

ACCOMMODATION

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# DECLARATION

2004-004140

## OF COVENANTS CONDITIONS AND RESTRICTIONS

# *THE VILLAGE AT HIGH MEADOW*

## SECTION 1

RETURN TO:

Jack Frey Properties, Inc.  
P.O. Box 860  
Tomball TX 77377-0860

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this day by JACK FREY PROPERTIES, INC., hereinafter called the "Declarant".

#### PREAMBLE

WHEREAS, the Declarant is the owner of the real property described in Exhibit A of this Declaration and desires to create thereon Section 1 of the Community of THE VILLAGE AT HIGH MEADOW which shall be a duly approved and recorded subdivision in Montgomery County, Texas.

WHEREAS, the Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in said community contributing to the personal and general health, safety and welfare of residents, and for the maintenance of the land and improvements thereon, and to this end desires to subject the real property described in Exhibit A, together with such additions as may hereafter be made thereto (as provided in Article II), to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth the Declarant shall incorporate, under the laws of the State of Texas and according to the provisions of Article III, THE VILLAGE AT HIGH MEADOW COMMUNITY ASSOCIATION.

AND FURTHER, the Declarant hereby delegates and assigns to THE VILLAGE AT HIGH MEADOW COMMUNITY ASSOCIATION, the power of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

NOW THEREFORE, the Declarant declares that the real property described in Exhibit A, and such additions thereto as may hereafter be made, pursuant to Article II hereof, is and are and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth;

#### ARTICLE I

##### DEFINITIONS

**SECTION 1.01 Section "Declaration"** shall mean and refer to the covenants, conditions, and restrictions and all other provisions herein set forth in this entire document, as they may from time to time be amended

**SECTION 1.02 "Declarant"** shall mean and refer to JACK FREY PROPERTIES, INC., and its successors and assigns. In the event another other than the Declarant comes to stand in the same relation to the project as the Declarant, the party shall hold the same rights and obligations as would then have been held by the Declarant.

**SECTION 1.03 "Co-Developer"** shall mean and refer to any party so designated by the Declarant, who purchases multiple, unfinished lots or unrecorded, undeveloped property for subdividing and development of roads, common areas, etc. at his expense.

**SECTION 1.04 "Subdivision"** shall mean and refer to a recorded subdivision known as THE VILLAGE AT HIGH MEADOW and defined on the recorded Subdivision Plats, and which is hereby subject to this Declaration, together with such

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other real property or additional Sections as may from time to time be annexed thereto under the provisions of Article II.

**SECTION 1.05 "Subdivision Plats"** shall mean and refer to the respective maps or plats recorded in the Map Records of Montgomery County, Texas and which shall define the development scheme of the Subdivision.

**SECTION 1.06 "Section"** when followed by a roman numeral shall mean and refer to a specific portion of the Subdivision, the exact geographic location of which shall have been described and defined either in Exhibit "A" attached hereto or in one of the Supplemental Declarations provided for in Article II.

**SECTION 1.07 "Homesite" and/or "Homesites"** shall mean and refer to each of the Lots shown upon the Subdivision Plats and conveyed according to the Block and homesite numbers shown thereupon. References herein to "the homesite (each homesite) in the Subdivision" shall mean and refer to homesites as defined respectively in the Declaration and all Supplemental Declarations. The count of the number of Lots in the Subdivision for determining the Declarant's rights under the Governing Documents shall be based on the number of Lots proposed in the Declarant's overall development scheme for future sections not the number of lots actually completed and/or recorded. The current total number of lots planned is 275, but may be increased or decreased by the Declarant.

**SECTION 1.08 "Owner"** shall mean and refer to the record owner, or if such homesite is subject to a term purchase contract with Declarant, to the contract purchaser, whether one or more persons or entities, of the fee simple title to any homesite situated within the Subdivision, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. References herein to "the s in the Subdivision" shall mean and refer to s as defined respectively in this Declaration and all Supplements Declarations.

**SECTION 1.09 "Association"** shall mean and refer to THE VILLAGE AT HIGH MEADOW COMMUNITY ASSOCIATION, a non-profit corporation, incorporated under the laws of the State of Texas, and its successors and assigns.

**SECTION 1.10 "Members"** shall mean and refer to members of the Association, which shall consist of all owners and the Declarant as provided for in Article III.

**SECTION 1.11 "Directors" or "Board"** shall both refer to the duly appointed or elected Board of Directors of THE VILLAGE AT HIGH MEADOW COMMUNITY ASSOCIATION.

**SECTION 1.12 "Founding Documents"** shall mean and refer to the Articles of Incorporation of the Association, this Declaration, Supplemental Declarations, and the Association By-Laws, all as initially drawn by the Declarant or as may be duly amended from time to time.

**SECTION 1.13 "Governing Documents"** shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.

**SECTION 1.14 "Book of Resolutions"** shall mean and refer to the document containing the rules, regulations, and policies of the Association as they may from time to time be amended.

**SECTION 1.15 "Quorum of Members"** shall mean and refer to the representation by presence or proxy of Members who hold fifty percent (50%) of the outstanding Class A votes as defined in Section 1.03 and the representation by presence or proxy of the Class B Membership so long as it shall exist.

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**SECTION 1.16 "Notice"** shall mean and refer to: (1) Written notice delivered personally or mailed to the last known address of the intended recipient. In such event, said notice shall conclusively be deemed to have been given by the Association by placing same in the United States mail, properly addressed, whether received by the addressee or not, or: (2) Notice published at least once each week for two consecutive weeks in a newspaper having general circulation in Montgomery County, Texas, or in the immediate area.

**SECTION 1.17 "Registered Notice"** shall mean and refer to any Notice which has been signed for by a recipient or has been certified by the U. S. Postal Service or other entity as having been delivered (or the delivery of which has been certified by the Postal Service or other entity to have been attempted) to the address of the intended recipient. Failure by refusal of an intended recipient to acknowledge such Notice shall nevertheless constitute receipt when such refusal is witnessed by two other people or by one person if that person is a Postal Service representative.

**SECTION 1.18 "Single Family"** shall mean and refer to a single housekeeping unit which includes not more than three adults who are legally unrelated, together with their legal children or others over which they may have legal guardianship or care. Provided, however, that parents or children of the owners and bona fide, salaried servants shall not be counted for purposes of this section.

**SECTION 1.19 "Common Area"** shall mean and refer to all real property and improvements thereon owned or leased by the Association or over which the Association has an easement for maintenance (excepting Lots and dwelling units thereon) for the use and enjoyment of the Members.

**SECTION 1.20 "Common Facilities"** shall specifically refer to all existing and subsequently provided improvements upon or within the Common Area. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of all owners constructed, purchased, or leased on property not defined as a Common Area.

**SECTION 1.21 "Supplemental Declaration"** shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions bringing additional property within the scheme of this Declaration as provided for in Article II. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental Declarations.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

**SECTION 2.01 The "Subdivision".** The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of Montgomery and is more particularly described in Exhibit "A" attached hereto and made a part hereof and represents the second stage of the Residential Planned Community known as THE VILLAGE AT HIGH MEADOW. For purposes of this Declaration, such real property is designated as Section 1.

**SECTION 2.02 Mineral Exception:** There is hereby excepted from the Subdivision and Declarant will hereafter except from all its sales and conveyances within the Subdivision, or any part thereof, including the Lots and Common Area, all oil, gas, and other minerals in, on, or under the Subdivision, but Declarant hereby waives, to the extent of its ship interest, its right to use the surface of such land for

exploration for or development of oil, gas, and other minerals, except in specified drill sites as per the plat. No actions by any and nothing in the Governing Documents shall limit the rights of the mineral owners or Lease Holders from obtaining oil or gas from said property by slant or horizontal drilling to obtain minerals is specifically prohibited.

**SECTION 2.03 Additions to Property Subject to Declaration:** Additional property may become subject to this Declaration in the following manner.

#### A. ADDITIONS BY DECLARANT OR OTHERS:

If Declarant or any other person, firm or corporation is the owner of any property which it desires to add to the scheme of this Declaration, it may do so by filing of record a Supplemental Declaration, which shall extend the scheme of the covenants and restrictions of this Declaration to such property. PROVIDED HOWEVER, that such covenants and restrictions as applied to the property which is so added may be altered or modified by said Supplemental Declaration, and PROVIDED FURTHER, if property is added to the scheme of this Declaration by any person, firm or corporation other than Declarant, the Association, acting through its Board of Directors and the Declarant must give written consent thereto. Each Supplemental Declaration shall include a legal description of the property added and shall designate said area with the term "Section" followed by a roman numeral so as to differentiate each respective area from other areas within the Subdivision.

#### B. CONTENTS OF SUPPLEMENTAL DECLARATIONS:

Such Supplemental Declaration shall contain covenants and restrictions to which the added properties shall be subject. Such covenants and restrictions may contain additions, deletions, and modifications from those contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties. Such Supplemental Declaration must impose an annual maintenance charge assessment on the property covered thereby, on a uniform, per homesite basis, substantially equivalent to the maintenance charge and assessment imposed by this Declaration, according to Article IV, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional property. In no event, however, shall such Supplemental Declaration revoke, modify, or add to the covenants established by this Declaration or by previously filed Supplemental Declarations within previously designated "Sections". All lots added in Supplemental Declarations shall have the same rights, privileges and obligations pertaining to Recreation Centers and common areas as those lots in the original Declaration unless specifically changed by the Declaration.

#### C. COUNTY REGULATIONS:

Any additions to the Subdivision according to the provisions hereunder, shall, in addition to the requirements of this Declaration, be approved by the proper governmental entities and recorded as required by the then existing regulations.

## ARTICLE III

### THE VILLAGE AT HIGH MEADOW COMMUNITY ASSOCIATION

#### SECTION 3.01 *Organization:*

##### A. NON PROFIT CORPORATION:

THE VILLAGE AT HIGH MEADOW COMMUNITY ASSOCIATION shall be a nonprofit, non-stock corporation organized and existing under the laws of the State of Texas and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time, provided no Governing Documents other than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

##### B. PURPOSE:

The purpose of the Association in general is to protect the general scheme of the development as evidenced by the Declaration and to provide for and promote the health, safety, and welfare of the Members, to set and collect the Annual Maintenance Fund Assessments, and other fees or Assessments, and to administer said funds, to provide for the protection of the Common Areas and Facilities in the Subdivision and such other purposes as are stated in the Founding Documents consistent with the provisions of this Declaration and all Supplemental Declarations.

##### C. SUBSIDIARY CORPORATIONS:

The Association shall have the right to form one or more subsidiary corporations, for any purpose or purposes deemed appropriate by a majority vote of the Board of Directors. Without limiting the generality of the foregoing, one or more subsidiary corporation(s) may be formed for the operation and maintenance of any specific area or to perform any function within the Subdivision; however, such subsidiary corporation(s) shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Members.

#### SECTION 3.02 *Membership:*

##### A. ALL OWNERS:

Each, whether one or more persons or entities, of a homesite shall, upon and by virtue of becoming such owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of each homesite and may not be separated from such ownership. Whenever the ownership of any homesite passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued. The term "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms, or corporations acquiring or succeeding to the title of the Member by sale, grant, will, foreclosure,

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execution, or by any legal process or by operation of law, or in any other legal manner. Operation of the preceding sentence shall not be construed to automatically allow all of the employees of a business or commercial entity to have rights to use the Common Areas except as specifically agreed by the Association Board

##### B. SUSPENSION OF RIGHTS:

All of the privileges of membership, including voting rights and use of the Common Facilities, are subject to: 1) being current in all assessments and fees established by the Association, and 2) being in compliance with the covenants, rules and restrictions within the Governing Documents as they currently exist or may be amended from time to time. Any member failing to meet one or both conditions may, under the terms of the Governing Documents, be denied their privileges of membership.

**SECTION 3.03 *Voting Rights:*** The Association shall have two classes of voting membership:

**CLASS A:** Class A Members shall be all the Members of the Association, with the exception of the Declarant. Class A Members shall be entitled to one vote for each homesite in the Subdivision in which they hold the interest required for membership by this Declaration or any Supplemental Declaration. When more than one person holds such interest or interests in any such Lot, all such persons shall be Members, and the vote for such homesite shall be exercised as they determine among themselves but, in no event, shall more than one vote be cast with respect to any such Lot.

