintained to accommodate at least two (2) full-sized automobiles for each Dwelling Unit. Street facing garage doors shall be constructed with Cedar Façade (Design and material to be approved by the Architectural Committee). No

garage shall be permanently enclosed for conversion to any other use. Open carports are not permitted.

8.10 Intentionally Deleted.

8.11 Landscape Maintenance. The Association will maintain all landscaping for Common Areas. The Owner shall be responsible for adequately watering and maintaining all landscaped areas on their individual Lots. The landscaping in the area between the street curb and the side yard fence shall be approved by the Architectural Committee. Any changes to the landscaping design after initial installation and approval shall be first approved by the Architectural Committee. Each interior Lot shall have a minimum of one (1) four inch caliber oak tree planted between the curb and sidewalk, and on corner lots there shall be at least two (2) four inch caliber with one tree located on the front of the Lot, and one on the side yard (or other type approved by the Committee), and a landscape plan composed of an automatic sprinkling systems, sod, flowers and shrubs approved by the Architectural Committee.

8.12 Intentionally Deleted.

8.13 Intentionally Deleted.

8.14. Lot Consolidation. Any Owner owning two or more adjoining Lots or portion of two (2) or more such Lots may, with the prior approval of the Architectural Committee, consolidate such Lots or portion thereof into a single building site for the purpose of constructing one Residence and such other improvements as are permitted herein; provided, however, that no such building site shall contain less than the square foot area equal to the average size of Lots in the Property. Any consolidated Lot shall comply with all lawful requirements of any applicable statutes, ordinance or regulation. On application by an Owner, the Board of Directors may adjust the assessments on a consolidated Lot to an amount not less than the full assessment rate for a single Lot. Absent such adjustment, a consolidated Lot shall bear the full assessment rate theretofore applicable to all Lots which are not consolidated.

8.15 Intentionally Deleted.

8.16 Compliance with Laws. Construction of improvements on each Lot must comply with all applicable local building codes that are enforced by governmental agencies.

8.17 Care During Construction. Merchant Builders shall take all reasonable precautions to minimize interference with traffic and to protect the general public and residents of the Property, from injury from movement of vehicular traffic in connection with construction of each Lot. In addition to, and without limiting the generally of the foregoing, Merchant Builders agree to perform the following.

- a. **Storage of Building Materials.** Building materials stored on a Lot will be kept in a neat condition so as not to detract from the appearance of the neighborhood and so as to give the visual impression from adjacent streets of a clean, orderly work site.
- b. **Scrap Materials and Trash.** Merchant Builders agree to keep scrap materials and trash produced in connection with the construction of a house on a Lot confined to a particular area of such Lot. Trash will be placed in a wire mesh, or solid container within such area at the end of each work day and removed from the Lot frequently enough so that trash does not overflow from each container.
- c. **Clean Roads and Utilities.** Merchant Builders agrees to keep pedestrian and road rights-of-way and drives, and other property, generally clean and clear of equipment, building materials, dirt, debris and similar materials. During and after home construction each Owner agrees to maintain in good functional condition, storm water pollution prevention materials adequate to comply with guidelines promulgated by the Environmental Protection Agency. During the period of home construction, all trades must enter and leave via designated trade Entrance/Exit as determined by the Board.
- d. **Maintenance.** Owner agrees to keep the interior and exterior of all improvements constructed on a Lot in good working conditions and repair. Without limiting the generality of the foregoing, Owner agrees to promptly replace any glass, paint, roof materials, bricks, stone or other exterior building materials on any Lots which are damaged by construction activities.

ARTICLE IX

ARCHITECTURAL STANDARDS

9.1 Approval Required; Procedures.

- a. No Improvements or any other structure shall be placed, erected or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, drainage and other site work), no exterior alteration or modification of existing improvement, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article IX, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to Section 9.2 and 9.3 below. Such Improvements include but are not limited to the construction or installation of sidewalks, driveways, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior service), unless and

until two (2) copies of the plans and specification and related data are submitted and approved. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the appropriate Architectural Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted" or "disapproved". Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally-approved color scheme, or to rebuild in accordance with the originally-approved plans and specification. The Architectural Committee shall have the sole discretion to determine whether plans and specification submitted for approval are acceptable to the Association. The Architectural Committee may establish rules and procedures for submission of plans and related data by email correspondence.

