

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
STONE MOUNTAIN ESTATES**

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

§

This Declaration, made on the date hereinafter set forth by SM Ranch Partners, LTD., a limited partnership, duly authorized to do business in the state of Texas, hereinafter referred to as "Developer",

WITNESSETH:

WHEREAS, Developer is the owner of that certain tract of land known as "STONE MOUNTAIN ESTATES" being a Subdivision more particularly described on Exhibit "A" attached hereto, (hereinafter referred to as the "Property" or the "Subdivision"); and

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of Lots in said Subdivision;

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon the Subdivision known as STONE MOUNTAIN ESTATES, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each Owner thereof, except that no part of this Declaration or the Restrictions shall be deemed to apply in any manner to the areas identified or platted as a Reserve or Unrestricted Reserve on the Plat or to any area not included in the boundaries of said Plat. Developer also declares that this Subdivision shall be subject to the jurisdiction of the "Association" (as hereinafter defined).

**ARTICLE I
DEFINITIONS**

Section 1.01 "Annexable Area" shall mean and refer to any additional property made subject to the jurisdiction of the Association pursuant to the provisions set forth herein, including, without limitation, any other Sections of STONE MOUNTAIN ESTATES Subdivision, if any, Developer may plat any property adjacent to or in the proximity of the Property which the Developer may wish to include in the Subdivision and the jurisdiction of the Association.

Section 1.02 "Association" shall mean and refer to Stone Mountain Estates Property Owners Association and its successors and assigns.

Section 1.03 "STONE MOUNTAIN ESTATES" shall mean and refer to this Subdivision and any other sections of STONE MOUNTAIN ESTATES hereafter made subject to the jurisdiction of the Association.

Section 1.04 "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.05 "Builders" shall mean and refer to persons or entities that purchase Lots and build speculative or custom homes thereon for third party purchasers.

Section 1.06 "Common Area" shall mean all real property (including the improvements thereto) within the Subdivision owned by the Developer and/or the Association for the common use and enjoyment of the Owners and/or any other real property and improvements, including, but not limited to, Subdivision roads, parks, open spaces, lakes, lake road crossings, dams, greenbelt areas and other facilities and areas designated on the Plat within the Common Area to which the Owners may hereafter become entitled to use.

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Section 1.07 "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential Dwelling on such Owner's Lot.

Section 1.08 "Developer" shall mean and refer to SM RANCH PARTNERS, LTD., and any successor(s) and assign(s). However, no person or entity merely purchasing one or more Lots from SM RANCH PARTNERS, LTD., in the ordinary course of business shall be considered a "Developer."

Section 1.09 "Lot" shall mean and refer to any plot of land identified as a Lot or tract on the plat of the Subdivision. For purposes of this instrument, "Lot" shall not be deemed to include any portion of any Common Area, "Reserves," "Restricted Reserves" or "Unrestricted Reserves," (defined herein as any Common Area, Reserves, Restricted Reserves or Unrestricted Reserves shown on the Plat) in the Subdivision, regardless of the use made of such area. No lot may be re-subdivided or may two or more lots be combined into one new lot without the prior written consent of the Association.

Section 1.10 "Member" shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.11 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or reserve which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely as security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

Section 1.12 "Living Area" shall mean and refer to the area computed using exterior dimensions of the entire living area of a residence that is heated and cooled; e.g. both floors of a two story residence excluding attic, garage, basement, breezeway or porch.

Section 1.13 "Reserves" shall mean and refer to Restricted Reserve Lot if any such lots are included on the Plat. The Restricted Reserves, if any are platted, will be maintained by the Developer (or after the Control Transfer Date, by the Association) and use thereof by Owners and their guests will be subject to such rules and regulations as may be from time to time promulgated by the Developer (or after the Control Transfer Date by the Association).

Section 1.14 "Private Roads, Subdivision Roads or Private Streets" shall mean and refer to private roads of the Subdivision as owned and maintained by the Association as described in Section 2.05 hereof.

ARTICLE II
RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01 Recorded Subdivision Map of the Property. The plat ("Plat") of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat, re-plats or amendments of the Plat of the Subdivision recorded or hereafter recorded shall be incorporated herein and made a part hereof and shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Developer, conveying said Property or any part thereof whether specifically referred to therein or not.

Section 2.02 Easements. Developer subject to the provisions of Section 3.02 hereof for Composite Building Sites, reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Denton County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. Developer and its assigns further expressly reserves the right to enter upon any Lot for the purpose of constructing or maintaining any natural drainage pattern, area or easement. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Area and/or Lots. The Property Owners Association, the Developer and their assigns shall have the right to enter upon any Lot for the purpose of improving, constructing

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or maintaining the drainage facilities in the drainage easements shown on the plat of the Subdivision. The Property Owners Association at its expense, shall maintain all drainage facilities as shown on the plat of the Subdivision as well as any outside drainage easements referenced on the plat. Further, fences shall not be constructed within or across any drainage easement as shown on the plat of the Subdivision as well as any outside drainage easements referenced on the plat except as specifically approved by the Developer, Property Owners Association or controlling governmental authority. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or any Utility District serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, operation repair and maintenance of their respective facilities. Neither Developer nor any utility company, water district, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property encumbered by said easements.

