

**THIRD AMENDED AND
RESTATED DECLARATION
OF
COVENANTS, EASEMENTS, AND RESTRICTIONS
FOR
THE FAIRWAYS OF SHERRILL PARK
(Formerly known as Whitechapel Subdivision)**

When recorded return to:

Fairways of Sherrill Park HOA
PO Box 830341
Richardson, TX 75083-0341

October 9, 2015

**THIRD AMENDED AND RESTATED DECLARATION
OF
COVENANTS, EASEMENTS, AND RESTRICTIONS**

THIS THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS, EASEMENTS, AND RESTRICTIONS FOR THE FAIRWAYS OF SHERRILL PARK, formerly known as WHITECHAPEL SUBDIVISION Phases IA, IB, IIA, IIB, and IIC, additions to the City of Richardson, Texas (the "Declaration" or "CERs") is made and executed effective as of this ____ day of _____, 2015, by the Fairways of Sherrill Park Homeowners Association (the "Association"), whose principal contact address is c/o President, P.O. Box 830341, Richardson, TX 75083-0341.

W I T N E S S E T H :

WHEREAS, a Declaration of Covenants, Easements, and Restrictions dated March 10, 1986 was filed in the Deed Records of Collin County, Texas at Volume 2324, Page 635 (the "Former Declaration"), such Former Declaration covering the property described in Exhibit "A", which is attached hereto and incorporated herein by reference (the "Subdivision");

WHEREAS, the Former Declaration was executed by Thomas S. Mackie d/b/a Warwick subject and subordinate to that certain Deed of Trust and Security Agreement dated the 28th day of December, 1984 from Warwick to and for the benefit of Farm & Home Savings Association, to secure, in part, one certain Promissory Note as described in such Deed of Trust, said Deed of Trust being recorded in Volume 2044, Page 1, of the Deed of Trust Records of Collin County, Texas;

WHEREAS, by Substitute Trustee's Deed dated the 7th day of October, 1986 and recorded at Volume 2474, Page 590 of the Real Property Records of Collin County, Texas, Farm & Home Savings Association foreclosed its liens against the Subdivision and became the owner thereof;

WHEREAS, the Farm & Home Savings Association amended and restated the

Former Declaration as the Second Amended and Restated Declaration of Covenants, Easements and Restrictions for Fairways of Sherrill Park (formerly known as Whitechapel Subdivision) (“Second Amended Declaration”). In the Second Amended Declaration, the Farm & Home Savings Association assigned all its rights, benefits, and obligations with respect to the Subdivision to the Association. Said Second Amended Declaration was recorded with the Collin County Clerk on June 10, 1988, as Document Number 30141, Pages 186-228 of the Real Property Records of Collin County, Texas;

WHEREAS, the Second Amended and Restated Declaration of Covenants, Easements, and Restrictions were properly amended in the First Amendment to the Second Amended and Restated Declaration of Covenants, Easements, and Restrictions and the Second Amendment to the Second Amended and Restated Declaration of Covenants, Easements, and Restrictions;

WHEREAS, the Association wishes to provide for the orderly and efficient management, operation, and use and enjoyment of the Subdivision and for the protection of the value and desirability thereof, and therefore shall amend all former Declarations of Covenants, Easements, and Restrictions;

WHEREAS, the Association now amends the Second Amended and Restated Declaration of Covenants, Easements, and Restrictions for Fairways of Sherrill Park, as Amended, pursuant to Article XIII, Section 13.1 of the Second Amended and Restated Declaration of Covenants, Easements and Restrictions for Fairways of Sherrill Park, as well as the Texas Property Code §209.0041(h), which provides that “a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners’ association;” and

NOW THEREFORE, the Association hereby declares that all of the Subdivision and any interest therein shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the Subdivision and be binding upon and enure to the benefit of all parties having any right, title, or interest therein or any part thereof, their heirs, successors, assigns, and personal representatives. Said following easements, restrictions, covenants, and conditions shall

replace and supplant all prior easements, restrictions, covenants, and conditions, whether referenced above or otherwise.

ARTICLE I
DEFINITIONS AND TERMS

1.1 Definitions and Terms. As used in this instrument, the following terms shall have the following meanings unless expressly provided otherwise:

(a) "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.

(b) "Assessments" shall mean the assessments against each Owner and such Owner's Lot to defray Common Expenses as defined by this Declaration and the Association's Bylaws.

(c) "Association" shall mean the Fairways of Sherrill Park Homeowners Association, the entity which has the power, duty, and responsibility of maintaining and administering the Common Areas and collecting the Assessments, Special Assessments, fines, fees, disbursements, and charges herein prescribed, and has the right of administering and enforcing all provisions of the Dedicatory Instruments. The membership of the Association shall be composed of all the Owners of the lots. The Association is incorporated as a non-profit corporation under the laws of the State of Texas, the Articles and Bylaws of which, together with this Declaration, shall govern the administration of the Subdivision. If at any time the Association ceases to operate as a Texas Non-Profit Corporation, it shall avail itself to all the protections of a non-profit unincorporated entity to the fullest extent allowed by law.

(d) "Board" or "Board of Directors" shall mean the governing body of the Association.

(e) "Business" and "Trade" shall be construed to have their ordinary, generally-accepted meanings and shall include but not be limited to any occupation, work, or activity undertaken on an ongoing basis that involves the manufacture or provision of goods or services for or to Persons other than the provider's Household, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to, does, or does not generate a profit; or (iii) a license is required for the operation thereof.

(f) "Bylaws" shall mean the Bylaws of the Association, as amended from time to time.

(g) "City of Richardson" or "City" shall mean the city of Richardson, Texas.

(h) "Common Areas" shall mean the portions of the Property designated as "C.A." or "Common Area" on the Plats. Common Areas may also include, but are not limited to: (i) those certain parkway areas, landscaped medians, landscaping improvements, plantings, screening

walls, sprinkler systems, and easements and curbs, among other amenities, as are intended to be devoted to the common use and enjoyment of the Association's Members; and (ii) any other areas of land, improvements, or other property rights within the Subdivision which are known, described, or designated or which shall subsequently become known, described, or designated as Common Areas intended for or devoted to the common use and enjoyment of the Association's Members, together with any and all improvements that are now or may hereafter be constructed thereon. The Association may hold record title to the Common Areas, the use of which shall be consistent with the objectives envisioned herein and subject to the easement rights herein of the Members to use and enjoy the Common Areas for an indefinite period of time. In certain circumstances Common Areas may not be owned by the Association in fee, but may be held as easements, be leased, or may simply be areas of land not owned or leased by the Association but maintained by the Association for the use and benefit of the Association's Members and the Subdivision. An example of Common Areas which may not be owned or leased by the Association but might be still maintained by the Association and constitute a portion of the Common Areas are landscaped parkways and medians within public rights-of-way within or appurtenant to the Subdivision.

(i) "Common Area Improvements" shall mean: (i) any improvements, fixtures, and facilities located on the Common Areas; (ii) all personal property used in connection therewith and owned by the Association; and (iii) all repairs and additions to and replacements of any of the foregoing. Such Common Area Improvements shall include but not be limited to landscaping improvements, plantings, screening walls, sprinkler systems, curbs and green belts.

(j) "Common Expenses" shall mean: (i) all sums lawfully assessed against the interest of the Association relating to the Common Areas and Common Area Improvements; (ii) all expenses of administration and management, maintenance, operation, repair, or replacement of and addition to the Common Areas and Common Area Improvements (including unpaid Special Assessments); (iii) expenses agreed upon as Common Expenses by the Owners; and (iv) expenses declared to be Common Expenses by this Declaration or the Bylaws.

(k) "Declarant" shall mean the Association, as defined above.

(l) "Declaration" shall mean this Third Amended and Restated Declaration of Covenants, Easements, and Restrictions for the Fairways of Sherrill Park, formerly known as Whitechapel Subdivision Phases IA, IB, IIA, IIB, and IIC, additions to the City of Richardson, Texas, as amended from time to time.

(m) "Dedictory Instruments" shall mean all documents governing the establishment, maintenance, or operation of this Subdivision and expressly includes but is not limited to this Declaration, the Articles, the Bylaws, and any other properly adopted rules and regulations of the Association, as well as all lawful amendments thereof.

(n) "First Mortgagee" shall mean any institutional or governmental lender who is the holder of a First Mortgage lien on any Lot or any institutional or governmental insurer or guarantor of a First Mortgage lien on any Lot.

(o) "Former Declarant" shall mean all predecessors in interest of the Declarant, all of which have expressly transferred their rights, in succession, to the current Declarant, the Association.

(p) "Halfway House" shall mean a facility providing for the housing and rehabilitation or training of adults on probation, parole, early or pre-release, or any other form of executive, judicial, or administrative release from a penal institution, including but not limited to community residential facilities established in accordance with Texas Code of Criminal Procedure Ann. art. 42.18, as amended from time to time. "Halfway House" includes facilities which provide in-patient treatment for chemical dependency to Persons on probation, parole, early, or pre-release or any other form of executive, judicial, or administrative release from a penal institution if such Persons are ordered to obtain such treatment for chemical dependency as a condition of release. For purposes of this definition, an adult is a Person age 18 or over.

(q) "Household" shall mean a domestic unit that resides in and shares in common a single dwelling unit and consists of one or more individuals related by blood, marriage, adoption, or recognized legal union or guardianship, and not more than two unrelated adult individuals. The term shall further encompass the Occupants of any Household Care Facility or any other domestic unit whose use of the Lot as such has been approved pursuant to Article VIII.

(r) "Household Care Facility" shall mean a dwelling unit that provides residence and care to one or more Persons, regardless of legal relationship, who are disabled or otherwise protected by state or federal law and living together as a single household under the care of at least one caregiver. Where applicable, a household care facility shall have appropriate licensing and/or registration by the State of Texas, the City of Richardson, or the County of Collin. A Household Care Facility shall be at least one-half mile, as measured in a straight line, from any other Household Care Facility or Rehabilitation Care Facility.

(s) "Lease" shall mean any agreement between an Owner and

Tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the Tenant's use and occupancy of a Lot.

(t) "Leasing" shall mean the occupancy of a Lot by any Household other than one of which the Owner is member, or for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

(u) "Lots" shall mean the individual plots of land identified by Lot and Block number on the Plats which have been improved with a residential dwelling. Some portions of the Common Areas may be platted as a "lot" on the recorded subdivision Plats; however, such lots shall be excluded from the concept and definition of "Lot" as used herein.

(v) "Majority of Lot Owners" shall mean Owners having, in the aggregate, fifty-one percent (51%) of the eligible votes in the Association. When an Owner is not eligible to vote in the affairs of the Association in accordance with the terms of this Declaration (for instance but without limitation: failure among multiple Owners of a Lot to reach an agreement on how to cast their vote or failure to pay required assessments), such ineligible votes are deemed neither an affirmative nor a negative vote, but a nullity. Therefore, ineligible votes shall not be considered in determining the total pool of eligible votes. For example, if there are one hundred (100) Owners in the Association and two (2) of these Owners' votes are ineligible under the terms of this Declaration, a majority vote of the Lot Owners would be fifty-one percent (51%) of the ninety-eight (98) eligible votes. This concept, whereby the aggregate vote pool is decreased by the number of ineligible votes, shall apply in all situations where votes of the Members are cast and a percentage of positive votes calculated. Further, in determining any quorum, ineligible votes shall not be included in the aggregate vote pool.

(w) "Member" shall mean a Person entitled to membership in the Association, as provided herein.

(x) "Occupant" shall mean any Person in possession of a Lot, regardless of whether any such Person is an Owner. This includes Tenants and any others living in on a Lot within the subdivision, each being bound by the terms and provisions the Dedicatory Instruments.