**CLASS B:** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each homesite in the Subdivision in which it holds the interest required for membership by this Declaration or any Supplemental Declaration; provided that the Class B membership under this Declaration shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership (according to the homesite count defined in Section 1.07);
- (b) on January 1, 2013
- (c) when, in its discretion, the Declarant so determines.

From and after the happening of whichever of these events occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each homesite in the Subdivision in which it holds the interest required for membership by this Declaration. At such time, the Declarant shall notify the Association in writing that the Class B Membership has terminated.

#### **SECTION 3.04 *Voting Procedures and Requirements:***

All regular business of the Association shall be carried out by its duly appointed or elected Boards and Committees according to the provisions of the Founding Documents. The Board of Directors shall determine all details relating to voting on any matter subject to vote by the general membership of the

Association according to the guidelines and requirements below. In all cases, votes by Proxy or in writing shall be counted as if the person issuing such proxy or written vote were present in person. The types of voting shall be as set out below and further defined elsewhere in this Declaration or the Governing Documents.

**A. GENERAL BUSINESS:**

Any voting desired or required at any meeting shall be determined by a simple majority vote of those votes represented at such meeting EXCEPT for such actions and decisions that shall require the vote of a "Quorum of Members" as provided for in Section 3.04-B below.

**B. QUORUM OF MEMBERS:**

When the Board of Directors shall at their option determine that a major financial or business decision requires the vote of a "Quorum of Members", or when the Governing Documents shall, by direct reference to this Section 3.04-B, require the vote of a "Quorum of Members", then such vote shall be at a meeting called for the purpose of taking such action. Such action may also take place at the regularly scheduled meetings of the Association provided, however, that written notice of any such meeting and the purpose thereof shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty percent (20%) of the outstanding Class A votes and the representation by the presence or proxy of the Class B Member so long as it shall exist shall constitute a "Quorum of Members". If the required quorum is not present, another meeting may be called subject to the same notice requirement, and at the subsequently called meeting the quorum requirement shall be waived. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Approval under the provisions of this Subsection shall be by simple majority of those votes represented at any meeting called for that purpose with both classes voting together unless specifically required otherwise by the Governing Documents.

**C. PETITION FOR REFERENDUM:**

The general membership of the Association shall have the right to bring any proposed action, review any past actions taken by the Association, or bring a petition for the recall of any Board or Committee members before a vote of the general membership for purposes of denying, amending, establishing, or affirming such action or recall. A meeting shall be called by the Board of Directors for the purpose of carrying out such vote upon the receipt of a "Petition for Referendum" properly signed by persons holding fifteen percent (15%) of the outstanding Class A votes and signed by the Class B Member, if it shall exist at the time. Voting under and pertaining to such referendum shall then take place according to all of the provisions of Subsection B above, with notice of such meeting being mailed within fifteen (15) days of the receipt of said petition by the Board.

**D. MAINTENANCE FUND ASSESSMENT:**

The members shall have the right and power to deny an increase above twenty percent (20%) in the

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amount of the Annual Maintenance Fund Assessment according to the provisions of Section 3.03-A by a vote of the majority of the TOTAL MEMBERSHIP VOTES EXISTING (according to Section 3.03) at the annual meeting at which the budget and new Maintenance Fund Assessment are presented.

**E. AMENDMENT OF THIS DECLARATION:**

As required by Section 12.02, an amendment to this Declaration shall require the written agreement, by signed ballot, of sixty percent (60%) of the TOTAL MEMBERSHIP with one vote per each homestead owned except as provided for in Section 8.08.

**SECTION 3.05 Governing Documents:** The Association shall operate according to the following documents as established by the Declarant or as amended from time to time.

**A. FOUNDING DOCUMENTS:**

The Articles of Incorporation and By-Laws of the Association, along with the Declaration shall establish the existence and authority of the Association. Such documents, as originally drawn by the Declarant may be duly amended from time to time according to the conditions specified in each document.

**B. BOOK OF RESOLUTIONS:**

In addition to the Founding Documents, the Association shall maintain the Book of Resolutions as provided for in the By-Laws of the Association. Said Book of Resolutions shall document the policy resolutions, administrative resolutions, special resolutions, and general resolutions in a manner that will provide for 1) referencing the actions of the Association over a period of years, 2) establishing a consistency in Board actions, and 3) for protecting the Members from capricious and arbitrary actions by the Board.

**SECTION 3.06 Corporate Structure:** The structure of the Association shall consist of the following formal Boards or Committees along with any other Boards or Committees that may be established from time to time under the provisions of the Governing Documents. All Directors, Board Members, or Committee Members shall be entitled only to such compensation as may be established by the Association and approved by a majority of a Quorum of Members voting according to the provisions of Section 3.04-B, EXCEPT that all Directors, Board Members, and Committee Members shall be entitled to reimbursement for reasonable expenses incurred in the course of their duties. All compensation or reimbursements shall be made as a general expense payable out of the Maintenance Fund.

**A. BOARD OF DIRECTORS:**

The Board of Directors shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and as provided by the law and may do all acts and things as are not by the Governing Documents directed to be done and exercised exclusively by the members.

**1. INITIAL BOARD:**

The initial Board of Directors shall consist of three (3) Directors appointed by the Declarant and said Directors may be replaced at the discretion of the Declarant until they are replaced by elected Directors as hereinafter provided.

**2. ELECTED BOARD:** At the FIRST regular annual meeting following the sale of twenty-five

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percent (25%) of the Lots in Section 1, the Class A Members voting alone shall elect, according to the election provisions of the By-Laws, three (3) Directors in addition to those appointed by the Declarant. Following that election, the Board shall consist of at least six (6) Directors with staggered, two (2) year terms and at least two (2) non-voting Alternates. Directors or their spouses may not serve more than two (2) consecutive terms (four (4) years). Husbands and wives may not serve concurrently. The Directors appointed by the Directors elected by the Class A Declarant shall be replaced by Members. Directors appointed by the Declarant may serve one (1) additional two (2) year term if elected by the Class A members after service of time appointed by the Declarant.

**3. REPLACEMENT OF VACANCIES:**

After the start of elections by the Class A Members, according to the provisions above, any vacancies arising during the year in the positions held by elected Directors shall be filled by an Alternate for the balance of the term. Or if there are no more Alternates, then may be filled by appointment by the balance of the Board until the time of the next regular election at which time the position shall be filled by election with the newly elected Director serving out the remaining term, if any, of the original Director. Any positions vacated by operation of a "Petition for Referendum" according to the provisions of Section 3.04-C shall be filled by an election at the same meeting.

**4. DECLARANT'S RIGHTS:**

All Directors elected by the Association must be approved by the Declarant until the Class B Membership is converted to Class A Membership. The Declarant may, at its sole option, give control of the Association totally to the Class A Members for election of a Class A Member Board prior to the date requirements above. The exercising of said option shall not impair the voting rights of the Declarant as a Class B Member subject to Section 3.03. In addition, the Declarant shall have the right and power to veto any action or decision of the Board, according to the provisions of the By-Laws, within ten (10) days of the Notice to Declarant required in Section 3.07-C below. Such veto rights shall cease with the completed sale of ninety percent (90%) of the Lots within the Subdivision according to the homesite count defined in Section 1.07

**B. ARCHITECTURAL CONTROL COMMITTEE**

The Architectural Control Committee (ACC) shall operate under the provisions of Article V of this Declaration and shall be responsible for review of all plans for any improvement or action within the Subdivision that is subject to this Declaration or the Governing Documents. The Committee shall also be responsible for monitoring compliance with all of the provisions of this Declaration and the Governing Documents and may instigate any action necessary to bring about compliance.

**SECTION 3.07 Association Business:**

**A. GENERAL DUTIES AND POWERS:**

In Addition to the duties and powers enumerated in its Articles and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the duties and powers of the Board shall normally include, but shall not be limited to, the following:

**1. CORPORATE BUSINESS:**

The right of the Association, acting through the Board to carry on all legal business functions and exercise all of the powers of a Texas non-profit corporation, subject only to such limitations as are expressly set forth in this Declaration, including but not limited to the rights to own, sell, grant, convey, lease, mortgage, or dedicate to any individual entity or utility, any portion of or rights pertaining to any Common Areas, roads or easements in favor of the Association; or to construct, purchase, lease, or contract for any additional property, facilities, equipment, etc.; or to borrow money for the purpose of constructing, improving, maintaining, or repairing said Common Areas or Facilities, roads, or easements and in aid thereof to mortgage said property.

**2. ROADS:**

The roads within the Subdivision will be owned and maintained by Montgomery County, Texas. The Board, however, shall be responsible for working with the County to see that all County right-of-ways and public easements within the Subdivision are adequately maintained by the County or other responsible entity. The Association shall specifically have the right to assist in said maintenance in any manner agreeable to the responsible entity, including, but not limited to, performing needed repairs at Association expense.

**3. COMMON AREAS, FACILITIES AND EASEMENTS:**

All of the Common Areas, Common Facilities and easements in favor of the Association shall be operated, managed, and maintained in good repair for the benefit and enjoyment of all of the Members and the cost therefrom, including payments on any existing mortgages on the Common Areas or Facilities conveyed to the Association by the Declarant, shall be a common expense to be paid out of the Annual Maintenance Fund Assessment.

**4. DETENTION FACILITIES:**

All detention facilities shall be maintained and kept in good repair by the Community Association Board and shall be a common expense to be paid out of the Annual Maintenance Fund Assessment. If the detention facility is privately owned, then the Community Association may require the owner to maintain the detention facility at his/her personal expense.

**5. ENFORCEMENT:**

The Board shall have the right to enforce the provisions of the Governing Documents by any

legal and appropriate means, whether specifically defined in this Declaration or not, for the benefit and protection of the Members in general and specifically to protect the scheme of the development as evidenced by this Declaration.

**6. RULES AND REGULATIONS:**

The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules") which may include the establishment of a system of fines and penalties. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of any Common Areas; provided, however, that the Association Rules may not discriminate among owners, and shall not be inconsistent with the Founding Documents. A copy of the Association Rules as they may from time to time be adopted, amended, or repealed or a notice setting forth the adoption, amendment, or repeal of specific portions of the Association Rules shall be delivered to each according to the "Notice" provisions of Section 1.16. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the owners and their successors in interest whether or not actually received thereby. The Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Association to each owner or other interested party upon request. In the event of any conflict between any such Association Rules and any other provisions of the Founding Documents, the provisions of the Association Rules shall be deemed to be superseded by the provisions of the Founding Documents to the extent of any such conflict.

**7. BUDGETS AND ASSESSMENTS:**

The Board shall annually prepare an Operating Budget and Capital Budget as defined in Section 4.03 and therefrom compute the Annual Maintenance Fund Assessment to be charged against each Lot. The Board shall also have the right, subject to the provisions of this Declaration, to establish other fees or assessments that may from time to time be required or beneficial to the purposes of the Association, and the right to adopt procedures for the purpose of making, billing, and collecting the Assessments, user fees and charges provided for herein, provided that the procedures are not inconsistent with the provisions hereof.

**8. CONTRACTS:**

The Board shall have the right to hire or contract with any person or entity for the performance of various duties and functions including, but not limited to, the employment of a manager or management company to perform all or any part of the duties and responsibilities of the Association.

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**9. DELEGATION:**

The Board shall have the right to delegate to committees, officers, employees, or agents any of its duties and powers under the Founding Documents except such powers which are non-delegable according to law. No such delegation, however, whether to a professional management company, the Architectural Control Committee, or otherwise, shall relieve the Association of its obligations to perform such delegated duty.

**10. APPEALS:**

The Board shall hear appeals on decisions of the Architectural Control Committee according to the provisions of 1.13, and shall hold hearings on any proposed enforcement of the Governing Documents according to the provisions of Section 9.02.