Section 2.03 Title Subject to Easements. It is expressly agreed and understood that the title conveyed by Developer to any of the Lots by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water line, gas, sewer, electric lighting, electric power, telephone purposes and other easements hereafter granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot. The Developer may convey title to said easements to the public, a public utility company or the Association.

Section 2.04 Utility Easements.

(a) Utility ground and aerial easements have been dedicated in accordance with the Plat and by separate recorded easement documents. Utility easements on side Lots lines may be eliminated and canceled along adjoining Lot lines in a Composite Building Site in accordance with Section 3.02 hereof.

(b) No building, swimming pool or other structure shall be located over, under, upon or across any portion of any utility easement. The Owner of each Lot shall have the right to construct, keep and maintain concrete drives, walkways, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive, walkways, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives, walkways, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

(c) The Owner of each Lot shall indemnify and hold harmless Developer, and public utility companies having facilities located over, on, across or under utility easements from any loss, expense, suit or demand resulting from death, injuries to persons or damage to property in any way occurring, incident to, arising out of or in connection with said Owner's installation, maintenance, repair or removal of any permitted improvements located within or upon utility easements, including where such death, injury or damage is caused or alleged to be caused by the negligence of such public utility or the Developer, their employees, officers, contractors, or agents.

Section 2.05 Private Streets. The entry gates or other entry security devices, streets and roads within the Subdivision shall be and are "private" and constitute a portion of the Common Area which are subject to the jurisdiction and administration by Stone Mountain Estates Property Owners Association. The roads and streets in this Subdivision are not dedicated to the public, but shall be conveyed to Stone Mountain Estates Property Owners Association ("Association") and operated as private streets by the Association, with each Owner having an easement for the use and benefit of such Owner of a Lot fronting thereon or adjacent thereto, which easements shall include rights of ingress, egress and passage over and along said streets in favor of the Developer, the Association, the Owners and their respective legal representatives, successors and assigns, guests, invitees, licensees, designees and

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the successors-in-title to each Lot Owner and in favor of the invitees and designees of each successor-in-title to each Lot Owner, but not in favor of the public.

Subject to the terms and conditions of this Section 2.05, the private roads and streets in this Subdivision, as shown on the Plat, are hereby dedicated as utility easements strictly for the purpose of constructing, operating, maintaining or repairing a system(s) of electric lighting, electrical power, telegraph and telephone lines, gas lines, sewers, water lines, storm drainage (surface or underground) or any other utilities that the Developer sees fit to install (or permit to be installed) in, across and/or under the Property. The dedication of the private roads and streets as utility easements shall not affect the Association or the Association's operation of the roads and streets in this Subdivision as private roads and streets, as set forth above in this Section 2.05

Notwithstanding the Association's operation of the roads and streets in the Subdivision as private streets, Developer grants to law enforcement agencies and officers of Town of Cross Roads, Denton County and the State of Texas, other governmental law enforcement bodies, fire equipment, ambulances, school buses, Town of Cross Roads officials, Denton County officials and personnel and other governmental officials and personnel, rights of ingress and egress and passage over and along said private roads and streets of the Subdivision in connection with the performance of their official functions. In addition to the other provisions appearing within this Article, the Board of Directors of the Association and the Association is specifically authorized to recommend, adopt, implement and enforce, rules, regulations, mechanisms and procedures governing use of the entry gates, streets and roads covering items such as (but not limited to):

- (a) Entry gate identification and/or entry programs for Owners and their respective families, their guests and invitees and vehicles owned or driven by any of them;
- (b) speed limits, designated parking areas, restricted parking areas and non-parking areas;
- (c) signs and graphics to provide announcements to unauthorized personnel concerning potential criminal trespass matters;
- (d) a "fines" system through which the Association can levy and collect fines from its Members for violations of the applicable rules and regulations; and
- (e) disclaimers of liability for any and all matters or occurrences on or related to the Common Area.

The streets and roads in the Subdivision are dedicated for the private use and benefit of lot owners within the Subdivision. The Association shall be responsible for the maintenance and upkeep of the streets and roads and shall be authorized to assess and collect a maintenance fee against the Subdivision lots and to expend funds so collected for such purposes. The Association may make an offer of public dedication of private streets if such dedication is authorized by the affirmative vote of two-thirds (2/3) of all Lot owners within the Subdivision and all other Sections of Stone Mountain Estates. To be effective, an offered public dedication must be accepted by a formal vote of the governing body of the public entity which has jurisdiction over the streets. Until formally accepted, private streets which are offered for public dedication remain the responsibility of the Association.