(y) "Owner" or "Lot Owner" shall mean the record holder or holders of fee simple title to a Lot in the Subdivision but shall exclude Persons having any interest in a Lot merely as security for the performance of any obligation. An Owner's rights, but not obligations, may be assigned in writing to an individual who is related by blood, marriage, or adoption to the Owner, and also a member of the Household occupying the Residence. Such assignment shall be in form and substance satisfactory to the Board,

and may be relied upon by the Board until the earlier of revocation in writing or the death of the fee Owner.

(z) "Permitted Business Use" shall mean use by a Trade or Business where: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Residence; (ii) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Subdivision; (iii) the business activity does not involve visitation to the Residence by employees, clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Subdivision; and (iv) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as may be determined at the Board's sole discretion.

(aa) "Person" shall mean any natural person, corporation, partnership, trustee, or other legal entity.

(bb) "Phase IA" shall mean Whitechapel Subdivision, Phase IA, an addition to the City of Richardson, being the portion of the Subdivision depicted and so designated on the Plat recorded in Drawer F, Page 223 of the Map Records of Collin County, Texas, as such Plat has been or may be amended.

(cc) "Phase IB" shall mean the Whitechapel Subdivision, Phase IB, an addition to the City of Richardson, being the portion of the Subdivision depicted and so designated on the Plat recorded in Cabinet 7, Page 270 of the Map Records of Collin County, Texas, as such Plat has been or may be amended.

(dd) "Phase IIA" shall mean the Whitechapel Subdivision, Phase IIA, an addition to the City of Richardson, being the portion of the Subdivision depicted and so designated on the Plat recorded in Cabinet 7, Page 311 of the Map Records of Collin County, Texas, as such Plat has been or may be amended.

(ee) "Phase II B" shall mean the Whitechapel Subdivision, Phase IIB, an addition to the City of Richardson, being the portion of the Subdivision depicted and so designated on the Plat recorded in the Map Records of Collin County, Texas.

(ff) "Phase IIC" shall mean the Whitechapel Subdivision, Phase IIC, an addition to the City of Richardson, being the portion of the Subdivision depicted and so designated on the Plat recorded in the Map Records of Collin County, Texas.

(gg) "Plats" shall mean the recorded plats of portions of the

Subdivision which have been recorded on the Map Records of Collin County, Texas, as may be amended from time to time, which set forth, among other things, surveys of portions of the Subdivision showing the location of the Lots, streets, easements, and certain of, but not necessarily all of, the Common Areas located or to be located thereon, as well as certain other matters.

(hh) "Residence" shall mean, with respect to each Lot, the Lot's primary structure and enclosed garage space intended for residential use by any Occupant of said Lot.

(ii) "Rehabilitation Care Facility" shall mean a dwelling unit or Halfway House which provides residence and care to Persons, regardless of legal relationship, who have been convicted of prohibited criminal conduct, and are currently under conditional release, probation, or parole with supervision, living together as a single unit. A Rehabilitation Care Facility shall not be permitted to own or occupy a Lot or Residence within the Subdivision.

(jj) "Special Assessments" shall mean:

I. assessments assessed equally to each Lot, for the purpose of defraying, in whole or in part:

(1) the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto;

(2) the cost of any repair, reconstruction, construction, or replacement of any portion of Common Area Improvements; and

(3) the expense of any other contingencies or unbudgeted costs of the Association (provided that any such Special Assessment set forth in this subsection shall have the assent of sixty-seven percent (67%) of the eligible votes in the Association of Members who are voting in person or by proxy at a meeting duly called and held for such purpose); and

II. assessments established and fixed upon a particular Lot by the Association, after due notice and hearing, to secure the liability of the Owner of such Lot to the Association for any fines or penalties levied by the Association against such Owner or Occupant of a Lot or for any damages incurred by the Association as a result of any breach by such Owner or Occupant of any of the provisions of this Declaration, which

breach shall require an expenditure by the Association for repair or remedy.

(kk) "Subdivision" shall mean the property described in Exhibit A.

(ll) "Tenant" shall mean any Person who is authorized by a Lease to occupy a Lot.

ARTICLE II OWNERSHIP OF LOTS, COMMON AREAS, LOT DESIGNATIONS AND DESCRIPTIONS

2.1 Lot Ownership. Subject to the easements and other restrictions set forth herein, each Owner(s) of a Lot shall be entitled to exclusive ownership and possession of the Owner(s) Lot and all improvements located thereon.

2.2 Common Area Ownership. Title to the Common Areas and Common Area Improvements belongs to the Association.

2.3 Owner's Easement of Enjoyment of Common Areas. Every Owner shall have a nonexclusive right to and easement of use and enjoyment of the Common Areas and Common Area Improvements, and over and across the Common Areas for egress from and ingress to such Owner's Lot, which easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) the right of the Association to suspend the voting rights of an Owner and right of an Owner (or Occupant of a Lot) to use any recreational facilities which may from time to time be erected on the Common Areas for any period during which any Assessment against such Owner's Lot remains unpaid or for a period not to exceed sixty (60) days for any other infraction of its published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the Common Areas and Common Area Improvements to any public agency or authority, any public or private utility, or any CATV operators or other similar operators providing services which may benefit all Lots for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless approved by the Board of Directors;

(c) the right of the Association to adopt such rules and regulations with respect to the use of the Common Areas and the Common Area Improvements as may be reasonable and permitted hereby;

(d) the similar rights of the other Owners and the terms and conditions of this Declaration and the Plats;

(e) liens or mortgages placed against the Common Areas with respect to monies borrowed by the Association (as an incorporated entity) for the purposes of improving the Common Areas and facilities;

(f) the right of the Association to enter into and execute contracts with third parties for the purposes of providing maintenance or such other materials or services consistent with the purposes of the Association; and

(g) the right of the Association to take such steps as are reasonably necessary to protect the Common Areas and the Common Area Improvements against foreclosure.

2.4 Delegation of Use. Any Owner may delegate his right of enjoyment of the Common Areas and Common Area Improvements to the members of the Owner's Household and the Owner's Tenants. Nothing in this Section shall relieve any Owner of the obligations contained in the Declaratory Instruments.

2.5 Rights Reserved to Association. Unless access is otherwise reasonably available, the Association hereby reserves unto itself and its designated agents: (i) an easement over and onto the Common Areas for drainage and encroachment purposes and for ingress to and egress from the Common Areas for the purpose of completing improvements thereon and for the performance of necessary repair work pursuant to this Declaration; and (ii) an easement over and onto the Lots for ingress to and egress from the natural drainage channels or drainage and floodway easement described on the Plats and for the performance of necessary repair work thereon pursuant to the Dedicatory Instruments or an agreement with any Owner. The Association further reserves the right to establish easements, reservations, exceptions, and exclusions consistent with the best interests of the Owners and the Association in order to serve the entire Subdivision. Any damage caused by the Association's entry onto an Owner's Lot, other than any damages caused by the Owner, shall be repaired by the Association.

2.6 Deficiencies. It is expressly stipulated, and each and every purchaser of a Lot, as well as such purchaser's heirs, executors, administrators, successors, and assigns, hereby agree that the square footage, size, and dimensions of each Lot, as set out and shown in this Declaration or on the Plats, are approximate and are shown for descriptive purposes only, and that the Association does not warrant, represent, or guarantee that any Lot, or any portion thereof, will actually contain the area, square footage, or dimensions shown by the Plats. Each purchaser and Owner of a Lot and the improvements located thereon shall have full opportunity and shall be under a duty to inspect and examine the Lot prior to purchase and further agrees by such purchase that the Lot is purchased or approved as actually and physically existing. Each purchaser of a Lot expressly waives any claim or demand which such purchaser may have against the Association or other seller of such Lot on account of any difference, shortage, or

discrepancy between the Lot, Residence and any improvements constructed thereon as actually and physically existing and as shown on the Plats.

2.7 No Separate Conveyance of Undivided Interests. The easements relating to the Common Areas and Common Area Improvements and other appurtenances to the Lots, as established herein, are to be conveyed only with the respective Lots and cannot be changed except as set forth herein. The Association and each Owner covenant and agree that the easements relating to the Common Areas and all other appurtenances to the Lots, and the fee title to the respective Lots conveyed therewith, shall not be separated or separately conveyed, and each such interest, easement, and appurtenance shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Lot.

2.8 Easement to Enter Lots for Repair. Whenever sanitation, sewer, water, electric, gas, television receiving, or telephone lines or connections ("Connections") are located or installed within the Subdivision, which Connections, or any portion thereof, lie in or upon one or more Lots, the Association reserves for its use and benefit the right and an easement to the full extent reasonably necessary to enter upon such Lots or to have utility companies enter upon such Lots in order to install, repair, replace, and generally maintain such Connections as and when reasonably necessary. However, the exercise of such easement rights shall be in a manner reasonably calculated to cause minimal interference with the continued use and occupancy of the Lots and Residences affected thereby.

2.9 Easements for Utilities and Maintenance. Easements over and under the Subdivision for the installation, repair, and maintenance of sanitation, sewer, water, electric, gas, telephone lines and facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as are shown on the Plats and as may be hereafter required to serve the Subdivision are hereby reserved by the Association for its use and benefit, together with the right to grant and transfer the same.

2.10 Wall Maintenance Easements. This Section deals with Lots, if any, upon which a wall of a Residence is constructed immediately adjacent to and abutting one side Lot line of such Lot. The entire side Lot line upon which such wall of such a Residence is constructed shall be referred to as a Zero Lot Line and the Lot upon which such a Residence is constructed shall be referred to as a Zero Lot. The provisions of this Section shall apply only to these Zero Lots and to Lots which are adjacent to the Zero Lot Line of a Zero Lot. Lots within the Subdivision adjacent to a Zero Lot Line shall be conveyed subject to a three foot (3') wide maintenance easement running the length of the Zero Lot Line, which shall be adjacent to the adjacent Zero Lot. The right to create, grant, and reserve such easements is hereby reserved by the Association. Said easements shall be granted or reserved by reference to this Section. The following rules prescribe the terms, conditions, and uses of said easements, both with respect to the Owner of the easement (the Dominant Tenement) and with respect to the Owner of the land subject to the easement (the Servient Tenement):

(a) The Dominant Tenement, except as otherwise provided in this Section, shall have the use of the surface of the easement area for the sole purposes of maintaining, painting, repairing, and rebuilding the side wall of the residential structure which is situated adjacent to and abutting the easement area;

(b) The Servient Tenement shall have the right to enter, at reasonable times, upon the easement area for the purposes of maintaining the fence, lawn, landscaping, trees, or structures located within such easement area, which shall be the obligation of the Servient Tenement;

(c) Both the Dominant Tenement and the Servient Tenement shall have the right of surface drainage over, along, and upon the easement area. Neither Tenement shall use the easement area in such a manner as will interfere with such drainage and neither Tenement shall use the easement area for drainage of runoff from sources other than rain water and landscape irrigation systems;

(d) Neither Tenement shall attach any object (including but not limited to ivy, exterior lighting, dryer vents, utility risers, or lawn irrigation service or control boxes) to the side of the wall facing the easement area. No structure shall be constructed or placed upon the easement area by the Dominant Tenement. No structure shall be constructed or placed upon the easement area by the Servient Tenement that will interfere with the drainage of rain water and water sprinkler runoff or with access to the easement and maintenance of the wall by the Dominant Tenement. Fencing, brick, wood or concrete patios or decks, decorative paving stones or pavers, Jacuzzis, spas, hot tubs, outdoor cooking appliances, and lighting equipment are permitted in the easement area if approved by the Architectural Control Committee, so long as such structures do not interfere with the drainage over the easement area or with access to and maintenance of the Dominant Tenement's side wall. The owner of the Dominant Tenement must gutter all roof areas which would drain onto the Servient Tenement and must install downspouts in a manner and location sufficient to cause roof-water runoff to be directed away from the Servient Tenement;

(e) The Owner of the Dominant Tenement, as a condition to the exercise of the right of access provided for, shall indemnify and hold harmless the Owner of the Servient Tenement for and from damage to shrubs, plants, flowers, trees, lawn, sprinklers, hose bibs, and other landscaping directly resulting from the exercise of the Dominant Tenement's right of access for maintenance; and

(f) Neither the owner of the Dominant Tenement nor the owner of the Servient Tenement shall plant trees, shrubs, bushes, and other such vegetation within three feet (3') of the easement. However, those items planted outside this three-foot zone need not be removed or trimmed when they have branched or grown over and into the easement area, unless they unreasonably interfere with the Dominant Tenement's ability to maintain, paint, repair, or rebuild the side wall of the residential structure which is situated adjacent to and abutting the easement area.