**11. COURT ALTERNATIVE:**

Prior to any case pertaining to or covered by the Governing Documents, being filed for legal court action or legal suit by any Member of the Association, such dispute or case shall be heard by the Board which shall render a ruling that shall be binding on all parties. This paragraph shall not prohibit, however, any Member or the Association from subsequently pursuing such suit through the Courts.

**B. GENERAL LIMITATIONS AND RESTRICTIONS ON THE POWERS OF THE BOARD:**

In addition to the limitations and restrictions enumerated in the Founding Documents, and without limiting the generality thereof, the Board shall be prohibited from taking any of the following actions except with the affirmative vote of a "Quorum of Members" as provided in Section 3.04-B.

1. Incur aggregate expenditures for capital improvements or repairs in any fiscal year which shall exceed by twenty percent (20%) the amount previously budgeted in the Capital Budget for expenditure in that year.
2. Sell any real or personal property of the Association with an aggregate fair market value in excess of five percent (5%) of the Association's total assets.

**C. NOTICE TO DECLARANT:**

The Association shall inform the Declarant of all decisions and actions of the Board and the Association including: Copies of the minutes of all meetings, notice of change of ownership along with a copy of the Certificate of Occupancy if required, notice of all applications for approval of the Architectural Control Committee along with the decision of said committee, notice of actions for enforcement, notices of meetings, bulletins, newsletters, and other information conveyed to the Members. All such information shall be provided to the Declarant in a timely manner and without charge until the Declarant shall inform the association in writing that it no longer requires the information.

**D. INSURANCE:**

The Association, to the extent available and to the extent deemed necessary or beneficial, according to the provisions of the Founding Documents, shall



obtain and continue in effect in its own name the following types of insurance so long as such amounts or types of insurance coverage are not, in the good faith judgment of the Board, prohibitively expensive or no longer necessary or appropriate for the protection of the Properties, the Association, and the Members:

**1. FIRE AND EXTENDED COVERAGE:**

This insurance coverage to be carried on all improvements owned by or leased to the Association, the amount of such insurance to be not less than ninety percent (90%) of their aggregate full insurable value, meaning actual replacement cost exclusive of the costs of excavations, foundations, and footings.

**2. OTHER:**

Public Liability, Fidelity Coverage, Worker's Compensation, Officers and Directors Liability Insurance and/or Indemnity, or other bonds shall be obtained and maintained where the Board, according to the provisions of the Founding Documents, shall deem necessary or beneficial to carry out the Association functions.

**3. PREMIUMS:**

All of the costs, charges, and premiums for all insurance that the Board of Directors authorizes as provided herein shall be a common expense of all Members and be a part of the Annual Maintenance Fund Assessment or a Special Assessment at the option of the Board.

**4. WAIVER BY MEMBERS:**

All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the owners and the Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the s hereby waive and release all claims against the Association, the Board, other owners, the Declarant and agents, and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

**5. INSURANCE REVIEW:**

It shall be the duty of the Board of Directors annually to conduct an insurance review to determine if the policies in force are adequate to meet the needs of the Association and to satisfy the requirements of this Section.

**6. INSURANCE RATES:**

Nothing shall be done or kept in the Subdivision which would result in the cancellation of insurance or increase the rate of insurance on any property insured by the Association without the express written approval of the Board, providing, however, Declarant may keep equipment, building materials, fuel ports, etc. that are necessary for the development of said Subdivision.

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**7. INDEMNIFICATION:**

The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by, or imposed upon, any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a common expense, maintain adequate general liability and officers and directors liability insurance to fund this obligation.

**F. INSPECTION OF RECORDS:**

The Members of the Association shall have the right to inspect the books and records of the Association at reasonable times during the normal business hours, and copies of all or any part of the Governing Documents, or other documents pertaining to the business of the Association, shall be made available to all Members and any other person or entity having a valid interest in the Properties upon the request of such party. The Association shall have the right to charge reasonable fees for providing copies of said documents.

## ARTICLE IV

### MAINTENANCE FUND AND ASSESSMENTS

**SECTION 4.01 *Covenants for Assessment:*** Each owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his homesite and/or assessed against him by virtue of his ownership thereof, as the same shall become due and payable, without demand. Such assessments shall include, but not be limited to:

- A. Annual Maintenance Fund Assessments or charges (as specified in Section 4.03 hereof);
- B. Special Assessments to be established and collected by the Board according to the provisions of Section 4.04; No member shall be exempt or excused

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from paying any such charge or assessment by waiver of the use or enjoyment of the Common Areas or Facilities, or any part thereof, or by abandonment of his homesite or his interest therein.

**SECTION 4.02 Purpose of Assessments:** The Assessments levied by the Association shall be used as necessary for the general maintenance, beautification, landscaping of all common areas, front entrance, and recreation center, repair, utility bills and tap fees, operation of swimming pool, and any other expense of all common areas and common facilities; for mowing and maintenance of all nature trails, mowing and beautification of all side road ditches until individual property owners occupy their homes, for paying off any indebtedness of the Association; for the protection of the scheme of Development as evidenced by this Declaration; and for carrying out the general business responsibilities of the Association, pertaining to the health, safety and welfare of the owners within the Subdivision as provided for in the Governing Documents, including the funding of appropriate reserves for future repair or replacement. Other regular expenditures may be added to the Annual Maintenance Fund Assessment according to the provisions of Section 4.04. It is further established that the judgment of the Board of Directors in the expenditure of said funds according to the provisions of the Founding Documents shall be subject only to the operation of a "Petition for Referendum" according to Section 3.04-C so long as such judgment is exercised in good faith.

**SECTION 4.03 Annual Maintenance Fund Assessment:** Until the first day of the first fiscal year following commencement of assessments, the maximum Annual Maintenance Fund Assessment shall be \$350.00 per Lot.

**A. COMPUTATION OF OPERATING BUDGET AND ASSESSMENT:**

It shall be the duty of the Board, at least thirty (30) days prior to the Association's annual meeting, to prepare an Operating Budget covering the estimated costs of operating the Association during the coming year including a reasonable amount for contingencies and the amount of the annual contribution required for the Capital Budget as defined in Subsection B below. The Board shall cause the Operating Budget and a statement of the amount of the Annual Maintenance Fund Assessment to be levied against each homesite for the following year to be delivered to each Member at least twenty-one (21) days prior to the meeting, along with a status report indicating any owners delinquent in their assessments and the amount thereof. Except in the case of Special Assessments as provided in Section 4.04, or Restoration Assessments, as provided for in Section 4.05 below, the assessments levied shall be uniform and equal. The amount of the Annual Maintenance Fund Assessment may be increased in any year up to twenty percent (20%) more than the previous year at the sole discretion of the Board. An increase in the Operating Budget or Annual Maintenance Fund Assessment above said twenty percent (20%) increase shall become effective unless specifically disapproved at the annual meeting by a vote of a majority of the TOTAL MEMBERSHIP VOTES EXISTING (according to Section 3.03). Notwithstanding the foregoing, however, in the event that the membership disapproves the proposed budget for the succeeding year, then and until such time as a budget shall have been determined as

provided herein, the budget in effect for the current year shall continue for the succeeding year.

**B. CAPITAL BUDGET AND CONTRIBUTION:**

The Board of Directors shall annually prepare a Capital Budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the Capital Budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the Operating Budget for purposes of computing the Annual Maintenance Fund Assessment according to the provisions of Subsection A above. A copy of the Capital Budget shall be distributed to each Member in the same manner as the Operating Budget. All amounts collected under the Capital Budget may only be used for capital improvements and repairs and shall be deposited by the Board in a separate interest bearing account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

**SECTION 4.04 Special Assessments:** If the Annual Maintenance Fund Assessment proves inadequate for any year or purpose, the Board may levy a Special Assessment against all owners, payable in one payment or over such period as may be set by the Board. Any Special Assessment shall be levied on an equitable basis, as determined by the Board, against all owners. Prior to becoming effective, however, any Special Assessment shall be approved by the affirmative vote of the majority of a Quorum of Members voting according to Section 3.04-B.

**SECTION 4.05 Restoration Assessment:** The association may levy a Restoration Assessment upon any homesite whose owner fails to maintain such Lot, as provided in Article IX, or who fails to provide such maintenance funds as may be required by this Declaration or any Supplemental Declaration for such Lot. Restoration Assessments shall be set solely by the Board of Directors and shall be limited to the amount necessary to meet the cost of restoration or deficiency in required funds, plus any penalty fees, interest, and the cost of collection thereof.

**SECTION 4.06 Assessment Allocation:** Except as provided for elsewhere in this Article, assessments levied against any homesite or owner shall be uniform and equal EXCEPT THAT:

**A. MULTIPLE HOMESITE ASSESSMENT:**

Any individual owning more than one (1) homesite shall be assessed as follows:

1. For the first homesite owned, the assessment shall be 100% of the Annual Maintenance Fund Assessment.
  2. For the second homesite owned, the assessment shall be twenty-five percent (25%) of the Annual Maintenance Fund Assessment.
  3. For all additional Lots owned, the assessment shall be twenty-five percent (25%) of the Annual Maintenance Fund Assessment.
- All Lots owned shall be subject to the full amount of any Special Assessment as defined in Section 4.04. The reduced Annual

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Maintenance Fund Assessment shall continue until such additional Lots shall be sold or become residences at which time the rate of assessment shall return to the normal full amount.

**B. BUILDER ASSESSMENT:**

Any builder or construction company owning any homesites for the purpose of building homes for resale to third parties shall be assessed at the rate of twenty-five (25) percent on all lots owned. The reduced annual maintenance fund shall continue for two (2) years or until such property is sold, whichever occurs first.

**C. DECLARANT ASSESSMENT:**

All lots owned by the Declarant or a Co-Developer are designated by the Declarant, shall be exempt from all assessments until such time as the lots are sold to a party other than a co-developer.

**SECTION 4.07 Due Date of Assessments:** Maintenance Fund Assessments are due in advance and payable on January 1st each year. Fees for lots purchased after January 1st shall be pro rated from date of purchase to December 31st and are due at time of purchase.

**SECTION 4.08 Assessment Prorated:** When lots are purchased from third parties (not from the Declarant) during the year, then the maintenance assessment shall be pro-rated to the date of closing between the buyer and seller or as otherwise provided by the Board, upon closing or completion of said purchase.

**SECTION 4.09 Transfer Fee**

1. To provide additional funds for payment of the operating expenses or capital improvements of the Association, which will in turn insure to the benefit of all owners, there is hereby imposed on all Lots (with or without improvements) the following restriction and obligation: Beginning with the initial conveyance of a homesite from Declarant to the initial owner, there shall be imposed on each subsequent purchaser of the Lot, the obligation to pay to the Association, a transfer fee in the amount of one-half (1/2%) percent of the purchase price paid upon transfer of ownership of a homesite and/or improvements thereon, by sale or trade from one entity to another. The transfer fee is imposed, not as a penalty and not as a tax, but as a means of supplementing the Assessments provided for in this Declaration. The purchase price shall be the actual money paid for the property or in case of a trade, the fair market value of the property. One-half of the Transfer Fee (1/4%) shall be the Seller's responsibility and one half (1/4%) shall be the Buyer's responsibility.

2. **Exclusions:** The Transfer Fee shall not apply to any of the following, except to the extent that they are used for the purpose of avoiding the Transfer Fee:

- (i) Any transfer to the United States, or any agency or instrumentality thereof, the State of Texas, any county, city, municipality, district or other political subdivision of the State.
- (ii) Any transfer from or to a Village at High Meadow Ranch homeowner that results in that homeowner paying more than one-half (1/2%) percent lifetime Transfer Fee on one of his/her homes: **EXCEPTIONS:**

a. Builders are not included in this exclusion and are required to pay their required portion.

b. Each transfer results in 1/4% of sales price credited to lifetime transfer fee.

(iii) Any transfer, whether outright or in trust, that is for the benefit of the transferor or his or her relatives, but only if there is no more than nominal consideration for the transfer. For the purposes of this exclusion, the relatives of a transferor shall include all lineal descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion. For the purposes of this exclusion, a distribution from a trust shall be treated as a transfer made by the grantors of the trust, in the proportions of their respective total contributions to the trust.

(iii) Any transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership, except to the extent that additional consideration is paid in connection therewith.