Section 2.06 Transfer of Roads and Reserves to Association. At such time as the Developer has sold and conveyed eighty (80%) percent of the Lots in the Subdivision, the Developer shall transfer responsibilities of all Roads and Reserves in the Subdivision to the Association.

ARTICLE III USE RESTRICTIONS

Section 3.01 Single Family Residential Construction. Each home in STONE MOUNTAIN ESTATES should contribute to the aesthetic benefit of all residents and must not result in a negative impact on the community as a whole. All residences must conform to the French Country, European, Italian Villa, English Country, English Manor or Mediterranean style architecture with traditional detailing. All street front exteriors are subject to aesthetic determination and approval by the Architectural Control Committee ("Committee"). While each home should compliment adjacent structures, every home should have a unique identity through the use of detailing such as: cast stone, wrought iron, window treatments, dormers, turrets, flat work, brick details, natural stone, gas lights landscape illumination and other architectural details. No repetition of front elevations will be allowed. No building shall be erected, altered, placed or permitted to remain on any Lot or Building Site other than one single-family Dwelling unit ("Dwelling") per each Lot to be used solely for residential purposes except that one guest/servants house may be built provided it matches the same design as main Dwelling and said guest/servants house must contain a minimum of 500

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air-conditioned square feet and a maximum of not more than 50% of the square footage of the main Dwelling, and be built after or while the main Dwelling is being built and be approved in writing by the Committee prior to construction. Other outbuildings (including workshops, pool houses, cabanas, detached garages, or storage buildings) may be constructed on the property after or while the main Dwelling is being built, so long as they are no larger than 50% of the main Dwelling, are no higher than the peak of the roof of the main Dwelling, are in harmony with the main Dwelling, consisting of 100% masonry on the front and 80% masonry of the remainder (masonry must be the same as the main Dwelling), have the same roofing material as the main Dwelling, are of good construction, kept in good repair, and are not used for residential purposes provided; however, detached garages must be built for not more than five (5) vehicles and must have a side entry or rear entry garage door. No front entry garage doors are permitted on detached garages. Any outbuildings shall be located to the rear of the main Dwelling. All Dwellings and outbuildings must be approved in writing by the Committee prior to being erected, altered or placed on the property. No single or double wide manufactured or mobile homes, or any old or used houses are allowed on any Lot. All Dwellings must have at least 3500 air-conditioned square feet of living area, with a minimum of 2500 square feet on the first floor (or the main floor if the Dwelling includes a basement). Every Dwelling must include attached garage space for at least two automobiles, and any garage doors that face a street must be constructed of wood or have a wood veneer. No Dwelling may have more than two stories in addition to a basement, provided however that a small observation room or deck may be built as an additional level at the top of the Dwelling. Any such observation room or deck must be designed in a manner such that the observation room or deck complements the architectural design of the Dwelling as a whole and is small in relation to the second floor. All Dwellings must be built with construction materials consisting of 100% masonry (stucco, stone, cast stone and brick are considered masonry) on the exterior portion of any Dwelling that is visible from a street or a park area. All other areas of each Dwelling not visible from a street or park area must be built with at least 80% (of the non-street or park visible portion) masonry (as previously defined), and all siding, soffit and fascia material and all other external trim must be of a cementitious non-weathering material or other appropriate material as approved by the Committee. Any building, structure or improvement commenced on any tract shall be completed as to exterior finish and appearance within fifteen (15) months from the setting of forms for the foundation of said building or structure. The roof of any Dwelling shall be constructed of either composition shingles, copper, tile, slate, standing seam metal or other material approved by the Committee and according to the guidelines adopted by the committee, prior to construction. The use of sheet metal or similar material on the roof or exterior sides of any Dwelling other than as flashing is prohibited. No Log siding may be used. As used herein, the term "residential purposes" shall be construed to prohibit mobile homes, trailers modular or manufactured homes being placed on said Lots, or the use of said Lots for duplex houses, condominiums, townhouses, log homes, garage apartments, or apartment houses; and no Lot shall be used for business, educational or professional purposes of any kind whatsoever, nor for any commercial or manufacturing purposes. Provided, however, an Owner may maintain a home office in a Dwelling with no advertising signs or regular visits by customers or clients. Occupancy of a Dwelling shall be limited to one (1) family which shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit, or no more than two (2) persons who are not so related living together as a single household unit. In addition to the single household unit, a maximum of two (2) other persons who are employed by the single household unit as property caretakers or personal caregivers may live in the Dwelling or in a servants' house on the Lot. It is not the intent of the Developer to exclude any individual from a Dwelling who is authorized to so remain by any state or federal law. If it is found that this section, or any other section, of the Restrictions are in violation of any law, then the prohibited section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