2.11 Encroachments. If, due to initial construction, repair, reconstruction, shifting, settlement, or other movement, any portion of the Common Area Improvements encroaches upon a Lot, a valid easement for the encroachment and for the maintenance thereof, so long as the encroachment occurs, shall and does exist. Such encroachments or protrusions shall not be considered to be an encumbrance either on the Common Area or on a Lot for purposes of marketability of title or otherwise.

ARTICLE III USE AND OCCUPANCY RESTRICTIONS

3.1 Use Restrictions.

(a) Residential, Single Household Uses Permitted. Each Lot within the Subdivision shall be used exclusively for “single Household” residential purposes, subject to Section 3.1(d) below. The term “single Household” as used herein shall refer not only to the architectural design of the Residence but also to the number and character of permitted inhabitants, which shall be limited to one Household, as defined above. As to architectural design, “single Household” shall mean the use of and improvement to a Lot with no more than one building designed for and containing facilities for living, sleeping, cooking, and eating therein. In no case may a Lot contain more than one Residence, and in no case may one Residence be occupied by more than one single Household. The Lease of a Lot is permitted under specific circumstances, as further outlined elsewhere in this Declaration and any other applicable provisions of any other Dedicatory Instrument. Permitted Business Use of a Lot by an Owner or Occupant shall also be permitted.

(b) Non-Permitted Uses. The following uses are not permitted within the Subdivision:

I. Any Permitted Business Use that causes increased parking or traffic within the Subdivision;

II. Conducting, performing, or engaging in any Business or Trade that is not permissible as a Permitted Business Use. However, the Lease of a Lot shall not be considered prohibited Business or Trade unless any of the following collectively Lease more than one Lot at any time: (i) an Owner; (ii) such Owner’s Household; or (iii) any Person related to such Owner for the purposes of business involving real property. Garage sales, attic sales, estate sales, moving sales, or yard sales (or any similar vending of merchandise) conducted on any Lot more than twice per year shall be considered business activity and are therefore prohibited.

III. The raising of livestock, domestic or wild animals, or plants or crops on any Lot, or any portion of the Subdivision, for the purpose of

breeding or selling the same, whether for profit or not.

IV. Use of the Lot or Residence for non-residential activities or purposes, whether for profit or not, including without limitation transient housing, transitional housing, Halfway Houses, Rehabilitation Care Facilities, hotels, motels, event or party venues, tourist homes or houses, lodging houses, inns, rooming houses, bed and breakfasts, and/or vacation rentals, unless such use is required to be permitted by state or federal law.

V. Lease of a Lot, any improvements located thereon, or any appurtenances if such Lease does not fully comply with all terms of this Declaration and any applicable provisions of any other Dedicatory Instrument.

(c) Clarification of Scope of Permitted Commercial Activity. The Association may, but is not required to, adopt rules and regulations regarding non-permitted commercial activity and may also promulgate rules to further clarify and supplement the scope of permitted commercial activities within the Subdivision.

(d) Intent. It is not the intent of this provision to exclude from this Subdivision any individual who is entitled to occupy the Subdivision or any part thereof by virtue of any state or federal law. If it is found that any use or occupancy provision contained in the Declaratory Instruments is in violation of any law, then such provision shall be interpreted to be as restrictive as possible within the bounds of the law. However, this provision is intended to limit the structure and use of all Residences and Lots to single Household to the fullest extent allowed by law. To the extent the law mandates deviation from this Declaration's single Household use and occupancy restrictions, including but not limited to the operation of a Household Care Facility, such deviation is only permitted to the extent that the necessary approval of such use or occupancy has been requested and secured from the Architectural Control Committee or Homeowner Advocacy Committee, as required by and outlined in Article VIII below.

3.2 Common Areas. The Common Areas shall be used only by Lot Owners or Occupants and their agents, invitees, and licensees for access to, ingress to, and egress from the respective Lots and for general enjoyment of the Common Areas and Common Area Improvements. The use, maintenance, and operation of the Common Areas shall not be obstructed, damaged, or unreasonably interfered with by any Lot Owner, and may be subject to lease, concession, or easement, whether presently in existence or entered into by the Association at some future time.

3.3 Alterations. No improvement or structure, including but not limited to any building, fence, wall, or other improvement or structure shall be commenced, erected, painted, or maintained upon the Subdivision, nor shall any alteration or improvement be made that is in not in accordance with Article VIII.

3.4 Storage. Nothing shall be stored in the Common Areas without the prior written consent of the Board.

3.5 Insurance Rates. Nothing shall be done or kept on any Lot or on the Common Areas which will increase the rate of insurance for improvements located within the Subdivision without the prior written consent of the Board. No Owner or Occupant shall permit anything to be done in or kept on such Owner's Lot, in the Residence thereon, or in the Common Areas, that will result in the cancellation of insurance on any Lot, Residence, other improvements located on a Lot, or any part of the Common Areas or Common Area Improvements, or which violates any Law.

3.6 Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted on, painted on, or attached to any Residence, fence, or other improvement upon such Lot so as to be visible from public view except as follows:

(a) For-Sale Signs. An Owner may erect one (1) sign on his Lot, not exceeding a 2'x3' in area, fastened only to a stake in the ground and extending not more than four feet (4') above the surface of such Lot advertising the property for sale.

(b) Political Signs. Not more than one sign per political candidate or ballot item, not exceeding a 4' x 6' in area, may be erected upon a Lot by the Owner or Occupant of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue, or proposal, provided that such signs shall not be displayed before the ninetieth (90th) day preceding the date of the election and shall be removed before the tenth (10th) day after such election.

(c) School Spirit Signs. Signs containing information about any child residing on a Lot and the school that child attends shall be permitted so long as any such signs are not more than 36" x 36" and are fastened only to a stake in the ground. There shall be no more than one (1) sign for each child residing on a Lot.

(d) Security Signs/Stickers. Signs or stickers provided to an Owner or Occupant by a commercial security or alarm company providing service to the Residence shall be permitted so long as the sign is not more than 12" x 12" and the sticker is no more than 6" x 6". Further, there shall be no more than one (1) sign and no more than six (6) stickers located on the windows or doors. Stickers shall also be permitted upon windows and doors for any "Child Find" or a similar program sponsored by a local police or local fire department.

(e) Directional and Informational Signs. The Association shall have the right to erect and maintain directional and informational signs along the streets within the Subdivision and identifying signs and monuments at entrances to the Subdivision.

(f) Other Approved Signs. Such other signs, flags, or emblems as may be approved by the Architectural Control Committee, in its sole discretion, are

permitted.

3.7 Nuisances. No odorous, toxic, noxious, illegal, or offensive activity shall be carried on upon any Lot or upon the Common Areas, nor shall any action be undertaken thereon which may be or become an unreasonable annoyance or a nuisance to any Owner or Occupant. No loud noises or noxious odors shall be permitted within the Subdivision, and the Board shall have the right to determine, in accordance with the Bylaws, if any particular noise, odor, or activity constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no loud exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools except those needed occasionally for the maintenance or repair of yard or home, unlicensed off-road motor vehicles, or items which may unreasonably interfere with the television or radio reception of any Owner or Occupant, shall be located, used or placed on any portion of the Subdivision or exposed to the view of other Owners or Occupants without the prior written approval of the Board.

3.8 Temporary Structures. No structure of a temporary character, trailer, large tent, shack, garage, barn, or other outbuilding shall be permitted in the Subdivision at any time, temporarily or permanently, except with the prior written consent of the Architectural Control Committee (as outlined in Article VIII below), except that temporary structures may be erected for use in connection with the construction, repair, or rebuilding of Residences or other approved improvements.

3.9 Waste. No rubbish, trash or garbage, or other waste material shall be kept or permitted upon any Lot or the Common Areas, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to permeate therefrom so as to render the Subdivision or any portion thereof unsanitary, unsightly, offensive, or detrimental to any Lot or Common Area in the vicinity or to the Owners or Occupants thereof. No lumber, grass, shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse, or trash shall be kept, stored, or allowed to accumulate on any portion of the Subdivision, except within an enclosed structure or otherwise appropriately screened from view while not in violation of any other provision in the Dedicatory Instruments.

3.10 Exterior Fires. There shall be no exterior fires whatsoever except fires contained within receptacles designed in such a manner that no fire hazard is created.

3.11 Fabrics. No clothing or household fabrics shall be hung, dried, or aired in such a way as to be visible to other Lots, streets, or Common Areas.

3.12 Parking and Prohibited Vehicles. The Board of the Association may adopt and enforce policies, rules, and/or regulations related to parking, prohibited vehicles, and vehicles considered to be a nuisance. The content of these policies, rules, and/or regulations shall be guided by the text and spirit of the municipal parking laws of the City of Richardson. Though the Association may adopt policies, rules, and/or regulations stricter than the laws of the City of Richardson, in general, any deviation of the

Associations parking policies, rules, and regulations from those of the City of Richardson shall be minimal.

3.13 Antennas. No exterior antennas, aerials, satellite dishes, or other apparatuses for the reception of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Subdivision, including any Residence, which is visible from any street, Common Area, or other Lot (“visible location”) unless it is only possible to receive such signals from said location. In the event that a signal may only be received from a visible location, the receiving device may be placed in one once approved by the ACC. The ACC may require as much screening as possible without substantially interfering with reception. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No exterior antennas, aerials, satellite dishes, or other apparatuses shall be permitted which transmit television, radio, satellite, or other signals of any kind. The Association, by promulgating this Section, does not intend to violate the Telecommunications Act of 1996, as may be amended from time to time (the “1996 Act”). Therefore, this Section shall be interpreted to be as restrictive as possible while remaining in compliance with the 1996 Act.

3.14 Animals. Except as otherwise provided in this Section, no animals, livestock, reptiles, or poultry of any kind shall be raised, bred, or kept on any Lot or the Common Areas. Dogs, cats, fish, birds, and other household pets may be kept on the Lots and in Residences subject to any rules and regulations adopted by the Board, provided the same are not kept, bred, or maintained for commercial purposes or in unreasonable quantities. The Board may determine a reasonable number in any specific instance, and the Board may limit the size and weight of any household pets permitted. The Board shall further have the right to prohibit the keeping of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner or Occupant. At all times, any animals belonging to Owners, Occupants, or either’s agents, invitees, or licensees within the Subdivision must be kept either within an enclosure or on a leash being held by a Person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Board. Should any animal belonging to an Owner be found unattended outside of an enclosure while not being held on a leash by a Person capable of controlling the animal, such animal may be removed by the Association or a Person designated by the Association to an animal shelter under the jurisdiction of the local municipality in which the Subdivision is situated and subject to the laws and rules governing said pound, or to a comparable facility. Additionally, any Owner or Occupant shall be absolutely liable to each and all other Owners, Occupants, and either’s agents, invitees, or licensees for any unreasonable noise or any damage to person or property caused by any animals brought to or kept upon the Subdivision by such Owner, Occupant, or either’s agents, invitees, or licensees. Furthermore, it shall be the absolute duty and responsibility of each Owner or Occupant to clean up any messes made by any animals belonging to the Owner, Occupant, or either’s agents, invitees, or licensees in the Common Areas and Lots.