(iv) Any transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including transfers in connection with foreclosure of a deed of trust or mortgage or transfers in connection with a deed given in lieu of foreclosure.

**SECTION 4.10 Owner's Personal Obligation for Payment of Assessments:** All assessments provided for herein shall be the personal and individual debt of the owner of the property covered by such assessments. No owner may exempt himself from liability for such assessments. In the event of default in the payment of any such assessment, the owner of the property shall be obligated to pay such penalty fees as may be established by the Association, along with interest, at the rate established by the Association up to the maximum rate allowed by law, on the amount of the assessment from the due date thereof, together with all costs and expenses of collection, including attorneys' fees. No Member shall be personally liable for the payment of any assessment made or becoming due and payable after his ownership ceases, and the personal obligation for delinquent assessments shall not pass to successors in title unless specifically assumed by them.

**SECTION 4.11 Homestead Waiver:** Each owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Texas now in effect, or in effect from time to time hereafter.

**SECTION 4.12 Assessment Lien and Foreclosure:** All sums assessed in the manner provided for in this Article but unpaid, shall (together with penalty fees and interest as provided in Section 4.09 hereof, and the cost of collection, including attorney's fees as herein provided) thereupon become a continuing lien and charge on the property covered by such assessment, which shall bind such property in the hands of the owner, and his heirs, successors, personal representatives and assigns. The aforesaid lien shall be superior to all other liens and charges against the said property, except only for tax liens and all sums unpaid on any purchase money lien or deed of trust lien of record, securing in either instance sums borrowed for the

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purchase or improvement of the property in question, and shall specifically be prior to any declaration of homestead. The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Association. In any case the Association shall be made a party to any court proceedings to enforce any lien deemed to be superior to any assessment lien. To evidence the aforesaid assessment lien, the Association may (but shall not be required to) prepare a written notice of assessment lien including the name of the owner of the property covered by such lien and a description of the property. Such notice, if prepared, shall be signed by one of the officers of the Association and may be recorded in the office of the County Clerk of Montgomery County, Texas. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment become delinquent as set forth in Section 4.07 above and may be enforced by the foreclosure of the defaulting owner's property by the Association in like manner as a mortgage or deed of trust on real property subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the owner personally obligated to pay the assessment and/or for foreclosure of the aforesaid lien judicially. The Board is hereby authorized to appoint its attorney or any Director of the Association as Trustee for the purpose of conducting such power of sale foreclosure. Notwithstanding, anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of a claim of lien pursuant to this Section 4.11, whether judicially, by power of sale, or otherwise, until the expiration of ten (10) days after Registered Notice, as defined in Section 1.17, has been given to the owner whose homesite is described in such claim of lien. In any foreclosure proceeding, whether judicial or not judicial, the owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred along with any penalty fees and interest accrued. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same. Each Member hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

**SECTION 4.12 Release of Lien:** Upon (i) the timely curing of any default for which a notice of a claim of lien was filed by the Board, (ii) the payment of all sums secured by the lien created by the recordation of such claim of lien, and (iii) the payment of a reasonable fee as determined by the Board to cover the costs of preparing and recording a release, the Board shall file and record an appropriate release of such claim of lien in the Office of the County Clerk of Montgomery County, Texas. No owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by non-use or abandonment of his Lot.

**SECTION 4.13 Certificate of Account:** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified have been paid or the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same. Upon the written request of any mortgagee holding a prior lien on any part of the Properties, the Association shall report to said mortgagee any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.

**SECTION 4.14 Foreclosure by Declarant:** It is specifically stated and agreed that any homesite sold to persons or entities by the Declarant by deed or deed with lien and note,

or other instrument and the purchaser defaults in the contract or note payments in any manner and said homesite is repossessed, foreclosed, or such contract canceled by Declarant, its successors or assigns, the Association will release its right to collect the past due maintenance charges, assessments, and penalties on such Lots from the Declarant and the homesite shall revert to ownership of the Declarant subject to the Declarant Assessment provided for in Section 4.06-B. Nothing herein contained shall relieve the purchaser in default from whom the homesite was repossessed from his obligation to pay such delinquent charges, assessments, and penalties to the Association.

**SECTION 4.15 Foreclosure by Lien:** Any foreclosure of any superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through Court proceedings in which the respective concerned Association has been made a party, shall cut off and extinguish the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosures shall free any homesite from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

**SECTION 4.16 Exempt Property:** The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- A. All Common Areas as defined in Section 1.19 herein.
- B. Any other areas or properties which the Board, in its good faith judgment, may specifically exempt for the benefit of the Association, its Members or the general development plan of the subdivision.

## ARTICLE V

## ARCHITECTURAL CONTROL COMMITTEE

**SECTION 5.01 Designation of Committee:** The Association shall have an Architectural Control Committee, (ACC) which shall consist of a Chairperson who shall be a member of the Board and at least four (4) Members who shall be approved by the Board of Directors of the Association. Until the Class B membership shall be converted to Class A membership under the terms of Section 3.03, the appointment of the members of the ACC must be approved by the Declarant, (unless such right is specifically waived by written notice to the Association) and any and all members of such Committee may be removed by the Board of Directors and/or the Declarant without cause. After such date, the Board of Directors shall have the exclusive right and power at any time and from time to time to create and fill vacancies on the Architectural Control Committee, providing, however, that no ACC member shall serve more than three (3) consecutive years after which that member must take at least one (1) year off. Husbands and wives may not succeed each other nor may two (2) members of one (1) family serve concurrently.

**SECTION 5.02 Meetings of the Architectural Control Committee:** The ACC shall meet from time to time as necessary to perform its duties hereunder. The ACC may, from time to time, by resolution unanimously adopted in writing, designate one or more of the Members of the ACC to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 5.08 of this Article. Upon such designation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or

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disapproval by the entire Committee. In the absence of such designation, the vote of a majority of the Members of the ACC shall constitute an act of the Committee and shall be final, conclusive and binding.

#### **SECTION 5.03 Function of Architectural Control**

**Committee:** No improvement, as that term is hereinafter defined, shall be erected, constructed, placed, altered (by addition or deletion), maintained, or permitted to remain on any portion of the Subdivision until plans and specifications, in any such form and detail as the ACC may deem necessary according to the published "Procedures for Approval" described in Section 5.04-B, shall have been submitted to and approved in writing by such Committee. The ACC shall have the power to employ professional consultants to assist it in discharging its duties. In addition, the ACC shall be responsible for monitoring the compliance of all of the owners with the provisions of this Declaration. All actions, interpretations or decisions of the ACC shall be final and binding subject only to Appeal by the Member or other party to the Board as provided for in Section 5.13.

#### **SECTION 5.04 Application Procedures:**

##### **A. GENERAL PROCEDURES FOR ANY ADDITION OR CHANGE:**

1. Each homesite owner will submit his proposal for any addition, alteration or improvement, in writing, to the ACC at the address of the principal place of business of the Association unless otherwise provided for. The applicant shall use a Request for Review Form containing all the materials and information defined in the published "Procedures for Approval". The proposal will contain a description of the project, including the height, width, length, size, shape, color, materials, and location of the proposed improvement. Photographs or sketches of similar completed projects will aid in the consideration. If the alteration affects the existing drainage pattern, the proposed drainage pattern must be included. The proposal should include a letter describing the proposed addition or alterations. The proposal shall be checked for specific conformance to the restrictions defined in Articles VI, VII, and VIII of this Declaration. Requests not in conformance will be automatically denied unless a specific request for variance is made by the owner.
2. Oral requests will not be considered.
3. Each alteration or addition must be specifically approved even though the intended alteration or improvement conforms to the Declaration, and even when a similar or substantially identical alteration or addition has been previously approved.
4. The applicant shall be informed in writing of the decision.
5. If the applicant fails to receive a reply within sixty (60) days, from the date of the written "Receipt of Plans" issued by the ACC, the request shall be considered to have been approved.
6. If a proposal is rejected, the reason(s) for disapproval shall be stated as part of the written decision.
7. The applicant is free to request reconsideration, if new or additional

information which might clarify the request or demonstrate its acceptability can be provided.

8. All plans, specifications and other materials submitted shall become the property of the ACC and will not be returned. All of the items submitted along with a copy of the Requests for Review will be filed according to the homesite number, along with the written decision and a statement of action taken, if any.
9. In cases of new residential construction, the ACC shall be informed in writing upon completion of all construction and improvements required by this Declaration or the Governing Documents. The committee shall, within seven (7) days of the receipt of such notice, and such other information as is required for the issuance of a Certificate of Occupancy, inspect the property for determining compliance and providing a Certificate of Occupancy as required in Section 6.05, and approving connection to the water system according to Section 6.07.

##### **B. PROCEDURES FOR APPROVAL:**

The ACC shall make available to any person or entity, upon their request, a copy of the "Procedures for Approval:" which shall (1) restate the provisions in Subsection A as shown herein or as modified by the Committee, (2) define any other requirements, procedures, or construction standards adopted by the Committee, and (3) state any fee structure as provided in Subsection D below.

##### **C. CHANGES IN PROCEDURES:**

The ACC, subject to the approval of the Board of Directors, may change the procedures and requirements defined in Subsections A and B herein by recording such changes or new procedures in the Book of Resolutions and subsequently making available to all owners upon request a copy of the new "Procedures for Approval".

##### **D. CHARGES:**

The ACC shall have the right to establish reasonable minimal fees for its regular services, and or deposits to insure compliance. Said fees may be used to cover the costs of providing the services, including, but not limited to, research, copying of materials, etc. Any fees established will be subject to the approval of the Board of Directors and shall be noted in the Book of Resolutions. The fee structure shall be equitable to all Members and a statement of the fees will be made in the published "Procedures for Approval". In addition, after written notice to the submitting party, the Committee shall have the right to charge for reimbursement of any unusual expenses required or helpful in reviewing an application for approval, including but not limited to the expenses of hiring outside experts or counsel.

##### **E. BUILDER APPROVAL:**

Declarant and/or his assigns shall have the option to approve or disapprove all builders.

#### **SECTION 5.05 Definition of "Improvement":**

Improvement shall mean and include all buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, driveways, swimming pools, changes in any exterior color or

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shape, and any new exterior construction or exterior improvement which may not be included in any of the foregoing. It does not include garden, shrub or tree replacements, or any other normal replacement or repair which does not change exterior colors or exterior appearances. It does include both original improvements and all later changes and improvements.

**SECTION 5.06 *Basis of Approval:*** Approval of plans and specifications shall be based, among other things, on adequacy of site dimensions, structural design, conformity and harmony of external design and of location with respect to neighboring structures and sites, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of this Declaration.

**SECTION 5.07 *Minimum Construction Standards:*** The ACC may, from time to time, establish an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and the ACC shall not be bound thereby.

**SECTION 5.08 *Variances:*** Anything contained in this Article V or elsewhere in this Declaration to the contrary notwithstanding, the ACC is hereby authorized and empowered, at its sole and absolute discretion, to make and permit reasonable modifications of and deviations from any of the requirements of this Declaration relating to the type, kind, quantity, or quality of the building materials to be used in the construction of any building or improvement on any Subdivision homesite and of the size, shape and location of any such building or improvement when, in the sole and final judgment and opinion of the Committee, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Subdivision and its improvements as a whole. The ACC may require the submission to it of such documents and items (including as examples, but without limitation, written request for and description of the variances requested, plans, specifications, plot plans, and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for a variance. If the ACC shall approve such request for a variance, the ACC may evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the ACC to permit the variance, describing (when applicable) the conditions on which the variance has been approved (including as examples, but without limitation, the type of alternate materials to be permitted and alternate fence height approved or specifying the location, plans, and specifications applicable to an approved out building), and signed by a majority of the then members of the ACC. If such variances are granted, no violation of the covenants, conditions, and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the owner's obligation to comply with all governmental laws and regulations affecting his use of the premises. Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval from the ACC; or (b) failure by the ACC to respond to the request for variance. The ACC shall have no authority to approve any variance except as expressly provided in this Declaration.