Section 3.02 Composite Building Site. Any Owner of one or more adjoining Lots (or portions thereof) may, with prior written approval of the Committee, consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting composite site, in which case the side set-back lines along the common lot lines shall be eliminated and said set-back lines shall thereupon be measured from the resulting side property lines rather than from the center adjacent Lot lines as indicated on the Plat. Further, any utility easements along said common lot lines shall be eliminated and abandoned upon approval of a Composite Building Site provided such easements are not then being used or planned for utility purposes. Any such Composite Building Site must have a front building set-back line of not less than the minimum front building set-back line of all Lots in the same block. Such Composite Building Site will be considered as one (1) Lot for purposes of the Maintenance Charge set forth in Article VI hereof.

Section 3.03 Location of the Improvements upon the Lot. No building of any kind shall be located on any Lot nearer to any side or rear property line, or nearer to any public road or waterway than as may be indicated on the Plat; provided, however, as to any Lot, the Committee may waive or alter any such setback line if the Committee, in

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the exercise of the Committee's sole discretion, deems such waiver or alteration is necessary to permit effective utilization of a Lot. Any such waiver or alteration must be in writing and recorded in the Deed of Records of Denton County, Texas. All Dwellings placed on Property must be equipped with an aerobic septic system meeting all applicable laws, rules, standards and specifications. Prior to obtaining approval from the Committee to construct a Dwelling, a permit for an aerobic septic system must be obtained from the Denton County Health Department or other required governmental authority. All such Dwellings must be served with water and electricity. The main residential structure on any Lot shall face the front of the Lot towards the street or road, unless a deviation is approved in writing by the Committee. Corner lots may face either property line facing a street. The recorded plat will show all building set back lines, and in the event of a conflict with these Restrictions, said PLAT shall control. The minimum dimensions of any Lot and the building set back lines shall be as follows (provided, any conflict with the building set back lines set forth on the Plat shall be controlled by the Plat):

The building set back line along the front of each Lot shall be fifty (50") feet, unless otherwise shown on the Plat.

The building set back line along the side of each Lot shall be fifteen (15') feet, on all Lots, unless otherwise shown on the Plat.

The building set back line along the rear of each Lot shall be thirty (30') feet, on all Lots, unless otherwise shown on the Plat.

Section 3.04 Residential Foundation Requirements. The foundations of all Dwellings and outbuildings must be constructed according to the design and certification for that specific structure by a licensed registered professional engineer. All building foundations shall consist of either: (i) concrete slabs (including a slab beneath a basement, if applicable and so designed by a registered professional engineer), or (ii) piers and beams, with the entire building being skirted with brick or materials which match the outside of the building as may be approved by the Committee. Provided, however, the Committee may approve a different type of foundation when circumstances such as topography of the Lot make it impractical to use one of the above foundations for all or any portion of the foundation of the building improvements constructed on the Lot. Minimum finished slab elevation for all structures shall be 12" (twelve) inches above 100 year flood plain or 12" (twelve) inches higher than the crown of any down gradient roadway, as the Subdivision map specifies per lot, whichever is greater or such other level as may be established by the Commissioner's Court or County Engineer of the County, and other applicable governmental authorities. The minimum slab elevation must also be a minimum of twelve (12") inches above the finished grade of the Lot at the foundation perimeter, unless otherwise approved by the Committee.

All references in this Declaration to required minimum slab elevations and/or any slab elevations approved by the Committee do not constitute a guarantee by the Developer, the Committee or the Association that the residence will be free of flood or related damage.

All foundations are required to be engineered and designed by a licensed, registered engineer based upon appropriate soils information taken from the specific Lot in question as recommended by such engineer. Soils borings and soils reports by a qualified soil engineer are required for all Lots prior to such engineer's design of the foundation.

The residential foundation plans to be used in the construction of the Dwelling and all outbuildings must be submitted to the Committee along with the plans and specifications for the residence as provided in Section 4.01. All foundation plans must be signed, sealed and dated by the engineer designing said foundation plans. The Committee and/or Developer shall rely solely upon Owner/Builder's engineer as to the adequacy of said foundation design when issuing architectural approval of the residence to be constructed. No independent evaluation of foundation plan is being made by the Committee. The Committee's sole function as to foundation plans are to determine if the plans have been prepared by a licensed registered engineer, as evidenced by the placement of an official seal on the plans.

After the form of the foundation has been constructed, but prior to any further construction of the foundation, the Owner/Builder must submit a Form Board Survey to the Committee to ensure that the location of the Dwelling meets all of the Subdivision location and elevation restrictions.

The Owner/Builder shall establish and construct the residence, garage, and outbuilding slab elevation(s) sufficient to avoid water entering into the Dwelling, garage, and outbuildings in the event of a heavy rain. A special

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drainage structure, as recommended and designed by a licensed engineer or other person on behalf of the Owner is recommended wherein the slab elevation is lower than the road ditches.