3.15 Leasing. Lease of a Lot, any improvements located thereon, or any appurtenances thereto is not permitted unless such Lease fully complies with all terms of this Declaration and any applicable provisions of any other Dedicatory Instrument. The

following terms govern the Lease of any Lot and Residence within the Subdivision:

(a) Requirements for Lease of Lot. It is permitted for Owners to Lease a Lot and Residence in the Subdivision, provided that:

I. The Lease is for residential purposes;

II. The Occupants under the Lease comprise a “single Household”, as defined herein;

III. The Occupants under the Lease are leasing the entire, undivided Lot and all improvements located thereon and all appurtenances thereto;

IV. The Lease (1) is documented in writing, (2) provides that the lessee shall be bound by and subject to all terms of the Dedicatory Instruments, (3) provides that failure to perform and abide by the same shall be a default thereunder by said lessee, and (4) complies with any other requirements of the Dedicatory Instruments;

V. The Lease provides that such Lease may be terminated in the event of a serious or ongoing violation of the Dedicatory Instruments by the lessee, any Occupant of the leased Lot and Residence, or any of either’s agents, invitees, or licensees, and that the Association, in its sole discretion, may require termination of the Lease by the Owner and eviction of the Tenant and all Occupants in such event (though the Lease of the Lot and Residence shall not relieve any Owner from compliance with the Dedicatory Instruments);

VI. The Lease specifies that the Owner must provide any lessee with a copy of this Declaration and any other Dedicatory Instruments under which the lessee’s conduct is regulated at or before the signing of any Lease, and the Owner must actually provide the lessee with such documents as indicated;

VII. The Lease provides that the Occupants may not sublease or otherwise permit a change in Occupants.;

VIII. The Lease is for no term shorter than one (1) year, and the Lot is not subject to more than two (2) separate leases within a calendar year;

IX. The Owner and Occupants have provided prior written representation regarding the names of Occupants and compliance with these terms to the Association, in form satisfactory to the Association; and

X. The Owner has registered with, and received the required permitting from, the City of Richardson and any other legally required regulatory body.

(b) Temporary Tenancy. The Lease of a Lot is prohibited where any Tenant does not intend to make the Lot's Residence the Tenant's primary residence, or where the use of the Lot will involve transient housing, including but not limited to, transitional housing, Halfway Houses, Rehabilitation Care Facilities, hotels, motels, event or party venues, tourist homes or houses, lodging houses, inns, rooming houses, bed and breakfasts, and/or vacation rentals, unless such use is required to be permitted by state or federal law.

(c) Business Use By Virtue of Leasing. The Lease of Residence for residential purposes shall not be considered a "business" provided that none of the following collectively Lease more than one Lot at any time: (i) an Owner; (ii) such Owner's Household; or (iii) any Person related to such Owner for the purposes of business involving real property. This provision shall not preclude the Association or any institutional lender from leasing multiple Residences or Lots upon taking title following foreclosure of either's security interest in such Residences or Lots or upon either's acceptance of a deed in lieu of foreclosure.

(d) Further Rules and Regulations. The Association shall have the right to promulgate further rules and regulations concerning Leases and to require a Lease Addendum in a form acceptable to the Association to be executed by all lessees, binding them to the terms of the governing documents, including but not limited to full liability for any violations thereof.

3.16 Residence Exteriors. It is specifically required that the exterior wall area of the first floor of each Residence that is visible from public streets and Common Areas, but not from alleys or the golf course, shall not have less than seventy-five percent (75%) brick construction. The surface area of windows surrounded completely by masonry or brick may be included within the computation of the exterior masonry wall area of a residence. The portions of the exterior of any Residence not consisting of brick or masonry shall be painted or stained and shall not be allowed to peel, fade, or deteriorate but shall be maintained in a first-class condition. All chimneys and exterior portions of fireplaces must be one-hundred percent (100%) brick or masonry, regardless of situation. The exterior wall area of the second floor of a residence need not contain a specific percentage of brick or masonry, subject to all requirements for fireplaces and chimneys.

3.17 Height. No building or structure on any Lot shall contain more than two (2) stories of living space above finished grade (except in a case where a third (3rd) story of living space is contained within the volume enclosed by the roof planes of the Residence) nor exceed, in height, the maximum height allowed by the City of Richardson, such height to be measured and determined in accordance with the City of Richardson's approved method.

3.18 Firearms. Firearms or fireworks shall not be used or discharged in the Subdivision.

3.19 Yard Maintenance. All front, side, and rear yards shall be neatly and carefully maintained.

3.20 Exterior Lighting. No exterior light, including landscape lighting, shall be installed or maintained on any Lot without the prior written approval of the Architectural Control Committee.

3.21 Fences and Retaining Walls. No fence or retaining wall shall be erected or located on any Lot without the prior written approval of the Architectural Control Committee. All fences shall be constructed of masonry, wood, wrought-iron, high-quality fiberglass/composite (such as Fiberfence) engineered to maintain the appearance of the above, or other compatible material approved by the Board on a case-by-case basis, and shall be maintained in an attractive manner. There shall be no wire or chain-link fences. No fence upon any Lot shall extend toward the front Lot line beyond the front building line. Except as otherwise provided in this Section, no fence shall exceed six (6) feet in height. Fences located on the rear Lot line of lots which back up to an alleyway may exceed six (6) feet in height and be of a maximum height of eight (8) feet in height, but only that portion of the fence which is on the rear Lot line of the property abutting an alleyway may exceed six (6) feet in height. The Architectural Control Committee may further permit a short section of fence on the side Lot line near its intersection with the rear fence to exceed six (6) feet in height so that the transition between the eight (8) foot rear Lot line fence and the six (6) foot side Lot line fence may be accomplished by an angled decrease in height rather than an abrupt reduction in height from eight (8) feet to six (6) feet. Fences located on the rear Lot line of lots which back up to the Sherrill Park Golf Course shall not exceed four (4) feet in height and shall be of wrought iron construction identical to the wrought iron fencing installed on the rear Lot line of such golf course Lots in connection with the initial development of the Subdivision. Further, on Lots which back up to the golf course, no fencing shall be located within ten (10) feet of the rear Lot line other than a fence located on the side Lot line, which fence shall be of identical height and design to the wrought iron fence installed on the rear Lot line. The Architectural Control Committee may approve or deny construction of retaining walls and fences built above retaining walls on a case-by-case basis. It may, but is not obligated to, permit the combined height of a fence and retaining wall to exceed the six or eight foot limitations described above if such exceptions maintain the general character and appearance of the immediately surrounding neighborhood and the Subdivision as a whole.

3.22 Above Ground Swimming Pools. An Owner may not install any above-ground swimming pool on the Owner's Lot unless the Architectural Control Committee first grants its written permission for such installation.

3.23 Air Conditioning Apparatus. No air conditioning apparatus or evaporative cooler shall be installed on the ground in the front of a Residence or on any front wall or side wall of a Residence.

3.24 Roofing Materials. All roofing for the Residences and other improvements located on the Lots shall consist of high quality aluminum shakes (with wood appearance), slate, concrete, clay tile, or composition shingles weighing at least two hundred and forty (240) pounds per one hundred (100) square feet of surface area covered thereby and be of a natural weathered wood color.

3.25 Exterior Walls. The exterior walls of any Residence, improvement, or structure placed or erected on any Lot shall comply with the applicable building codes of the City of Richardson and all other applicable requirements.

3.26 Sidewalks. The sidewalks constructed on any Lot shall comply with the applicable building codes of the City of Richardson and all other applicable requirements.

3.27 Garages. Each Residence shall have sufficient garage space for a minimum of two (2) conventional automobiles. No garage shall be constructed on any Lot except as an integral part of the Residence it is intended to serve. If there is an alley along the rear of a Lot, the garage shall be rear-entry type with all entrances from the alley. If there is not an alley along the rear of the Lot, the garage shall open only to the side of the Lot so as not to directly face a residential street. The garage shall not be converted for use as any living area or other use inconsistent with the garaging of conventional automobiles.

3.28 Liability of Owners for Damage to Common Areas. To the extent permitted by Texas law, each Owner and Occupant shall be liable to the Association for all damages to the Common Areas or Common Area Improvements caused by the willful misconduct, neglect, misuse, or negligence of such Owner or Occupant, or either's, agents, invitees, or licensees.

3.29 No Warranty of Enforceability. While the Association has no reason to believe that any of the restrictive covenants or other terms and provisions contained herein are or may be invalid or unenforceable for any reason or to any extent, the Association makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Person acquiring a Lot in the Subdivision in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold the Association harmless with respect to the validity, enforceability, or lack thereof of any such covenants, terms, or provisions.

3.30 Occupants Bound. All provisions of the Dedicatory Instruments applicable to the Subdivision and Owners shall also apply to all Occupants of any Lot or Residence. Every Owner shall cause all Occupants to comply with the foregoing, and every Owner shall be responsible for all violations, losses, or damages caused by any Occupant, notwithstanding the fact that such Occupant is jointly and severally liable for the same and may be personally sanctioned for any violation. In addition to all other remedies available to the Association, in the event of a serious or ongoing violation by an Occupant, the Association may require that the Occupant be permanently ejected from the Subdivision by the Owner or that any Lease, agreement, or permission given entitling the Occupant to be present in the Subdivision be terminated.

3.31 Exterior Seasonal Decorations. The display of exterior seasonal decorations, including but not limited to lights, banners, flags, and wreaths, shall be subject to any reasonable rules and regulations adopted by the Board. Such rules may address the appearance, maintenance, and length of time of any such display.

3.32 Flags and Flagpoles. The size, number, and placement of flagpoles, and the display of flags within the Subdivision, shall be subject to any applicable rules or policies adopted by the Board. The Association, by promulgating this Section, does not intend to violate any state or federal law. Therefore, this Section shall be interpreted to be as restrictive as possible while remaining in compliance with all state and federal laws.

3.33 Wind Turbines/Solar Panels. The installation of any device designed to convert wind or sun light into energy, including but not limited to wind turbines, wind pumps, wind chargers, windmills, and solar panels shall be subject to any applicable rules or policies adopted by the Board. The Board shall adopt rules and/or policies that are as restrictive as possible in limiting the installation of such devices while remaining in compliance with all state and federal laws. The Association, by promulgating this Section, does not intend to violate any state or federal law.

ARTICLE IV SPECIAL RESTRICTIONS UPON LOTS LOCATED IN PHASE IA, PHASE IIA AND PHASE IIB

4.1 Use Restriction. The Lots located in Phase IA, Phase IIA and Phase IIB shall be used only for residential purposes and for single Household use.

4.2 Minimum Size. No Residence, the habitable floor space of which, exclusive of basements, porches, terraces, garages, and breezeways is less than two thousand two hundred (2,200) square feet, and whose first floor habitable space is less than fifteen hundred (1,500) square feet, shall be permitted on any Lots in Phase IA, Phase IIA and Phase IIB.

ARTICLE V SPECIAL RESTRICTIONS UPON UNIT LOTS LOCATED IN PHASE IB AND PHASE IIC

5.1 Use Restriction. The Lots located in Phase IB and Phase IIC shall be used only for residential purposes and for single Household use.

5.2 Area Restriction. No Residence shall be permitted on any Phase IB Lot or Phase IIC Lot, the habitable floor space of which, exclusive of basements, porches, terraces, garages, and breezeways is less than fifteen hundred (1,500) square feet.