b. Following approval of any plans and specifications by the appropriate Architectural Committee, representatives of the appropriate Architectural Committee shall have the right, but not the obligation during reasonable hours to enter upon and inspect any Lot with respect to which construction is underway to determine whether or not the plans and specification therefore have been approved and are being complied with. In the event the appropriate Architectural Committee shall determine that such plans and specifications have not been approved or are not being complied with, the appropriate Architectural Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the appropriate Architectural Committee fails to approve or disapprove in writing any proposed plans and specifications within ten (10) days after such plans and specification shall have been received by the Architectural Committee, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with this Declaration. Upon approval of plans and specifications, no further approval under this Article IX shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Disapproval of plans and specifications by the Architectural Committee may be based upon any ground which is consistent with the objects and purposes of this Declaration as defined in Design Guidelines which shall be promulgated by the Architectural Committees from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

c. All Dwelling Units constructed on any portion of the Property shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer. This Article IX shall not apply to construction or improvements or modifications to the Common Property by or on behalf of the Association. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Committee. This Article IX may not be amended

without the Boards written consent. Because architectural trends, design trends, neighborhood character and general standards of taste change with the times, the New Construction Committee or the Architectural Committee shall not be bound by prior decisions of the Committees. The granting of approval on prior occasions is no assurance that the same similar plans will be approved on future requests

9.2 Architectural Committee. The duties of the Architectural Committee shall initially be performed by the Board. At any time, the Board may create an Architectural Committee, which shall consist of at least one (1), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction or modifications on any portion of the Property. The Board of Directors shall appoint the members of the Architectural Committee, who shall serve and may be removed at the discretion of the Board. The members of the Architectural Committee may include architects, engineers and other persons who are not Members of the Association. In the event that the Architectural Committee fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within ten (10) days after submission thereof, the plans shall be deemed approved.

9.3 Intentionally Deleted.

9.4 No Waiver of Future Approvals. The approval of either the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute an approval for similar proposals, plans and specifications, drawings, or matters whatever which may subsequently or additionally be submitted for approval or consent.

9.5 Variance. The Architectural Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. No request for a variance shall be considered if it affects the rights of adjoining Owners, unless affected Owner has granted written consent to the requested variance. Additionally, the Architectural Committee shall not be obligated to grant a similar variance as a result of granting the same or similar variance in the past.

9.6 Design Guidelines. The Architectural Committee is authorized and empowered to consider all aspects of dwelling construction, construction of other improvements and the location, quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the reasonable opinion of the Architectural Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property. Also, the Architectural Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Architectural Committee. The Architectural Committee may, from time to time, publish and promulgate design guidelines ("Design Guidelines") for the Property which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. The Design Guidelines shall supplement this Declaration and are incorporated herein by reference. The Architectural Committee shall have the authority to make a final decision in interpreting the general intent, effect and purpose of this Declaration. It is the intent of the Association that this Declaration and any Design Guidelines issued by the Architectural Committee promote harmonious design throughout the Properties. However, approval of the plans and specification by the Architectural Committee and compliance with the Design Guidelines does not insure compliance with the building codes and other restrictions imposed by applicable governmental authorities.

9.7 Architectural Control Committee Approval. To preserve the aesthetic appearance of the Community, grading, excavation, or filling of any nature whatsoever shall not be implemented and installed on a Lot by any Owner unless and until the plans have been submitted to and approved in writing by the Architectural Control Committee. The provisions of this Article IX regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, and so forth shall also be applicable to any proposed clearing, grading, excavation, or filling.

9.8 NO LIABILITY. NO APPROVAL OF PLANS AND SPECIFICATION AND NO PUBLICATION OF DESIGN GUIDELINES SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATION, OR DESIGN GUIDELINES WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED IMPROVEMENT, SUCH APPROVALS AND DESIGN GUIDELINES SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENT OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS ARTICLE IS MADE ON THE BASIS OF AESTHETIC CONSIDERATION ONLY AND NEITHER THE ARCHITECTURAL COMMITTEE NOR THE BOARD SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR THE ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER THE ASSOCIATION, THE

BOARD OF DIRECTORS, ANY COMMITTEE, OR MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE APPROVAL OR DISAPPROVAL OF OR NON-COMPLIANCE WITH ANY PLANS OR SPECIFICATION, THE MANNER OR QUALITY OF APPROVED CONSTRUCTION OR MODIFICATIONS TO ANY DWELLING UNIT.

9.9 Initial Construction by Declarant. Notwithstanding anything contained in this Article IX to the contrary, all construction of a Dwelling Unit (including landscaping) by Declarant shall be deemed approved by the Architectural Control Committee.

ARTICLE X

MAINTENANCE OF LOTS AND DWELLING UNITS

10.1 Duty of Maintenance. The Owner of each Lot shall, at the Owners sole cost and expense, keep the Owner's Lot and Dwelling Unit in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- a. Prompt removal of all litter, trash, refuse and waste;
- b. Mowing of yards;
- c. Tree and shrub pruning in front, rear and side yards which front a public way;
- d. Adequately watering all landscaped areas;
- e. Keeping exterior lighting and maintenance facilities in working order;
- f. Keeping lawn, garden and landscaped areas not maintained by the HOA alive, free of weeds, and attractive;
- g. Keeping driveways and leadwalks in good repair;
- h. Complying with all government health and police requirements; and
- i. Repair of exterior damages to improvements.