The granting of approvals of foundation plans and the Dwelling and garage slab elevation shall in no way serve as warranty as to the quality of the plans and specifications and/or that Dwelling shall be free from flood damage from rising or wind driven water or the flow of surface water from other locations within the Subdivision and in no event shall the Developer, the Committee or the Association have any liability as a result of the Committee's approval or disapproval of the resulting improvement.

Section 3.05 Driveways. All driveways in the Subdivision shall be constructed of concrete and shall be completed prior to obtaining a certificate of occupancy for the Dwelling. Further, the driveway or entrance to each lot, from the pavement of the street shall be paved with concrete, and shall include concrete safety end treatments and a county approved culvert shall be installed to cross any roadside drainage ditch. All driveway culverts shall be installed with the flowline level with the final grade of the ditch, or as may be required by Denton County and/or the Town of Cross Roads. Culverts shall be of a type and size acceptable to Denton County and the Town of Cross Roads, subject to the Subdivision plat. It is the responsibility of every Property Owner to ensure that the construction, size and placement of any culvert on their property meets the guidelines and approval of Denton County and/or the Town of Cross Roads, subject to the requirements of the Subdivision plat. It is understood that should Denton County or the Town of Cross Roads require the removal, replacement, correction, modification or repair of any culvert, it shall be the responsibility of the Property Owner to pay for such work. Should Denton County or the Town of Cross Roads require Developer to remove, replace, correct, repair or modify any culvert, Developer shall have to right to undertake such work and Property Owner shall reimburse Developer for all costs incurred. .

Section 3.06 Use of Temporary Structures and Sales Offices. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently; provided, however, that Developer reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements within the Subdivision. Builders may maintain model homes on Lots as a sales office. Any Builder may advertise the sale of a Dwelling constructed by Builder or advertise the sale by "will build to suit" by placing a sign on said Lot in accordance with the size requirements in Section 3.19 herein.

Section 3.07 Water Supply. All residential Dwellings in this Subdivision shall be required to use the provider as arranged by Developer for water supply for household purposes. No private water wells used for private irrigation purposes may be drilled without the approval of the Board and the appropriate governmental authorities. The Board may withhold approval of any private well if that well is deemed to interfere with the subsurface water reservoir serving the water wells owned by the Association. Any well and/or pump facilities shall be hidden from public view in accordance with the guidelines adopted by the Committee.

Section 3.08 Sanitary Sewers. No outside, open or pit type toilets will be permitted in this Subdivision. Prior to occupancy, all Dwellings constructed in this Subdivision must have a septic or sewage disposal system installed and maintained by the Owner to comply with the requirements of the appropriate governing agency or agencies. The aerobic type septic systems are required. Prior to beginning construction of the septic system, the Owner must obtain a permit from Denton County Health Department.

Section 3.09 Electric Utility Service.

(a) Prior to beginning any construction on a Lot, each Lot owner, at his expense, shall be required to install electric service lines from the transformer or source of feed to the meter location on said Lot. Further, each Lot owner may expect to pay a charge for connection to such electric utility service, and the owner is obligated to contact the electric utility company providing service to the Subdivision to determine such charge and make arrangements for the installation of said electrical service lines and connection to the electrical distribution system. Owner shall also be responsible for all electric charges for all utility service furnished to Owner's Lot.

(b) Upon installation of the Developer approved Infrastructure design (location and appearance), the Builder, Contractor, or Owner agrees to pay the approved electricity supplier in advance the cost for any relocation which may be required due to request, or the cost for changes requested by others engaged by the Builder, Contractor or Owner to perform such services and/or requested grade changes. Requests, changes and alterations requiring

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relocation of the Infrastructure, pertaining to the subject matter of this paragraph, required by other persons, entities or Customers, not being a Party to this Agreement, shall only be done by the approved electricity supplier when payment has been received in advance from such persons, entities or Customers for the cost of the relocation required or requested.

(c) The Builder, Contractor or Owner, recognizes that they may incur additional cost if the approved electricity supplier is required to bore or hand dig under any structures such as driveways and/or sidewalks. The approved electricity supplier shall bill those persons and/or entities in an amount equal to the additional actual costs incurred by the approved electricity supplier.