5.3 Yard Size Restrictions. All Residences on any Phase IB Lot or Phase IIC Lot shall have: (i) a front yard with a minimum depth of twenty (20) feet from every adjacent street; (ii) a rear yard with a minimum depth of twenty-five (25) feet from the adjacent street or alley; and (iii) a side yard on one (1) side of each Phase IB Lot or Phase IIC Lot with a minimum depth of ten (10) feet. Chimneys, roofs, eaves, or other

appendages shall not extend six (6) inches into the side yard. Eaves, cornices, and other architectural embellishments shall not extend more than three (3) feet into the front yard.

5.4 Chimneys. No chimney shall be permitted on any Phase IB Lot or Phase IIC Lot Residence unless it shall be less than ten (10) feet in width. All chimneys, as well as any exterior portion of a fireplace, must be one hundred percent (100%) brick or masonry.

5.5 Structures on Property Lines. A structure may be built on one (1) side of the property line of any Phase IB Lot or Phase IIC Lot, provided that the side of the structure facing said property line shall contain no openings, appendages, or overhangs and further provided that no wall of any structure on any Phase IB Lot or Phase IIC Lot shall be located less than ten (10) feet from the wall of any structure on any other Phase IB or Phase IIC Lot. However, a structure on a Zero Lot may be erected no less than one (1) foot from the Zero Lot Line.

5.6 Percentage of Lot Restriction. The combined surface area of all Residence improvements located on any Phase IB Lot or Phase IIC Lot shall not exceed fifty percent (50%) of the total Lot's surface area and must meet all applicable Code specifications for the City of Richardson.

ARTICLE VI ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

6.1 Association to Own and Manage Common Areas. The ownership and management of the Subdivision and its Common Areas and the Common Area Improvements shall be vested in the Association in accordance with the terms of this Declaration and, upon incorporation by the Association, the Articles and the Bylaws of the Association shall supplement this Declaration. The Owners and Occupants of all Lots covenant and agree that the administration of the Subdivision shall be in accordance with the provisions of the Dedicatory Instruments, subject to all applicable laws, regulations, and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Subdivision or the Association, as may be amended from time to time.

6.2 Board of Directors. Upon incorporation of the Association, the affairs of the Association shall be managed by a Board of Directors which has been established and which shall conduct regular and special meetings according to the provisions of the Bylaws.

6.3 Membership. Any Person, on becoming an Owner of a Lot, shall automatically become a Member of the Association. Such membership shall terminate without any formal Association action whenever such Person ceases to own a Lot, but

such termination shall not relieve or release such Person from any liability or obligation incurred under or in any way connected with the Subdivision during the period of such Person's ownership and membership, or impair any rights or remedies which the Board or others may have against such Person arising out of or in any way connected with such ownership, membership, and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association.

6.4 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in such Owner's name to the purchaser of such Owner's Lot, the Association shall have the right to record the transfer upon its books. This paragraph shall not prohibit the assignment of ownership rights as contemplated by the definition of Owner, and during the pendency of such assignment the assignee Owner shall be considered a Member.

6.5 Quorum, Notice, and Voting Requirements.

(a) Lot ownership shall entitle the Owner(s) to cast one (1) vote per Lot in the affairs of the Association. The vote attributable to a Lot shall not be split among more than one (1) Person.

(b) Subject to the provisions of Paragraph (d) of this Section, the levy of a special assessment for capital improvements upon the Subdivision shall require the assent of the majority of all of the votes of those who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members not less than ten (10) days nor more than fifty (50) days in advance and shall set forth the purpose of such meeting.

(c) The quorum required for any action referred to in Paragraph (b) of this Section shall be as follows: At the initial meeting called, as hereinafter provided, the presence at the meeting of Members, or of proxies, entitled to cast fifty-one percent (51%) of all of the votes of the Association shall constitute a quorum. If the required quorum is not present at the meeting, one (1) additional meeting may be called, subject to the notice requirement set forth above, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting. However, that no such second meeting shall be held more than sixty (60) days following the first meeting.

(d) As an alternative to the procedure set forth above, any action referred to in Paragraph (b) of this Section may be taken without a meeting if a consent in writing, approving of the action to be taken, shall be signed by all of the Members entitled to vote.

**ARTICLE VII
DUTIES AND POWERS OF THE ASSOCIATION**

7.1 Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors. The Board of Directors shall be selected in accordance with the Dedicatory Instruments. Nothing contained herein creates a fiduciary duty owed by the Board to the Members of the Association, nor shall any fiduciary duty exist between the Association and its Members. The Board, for the benefit of the Subdivision, shall have the power to undertake and shall provide and pay for, out of the maintenance funds(s) provided for in Article X, the following:

(a) Care and preservation of the Common Areas including but not limited to the care of the exterior grounds, trees, grass, and full maintenance of utility service for the Common Areas, as well as the furnishing and upkeep of any desired personal property for use in the Common Areas;

(b) Care and maintenance of the masonry and wrought iron screening walls and entry features which may be constructed by the Association around all or portions of the perimeter of the Subdivision and which may be constructed by the Association elsewhere on the Common Areas or on private property. Maintenance includes but is not limited to any repair, rebuilding and cleaning that is reasonably necessary;

(c) The services of a person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager;

(d) Legal and accounting services;

(e) Any other materials, supplies, furniture, alterations, taxes, or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration;

(f) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Areas on behalf of all Owners;

(g) To enter into agreements or contracts with insurance companies, and the holders of mortgage liens on the individual Lots with respect to insurance coverage of the Common Areas, as they relate to the assessment, collection, and disbursement process envisioned by Article X;

(h) To borrow funds to pay costs of operation secured by assignment or pledge of rights against Owners if the Board sees fit;

(i) To enter into contracts, maintain one or more bank accounts, and generally to have all the powers necessary or incidental to the operation and management of the Association and Subdivision;

(j) If, as, and when the Board, in its sole discretion, deems necessary, subject to paragraph 7.15(b), it may take action to protect or defend the Common Areas from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for replacements;

(k) To make reasonable rules and regulations for the operation and use of the Subdivision and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members;

(l) To make available to each Owner within sixty (60) days after the end of each year an unaudited annual report;

(m) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency; and

(n) If, as, and when the Board, in its sole discretion, deems necessary, and without obligation to do so, it may take action to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for any violation of such provisions or rules.

7.2 Maintenance. The Association shall maintain in good condition, repair, replace, restore, operate, and manage all of the Common Areas, Common Area Improvements, all landscaping thereon, and all property that may be acquired by the Association. This obligation shall not extend to the cost and expense of repairs or replacements arising out of or caused by the willful or negligent act or neglect of any Owner, Occupant, or either's agents, invitees, or licensees, which shall be the obligation of such Owner or Occupant, and the Association may cause such repairs and replacements to be made at such Owner or Occupant's sole cost and expense. If any such Owner shall fail to pay for such repairs or replacements upon demand, the cost thereof (plus interest from the date of demand at the maximum legal rate) shall be added to the Assessments chargeable to such Owner's Lot, shall be payable to the Association by the Owner of such Lot upon demand, and shall be secured by the Association's Assessment lien as set forth Article X.

7.3 Association Easements and Access to Lots. For the purpose of performing the maintenance, repair, or replacement authorized by this Article or for any

other purpose reasonably related to the performance by the Board or the Association of their respective responsibilities under this Declaration, the Association (and its agents and employees) shall have a nonexclusive easement over and onto all portions of the Common Areas and the Lots. All damaged improvements shall be restored to substantially the same condition of such improvements prior to such damage. All maintenance, repairs, and replacements as to the Common Areas and Common Area Improvements (unless necessitated by the neglect, negligence, or misuse by an Owner or Occupant, or either's agents, invitees, or licensees, in which case such expense shall be charged to such Owner) shall be the Common Expense of all the Owners.

7.4 Utility Installations. The Association shall maintain all utility installations located in the Common Areas except for those installations maintained by utility companies, whether public, private, or municipal.

7.5 Easements. The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for the purposes, and subject to the conditions, of such agency, authority or utility to the extent, but only to the extent, reasonably necessary to provide utility and other services described herein or reasonably implied herefrom. However, no such dedication or transfer shall be effective unless approved by a sixty-seven percent (67%) vote of Owners present at a meeting of the Association specifically called for the purpose of approving any such dedication or transfer, and unless an instrument signed by the Board of Directors reflecting such vote has been duly recorded in the real estate records of the county in which the Subdivision is located.

7.6 Indemnity. The Association shall indemnify any individual made a party to a proceeding because the individual is a member of the Board of Directors of the Association, a member of the Architectural Control Committee, a member of the Homeowner Advocacy Committee, or any volunteer serving under the authority of the Board, against liability incurred in the proceeding and shall also reimburse reasonable and necessary expenses incurred in the proceeding by the individual so long as, by a 50% vote, the Board of Directors determines that the individual acted in good faith and reasonably believed: (i) in the case of conduct in the individual's official capacity with the Association, that the individual's conduct was in the Association's best interests; (ii) in all other cases, that the individual's conduct was at least not opposed to its best interest; and (iii) in the case of any criminal proceeding, the individual had no reasonable cause to believe the conduct was unlawful. There shall further be no indemnification provided by the Association where the Association brings a proceeding against the individual. To the extent relevant, the indemnification is subject and subordinate to any insurance policy maintained by the Association that might provide coverage for the individual.

7.7 Insurance.

(a) The Association shall obtain and maintain, at all times, insurance of the types described hereinafter.

I. **Property Insurance** to cover buildings, fixtures, equipment and

personal property either owned, non-owned or leased by the Association. All such property insurance shall be in an amount equal to one-hundred percent (100%) of the replacement cost of the property covered thereby. Coverages shall protect against loss or damage by fire, vandalism, malicious mischief, and such other coverages as are covered under standard extended coverage provisions and such other hazards and for such amounts as the Board may deem advisable.

II. **Commercial General Liability Insurance** to protect the Association from liabilities arising out of third party Bodily Injury or Property Damage in amounts not less than:

- \$2,000,000 General Aggregate (other than Products & Completed Operations)
- \$2,000,000 Products & Completed Operations Aggregate Limit (any one person or organization)
- \$1,000,000 Personal and Advertising Injury Limit
- \$1,000,000 Each Occurrence Limit
- \$100,000 Property rented to the Association
- \$5,000 Medical Expense Limit (any one per person)

III. **Automobile Liability Insurance** – Non-owned & Hired Automobiles.

- \$1,000,000 Combined Single Limit.

IV. **Directors and Officers Liability Insurance** – Covering all Officers, Directors, Volunteers and Positions appointed by the Board.

- \$1,000,000 Each Occurrence.

V. Any other insurance the Board may deem reasonable and necessary in order to protect the Association. The Board may obtain coverages in amounts higher or lower than detailed above when it deems reasonable, prudent, and in the best interest of the Association.

VI. Any such insurance policy as described above shall provide no less than a sixty (60) day notice of cancellation or non-renewal.

VII. All insurance for the Association shall be issued by one or more responsible insurance companies admitted or authorized to do business in the State of Texas and have a most current A.M. Best rating of at least B+ VIII or higher with a Stable or Positive Outlook Rating. In the event of alteration or termination of such A.M. Best ratings, similar minimum ratings of a comparable rating agency shall be used.

(b) The Association shall not be responsible for procurement or maintenance of any insurance covering the liability of any Owner not caused by or

connected with the Association's operation or maintenance of the Common Areas and Common Area Improvements.

(c) Each Owner irrevocably designates the Association, as attorney-in-fact for each such Owner, to administer and distribute such proceeds from any such insurance policy as is elsewhere provided in this Declaration.

(d) Each Owner may obtain additional insurance at such Owner's own expense for such Owner's own benefit.

(e) Insurance coverage on the fixtures, furnishings, and other items of personal property belonging to an Owner, and casualty and public liability insurance coverage within each Lot, are specifically made the responsibility of each Owner.

(f) Any insurance obtained by the Association or an Owner shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against the Owners, the Association or their respective servants, agents, invitees, or guests.