10.2 Enforcement. If, in the opinion of the Association, any Owner has failed in any of the foregoing duties or responsibilities, then the Board, Association, or its managing agent, may give such Owner written notice of such failure. Should any such Owner fail to fulfill this duty and responsibility within such required period to remedy the violation, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner of any Lot on which such work is performed shall be liable for the cost of such work (such costs constituting a default assessment as specified

in Section 4.1 hereof) and shall promptly reimburse the Association for such costs. If such Owner shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, the said indebtedness shall be a debt of said Owner, and shall constitute a lien against the Lot on which said work was performed. Such lien shall have the same attributes as the lien for Assessments as set forth in this Declaration, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

ARTICLE XI

DISPUTE RESOLUTIONS AND LIMITATIONS ON LITIGATION

11.1 Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Board, all persons subject to this Declaration, Owners and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property including , without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 11.2, shall be resolved using the procedures set forth in Section 11.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

11.2 Exempt Claims. The following claims ("Exempt Claims") shall be exempt from the provisions of Section 11.3:

- a. Any suit by the Association against any Bound Party to enforce the provisions of Article IV;
- b. Any suit by the Architectural Committee or the Association to obtain a temporary restraining order (or equivalent emergency equitable relief and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Architectural Committee's or the Association's ability) to enforce the provisions of Article VII (Protective Covenants) and Article IC (Architectural Standards);
- c. Any suit between Owners seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of Texas in the absence of a claim based on the Declaration, the Bylaws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00; and

d. Any suit arising out of any written contract between Owners which would constitute a cause of action under the laws of the State of Texas in the absence of the Declaration, Bylaws, and Articles of the Association.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 11.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association or the Architectural Committee to the alternative dispute resolution procedures of Section 11.3 shall require the approval of the Association or the Architectural Committee, as applicable.

11.3 Mandatory Procedures for All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) **Notice.** Any Bound Party having a claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i) The nature of the Claim, including date, time, location, persons involved and Respondent's role in the Claim;

(ii) The basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

(iii) What Claimant wants Respondent to do or not to do to resolve the Claim;

(iv) That the Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) **Negotiation.**

(i) Each Claimant and Respondent (the "**Parties**") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good negotiation.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be

beneficial to the Parties and to the welfare of the community.

(c)

Mediation.

(i) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the same geographical area upon which the Parties may mutually agree.

(ii) If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(iii) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation**"). The Termination of Mediation notice shall set forth when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.

(iv) Each Party, shall, within five (5) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("**Settlement Demand**") to the Respondent. The Respondent shall make a formal written settlement offer ("**Settlement Offer**") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

- (d) **Final and Binding Arbitration.** Any and all claims, disputes and controversies by and between the Board, Association and/or Owners arising from or related to the Property, any improvements to the Property, the sale of the Property, including, without limitation, any claim of breach of contract, negligence, negligent or intentional misrepresentation or non disclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealings, shall be submitted to arbitration by and pursuant to the rules of Construction Arbitration Services, Inc. (hereinafter “**CAS**”) in effect at the time of the request for arbitration or by such other arbitration service as Board shall, in its sole discretion select, and pursuant to the rules of that arbitration service in effect at the time of the request for arbitration. This arbitration agreement shall inure to the benefit of, and be enforceable by all successors and assigns of the parties. Any party shall be entitled to recover reasonable attorneys’ fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement, and notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The arbitrator’s compensation shall be borne equally by the arbitrating parties. Any additional fees may be assessed in accordance with the arbitration rules and fees. Parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC § 1 et. seq.) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rules; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the

conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or (ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms.

11.4 Allocation of Costs of Resolving Claim.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 11.3, including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 11.3(c).

(b) Each Party shall bear its own costs (including the fees of attorney or other representative) incurred after the Termination of Mediation under Section 11.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection Section 11.4(c).

(c) Any award, which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the award, such Costs to be borne equally by all Respondents. Any award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne equally by all such Claimants.

11.5 Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 11.3 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or award without the need to again comply with the procedures set forth in Section 11.3, in such event, the Party taking action to enforce the agreement or award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

11.6 Intentionally Deleted.

11.7 Applicability of the Owners Protection Act. Notwithstanding anything to the contrary to this Article XI or elsewhere in this Declaration, any claim against an Owner that is also the nature of an enforcement action under the Owners Protection Act shall be subject to all the applicable provisions of the Owners Protection Act. To the extent of any conflict between the enforcement provisions of this Declaration and the provisions of the Owners Protection Act, the Owners Protection Act shall be controlling.