Section 3.10 Walls and Fences. No fence, wall or hedge shall be erected, placed or altered on any residential Lot without the approval of the Committee. No fence, wall or hedge (which serves as a barrier) shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line as established herein or by the Committee as an exception. Unless otherwise approved by the Committee, all exterior mechanical or service equipment adjacent to a Dwelling Unit must be enclosed within fences, walls or landscaping so as not to be visible from the immediate residential street or common area. Unless otherwise approved by the Committee, fences along and adjacent to any road or street, common area, creek or lake must be constructed of ornamental iron or similar appearing synthetic materials as defined by the Committee. Fences on the side property lines between two Lots without a creek or drainage area between the two Lots may be wrought iron, board-on-board wood or masonry and may extend from the minimum building setback line at the front of the Lot to intersect with the fence line at the rear of the Lot. Fences at the rear of any Lot that backs up to the rear of another Lot may be located on the common rear property line, except that any fence must be located at least ten feet (10') away from the bank of any creek or drainage area. Any fence constructed on the common rear property line between two lots may be wrought iron, board-on-board wood or masonry as approved by the Committee. Any fence newly constructed along the rear property line of a lot that connects to Corps of Engineers property and is not visible from a street may be wrought iron, pipe and rail, or split rail, subject to approval by the Corps of Engineers if required by the Corps of Engineers. Any fence newly constructed along the rear property line of a lot that connects to property outside the Subdivision may be wrought iron, board-on-board wood, pipe and rail, split rail, or masonry as approved by the Committee. No new barbed wire or chain link fences shall be allowed, provided, an Owner may obtain permission from the Committee to construct a cage, kennel or dog run out of chain link fence, provided any such outside pen, cage, kennel, shelter, concrete pet pad, run, track or other building, structure or device directly or indirectly related to animals which cannot be seen, heard or smelled by anyone other than the subject Lot Owner must be approved as to materials, size and location by the Committee in its sole and absolute discretion. Such area must be no closer to the front of the lot than the front of the main Dwelling. Driveway entrances may be constructed of masonry columns, ornamental iron or similar materials in harmony with the Dwelling on said Lot as may be approved by the Committee. The Owner of any Lot upon which the Developer has constructed a fence shall be responsible for the maintenance and repair of said fence. Further, any fence constructed across any pipeline easement shall include a gate or gates sufficient to allow the pipeline company access along and use of said pipeline right-of-way or easement.

Section 3.11 Prohibition of Offensive Activities. Without expanding the permitted use of the Lots, no activity, whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be or become an annoyance or a nuisance to the Subdivision. This restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision and for home offices described in Section 3.01 hereof. No loud exterior speaker, horn, whistle, bell or other sound device, except security and fire devices used exclusively for security and fire purposes, shall be located, used or placed on a Lot. Certain discreet outdoor entertainment speakers may be installed and used close to the main home site, provided that they are not disruptive to any neighbors and do not create any offensive noise. All outdoor entertainment speakers must be turned off or disconnected if any neighbor is dissatisfied with the noise. Without limitation, the discharge or use of firearms is expressly prohibited. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance. Activities generally prohibited, include, without limitation, (1) the use or discharge of firearms, firecrackers or other fireworks within the Subdivision, (2) the storage of ammonium nitrate, flammable liquids in excess of five gallons, or (3) other activities which may be offensive by reason of odor, fumes, dust, smoke, noise, vision, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion.

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(a) In addition to the other restrictions set forth herein, the following activities are expressly prohibited within the Property unless expressly authorized by, and then subject to such conditions as maybe imposed by, the Association:

(i) Use of Common Area.

No Person (other than the Developer) shall use any portion of the Common Area to: (a) solicit, promote or conduct business, religious, political or propaganda matters; or (b) distribute handbills, newsletters, flyers, circulars or other printed materials, without the prior written consent of the Board of Directors.

(ii) Business Use.

No business, trade, garage sale, moving sale, rummage sale, or similar activity shall be carried on in or from any Lot, except that an Owner or occupant residing in the Dwelling on the Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board of Directors. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required. Notwithstanding the above, the leasing of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Developer or a Builder approved by the Developer with respect to its development and sale of the Property or its use of any Lots which it owns within the Property.

Section 3.12 Swimming Pools. No swimming pool may be constructed on any Lot without the prior written approval of the Committee. Each application made to the Committee shall be accompanied by two sets of plans and specifications for the proposed swimming pool construction to be done on such Lot, including a plot plan showing the location and dimensions of the swimming pool and all related improvements, together with the plumbing and excavation disposal plan. The Committee's approval or disapproval of such swimming pool shall be made in the same manner as described in Article IV hereof for other building improvements. The Owner shall be responsible for all necessary temporary erosion control measures required during swimming pool construction on said Lot to insure that there is no erosion into Lakes or natural waterways. Swimming pool drains shall be piped into the ditch in the front of the Lot or other approved drainage area. The swimming pool drain outfall shall be terminated through a concrete pad constructed flush with the slope of the ditch so as not to interfere with the maintenance or mowing of the ditch. Pools may not be erected within any utility easement, and no portion of a swimming pool shall be erected in front of a Dwelling. However, pools may be erected outside the building line setbacks as long as the pool has no permanent structure outside the building line setback built above pool deck.

Section 3.13 Drainage.