7.8 Destruction of Improvements on Individual Lots. In the event of destruction (total or partial) to the improvements on any individual Lot due to fire or any other cause, each Lot Owner covenants and agrees to complete all necessary repairs or reconstruction of the damaged improvements, or to clear and grade the Lot of above ground improvements or ground level improvements (including but not limited to any slab or other foundation improvements, walks, drives, patios, in ground pools, or decks), and restore the Lot to a neat and orderly condition within six (6) months of the date that the damage occurs.

7.9 Rules and Regulations. The Board has the authority, without the obligation, to promulgate, amend, cancel, limit, create exceptions to, and enforce reasonable rules, regulations, and policies, including but not limited to rules, regulations, and policies concerning the administration of the Subdivision, the enforcement of the Dedicatory Instruments, the use and enjoyment of the Subdivision, limitations on the use of the Common Area, establishing and setting the amount of fines for violations of the Dedicatory Instruments, and all fees and costs generated in the enforcement of the Dedicatory Instruments. Such rules, regulations, and policies shall be published on a website maintained by the HOA and accessible to the public. Such rules, regulations, and policies shall be binding upon all Owners and Occupants (including all Tenants), if any. However, under no circumstances shall this Section be construed to give the Board authority to create or limit rules, regulations, and policies in conflict with this Declaration or any Bylaws currently in effect. The rights and remedies contained in this Article are cumulative and supplement all other rights of enforcement under applicable law.

7.10 Noise Regulation. The Board shall regulate noise within the Subdivision, and may require mufflers on engines and prohibit the use of devices producing excessive noise.

7.11 Security. The Board may adopt, implement, and maintain policies and procedures that provide security measures for the Subdivision consistent with applicable laws and regulations.

7.12 Borrowings. The Board may borrow money and mortgage the Common Areas and Common Area Improvements for the purpose of improving the Common Areas and Common Area Improvements, provided, however, that the right of any such mortgagee in such property shall be subordinate to the rights of the Owners, and in no event shall any such mortgagee have the right to terminate this Declaration, the Articles or the Bylaws or to amend the Plats.

7.13 Records. The Association shall keep or cause to be kept records with detailed accounts of the income, receipts, and expenditures affecting the Subdivision and its administration, specifying the maintenance and repair expenses with regard to the Common Areas and any other expenses incurred by or on behalf of the Association. The records so kept shall be available for inspection by all Owners and mortgagees of Lots during regular business hours of the Association that shall be set and announced for general knowledge. All records shall be kept either in accordance with generally accepted accounting principles, or on a cash basis, as determined by the Board of Directors, and may, at the election of the Board of Directors, be audited periodically by an independent auditor. Copies of the auditor's reports shall be made available to all Owners and mortgagees upon written request accompanied by payment of the reasonable reproduction costs of such report as established by the Board within ninety (90) days following the end of any fiscal year of the Association.

7.14 Use of Managing Agent. The Board shall have the authority to employ a manager or other persons, and to contract with independent contractors or managing agents, to perform all or any part of the duties and responsibilities of the Association, subject to the Articles, Bylaws, and restrictions imposed by any governmental or quasi-governmental body.

7.15 Enforcement. As set forth above, the Board may, at its discretion and without obligation to do so, enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditures of funds of the Association, the employment of legal counsel, and the commencement and prosecution of actions. The prevailing party in such action shall be reimbursed for attorney's fees and court costs by the losing party. The Board may suspend the voting rights and the right to the use of the recreational facilities by an Owner for any period during which any Assessment against such Owner remains unpaid, or for violation of rules and regulations established by the Board.

(a) Responsibility For Attorneys' Fees and Fines. In addition to all other remedies that may be available, after giving notice and an opportunity to be heard as may be required by Section 209 of the Texas Property Code, as same may be amended, the Association has the right to collect attorneys' fees and/or fines as set by the Board from any Owner that is in violation of the Dedicatory Instruments. Any such attorneys' fees and/or fines owed shall be added to the violating Owner's

Assessment account and shall be secured by a continuing lien on the Lot.

(b) Action By The Board. Every Owner shall comply with all provisions of the Dedicatory Instruments. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association. In addition, the Board has the authority, but not the obligation, to enforce the covenants, conditions, and restrictions contained in the Dedicatory Instruments, and to regulate the use, maintenance, repair replacement, modification, and appearance of the Subdivision, and may avail itself of any and all remedies provided in the Dedicatory Instruments. Notwithstanding anything to the contrary herein, the Board shall have no duty, legal or otherwise, to institute legal or other proceedings on behalf of or in the name of an Owner. In any event, the Board's decision not to act in a particular instance shall not be construed as a waiver of the Association's right to enforce any provision implicated at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule. The initiation of a foreclosure or other court action against an Owner shall require approval of not fewer than 67% of members of the Board of Directors. Prior to the initiation of a foreclosure or other court action against an Owner, the Board of Directors shall hold a public meeting that provides a period of time for input from any Member of the Association. Standard voting procedures, as defined herein, shall govern any other action undertaken by the Board of Directors under Section 7.15.

ARTICLE VIII OPERATING COMMITTEES

A. ARCHITECTURAL CONTROL COMMITTEE

8.1 Architectural Control Committee. The Architectural Control Committee ("the Committee" or "ACC") shall be composed of not fewer than three (3) Members selected and appointed by the Board on behalf of the Association. The Committee shall function as the representative of the Owners of the Lots for the purposes set forth herein, as well as for all other purposes consistent with the creation and preservation of a first-class residential development.

8.2 Membership. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate and appoint a successor, subject to approval of the Board. No member of the Committee or its designated representative shall be entitled to any compensation for services performed hereunder or be liable for claims, causes of action, or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this covenant. At any time, the Board may change the membership of the Committee, withdraw or add powers and duties from or to the Committee, or restore powers and duties to the Committee.

8.3 Representative. A majority of the Committee may designate a representative to act for it.

8.4 Architectural Approval.

(a) No building, structure, or improvement of any nature (including, but not limited to the initial construction and any remodeling or reconstruction) visible from any public street (excluding alleys) or Common Area shall be erected, placed, or altered on any Lot until the plot plan (showing the location of such building, structure, or improvement), construction plans and specifications thereof, and landscaping plans therefor have been submitted to and approved in writing by the Committee as to: (i) location with respect to Lot lines and finished grades with respect to existing topography; (ii) conformity and harmony of external design, color, and texture with existing structures and existing landscaping; (iii) quality of materials, adequacy of site dimensions, proper facing of main elevation with respect to nearby streets; and (iv) the other standards set forth within the Dedicatory Instruments. The Committee is authorized to request the submission of samples of proposed construction materials or colors of proposed exterior surfaces.

(b) Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Lot Owner. If found to be out of compliance with the Dedicatory Instruments, one set of such plans and specifications shall be marked "Disapproved" and returned to the Lot Owner, accompanied by a reasonable statement of items found to fail to comply with the Dedicatory Instruments, including individual reference to the specific covenants or restrictions violated. Any modification or change to the approved set of plans and specifications which materially affects items (i) through (iv) of the preceding paragraph must again be submitted to the Committee, for its inspection and approval. The Committee's approval or disapproval as required in these covenants shall be in writing. If the Committee or its designated representative fails to approve or disapprove submitted plans and specifications within forty-five (45) days after all information and materials required or requested to be submitted in conjunction with the submission have been submitted (and receipt of all such information and materials has been acknowledged by the Committee, in writing), then Committee approval shall be presumed.

(c) The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction, construction of other improvements and location, and quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or

more Lot Owner(s) or the general value of the Lots or Common Areas within the Subdivision. For example, but not by way of limitation, the Committee may impose limits upon the location of window areas of one residential dwelling which would overlook the enclosed patio area of an adjacent residential dwelling. Also, the Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods, or materials may or may not be permitted, in accordance with the reasonable opinion of the Committee. The Committee shall have the authority to interpret the general intent, effect, and purpose of these restrictions.

(d) The Committee shall monitor compliance with the terms of this Declaration that relate to preservation of an attractive and well-maintained neighborhood, as provided in Articles III and IX.

8.5 Reliance on Approval. Once a Lot Owner receives the Committee's approval pursuant to Section 8.4, that Owner is entitled to undertake any approved construction or modification. Provided that a Lot Owner's construction or modification conforms to all information and materials submitted to the Committee for approval, the Committee, the Board, and the Association are prohibited from later penalizing a Lot Owner for any previously approved construction or modification later determined to have violated any applicable covenants or restrictions.

8.6 Nonconforming and Unapproved Improvements. The Association may require any Owner to restore such Owner's improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements were commenced or constructed in violation of this Declaration. In addition, the Association may, without obligation to, cause such restoration, demolition, and removal of any improvements commenced or constructed in violation of this Declaration and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such improvements were commenced or constructed.

8.7 No Liability. Neither the Association, the Committee, the Board, nor the officers, directors, members, employees, or agents thereof, shall be liable for damages arising from any individual's submission of plans and specifications to any of the foregoing for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of any action or inaction undertaken as part of the approval process outlined in this Article. Every person who submits plans or specifications, and every Owner of any Lot, agrees that such person will not bring any action or suit against the Association, the Committee, the Board, or the officers, directors, members, employees, or agents thereof, to recover any such damages and hereby releases, remises, and quitclaims all claims, demands, and causes of action arising out of or in connection with any such judgment, negligence, or nonfeasance and further waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given. Plans and specifications are not approved for engineering or structural design or

adequacy of materials, and by approving such plans and specifications neither the Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Under no circumstances shall the Association, the Committee, the Board or any officers, directors, or committee members thereof be deemed fiduciaries to the applicants for ACC approval or to the membership affected by any construction of ACC approved plans.

8.8 Variance. Upon submission of a written request for same, the Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install improvements which are in variance from any established architectural standards, including but not limited to the standards prescribed by this Declaration and those previously published in architectural bulletins. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community. Each request for a variance submitted hereunder may be reviewed without reference to other requests for or grants of a variance and the grant of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce the covenants, restrictions, and architectural standards provided hereunder in all other circumstances. No member of the Committee, the Board, or the Association shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner.

8.9 Policies and Procedures/Appeals. The ACC, with the advice and consent of the Board, shall adopt policies and procedures necessary to effectuate its purpose as defined herein. Decisions of the ACC may be appealed to the Board.

B. HOMEOWNER ADVOCACY COMMITTEE

8.10 Homeowner Advocacy Committee. The Homeowner Advocacy Committee (the "HAC") shall be composed of not fewer than three (3) Members selected and appointed by the Board on behalf of the Association. The HAC shall function as the representative of the Association for the purposes set forth herein, as well as for all other purposes consistent with the creation and preservation of a first-class residential development, by ensuring that the use and occupancy of any property conforms to the Homeowner expectations as outlined in the previous Articles, including but not limited to Articles-I and III of this instrument.

8.11 Membership. In the event of the death or resignation of any member of the HAC, the remaining members shall have full authority to designate and appoint a successor, subject to approval of the Board. No member of the HAC, or its designated representative, shall be entitled to any compensation for services performed hereunder or be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this covenant. At any time, the Board may change the membership of the HAC, withdraw or add powers and duties from or to the HAC, or restore the powers and duties to the HAC.

8.12 Representative. A majority of the HAC may designate a representative to act for it.

8.13 Prior Notice and Representation by Owner and Lessee Regarding Compliant Use and Occupancy.

(a) An Owner who intends to Lease a residence within the Subdivision shall provide prior notice to the Association. The notice shall include a representation from both the Owner and potential lessee confirming that the proposed Lease will fully comply with all terms of the Dedicatory Instruments including, without limitation, Section 3.15 of this Declaration.