**SECTION 5.09 *Failure of the Committee to Act:*** In the event said ACC fails to approve or disapprove any plans and specifications, other than variances, within sixty (60) days after said plans and specifications have been submitted to it, and acknowledged by a written "Receipt of Plans", approval will not be required and the provisions of this Article will be deemed to have been fully complied with; provided, however, that the failure of the ACC to approve or disapprove such plans and specifications within such sixty (60) day period shall not operate to permit any structure to be commenced, erected, placed, constructed, or maintained on any homesite in the Subdivision in a manner inconsistent with any provision of this Declaration. EXCEPT that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances specifically reserved to Declarant in Article VI hereof. If plans and specifications are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

**SECTION 5.10 *Limitation of Liability:*** Neither the Declarant, the Association, the ACC, nor any of the Members of such committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any owner of land affected by this Declaration by reason of mistake of judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval, or failure to approve or to disapprove any plans and specifications.

**SECTION 5.11 *No Warranty Implied:*** The approval or lack of disapproval by the ACC shall not be deemed to constitute any warranty or representation by such Committee including, without limitation, any warranty or representation relating to fitness, design, or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations.

**SECTION 5.12 *Procedures for Monitoring Architectural Compliance and Compliance with this Declaration:***

**A. INSPECTION:**

1. The ACC may periodically survey the Properties for compliance with architectural standards and the provisions of this Declaration.
2. The Committee shall inspect Lots undergoing improvement at completion, notify the owner in writing of violations, if any, and, when satisfied that the conditions set forth in the approved application and the provisions of this Declaration have been met, issue a Certificate of Occupancy as provided for in Section 6.05 if such is required.

**B. ALLEGED VIOLATIONS:**

1. All reports of alleged violations must be submitted in writing to the Architectural Control Committee.
2. The Chairperson will appoint one member to investigate the allegation. If no violation is discovered, the complainant will be informed in writing. If it appears that there is a violation, the ACC will determine the appropriate disposition of the matter after the validity of the violation has been established according to the provisions of Section 9.02.
3. In all cases, the name(s) of the homesite owner(s) responsible for the alleged violations shall be kept confidential until the violation has been established.

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4. In all cases the name(s) of the complainant(s) shall be kept confidential unless he (they) should decide to speak at any hearing according to the provisions of Section 9.02.

**SECTION 5.13 Appeals:** Any Member or other individual or entity directly affected by a decision of the Architectural Control Committee may appeal in writing to the Board of Directors of the Association, provided the written appeal shall be received by the Board not more than thirty (30) days following the final written decision of the ACC. The Board shall submit such appeal to the ACC for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written approval or disapproval of the Ac's decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

## ARTICLE VI

### PROTECTIVE COVENANTS

**SECTION 6.01 Use Restrictions:** Homesites in THE VILLAGE AT HIGH MEADOW are intended for single family residential purposes only, as further described herein, and are additionally subject to all of the restrictions of this Section.

#### A. RESIDENTIAL ONLY:

Each Lot, (including land and improvements) shall be used and occupied for single family residential purposes only. No owner or other occupant shall use or occupy his homesite, or permit the same of any part thereof, to be used or occupied, for any purpose other than as a private single family residence for the owner, his family, parents of the owner and/or his children and their spouses, or his tenant and their families and domestic servants (and their families) employed on the premises. As used herein, the term "single family residential purpose" shall be deemed to prohibit specifically, but without limitation, the use of Lots for multiple or duplex apartments. This shall not preclude the main residential structure from being leased or rented in its entirety as a single residence to one family or person, providing that a new Certificate of Occupancy be obtained before any tenant may occupy said residence.

#### B. NO COMMERCIAL:

No profession, business or commercial activity which is in any way evident from the exterior of any building or which entails visitation by the general public shall be allowed on any homesite. No business or commercial structure of any kind or nature whatsoever shall be built on any portion of the property and no structure, facility, or area on any homesite shall be used for mechanical repair or construction work, manufacturing or production of any product except for repairing one's own vehicles in an area not visible from the road or neighboring properties, or purely for such purposes as would be considered a hobby and not a primary business regardless of whether such hobby shall be done for purposes of profit. This provision will not prohibit owner from having tractors or trucks in an enclosed area or totally shielded from the road. This provision will not prohibit any homeowner from maintaining his/her office in the home or providing

such things as sewing or piano lessons or selling such items as cosmetics or household cleaners from the home providing, however, that there should be no visual evidence of any such activity from the exterior of the home, no signage of any kind, no advertising to come to the home and no noise made as a result of the activity. In any case, all activities shall be carried out in a manner and/or in a facility keeping with the intent that said homesite be kept in a neat and presentable manner. Timber production, ranching and farming is allowed providing no other deed restrictions are violated.

#### C. TEMPORARY AND OTHER STRUCTURES:

1. **TEMPORARY STRUCTURES:** No structure of a temporary character; trailer, mobile home, tent, or shack shall be placed on any homesite, either temporarily or permanently and no previously used residence, house, garage, or other structure appurtenant thereto, shall be moved upon any homesite from another location.

2. **SALES AND CONSTRUCTION OFFICES:**

Declarant reserves the exclusive right to erect, place and maintain and to permit builders to erect, place and maintain such facilities in and upon the Subdivision as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of homesites, construction and selling of residences, and construction of other improvements in the Subdivision. Such facilities may include, but not necessarily be limited to, a temporary office, storage area, signs, portable toilet facilities and sales office. Declarant and builders shall also have the temporary right to use a residence situated on a homesite as a temporary office or model home during the period of and in connection with construction and sales operations in the Subdivision, but in no event shall a builder have such right for a period in excess of one (1) year from the date of substantial completion of his last residence in the Subdivision.

3. **PERMANENT OUTBUILDINGS:**

Barns, equipment and/or storage buildings are permitted providing that they:

- a. Are located a minimum of twenty-five (25) feet behind the back line of the residence.
- b. Shall at no time be used as a residence.
- c. Are not a temporary or pre-manufactured building, or a move-on building.
- d. Meet construction standards of this declaration or the Community Association standards for outbuildings.
- e. Have an architectural style similar to or complimentary to the main residence.
- f. Have a minimum pitch of 4 X 12 on the roofline.
- g. Have a minimum of two (2) feet overhang on the eaves and a minimum of one (1) foot overhang on the gable.
- h. May not be constructed prior to construction of the main residence unless the out building is not visible from the road, the barn is on four (4) acres or more, and construction of the



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main residence will begin within two (2) years.

- i. Are approved by the Architectural Control Committee.
- j. Exterior finish is compatible with main residence or painted in earth tones. Metal buildings must have bonded coating warranted for a minimum of twenty (20) years from fading, chipping or peeling.

**D. SIGNS:**

Except for signs, billboards or other advertising devices displayed by Declarant for so long as Declarant (or any successors or assigns of Declarant to whom the rights of Declarant under this Section are expressly transferred) shall own any portion of the Subdivision, no sign of any kind shall be displayed to the public view on any homesite or the Common Areas, except:

- 1. Builders may display one (1) sign of not more than sixteen (16) square feet to advertise the residential structure situated thereon for sale during the sales and/or construction period; and
- 2. No "For Sale" signs are permitted on unimproved homesites EXCEPT the Declarant's signs or signs approved by the Declarant. Any owner, or owner's representative may display one (1) sign of not more than nine (9) square feet on a homesite improved with a residential structure to advertise the residence for sale or rent.
  - a. The Declarant and/or his assigns may allow builders to place "For Sale" signs on a homesite prior to commencement of construction.
- 3. The Association may display such signs as it may deem necessary for the efficient use of the Common Areas or beneficial for the Members.
- 4. Declarant or THE VILLAGE AT HIGH MEADOW Community Association specifically is granted the right to enter on any property to remove signs not permitted by these Covenants.

**E. GARBAGE AND REFUSE STORAGE AND DISPOSAL:**

All Lots and Common Areas shall at all times be kept in a healthful, sanitary and attractive condition. No homesite or any part of the Common Areas 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 constructed of metal, plastic or masonry materials, with tightly fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view except as necessary for garbage pick-up days. No homesite shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction or improvements erected on any homesite may be placed upon such homesite 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.

**F. REMOVAL OF DIRT:**

The digging of dirt or the removal of any dirt from any homesite or from any portion of the Common Areas is prohibited, except by the Declarant and except as necessary in conjunction with landscaping or construction of improvements thereon, and subject to the Approval of the Architectural Control Committee.

**G. RE-PLATTING:**

No re-platting of this subdivision is allowed except by the Declarant, his heirs and/or assigns.

**H. CONTRACT RELEASE BY DECLARANT:**

No owner shall commence construction upon any homesite on which the Declarant has any lien or security interest without the express written approval of the Declarant.

**I. WINDOW AIR CONDITIONERS:**

No window or wall type air conditioners shall be permitted to be used, erected, placed, or maintained on or in any building in any part of the Subdivision, provided that the Architectural Control Committee may, at its discretion, permit window or wall type air conditioners to be installed if such unit, when installed, shall not be easily visible from a street, such permission to be granted in writing.

**J. PROTECTION OF WATER SYSTEM:**

The owner of each homesite is solely responsible for the protection of all portions of the water system upon his Lot. The location of the water tap and water meter shall be marked by the homesite owner implanting two posts, painted white, and with twenty-four (24) inches showing above ground with one post being placed on each side of said water connection(s). The posts shall remain prominently showing until all construction on the homesite is complete and the lawn has been established. Repair of damages to the water system upon an owner's homesite caused by negligence or willful misconduct of the owner, his family, guests or representatives shall (at the option of the utility company) be the homesite owner's expense.

**K. PROTECTION OF PROPERTY PINS:**

All property pins shall be initially installed by the Declarant. Subsequent to the purchase of any Lot, the owner shall be responsible for placing visible markers or posts immediately adjacent to all property pins he wishes to protect. Any pins subsequently damaged or removed after homesite has been purchased shall be replaced at the owner's expense if the owner did not properly mark them with visible posts.

**L. FIREARMS AND FIREWORKS:**

The use or discharge of firearms, firecrackers or other fireworks in the Subdivision is prohibited.

**M. ANTENNAS AND SATELLITE DISHES:**

Any antenna, satellite dishes or appurtenant structure shall be located behind the ridge line of the residence or in the backyard and shielded from view. Any antenna which will be more than fifteen (15) feet taller than the ridge line of the residence and will be easily visible from any street must be approved by the Architectural Control Committee.



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**N. EXTERIOR APPEARANCES:**

Each owner shall keep the exterior appearance of his residence in a neat and attractive manner. In no case shall windows be covered by sheets, aluminum, foil or other unsightly articles. Any interiors readily visible from any street shall be kept in a reasonable attractive manner or be hidden by decorative draperies.

**O. TENANT'S RIGHTS AND RESPONSIBILITIES:**

All Lessees or Tenants shall be jointly responsible with the owner for abiding by all of the provisions of the Governing Documents. Failure to comply after the enforcement procedure outlined in Section 9.02 B-E shall give the Association the right to evict said Lessee or Tenant. The owner shall be jointly responsible with the Tenants for any costs or fines.

**SECTION 6.02 Vehicles and Unsightly Articles:**

**A. STORAGE:**

No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any homesite so as to be visible from adjoining property or public or private streets. Without limiting the generality of the foregoing, boats, RV's wagons, motor scooter/bikes, golf carts, trailers (with or without wheels), tractors and garden maintenance equipment shall be parked or stored at all times, except when in actual use, in enclosed areas totally shielded from public view of the road or view of adjoining properties either in an out-building, in the garage, or behind a fence approved by the ACC. No vehicle of any type shall be parked on the street in front of the Lot. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Subdivision, including the assessment of charges to owners who violate or whose invitees violate such rules, and the right to tow away any vehicles parked or stored in violation of said rules and regulations.

**B. REPAIR:**

No repair work, dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway or other portion of any Common Areas. No repair work shall be performed on automobiles or other vehicles in driveways, or visible from the street except such work that is of a temporary nature. Any regularly recurring repair or dismantling work shall take place within a garage or other building screened from public view.