(a) Each Owner of a Lot agrees for himself, his heirs, legal representatives, assigns or successors-in-interest that he will not in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots in the Subdivision, and he will make adequate provisions for the drainage over his Lot (which provisions for drainage shall be included in the Owner's plans and specifications submitted to the Committee and shall be subject to the Committee's approval). For the purposes hereof, "established drainage" is defined as the drainage which existed at the time that the overall grading of the Subdivision, including landscaping of any Lot in the Subdivision, was completed by Developer.

(b) Each Owner (including Builders), unless otherwise approved by the Committee, must finish the grade of the Lot so as to establish good drainage from the building site to the front and rear of the Lot as dictated by existing drainage ditches, swales and Lakes constructed by Developer or Utility Districts for drainage purposes. No pockets or low areas may be left on the Lot (whether dirt or concrete) where water will stand following a rain or during watering. With the approval of the Committee, an Owner may establish an alternate drainage plan for low areas by installing

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underground pipe and area inlets or by installing an open trough with area inlets, however, the drainage plan for such alternate drainage must be submitted to an approved by the Committee prior to the construction thereof.

(c) The Subdivision has been designed and constructed utilizing surface drainage in the form of ditches and swales and, to the extent these drainage ditches and swales are located in front, side or rear Lot easements, the Owners shall not regrade or construct any improvements or other obstruction on the Lot which adversely affects the designed drainage flow. The Owner shall be responsible for returning any drainage swale disturbed during construction or thereafter to its original line and grade, and the Owner shall be responsible for maintaining the drainage ditches or swales appurtenant to said Owner's Lot in their original condition during the term of his ownership.

(d) The Property Owners Association or its assigns may enter onto property owners' drainage swales or easements on side or rear property lines from time to time to maintain such drainage swales or easements for removing silt and/or re-grading to improve roadside drainage or to prevent damage to road system at The Property Owners Association's expense.

Section 3.14 Excavation. The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as may be necessary in conjunction with ponds, pools or the landscaping of or construction of improvements on such Lot.

Section 3.15 Removal of Trees, Trash and Care of Lots during Construction of Residence.

(a) All Owners, during their respective construction of a residence, are required to remove and haul from the Lot all tree stumps, trees, limbs, branches, underbrush and all other trash or rubbish cleared from the Lot for construction of the residence, construction of other improvements and landscaping. No materials or trash hauled from the Lot may be placed elsewhere in the Subdivision or on land owned by Developer whether adjoining the Subdivision or not. Burning on the lots shall generally not be permitted, however exceptions may be granted if approved by the Board and in accordance with all governmental rules or regulations.

(b) All Owners, during their respective construction of a residence, are required to continuously keep the Lot in a reasonably clean and organized condition. Papers, rubbish, trash, scrap, and unusable building materials are to be kept picked up and hauled from the Lot. Other usable building materials are to be kept stacked and organized in a reasonable manner upon the Lot.

(c) No trash, materials, or dirt is allowed in the street or street ditches. All Owners shall keep street and street ditches free from trash, materials, and dirt. Any such trash, materials, or excess dirt or fill inadvertently spilling or getting into the street or street ditch shall be removed, without delay, not less frequently than daily.

(d) No Owner or Contractor may enter onto a lot adjacent to the Lot upon which he is building for purposes of ingress and egress to his Lot before, during or after construction, unless such adjacent Lot is also owned by such Owner, and all such adjacent Lots shall be kept free of any trees, underbrush, trash, rubbish and/or any other building or waste materials before, during or after construction of building improvements by the Owner of an adjacent Lot.

(e) All Builders, Owners and their Contractors shall be responsible for any damage caused to the roads, roadside ditches and easements during the construction of improvements on a Lot. Further, any Builder or Contractor shall be required to deliver to the Association a minimum damage deposit of \$2,000.00 or such reasonable amount as may be determined by the Committee prior to beginning construction of any Dwelling or other building. This damage deposit shall be returned to the Builder or Contractor upon completion of said Dwelling or other building provided the Association determines that no damage to the roads, ditches or easements was caused by said Builder or Contractor. Further, any Owner, Builder, or Contractor shall supply and maintain a portable toilet and trash bins for construction trash during the construction of a Dwelling in the Subdivision. All Builders, Owners and their Contractors shall be responsible for keeping construction site free of debris and trash and a concrete clean out area must be provided by the builder. Concrete clean out in roadside ditches is prohibited.

Section 3.16 Architectural Review Fee. A minimum Fee of \$225, or a reasonable amount to be determined by the Committee, must be paid to the Committee at such time as application for architectural approval is made to the Committee. In the event that a previously approved plan is changed, that change must also be approved, and an

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additional Fee may be charged by the Committee. The amount of the additional Fee will be reasonably determined by the Committee based on the degree of change from the previously approved plan.