(b) The HAC may develop and mandate the use of a form of notice sufficient to comply with the requirements of the Dedicatory Instruments. Such form of notice shall not require the submission of any information prohibited by law, but may require submission of other information deemed necessary by the Association.

(c) The HAC is authorized and empowered to consider and review any and all aspects of the use and occupancy of a property subject to a Lease as defined herein. The HAC shall have the authority to verify any use of a Residence, Lot, or property within the Subdivision and to interpret the general intent, effect, and purpose of all relevant rules, regulations, and restrictions.

(d) Authority to enforce the rules, regulations, and restrictions related to Leases and Leasing is vested with the Board and any enforcement action related to Leases and/or Leasing must be approved by the Board. Once approved, however, the Board may delegate an enforcement action to the HAC.

(e) A Lease to a Household that includes an adult individual related to the Owner by blood, marriage, or adoption shall be reported to the Association but shall not be subject to any subsequent reporting as defined in Section 8.14.

8.14 On-going Representation by Owner and Occupant Regarding Use and Occupancy Conformance. The Owner of any Residence or Lot within the Subdivision that has been Leased shall inform the Association of any material changes to the use and occupancy of the Residence or Lot, as well as to the specific Occupants thereof, prior to any such change. In any event, and not less frequently than annually, the Owner of a Leased property shall confirm to the Association that the Lease remains in compliance with all rules, regulations, and restrictions outlined herein and shall further submit any information required by the Association, subject to all legal restrictions (annual confirmation).

8.15 Lease Contents. All Leases used with the Subdivision must incorporate,

by reference and by actual inclusion as an exhibit, this instrument and any other relevant Dedicatory Instrument(s).

8.16 Nonconforming and Unapproved Use, Occupancy or Occupants. The Association may require any Owner of a Leased property, or any Property approved pursuant to Section 8.18, to make appropriate changes to the use or occupancy of a Residence or Lot, or to any occupant(s) of a Residence or Lot, should the Association find any failure to conform to the processes set forth in this Article. In the event of an Owner's failure to provide any annual confirmation, or in the event that an Owner's annual confirmation proves to be inaccurate, it shall be presumed the use of the Leased property is nonconforming.

8.17 No Liability. Neither the Association, the HAC, the Board nor the officers, directors, members, employees, and agents of the foregoing, shall be liable in damages or otherwise to anyone submitting information related to the use and occupancy of Leased residences, or to any Owner of a Lot affected by these restrictions, including but not limited to any Owner affected by an enforcement action or an Owner seeking a variance and/or reasonable accommodation, by reason of mistake in judgment, negligence, or nonfeasance arising out of any action or inaction undertaken as part of the any process outlined in this Article. Every person who submits such information, and every Owner of any Lot, agrees that they will not bring any action or suit against the Association, the HAC, the Board, or the officers, directors, members, employees, and agents thereof, to recover any damages, whether accrued or otherwise, and hereby releases, remises, and quitclaims all claims, demands, and causes of action arising out of or in connection with any such judgment, negligence, or nonfeasance and further waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given. Under no circumstances shall the Association, the HAC, the Board or any officers, directors or HAC members be deemed fiduciaries to the applicants for Leasing approval or to the membership affected by any approved use or occupancy of leased property.

8.18 Reasonable Accommodation. Upon submission of a written request for same, the Association may, from time to time permit an Owner the use or occupancy of a property in variance from any established neighborhood occupancy standards provided in this Declaration. This shall include, but not be limited to, the standards provided in Section 3.1. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general intent of this document and of the community. Each request for a reasonable accommodation submitted hereunder may be reviewed without reference to other requests for or grants of an accommodation and the grant of a variance accommodation to any Owner shall not constitute a waiver of the Association's right to strictly enforce the covenants, restrictions, and neighborhood occupancy standards provided hereunder, against any other Owner. Any denial of a variance or reasonable accommodation shall be appealable to the Board, subject to rules, policies, and procedures to be adopted by the Board designed to effectuate efficient management of variance appeals. No member of the HAC or the Association shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant of any accommodation to an Owner or the denial of a variance to an Owner.

8.19 Policies and Procedures/Appeals. The Association shall adopt policies and procedures necessary to effectuate the requirements of this Article. Any action by the HAC may be appealed to the Board.

8.20 Effective Date Regarding Existing Leased Properties. Owners of Properties that are Leased prior to the date this Declaration must comply with all terms not later than the earlier of (a) the next Lease renewal date established by the current Lease, (b) the next change in Occupants of the Residence, or (c) one year after this Declaration becomes effective.

ARTICLE IX OBLIGATIONS OF OWNERSHIP

9.1 Owner Maintenance.

(a) Owners and Occupants of any Lot shall, jointly and severally, have the duty and responsibility, at their sole cost and expense, to keep the Lot so owned or occupied, including buildings, improvements, grounds or drainage easements or other rights-of-way incident thereto, and vacant land, in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes but is not limited to the following:

- I.* Prompt removal of all litter, trash, refuse, and waste;
- II.* Lawn mowing on a regular basis;
- III.* Tree and shrub pruning;
- IV.* Watering landscaped areas;
- V.* Keeping exterior lighting and maintenance facilities in working order;
- VI.* Keeping lawn and garden areas alive, free of weeds, and attractive;
- VII.* Keeping parking areas, driveways, and roads in good repair;
- VIII.* Complying with all government health and police requirements;
- IX.* Repair of exterior damages to improvements;
- X.* Cleaning of landscaped areas lying between public right-of-way lines and Lot lines, unless such streets or landscaped areas are expressly designated to be Common Areas maintained by applicable governmental authorities or the Association; and
- XI.* Repainting of improvements.

Nothing in this paragraph shall prohibit an Owner from submitting a detailed description or a plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval by the Architectural Control Committee, which is charged with ensuring, to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision.

(b) If, in the simple majority opinion of the Board, any such Owner or Occupant has failed in any of the foregoing duties or responsibilities, then the Board may give such person written notice of such failure and such person must, within fourteen (14) days after receiving such notice, perform any required cleaning, repair, and maintenance or make arrangements with the Board for conducting any such cleaning, repairs and maintenance. Should any such person fail to fulfill this duty and responsibility within such period, the Association, through its authorized agent or agents, shall have the right and power to enter onto the Lot and perform such cleaning, repair, and maintenance without any liability for damages for wrongful entry, trespass, or otherwise to any person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such Owner shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of Owner, and shall constitute a lien against that portion of the Subdivision on which said work was performed. Such lien shall have the same attributes as the lien for Assessments and Special Assessments set forth in this Declaration, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure, subject to paragraph 7.15(b) and the Texas Property Code.

(c) Notwithstanding the provisions of Section 9.1(b) above, if, at any time, an Owner of any Lot shall fail to control weeds, grass, or other unsightly growth to the extent that any of the foregoing exceed six inches (6") in height the Association shall have the authority and right to enter onto said Lot for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a sum up to One Hundred and No/100 Dollars (\$100.00) for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. The assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment occurred. Each and every Owner of any Lot, by the acceptance of a deed or other conveyance of such Lot shall thereby covenant and agree to pay such assessments. The lien securing any such assessment shall be subordinate and inferior to the lien of any mortgage and any renewals or extensions thereof existing prior to the assessment date.

(d) All utility lines installed within a Lot and serving only such Lot, commencing at a point where the Utilities enter the Lot, shall be maintained and

kept in repair by the Owner thereof. Any utility lines located on a Lot, but serving other Lots, shall be deemed to do so pursuant to a valid easement and shall be maintained by the utility company using the same or by the Owners served by such lines.

9.2 Alterations. No Owner shall do any act or work that would impair the structural soundness and integrity of any building or impair any easement or hereditament. No Owner shall, in any way, alter, modify, add to, or otherwise change any of the Common Area Improvements without the prior written consent and approval in writing by the Board.

9.3 Mechanic's and Materialman's Liens. No labor performed or materials furnished and incorporated in a Lot, notwithstanding the consent or request of an Owner or such Owner's agent, contractor or subcontractor, shall be the basis for filing of a lien against the Common Areas or any other Lot or any improvements located thereon. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Lot of any other Owner or against the Common Areas for construction performed or for labor, material's, services, or other products incorporated in such Owner's Lot or at such Owner's request.

9.4 Subject to Declaration, Articles, and Bylaws. Each Owner and the Association shall comply strictly with the provisions of the Dedicatory Instruments, and the decisions and resolutions of the Board and the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages, injunctive relief, or both, maintainable by the Association on behalf of the Owners or, where appropriate, by an aggrieved Owner.

ARTICLE X MAINTENANCE AND ASSESSMENTS

10.1 Creation of Lien and Personal Obligation for Assessments for Common Expenses.

(a) All Owners shall be obligated to pay Assessments imposed by the Association to meet the Common Expenses. Each purchaser of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the Lot), to pay to the Association (or to an entity or collection agency designated by the Association): (1) annual maintenance assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) individual special assessments levied against

individual Lot Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner and not caused by ordinary wear and tear, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual, special capital, and special individual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof shall also be the continuing personal obligation of any person who was the Owner of such property at the time when the assessment fell due.

(b) The total amount of Assessments for any year shall be the total amount of Common Expenses (including the costs of maintaining any reserve accounts required to be maintained by the Association) estimated by the Board to be required for such year. The portion of the annual Assessments assessed against each Lot shall be equal and shall, as a default, be due annually in advance on or before the first day of each year. Failure to pay by the fifteenth (15th) day of each year shall require the imposition and assessment of a reasonable late charge as determined by the Board. Contribution for yearly Assessments shall be prorated if the ownership of a Lot commences on a day other than the first (1st) day of a year. The Board shall fix the total amount or the annual assessments against such Lot at least thirty (30) days prior to January 1st of each year at an amount which shall not exceed one hundred twenty percent (120%) of the annual Assessment in effect for January of the preceding year. The Board shall have the right to adjust the annual Assessment upon thirty (30) days prior written notice to the Owners, provided that no such adjustment shall result in the annual Assessment becoming greater than one hundred twenty percent (120%) of the annual Assessment in effect for January of the preceding year without the prior approval thereof by a vote of sixty-seven percent (67%) of a quorum of Owners voting in person or by proxy at a special meeting of the Owners called by the Board. Any such adjustment approved by the Owners shall become the basis for future annual increases, in lieu of the annual Assessment in effect for January of such year. The omission or failure of the Board to fix the Assessment for any year shall not be deemed a waiver, modification, or release of the Owners from the obligation to pay any Assessments for the year in question at the Assessment rate set for the preceding year. Further, the Board may, in its sole discretion, bill and collect the Assessments on a monthly or quarterly basis, instead of annually as provided above as a default

10.2 Special Assessments for Improvements. In addition to the annual Assessments authorized in Section 10.1 hereof, at any time upon obtaining the assent of the Members as set forth at Section 1.1(jj), the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost and expenses described therein. Such Special Assessments may be billed and collected on a monthly, quarterly, or annual basis at the discretion of the Board.

10.3 Purpose of Assessments. The Assessments levied by the Association

shall be used exclusively for the purposes of paying Common Expenses incurred in connection with promoting the health, safety, welfare, and recreation of the residents in the Subdivision, the improvement, maintenance, and preservation of the Subdivision, and the services and facilities devoted to said purposes that are related to the use and enjoyment of the Common Areas, Common Area Improvements, the Lots, and all improvements located thereon. Such Common Expenses include but are not limited to the cost to the Association of the following: all insurance, repair, replacement, and maintenance required or authorized to be paid for or performed by the Association with respect to the Common Areas; fire, extended coverage, vandalism, malicious mischief, and liability insurance for the Common Area Improvements or any portion thereof; management costs, taxes, legal and accounting fees as may, from time to time be authorized by the Association; construction of other facilities; maintenance of easements upon, constituting a part of, appurtenant to, or for the benefit of the Common Area Improvements; mowing grass, weeds or other unsightly growth; caring for the grounds and landscaping including, but not limited to green belts; caring for the Common Areas; garbage pickup; pest control; streets and screening wall maintenance; outdoor lighting and security service, if any, furnished by or through the Association; audits of the Association; discharge of any liens against the Common Areas and Common Area Improvements; and other charges contemplated by this Declaration or that the Association is otherwise authorized to incur.