**C. MOTOR VEHICLES:**

No unlicensed motor vehicles, other than those specifically and individually allowed in writing to the owner thereof by the Board of Directors, shall be operated within the Subdivision. Such permission form shall be in the possession of the operator of said vehicle at all times, and shall be shown without question to anyone requesting to see it. No motor bikes, motorcycles, motor scooters, "go-carts", 3 or 4 wheelers, or other similar vehicles shall be permitted to be operated in the Subdivision, if, in the sole judgment of the Board of Directors of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance or annoyance.

**D. PARKING**

1. **Vehicle Parking:** Vehicles shall be parked only in the garage or driveway. No vehicles shall be parked in the yard. No garage shall be enclosed or modified without ACC approval. Garage doors visible from any street shall remain closed except during ingress or egress or when actively being used.
2. **RV Parking:**
  - i. **HOMEOWNER'S RV:** Home owners may park their RV in their drive for a maximum of two (2) days to pack or unpack before or after going on a trip.
  - ii. **VISITING RV:** When visitors or relatives from out of town come with an RV, it may be parked in the driveway for a maximum of ten (10) days per year.

**SECTION 6.03 Animals:** In addition to the provisions set out below, the Board shall have the right and power to adopt rules and regulations, according to the provisions of Section 3.07-A.5, pertaining to the keeping of any insects, reptiles, animals, livestock, or poultry within the Subdivision, and to establish such fees, fines, or penalties as necessary to carry out all such rules and regulations.

**A. FARM ANIMALS:**

No large farm animals shall be permitted.

**B. PETS:**

All dogs shall be kept in a fenced area or secured by chain or leash and no animal will be allowed to roam or run about at large. No animals shall be allowed in or around any Common Facilities. Every female dog while in heat shall be confined in a building or secure enclosure by its owner in such a manner that she will not be in contact with another dog (except for intentional breeding purposes) nor create a nuisance by attracting other animals. Furthermore, all dogs and cats shall wear a collar at all times exhibiting a current rabies vaccination tag issued by a licensed veterinarian in compliance with the regulations of Montgomery County, along with an identification tag indicating the animal's name and the owner's name, address, and phone number. Said identification tag may, at the option of the Board, be designated to be of a defined size, shape or color which shall be common to the Subdivision for purposes of readily identifying stray animals.

**C. NUISANCE:**

Nothing herein contained shall ever be construed so as to permit the keeping of animals or pets to become an unreasonable annoyance or be obnoxious to the occupants or owners of neighboring property, or to become a hazard to the health, welfare and well-being of the community, and all animal owners are responsible for any property damage, mess, injury, and disturbances their pet(s) may cause or inflict. Said determination shall rest completely with the Board at their discretion, and the Board shall have the right and power to take any action necessary for the enforcement of this Section or the protection of the Members including banishment of any animal or pet from the Subdivision. Any dogs or cats not wearing an identification tag shall be considered a stray and

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shall be dealt with in such manner as the Board shall determine, including, but not limited to, the destruction of said animal by any appropriate means, and any such action will be deemed to be taken in good faith for the benefit of the residents and no liability shall exist because of such action.

#### **SECTION 6.04 *Resale of Lots:***

##### **A. REFERENCE TO DECLARATION:**

Reference shall be made to this Declaration in any instrument transferring title to any Lot.

##### **B. NOTICE OF SALE:**

The Board of Directors and the Declarant shall be notified of any conveyance of a homesite by any manner. Said notice shall indicate the homesite number, date and type of conveyance, new owner's name, address and phone number, and any other such information as may be required for the issuance of a Certificate of Occupancy which may be required at the option of the Architectural Control Committee before a new resident may move into the residence upon said Lot.

##### **C. ESTOPPEL CERTIFICATE:**

The Board, upon receipt of the above information, shall prepare an Estoppel certificate which shall set forth any assessments and charges due upon such home sit eat time of conveyance and certify as to whether or not there are violations of the Governing Documents remaining on the homesite as of the date of preparation of such certificate and further stating the remaining assessment balance, if any, due from the buyer for the balance of the fiscal year. This certificate shall be delivered to the place of closing, and the outstanding assessments, if any, and a reasonable charge to cover the cost of providing such certificate shall be deducted from the seller's account at the closing and transmitted directly to the Association.

**SECTION 6.05 *Certificate of Occupancy:*** No homesite shall be used for residential purposes in any manner; either initially, or subsequent to resale or leasing at the option of the ACC, until an inspection of the homesite has been made by the Architectural Control Committee to ascertain that all exterior improvements of the main residence, garage, driveways, culvert crossings, lighting, or other construction shall be completed and that the condition of the homesite is in compliance with the provisions of the Governing Documents. Said inspection by the ACC shall take place within seven (7) days of the receipt of written notice of completion of construction and/or such other information as is required for the issuance of a Certificate of Occupancy. Within three (3) days of the inspection, the ACC shall:

- A. In the case of a satisfactory inspection, issue a Certificate of Occupancy, or
- B. In the case of unsatisfactory inspection; issue a Certificate of Occupancy with non-conformities. Submission plan refund will not be authorized until listed non-conformances have been corrected.

No warranty of the fitness of workmanship or materials, and no waiver of the Association's rights to enforce provisions of the Governing Documents shall be implied by the issuance of said Certificate of Occupancy.

**SECTION 6.06 *Liability for Damages:*** Each homesite owner, his family, guests, or his builders, subcontractors and agents shall be liable, both jointly and severally, for any damages to any part of the Subdivision by them or their agents by reason of the negligent or intentional misconduct of such

person or entity. This shall include, without limitation, dumping of materials or concrete tailings in any area not specifically designated for that purpose by the Declarant or the Association; damages to ditches, roads, culverts, etc. by trucks or other vehicles; and damages to any other vegetation or improvements anywhere within the Subdivision. The dumping of materials and concrete tailings in any ditches is specifically prohibited. The correction of any damages applicable under this Section shall be handled the same as the enforcement of maintenance on any homesite according to the provisions of Section 9.02 with any charges arising herefrom becoming a lien upon the responsible owner's homesite with the same attributes of an assessment lien set forth in IV.

**SECTION 6.07 *Water Service:*** No water for purposes of residential usage shall be supplied or allowed to any homesite prior to the issuance of the original Certificate of Occupancy. It being the intention that no residence shall be habitable until all construction requirements or restrictions are fully complied with.

**SECTION 6.08 *Nuisance:*** Noxious, destructive, offensive activities, or any activity constituting a nuisance shall not be carried on in any homesite or in the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each owner shall refrain from any act or use of his or her homesite that could cause unreasonable embarrassment, discomfort, or annoyance to other owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

## **ARTICLE VII**

### **HOMESITE IMPROVEMENTS**

**SECTION 7.01 *Minimum Setback Lines:*** No structure of any kind and no part thereof shall be placed within the setback lines adjacent to any street as per the recorded plat. Setback lines as recorded are measured from the property pins, not from the edge of the asphalt.

1. Rear property setback line – ten (10) feet
2. Side property setback line – eight (8) feet.

#### **A. EXCEPTION:**

If one owner owns two or more adjacent Lots, and desires to construct one residence on such Lots, construction of which residence would violate the interior homesite set-back lines provided herein, the Architectural Control Committee may waive, in writing, said interior homesite lines as to such homesite for the purpose of determining the set back lines and other restrictions applicable to such Lots and such residence provided, however, that there are existing easements on the plat or required by the Declarant. Any Lots so combined shall be treated as one homesite by the owners and shall be conveyed as such. The following improvements are expressly EXCLUDED from these set back restrictions:

1. Structures below and covered by the ground.
2. Steps, walks, patios, swimming pools, driveways and curbing.
3. Planters, walls, fences or hedges, not to exceed nine (9) feet in height. (Walls and fences not to exceed six (6) feet in height.)
4. Landscaping.

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5. Any other improvements approved in writing by the Architectural Control Committee. Roofed structures, other than the following, may in no event be approved:
  - (a) guard houses
  - (b) gate houses
  - (c) swimming pool equipment, houses and cabanas
  - (d) greenhouses

**B. FRONT OF LOT:**

For the purpose of these restrictions, the front of each homesite shall coincide with and be the property line abutting the street of the Lot's address. Unless otherwise approved in writing by the Architectural Control Committee, each main residence building shall face the front of the Lot.

**SECTION 7.02 Minimum Square Footage:** Any residence constructed on said property shall have minimum square feet of living area exclusive of the area of attached garages, non-airconditioned porches, patios, breezeways, or other appurtenances or appendages of 2500 square feet.

**SECTION 7.03 Minimum Width:** Because this is a large homesite development, it is the intent of the Declarant to have the width of the house as wide as possible so as to have a very spacious look from the front. Therefore, no residence shall be less than seventy-five (75) feet in width including the garage (whether the garage is attached or detached), not including a porte-cochere or breezeway between the house and garage, unless the width of the homesite does not provide for seventy-five (75) feet between building lines. In such case the home shall be within one (1) foot of the width the building lines permit.

**SECTION 7.04 Traffic Areas:** All driveways or parking areas used for vehicles shall be constructed of reinforced concrete.

**SECTION 7.05 Walls and Fences:**

**A. SIGHT LINES:**

No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain in any corner homesite within the triangular area formed by the street easement lines and a line connecting them at points twenty-five (25) feet from the intersection of the street easement lines.

**B. FENCE LOCATION:**

No fence, wall or structure other than decorative, landscape plantings or drive entries shall be nearer to the front homesite line than the front walls of the dwelling existing on such homesite. Any continuous lineal structure more than one (1) foot high shall be considered a fence and subject to review by the Architectural Control Committee.

1. **SWIMMING POOLS:** All swimming pools must be enclosed as per all governmental regulations.

**C. FENCE MATERIALS:** All fences or walls shall be decorative wood, masonry, wrought iron or green vinyl coated chain link as approved by the Architectural Control Committee. Wooden frame or split rail style fences may be backed with vinyl coated chain link fencing as necessary to confine small animals. All wooden fences shall be constructed of cedar, redwood, or treated or painted lumber. All fences shall be maintained in a fully

repaired, neat and presentable manner. No fences shall be higher than six (6) feet.

**SECTION 7.06 Landscaping:** Landscaping work and planting in general do not require the approval of the Architectural Control Committee. Prior to occupying any residence, the lawn areas surrounding the building shall be cleaned of all debris and construction materials pertaining to work remaining, shall be stored within the garage or out of view from the road. The lawn areas shall be shaped and smoothed to remove the scarification of construction and to provide an acceptable seed bed for grass and within six (6) months of the issuance of the original Certificate of Occupancy, the owner shall complete the installation of grass (seed or sod) and shrubbery in the yard area and foliage to screen the foundation of the residence.

**SECTION 7.07 Septic Systems:** Each homesite owner will install his own septic system in accordance with all governmental regulations. Neither the Homeowner's Association nor the Declarant warrants the workability of any septic system.

**SECTION 7.08 Water:** On the portion of THE VILLAGE AT HIGH MEADOW that is serviced by a private utility company for water no potable water wells shall be dug on any Lot. Private, non-potable wells may be used for irrigation, landscaping, lake maintenance, pools, etc., providing they are not connected to the main home. On the portion of THE VILLAGE AT HIGH MEADOW that is not serviced by a utility company, potable wells will be allowed for all water needs. All wells must have: 1) ACC approval prior to being drilled; 2) be cemented in; 3) be logged and the logging records are made available to the developer and private water system operator; 4) be placed on the property so that the required sanitary easement does not encroach on any other lot. (Unless approved by the Declarant or Community Association); and 5) be in accordance with all governmental regulations.

**SECTION 7.09 Culverts and Drainage:**

**A. LIABILITY:**

All entries to any homesite shall be across an approved culvert crossing. In no case shall a ditch be crossed on a regular basis until such culvert crossing is constructed. Any road damage as a result of crossing ditches shall be the liability of the owner of the homesite adjacent to such damage.

**B. CULVERT CROSSINGS:**

All culvert crossings shall be constructed exactly according to detailed plans and specifications designated by and available from the Architectural Control Committee and shall contain culvert pipe sized to the specifications of the County. Said culvert crossing shall consist of a minimum of twenty (20) feet of culvert pipe covered by concrete and finished on both ends with reinforced concrete which shall run from the shoulder of the road to the shoulder of the ditch and shall extend at least six (6) inches below the normal grade of the ditch and three (3) inches above the level of the drive along both ends of the crossing.