Article XII

RIGHTS OF MORTGAGEES

12.1 General Protections. Notwithstanding any other provision of this Declaration, no amendment or violation of the Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage made in good faith and for value, provided that after the foreclosure of any Mortgage such Lot will remain subject to this Declaration. For purposes of the Restrictions, “first Mortgage” means a Mortgage with priority over other Mortgages on a Lot, and “first Mortgagee” means the Mortgagee of a first Mortgage.

12.2 Right of First Refusal. Each Owner, including each first Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any “right of first refusal” created or purported to be created by any contract between any third party.

12.3 Notices to Mortgages. The holder(s) of a Mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor’s/Member/Owner’s obligation(s) as established by this Declaration.

Article XIII

GENERAL PROVISIONS

13.1 Power of Attorney. Each and every Owner and Member hereby makes, constitutes and appoints the Board as his/her true and lawful attorney-in-fact, coupled with and interest and irrevocable, for him/ her and in his/her name, place and stead and for his/her use and benefit, to do the following; provided, however, to the extent this Declaration requires the assent of a certain number of the Members as a condition to such action, such assent has been obtained:

(a) to exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Property;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as the Board shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon subdivision plat(s) of the Property, or any part thereof, with any easements and rights-of-way to be therein contained as the Board shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of the Original Declaration in the Real Property Records of the County and shall remain in full force and effect thereafter until all Lots owned by the Declarant have been sold and conveyed to Class A or Class B Members.

13.2 Duration. This Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for any original fifty (50) year term expiring on the fiftieth (50th) anniversary of the date of recordation of the Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years an instrument is signed by the Owners of at least fifty-one (51%) of all Lots within the Property and recorded in the real Property Records of the County, which contains and sets forth an agreement to abolish this Declaration; provided, however, no such agreement where approved by less than sixty-seven percent (67%) of the Owners of all Lots within the Property to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

13.3 Amendments. This Declaration is expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as provided herein. This Declaration may be amended and/or changed in part as follows:

(a) In response to any governmental or quasi-governmental suggestion, guideline, checklist, requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance, the Board shall have the complete and unrestricted right and privilege to amend, change, revise, modify or delete portions of this Declaration, and each and every Owner and Member specifically and affirmatively authorizes and empowers Board, utilizing the attorney-in-fact status set forth above, to undertake, complete and consummate any and all such amendments, changes, revisions, modification, or deletions as the Board (in their sole and absolute discretion) shall deem reasonable and appropriate based on any governmental requirement or change in applicable laws.

(b) With the assent of Two-Thirds Members Vote.

Any and all amendments shall be recorded in the Real Property Records of the County.

13.4 Enforcement. Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s), guests and invitees. This lien created hereby on each Lot shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Property to the same extent as if the parent was directly responsible for the action of their child. Enforcement of this Declaration may be initiated by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by this Declaration or the Original Declaration, but failure by the Board, Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association, each Owner and the applicable governmental authority are each specifically authorized (but not obligated) to enforce this Declaration. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney's fees, from the non-prevailing party.

13.5 Validity. Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and in effect. In the event any portion of this Declaration conflicts with mandatory provisions of any ordinance or regulation promulgated by the applicable governmental authority (including, without limitation, any comprehensive zoning ordinance), then such governmental requirement shall control.

13.6 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

13.7 Registration with the Association. Each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days any change in ownership of a Lot.

13.8 Notices to Resident/Member/Owner. Any notice required to be given to any Resident, Member, or Owner under the provisions of this Declaration shall be deemed to have been

properly delivered when (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing, or when (ii) delivered by hand or by messenger to the last known address of such person within the Property; or when (iii) as otherwise may be authorized under the Texas Property Code.

13.9 Attorney's Fees. All attorneys' fees incurred by the Association or the Board in the enforcement of this Declaration and all future amendments shall be the obligation of the Owner and the Owner agrees to pay all such attorney's fees incurred by the Association and/or Declarant.

13.10 Liability Insurance. Each Owner shall maintain (and deliver a certificate of same to Association) a general liability insurance policy with coverage limits of not less than \$1,000,000 combined single limit for bodily injury, personal injury, death and property damage liability per occurrence, insuring against any and all liability of the insured's with respect to the Lot, Dwelling Unit and Common Property. Such policy shall name the Association as an additional insured.

13.11 Tenancies. An Owner may lease his/her Dwelling Unit in its entirety to a third party, but shall be prohibited from leasing only a portion thereof. All such leases shall be in writing, shall be for a minimum term of six (6) months, and shall contain a statement that such tenant has received a copy of this Declaration, has read same, and agrees to comply with same.