10.4 No Exemption. No Owner shall be exempt from liability for Assessments by waiver of the use or enjoyment of any of the Common Areas or Common Area Improvements or by abandonment of such Owner's Lot.

10.5 Lien for Assessments. All sums assessed to an Owner for Assessments, fines, penalties, attorneys' fees, and costs of collection and chargeable to such Owner's Lot, including interest thereon, after delinquency, at the highest rate permitted under applicable law, shall constitute a lien on such Lot superior to all other liens and encumbrances, except: (i) liens for taxes and special assessments levied by governmental and taxing authorities; and (ii) liens described by Section 10.6 below. To evidence the failure of an Owner to pay any Assessments, fines, penalties, attorneys' fees, costs of collection, and any interest on any of the foregoing which are due, the Association may, but shall not be required to, prepare written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed by a duly authorized representative of the Board and may be recorded in the Office of the County Clerk in the county in which the Subdivision is situated. The lien of the Association may, at the option of the Association and subject to paragraph 7.15(b) herein, be enforced by foreclosure of the defaulting Owner's Lot by the Association, in accordance with the provisions applicable to the exercise of powers of sale, as set forth in Section 51.002 of the Texas Property Code (as amended or succeeded from time to time), or in any manner permitted by law. Each Owner, by accepting a deed to such Owner's Lot, expressly grants to the Association a power of sale, as set forth in said Section 51.002 (as amended or succeeded from time to time) in connection with the foregoing lien for Assessments, fines, penalties, attorneys' fees, costs of collection, and any interest on any of the foregoing. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs

and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Association shall have the power to bid for the Lot at any foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Subject to paragraph 7.15(b), suit to recover a money judgment for unpaid Assessments, fines, penalties, attorneys' fees, costs of collection, and any interest on any of the foregoing shall be maintainable without foreclosing or waiving the lien securing the same. Any person or entity holding a lien on a Lot may pay any unpaid and past due Assessment, fines, penalties, attorneys' fees, costs of collection, and any interest on any of the foregoing payable with respect to such Lot, and upon such payment such person or entity shall have a lien on such Lot for the amount paid of the same rank as the lien held by such person or entity.

10.6 Subordination of the Lien to Mortgage. The lien for Assessments provided for herein shall be subordinate to the lien of any bona fide arm's length mortgage or mortgages granted or created by the Owner of any Lot to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot or the Residence thereon, which mortgage is recorded prior to the date that such Assessments came due. Sale or transfer of any Lot shall not affect the lien for Assessments, provided, however, that the sale or transfer of any Lot pursuant to a foreclosure, a deed in lieu of foreclosure, assignment in lieu of foreclosure under such bona fide arm's length purchase money, or improvement mortgage or deed of trust shall extinguish the lien of such Assessments as to payments thereof coming due prior to such sale or transfer, except for claims for such Lot's pro-rata share of such Assessments resulting from a reallocation among all Lots, which reallocation, if necessary, will require a readjustment of the monthly Assessment as provided in Section 10.1 above. No sale or transfer shall relieve such Lot, or the Owner(s) thereof, from liability for any Assessments thereafter becoming due or from the lien thereof. The purchaser, donee, or other transferee of a Lot, by deed or other writing (the "Grantee"), shall be jointly and severally liable with the transferor of such Lot (the "Grantor") for all unpaid Assessments against the Lot up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from Grantor the amounts paid by the Grantee.

10.7 Statement of Assessments. Upon the written request of any Owner, prospective Owner, or any mortgagee or prospective mortgagee of a Lot, to the Association, and upon payment of a reasonable fee to the Association, the Association, by its Board, shall issue a written statement setting forth the unpaid Assessments, if any, with respect to the subject Lot, the amount of the current monthly Assessment, the date of such Assessment and the due date thereof, and any credit for advance payments or for prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, no prospective mortgagee or prospective Owner requesting such statement shall be liable for any unpaid Assessments accruing prior to the date of such request.

10.8 Separate Taxation. Each Lot shall be deemed to be a separate and distinct entity for the purpose of the assessment and collection of taxes, assessments, and other charges of the State of Texas, or of any political subdivision, special improvement district, or any other taxing or assessing authority. The lien for taxes assessed to any Lot shall be

confined to that Lot. No forfeiture or sale of any Lot shall divest or in any way affect title to any other Lot or the Common Areas.

10.9 Mortgaging a Lot - Priority. Subject to the requirements, covenants, and restrictions of this Declaration, any Owner shall have the right, from time to time, to mortgage or encumber such Owner's Lot by deed of trust, mortgage, or other security instrument.

ARTICLE XI DESTRUCTION OR CONDEMNATION OF IMPROVEMENTS TERMINATION OF DECLARATION

11.1 Attorney-In-Fact. This Declaration hereby makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the Common Areas and Common Area Improvements upon the destruction or condemnation of all or any part thereof or the termination of this Declaration. Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any Grantee of a deed from the Association or any successor or from any Owner shall constitute appointment of the attorney-in-fact herein provided. Each Owner, irrevocably constitutes and appoints the Association, or any successor non-profit corporation, if same be hereafter organized, the true and lawful attorney-in-fact of such Owner in the name, place, and stead of such Owner, for the purpose of dealing with the Common Areas and Common Area Improvements upon the destruction or condemnation of all or any part thereof or the termination of this Declaration, as hereinafter provided. As attorney-in-fact, the Association, by its authorized officers, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. The rights of all First Mortgagees and other mortgagees of all or any portion of the Subdivision shall be expressly subject to the provisions set forth in this Article XI.

11.2 Destruction Due to Fire or Other Casualty. Repair and reconstruction of the Common Area Improvements means restoring all improvements located on the Common Area to substantially the same condition in existence prior to any fire, casualty, or other damage, with the Common Area Improvements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected by the Owners or the Association with respect to any damage to the Common Area Improvements caused by fire, casualty, or other cause shall be made available to the Association for the purpose of repair, restoration, or replacements, unless all of the Owners agree in writing not to rebuild. If the insurance proceeds are insufficient to repair and reconstruct the Common Area Improvements, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an Assessment to be made against all of the Owners and their Lots. Such deficiency assessment shall be due and payable within thirty (30) days after written notice thereof and shall be a Special Assessment assessed uniformly to each Lot. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose

notwithstanding the failure of an Owner to pay such Assessment. The Assessment provided for herein shall be the debt of each Owner and shall be secured by a lien on the Lot of such Owner which may be enforced and collected as is provided herein. To the extent that all of the Owners agree not to repair the damage, or if there are more than adequate insurance settlement proceeds to repair such damage, the remaining insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's interest (as such interest appears on the policy or policies), and such divided proceeds shall be paid into separate accounts, such apportionment to be uniformly and equally applied to each Lot. Each such account shall be in the name of the Association, and shall be further identified by the number of the Lot and the name of the Owner. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact in the following order and for the following purposes: (i) for payment of Special Assessment liens against such Owner's Lot; (ii) for payment of unpaid Assessments allocable to such Owner's Lot; and (iii) any balance remaining shall be released to the Owner.

11.3 Termination of Declaration. If this Declaration is terminated, or if Owners holding one-hundred percent (100%) of the votes in the Association agree that the Common Areas or some portion thereof should be sold, the Association shall record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's authorized officers, the Common Areas or the relevant portion thereof shall be sold by the Association, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in the Dedicatory Instruments. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's voting percentage in the Association, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Lot. Each such account shall be in the name of the Association and shall be further identified by the number of the Lot and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such funds, without contribution from one fund to another, for the same purposes and in the same order as is provided above in Section 11.2.

11.4 Condemnation. If all or any part of the Common Areas is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association, as attorney-in-fact, and each Owner shall be entitled to participate in the proceedings incident thereto at their respective expense. The Association shall give timely written notice of the existence of such proceedings to all Owners known to the Association to have an interest in any Lot. The expense of participation in such proceedings by the Association shall be a Common Expense. The Association, as attorney-in-fact, is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses, and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. After the damages or awards for such taking are determined, such damages or awards shall be paid to the account of each Owner and to be applied or paid as set forth in Section 11.2 above, unless restoration takes place as provided herein. The Association, if it deems advisable, may call a meeting

of the Owners, at which meeting the Owners, by a majority, shall decide whether and how to replace or restore, as far as possible, the Common Area Improvements so taken or damaged. In the event it is determined that such Common Area Improvements should be replaced or restored by obtaining other land or building additional structures, this Declaration, and the Plats shall be duly amended by instrument executed by the Association, as attorney-in-fact, on behalf of the Owners.

ARTICLE XII MORTGAGE PROTECTION

12.1 Notice to the Association. An Owner who mortgages such Owner's Lot shall notify the Association, giving the name and address of the mortgagee thereof. Each mortgagee shall be permitted to notify the Association of the fact that such mortgagee holds a deed of trust or mortgage on a Lot and the Board shall maintain a record of such information. No First Mortgagee shall have any rights under this Declaration unless and until the Association has been notified in writing of the name and address of such First Mortgagee.

12.2 Notices to First Mortgagees. The Association shall notify a First Mortgagee in writing, upon request of such First Mortgagee, of:

- (a) any default by the mortgagor in the performance of such mortgagor's obligations, as set forth in this Declaration, which is not cured within thirty (30) days;
- (b) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (c) any condemnation or casualty loss of any part of the Common Areas if such loss exceeds Fifty Thousand and No/100 Dollars (\$50,000.00).

ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 Amendment and Revocation. Except as set forth in this Declaration, this Declaration shall not be revoked, nor shall any of the provisions herein be amended unless Owners representing not less than sixty-seven percent (67%) of the eligible votes in the Association agree to such revocation or amendment by written consent or ballot. Any amendment shall be deemed to be effective as of the date of recording of this Declaration and shall be prior and superior to the rights and interests of all Owners of any fee title or lien interest in the Subdivision regardless of when any Owner shall have acquired an interest in the Subdivision.

13.2 Notice. All notices or demands intended to be served upon an Owner or Occupant may be sent, at the discretion of the Board, by ordinary or certified mail, postage prepaid, addressed in the name of such Owner or Occupant in care of the Lot number and Residence address of such Owner or Occupant. All notices or demands intended to be served upon the Board or the Association shall be sent by certified mail, postage prepaid, to the address set forth in the preamble hereto, until such address is changed by a notice of address duly recorded in the real property records of the county in which the Subdivision is located.

13.3 Conflict between Declaration, Articles and Bylaws. Whenever the application of the provisions of this Declaration conflict with the application of any provision of the Articles or Bylaws adopted by the Association, the provisions or application of this Declaration shall prevail.

13.4 Invalidation of Parts. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof, be invalidated in any circumstance, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any provision, paragraph, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

13.5 Omissions. In the event of the omission from this Declaration of any word, sentence, clause, provision, or stipulation which shall be necessary for the accomplishment of the intent and purposes hereof, or any part hereof, then such omitted matter shall be supplied by inference or by reference.

13.6 Pronouns. Pronouns, nouns, and terms as used in this Declaration shall include the masculine, feminine, neuter, singular, and plural forms whenever appropriate to the context.

EXHIBIT A

The Association hereby adopts and defines the property of the Subdivision as being the same as defined in the Collin County, Texas Land Records, Book 2854, Pages 227-228. The property of the Subdivision contains all property in Phase IA, Phase IB, Phase IIA, Phase IIB, and Phase IIC, as defined herein.