**C. DRAINAGE:**

No owner may block or impede the flow of any drainage ditch whether natural or man made including, but not limited to, roadway ditches and drainage easement. All culverts shall be installed with sufficient depth to prevent erosion. Each owner shall be responsible for maintaining all drainage ways, (including but not limited to the planting and mowing of grass to the edge of the

roadway, removal of debris on the road ditches adjacent to his lot) natural and man made, planting grass, stopping erosion, etc. and culverts on or adjacent to his homesite in a manner that will encourage the free flowing of water without erosion, including but not limited to the planting and mowing of grass, removal of debris or sediment, and clearing of any obstructions that may develop in said drainage ways or culvert. The Declarant or the Association may remove or repair any culverts, culvert crossings, or other obstructions or impediments; or repair damage from improperly placed culverts at the homesite owner's expense according to the provisions of Article IX.

**D. SLAB ELEVATION:**

The property owner is responsible to determine the proper slab elevation to prevent any flooding of the residence. Particular attention should be paid to the following:

1. **100 Year Flood Plain:** The slab should be sufficiently above the 100 year flood plain to prevent any possibility of flooding. If the 100 year flood plain is on your property or nearby, a qualified engineer should verify the location of the 100 year flood plain and determine the proper elevation of the slab.
2. **Road Ways:** If the home is on the high side of a road, then the slab should be at least one (1) foot above the roadway to allow water to go over the road during severe storms and not damage the home.
3. **Drainage Ditches:** The slab should be sufficiently high so as to allow for overflow drainage ditches or sheet flow during severe storms. (We recommend a minimum of one (1) foot above ground level.

**SECTION 7.10 Mailbox:** Each homesite owner will provide for his own rural mailbox that conforms to the U. S. Postal Service requirements and shall be constructed, maintained and located according to the plans and specifications as required by the ACC. Mailboxes shall be constructed of masonry construction covered with brick, rock, tile, or stucco to compliment the house. No single post mailboxes are permitted.

**SECTION 7.11 Address Numerals:** All assigned address numbers shall be prominently displayed in a decorative manner within the approved mailbox structure. The address numbers shall be a minimum of five (5) inches in height and shall be located so that the lighting required in Section 7.12 shall make the address readily visible at night

**SECTION 7.12 Lighting:** Each homesite shall contain night lighting in conjunction with the address display according to plans and specifications designated or approved by the Architectural Control Committee. Said lighting or other lights adjacent to the streets shall automatically turn on every evening and off every morning. All such street lighting shall be kept in an operating condition.

## ARTICLE VIII

### CONSTRUCTION STANDARDS

**SECTION 8.01 General:** All buildings or structures within the Subdivision shall meet the following requirements except as otherwise modified by this Declaration or the Architectural Control Committee.

**A. NEW CONSTRUCTION:**

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All buildings or structures placed upon any homesite in the Subdivision shall be constructed of all new materials excepting for used brick or other decorative accessories that are commonly used in the construction of new residences. All exterior material other than those which are not commonly decorated or painted, shall be stained or painted with at least two (2) coats of paint.

**B. ROOFING:**

All roofs shall be constructed of (1) "top of the line", two hundred forty (240) pound (or equivalent) heavyweight, accented shadow-line composition roof in an earthen tone color (2) wood shingles, (3) tile or (4) metal roofs (Not corrugated). In no case shall *lightweight or flat composition shingles* be allowed on any structure. Roof pitch shall be at least 6 on 12.

**C. MASONRY:**

There shall be NO minimum percentage of masonry imposed upon the construction. The approval of all materials and appearances is at the sole discretion of the Architectural Control Committee.

**D. MATERIALS ON LOT:**

No construction materials shall be stored upon any homesite prior to the commencement of construction. Prior to issuance of a "Certificate of Occupancy" the homesite shall be cleaned according to the provisions of Section 7.05.

**E. CONSTRUCTION STANDARD:**

In order to insure value and quality in the Development, the Architectural Control Committee may adopt a Minimum Building or Construction Standards Code. Prior to developing plans and specifications, each homesite owner should get a copy of said Code, if adopted. Inspections during construction may be required in order to facilitate compliance. Said building code must be approved by the Declarant prior to being adopted.

**F. TIME OF COMPLETION:**

All construction required for compliance with this Declaration and issuance of a Certificate of Occupancy, including but not limited to the exterior of the residence, garage, and all structures appurtenant thereto, the culvert crossing, lighting, address display, driveways, and homesite grading; shall be completed not later than twelve (12) months following commencement of construction. For purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation is completed. No structure shall be occupied or used until the exterior construction thereof is completed and a Certificate of Occupancy is issued according to the provisions of Section 6.05. Using any structure prior to completion of all construction required for a Certificate of Occupancy shall be considered a violation of the restrictions and the Association may seek any relief necessary to force a timely completion including injunctive relief or the eviction of said residents until a Certificate of Occupancy is obtained. It is specifically established that failure to complete construction and apply for a Certificate of Occupancy within twelve (12) months from the commencement of construction shall be considered a violation of these restrictions

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and subject to, at the option of the Board, the fines and other remedies provided for in Section 12.04.

**G. BUILDER APPROVAL:**

See Article 5.04 E.

**SECTION 8.02 Garages:**

**A. TWO CAR MINIMUM:**

All residences must have an enclosed garage, architecturally similar to the residence. The garage must be at least a two-car garage and a concrete parking pad the same width as the garage and a minimum of twenty (20) feet in depth and shall be constructed immediately in front of the garage. Garages must be side or rear loading EXCEPT they may face the street if a portico or carport is in front of the garage that are architecturally similar or complimentary to the residence.

**B. USE:**

No garage shall be permitted to be enclosed for living or used for purposes other than storage of automobiles and other Common uses, unless another approved garage is built, and all garage doors shall be kept closed when not in specific use.

**SECTION 8.03 Servant's and/or Guest Quarters:**

Any servant's and/or guest quarters not structurally a part of the main residence shall be architecturally similar or complimentary to the residence.

**SECTION 8.04 Outbuildings:** All outbuildings other than the garage or servant's quarters shall be constructed or installed behind the back line of the residence. No unfinished tin or aluminum materials may be used in the construction of any outbuildings. All metal buildings not matching the residence in architectural design, materials, and color must be finished in basic earthtone colors to blend in with the surroundings and have a manufacturer's warranty with a minimum of twenty (20) years. See Section 6.01-C for additional details.

**SECTION 8.05 Swimming Pools:** Swimming pools must have the approval of the Architectural Control Committee before any work is undertaken. Permanent above ground-level swimming pools will not be approved. (See 7.05 B, 1)

**SECTION 8.06 Play Equipment:** Temporary semi-permanent children's play equipment such as sandboxes, temporary swimming pools having a depth of less than twenty four (24) inches, playhouses, and tents shall not require the approval of the Architectural Control Committee provided that such equipment is located behind the back line of the main residence. and is in good repair.

**SECTION 8.07 Exempt Property:** Notwithstanding any provision herein to the contrary, the Common Areas shall not be subject to or burdened by the building and use restrictions set forth in Articles VI, VII and VIII, except to the extent that same are made specifically applicable to the Common Areas.

**SECTION 8.08 Amendment of Articles VI, VII and VIII:** The Association, acting through the Board of Directors, shall have the right to amend, modify or abandon any of the provisions of Articles VI, VII and VIII provided that such changes shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration. Said change shall 1) prior to January 1, 2013, have the written approval of the Declarant, 2) be recorded in the Book of Resolutions, 3) be evidenced by Notice to all Members, and 4) become effective six (6) months after the date of Notice to the Members unless a "Petition for Referendum" signed by fifteen percent (15%) of the Members is received prior to the effective date. Should a properly signed "Petition of Referendum" be received prior to the effective date, the proposed changes will be

brought before the membership according to the provisions of Section 3.04-C with the assent of the majority of a Quorum of Members being considered as ratification of the proposed changes. Said changes shall become effective immediately upon ratification.

**ARTICLE IX**

**MAINTENANCE**

**SECTION 9.01 Duty of Maintenance:** Owners and occupants (including lessees) of any part of the Subdivision shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that homesite or portion of the Subdivision so owned or occupied, including buildings, improvements and grounds in connection therewith, in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to the following.

- A. Completion of all improvements and/or compliance with all of the requirements for a Certificate of Occupancy.
- B. Prompt removal of all litter, trash, refuse, and wastes.
- C. Prompt removal of any trees or vegetation inflicted with communicable diseases or parasites and dead or unsightly trees or vegetation.
- D. Regular mowing of all cleared areas.
- E. Tree and shrub pruning after completion of improvements.
- F. Keeping lawn and garden areas alive, free of tall weeds, and attractive.
- G. Watering.
- H. Keeping parking areas, driveways, roads, and drainage ways in good repair.
- I. Complying with all restrictions or requirements of this Declaration and the Governing Documents.

**SECTION 9.02 Enforcement:** If, in the opinion of the Association or the Declarant, any such owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association or Declarant may, but shall not be obligated to, cause such deficiency to be corrected as hereinafter set forth.

- A. For failure to keep a homesite mowed, or to remove dead or diseased tree, or for failure to remove rubbish or debris from a Lot; the owner shall be notified of such condition according to the provisions of Section 1.16. Such notice shall include: 1) a reasonable deadline date for performing said clean-up, and 2) a statement of what charges will be assessed by the Association for performing said service on behalf of the Association if not performed by the owner prior to the deadline date. Said charges may include not only the actual costs of performing said services, but also any special charges assessed according to Section 4.03-A and any billing fees required to collect said funds. The owner specifically acknowledges that it is not the Association's primary job to maintain individual lots and that there is a great deal of time and energy required by the Board to protect the appearance of the Subdivision whenever an individual fails to maintain his Lot. For all more serious instances of non-compliance or lack of maintenance, the Association shall proceed as follows:
- B. Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give registered Notice, as defined in Section 1.17, of deficiency to the owner which shall briefly describe

the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its powers under this section to a duly appointed committee of the Association.

- C. Such hearing shall be held not less than fifteen (15) nor more than thirty (30) days from the date of delivery of said notice.
- D. Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to such owner. If the Board or any such committee renders a decision against the owner, it shall further set a date by which the deficiency is to be corrected by the owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.
- E. Should any such person fail to fulfill this duty and responsibility within such period, then the Association or Declarant, as a common expense to be paid out of the Maintenance Fund, acting through its authorized agent or agents shall have the right and power, but not duty, to enter onto the premises and perform such construction, work, care, or maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The owners and occupants (including Lessees) of any part of the Subdivision on which such work is performed shall jointly and severally be liable for the cost of such work along with any fines set by the Association for failure of the owner to comply, and shall promptly reimburse the Association for such cost. If such owner or occupant shall fail to reimburse the Association within thirty (30) days after delivery of a statement for such work from the Association, then said indebtedness shall be a debt of all of said persons jointly and severally, and shall constitute a lien against that homesite on which said work was performed. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in Article IV above, which provisions are incorporated herein by reference, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure. The rights herein shall be in addition to any or all of the rights provided in Section 12.04 of this Declaration.

## ARTICLE X

### COMMON PROPERTIES

#### SECTION 10.01 *Members' Easements of Enjoyment:*

Subject to the provisions of Section 10.02, every Member shall have a common right and easement of enjoyment in and to Common Areas and Common Facilities in the Subdivision, and such right and easement shall be appurtenant to and shall pass with the title to each homesite in the Subdivision

**SECTION 10.02 *Extent of Members' Easements:*** The rights and easements of enjoyment created hereby shall be subject to the following:

#### A. FEES AND RULES:

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The right of the Association, in its discretion, to charge reasonable admission and other fees for the use of the recreational Common Areas, and to make, publish and enforce reasonable rules and regulations governing the use and enjoyment of the Common Areas and Facilities or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with, and observed by each Member. These rules and regulations may include provisions to govern and control the use of such Common Areas and Facilities by guests or invitees of Members, including, without limitation, the number of guests or invitees who may use such Common Areas and Facilities, or any part thereof, at the same time. The Association shall also have the right to establish a "Guest Membership" for use of the Common Areas.

#### B. NORMAL BUSINESS FUNCTIONS:

The right of the Association to carry on normal business functions according to the provisions of the Governing Documents.

#### C. SUSPENSION OF RIGHTS:

The right of the Association to suspend the voting rights of a Member and his rights to use any recreational Common Areas during the period he is in default in excess of thirty (30) days in the payment of any assessment against his homesite or person and to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published rules and regulations. The aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in this Declaration and any Supplemental Declarations or in its By-Laws or by law.

#### D. OTHER RESTRICTIONS:

The restrictions as to use of the Common Areas provided for elsewhere in the Governing Documents.

**SECTION 10.03 *Title to Common Areas:*** The Declarant may retain the legal title to the Common Areas and Common Facilities in the Subdivision until such time as it has completed improvements thereon, if any, and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until title to such Common Areas and Facilities has been conveyed to the Association by Declarant, the Association will maintain said Common Areas and Facilities to the extent of the Association's ability. If the Declarant does maintenance, repairs, upkeep or pays taxes on common property, then the Association will reimburse the Declarant to the best of its ability for said expense. Once title is passed to the Association, then the Association will be responsible for all maintenance, repairs, improvements, taxes, etc.

**SECTION 10.04 *Delegation of Use:*** Any Member may delegate his right of use and enjoyment of the Common Areas and Facilities in the Properties, together with all easement rights granted to Members in this Declaration and all Supplemental Declarations, to the members of his family, his tenants, lessees, or contract purchasers.

## ARTICLE XI

### EASEMENTS AND RESERVES

**SECTION 11.01 *Existing or Platted:*** Declarant reserved the easements and right-of-way as shown on the

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Subdivision Plats for the purpose of constructing, maintaining, and repairing a system or systems of roads, drainage ways, electric lighting, electric power, communication and telephone line or lines, or any other utility Declarant sees fit to install in, across, and/or under the Subdivision. Natural gullies constitute a drainage easement. All dedications, limitations, restrictions and reservations shown on the Subdivision Plats and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Subdivision are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Subdivision. There is hereby established a one (1) foot reserve around the perimeter of the Subdivision in favor of the Declarant, it being the intention of the Declarant that no homesite shall be used as access to or joined to any property not included within the Subdivision without the Declarant's express approval. Unless otherwise set forth herein, any easement reserved to the Declarant shall be a non-exclusive easement and may, at its option, be used for any or all purposes mentioned in this Article.

**SECTION 11.02 Utility Easements:** All easements are shown on the subdivision plat.

**EXCEPTION:**

If one owner owns two adjacent lots and wants to build on the common homesite line, providing no utilities have been installed, then the Declarant and all utility companies waive the right to use such easement.

**SECTION 11.03 Title to Improvements and Appurtenances Not Conveyed:** Title to any homesite conveyed by Declarant by contract, deed, or other conveyance shall not be held or construed in any event to include the title to any improvements or appurtenances installed by Declarant or other entity providing any utility or service to the Subdivision, and the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved to the Declarant or the Association.

**SECTION 11.04 Installation and Maintenance:** There is hereby created an easement upon, across, over, and under all of the Subdivision for ingress and egress in connection with the completion of all development work by the Declarant or its agents and with the installation, replacement, and maintenance of all utilities, including, but not limited to, roadways, drainage ways, water, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying such service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across, and under the Subdivision within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Subdivision until approved by Declarant or the Association's Board of Directors. The Declarant and the utility companies furnishing service shall have the right to remove all trees situated within or adjacent to the utility easements shown on the Subdivision Plats which would constitute a hindrance to the installation of such utilities, and to trim overhanging trees and shrubs located on portions of the Subdivision abutting such easements including any easements granted under Section 11.02 of this covenant.

**SECTION 11.05 Emergency and Service Vehicles:** An easement is hereby granted to all police, fire protection, ambulance, and other emergency vehicles, and to garbage and trash collection vehicles and other service vehicles to enter upon the Subdivision in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Subdivision to render any service provided for herein or to perform any of its functions.

**SECTION 11.06 Surface Areas:** The surface of easement areas for above ground or underground utility services may be crossed by driveways, walkways, and fences and used for planting of shrubbery, lawns, etc. subject to the approval of the utility companies furnishing services to the Subdivision. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any owner or to the Association for any damage done by them or their respective agents, employees, servants, or assigns, to any of the aforesaid vegetation or improvements as a result of any normal activity relating to the construction, maintenance, operation, or repair of any facility in any such easement area. All easements shall be kept clear of all other structures or buildings.

## ARTICLE XII

### GENERAL PROVISIONS

**SECTION 12.01 Duration:** This declaration and the covenants, restrictions, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and every owner of any part of the Subdivision, including Declarant, and their respective legal representatives, heirs, successors and assigns, for a term beginning on the date this Declaration is recorded, and continuing through and including December 31, 2040 after which time said covenants shall be automatically extended for successive periods of ten (10) years unless a change (the word change including additions, deletions, or modifications thereto, in whole or in part) is approved according to the provisions of Section 12.02.

**SECTION 12.02 Amendments:** This Declaration (other than as provided for in Section 8.08, pertaining to Articles VI, VII and VIII, may be amended or terminated at any time by the written agreement, by signed ballot, of sixty percent (60%) of the TOTAL ELIGIBLE VOTES of the Association as defined in Article III hereof, with both classes of the membership voting together and with both Classes having ONE VOTE for each homesite owned. Members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting, provided that Declarant or its assigns must consent thereto if such amendment or termination is to be effective prior to December 31, 2006. Any such amendment or termination shall become effective when an instrument is filed for record in the Deed Records of Montgomery County, Texas, accompanied by a Certification, signed by a majority of the Board of Directors, stating that the required number of Members cast a written vote in favor of said amendment or termination at the meeting called for such purpose. Such instrument and certification shall also be signed by the Declarant or its assigns if the amendment or termination is to be effective prior to December 31, 2013. Copies of the written ballots pertaining hereto shall be retained by the Association for a period of not less than five (5) years after the date of filing for the amendment or termination.



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**SECTION 12.03 Amendments By The Declarant:** The Declarant shall have and reserves the right at any time and from time to time prior to January 1, 2013, without joinder or consent of any other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any owner or his Mortgagee.

**SECTION 12.04 Enforcement:** In addition to the remedies for enforcement provided for elsewhere in this Declaration, the violation or attempted violation of the provisions of the Governing Documents or the Association's Rules by an owner, his family, guests, lessees or licensees shall authorize the Board to avail itself of any one or more of the following remedies:

- A. The imposition of a special charge not to exceed Fifty Dollars (\$50.00) per violation, or
- B. The suspension of owner's rights to use any Association property for a period not to exceed sixty (60) days per violation, according to Section 10.02-C., or
- C. The suspension of owner's voting rights and his rights to default on any assessment against his homesite or person, or
- D. The right to cure or abate such violation and to charge the expense thereof, if any, to such owner, according to Section 9.02, or
- E. The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court costs.

Before the Board may invoke the remedies provided above, it shall give Registered Notice of such alleged violation to owner in the manner specified in Section 1.17, and shall afford the owner a hearing according to the provisions of Section 9.02. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation.

**SECTION 12.05 No Waiver:** Failure by the Association, the Declarant, or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, By-Laws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement on any such future breach of the same or any other covenant, condition or restriction.

**SECTION 12.06 Cumulative Remedies:** All rights, options and remedies of Declarant, the Association, or the owners under this Declaration are cumulative, and not one of them shall be exclusive of any other, and Declarant, the Association, and the owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

**SECTION 12.07 Rights of Montgomery County:** Notwithstanding anything herein to the contrary, any officials of Montgomery County shall have the right to enforce any of the provisions of this Declaration for the benefit of the public or any other affected individual by any action defined under this Declaration or any other action, which shall be legally available to the County.

**SECTION 12.08 Rights of Mortgagees:** Any violation of any of the easements, agreements, restrictions, reservations or covenants contained herein shall not have the effect of impairing or affecting the rights of any mortgagee, guarantor or trustee under any mortgage or Deed of Trust outstanding against the Lot, at the time that the easements, agreements, restrictions, reservations or covenants are violated. Nothing contained in this Declaration shall impair or defeat the lien of any mortgage or Deed of Trust made in good faith and for value, but titles to any property subject to this Declaration obtained through sale and satisfaction of any such mortgage or Deed of Trust shall thereafter be held subject to all the protective restrictions hereof.

**SECTION 12.09 Interpretation:** If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

**SECTION 12.10 Omissions:** If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other work, clause, sentence or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

**SECTION 12.11 Gender and Grammar:** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

**SECTION 12.12 Titles:** The titles, headings, and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

**SECTION 12.13 Severability of Provisions:** If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null, or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses, or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses, and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

**SECTION 12.14 Attorneys' Fees:** In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorney's fees and costs of such suit.

**SECTION 12.15 Choice of Law and Conflicts:** In case of any conflict between this Declaration and the Articles of Incorporation or By-laws or Association rules, this Declaration shall control. The validity, interpretation and performance of this Declaration, the Articles of Incorporation and By-laws shall be controlled and construed under the laws of the State of Texas.

**SECTION 12.16 Non-liability of Officials:** To the fullest extent permitted by law, neither the Board, the Declarant, the Architectural Control Committee, nor any other committees of the Association or any Member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such



Board, committees or persons reasonably believed to be the scope of their duties.

**SECTION 12.17 Acceptance by Lienholders:** The undersigned Lienholders, if any, have executed this Declaration to evidence their consent to the imposition of the foregoing covenants, conditions, and restrictions upon any and all tracts

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included within the metes and bounds attached hereto as Exhibit A regardless of whether such tracts may be encumbered by a pre-existing lien. It is agreed hereby that any such liens shall be subordinated to this Declaration and all of the provisions thereof.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, Owners and Lienholders have executed this Declaration, acting by and through their duly authorized and empowered officers, to be effective on this the 2nd day of October, 2003.

ATTEST:

Rozanne Buhrman  
ROZANNE BUHRMAN, Secretary

JACK FREY PROPERTIES, INC.

BY John R Frey  
JOHN R. FREY, President

**LIENHOLDERS**

**TEXAS NATIONAL BANK**

BY: Steven L. Vaughan  
Printed Name: STEVEN L. VAUGHAN  
Title: PRES. & CEO

THE STATE OF TEXAS }

COUNTY OF MONTGOMERY }

This instrument was acknowledged before me this 2 day of October, 2003, by John R. Frey, President of Jack Frey Properties, Inc., a Texas corporation, on behalf of said corporation.

Connie Byars  
NOTARY PUBLIC in and for  
THE STATE OF TEXAS

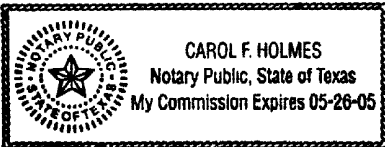


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THE STATE OF TEXAS }

COUNTY OF MONTGOMERY }

This instrument was acknowledged before me this 3<sup>rd</sup> day of October, 2003, by Steven L. Vaughan, Pres. + CEO of TEXAS NATIONAL BANK, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein set forth.



Carol F. Holmes  
NOTARY PUBLIC in and for  
THE STATE OF TEXAS

500-10-2920

**EXHIBIT "A"**

Being 33.454 acres of land in the Thomas Toby Survey A-565, Montgomery County, Texas, known as **THE VILLAGE AT HIGH MEADOW, SECTION ONE (1)** according to the map and plat thereof recorded in Cabinet V, Sheet(s) 1, of the Map Records of Montgomery County, Texas.

**RECORDER'S MEMORANDUM:**

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.

FILED FOR RECORD

2004 JAN 13 AM 11:06

*Mark Turnbull*  
COUNTY CLERK  
MONTGOMERY COUNTY TEXAS

STATE OF TEXAS  
COUNTY OF MONTGOMERY

I hereby certify this instrument was filed in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Real Property at Montgomery County, Texas.

JAN 13 2004



*Mark Turnbull*

County Clerk  
Montgomery County, Texas