Section 3.17 Garbage and Trash Disposal. Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No Lot shall be used or maintained as a dumping ground for rubbish or landfill. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 3.18 Junked Motor Vehicles Prohibited. No Lot shall be used as a depository for abandoned or junked motor vehicles. An abandoned or junked motor vehicle is one without a current, valid state vehicle inspection sticker and license plate. No junk of any kind or character, or dilapidated structure or building of any kind or character, shall be kept on any Lot. No accessories, parts or objects used with cars, boats, buses, trucks, trailers, house trailers or the like, shall be kept on any Lot other than inside a garage or other structure approved by the Committee.

Section 3.19 Signs. Except as authorized herein and in Section 3.06, no signs, advertisement, billboard or advertising structure of any kind may be erected or maintained on any Lot without the consent in writing of the Committee, except (i) one (1) professionally made sign not more than thirty-six inches wide by twenty-four inches high (36" x 24"), advertising an Owner's Dwelling for sale or rent, may be placed on such improved Lot and (ii) one (1) sign not more than thirty-six inches wide by twenty-four inches high (36" x 24") advertising the builders of the Owner's Dwelling may be placed on such Lot during the construction period of such residence from the forming of the foundation until completion. Other than as permitted in Section 3.06 hereof no signs shall be permitted on unimproved Lots. Developer or any member of the Committee shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any Lot in violation of these restrictions, and in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal. With the consent in writing of the Developer or the Committee, a model home as indicated in section 3.06, may erect one (1) professionally made sign larger than stated above for advertising the Model Home. Notwithstanding the above, all signs must comply with the Town of Cross Roads sign ordinance requirements.

Section 3.20 Livestock and Animals. Prior to the first sale of any lot by Developer, Developer may continue to use the lot for raising livestock (cattle or llamas). After the initial sale of any lot by Developer to an Owner, no animals, livestock or poultry of any kind shall be raised, bred or kept on any such Lot in the Subdivision except dogs, cats or other common household pets, provided that they are not kept, bred or maintained for commercial purposes and do not become a nuisance or threat to other Owners. Further, no animal shall be allowed or permitted on any portion of the Subdivision except the property of the Owner unless the same shall be under control of the Owner or another person by leash, provided however that no animal shall be allowed on any property without permission of the Owner of that property. No animals shall be allowed to run loose at any time in the Subdivision, including all common areas. No animals will be left unattended on any Lot unless they are restrained by a fence or kennel facility. No animals may be left chained or tied up on any Lot at any time. All Owners agree that they will remove any animal from the Subdivision that repeatedly causes a nuisance or threat to any other Owners.

Section 3.21 Mineral Development. Except within the areas that may be designated as Water Well locations on the Plat, and easements related thereto, no commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot, and, no derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Provided, however, that this provision shall not prevent the leasing of the Subdivision or any portion thereof, for oil, gas and mineral purposes and the development of same, it being contemplated that the portion or portions of the Subdivision may be developed from adjacent lands by directional drilling operations or from the Drill Sites designated on the Plat (if any) of various Sections of the Subdivision.

Section 3.22 Lot Maintenance. All Lots, at Owner's sole cost and expense, shall be kept at all times in a neat, attractive, healthful and sanitary condition, and the Owner or occupant of all Lots shall keep all weeds and grass thereon (outside of natural vegetation areas) cut and shall in no event use any Lot for storage of materials or

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equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish. Provided, however, the burning of underbrush and trees during Lot clearing shall be permitted, subject to applicable government regulations. All yard equipment or storage piles shall be kept screened by a service yard or other similar facility as herein otherwise provided, so as to conceal them from view of neighboring Lots, streets or other property. Such maintenance includes, but is not limited to the following:

- a. Prompt removal of all litter, trash, refuse, and wastes.
- b. Lawn mowing (outside of the natural vegetation areas).
- c. Tree and shrub pruning (outside of the natural vegetation areas).
- d. Keeping exterior lighting and mechanical facilities in working order.
- e. Keeping lawn and garden areas alive, free of weeds, and attractive.
- f. Keeping parking areas, walkways and driveways in good repair.
- g. Complying with all government health and policy requirements.
- h. Repainting of improvements.
- i. Repair of exterior damage to improvements.

In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof, the Association or their designated agents may, in addition to any and all remedies, either at law or in equity, available for the enforcement of these restrictions, without liability to the Owner, Builder or any occupants of the Lot in trespass or otherwise, enter upon (and/or authorize one or more others to enter upon) said Lot, to cut, or cause to be cut, such weeds and grass and remove, or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner, Builder or occupant of such Lot for the cost of such work and associated materials, plus fifteen percent (15%) of the cost, plus a fee of \$25.00 per month for each instance. Payment thereof shall be collected as an additional Maintenance Charge and shall be payable on the first day of the next calendar month.

Section 3.23 Exterior Maintenance of Building. In the event the owner of any building in the Subdivision should allow such building to fall into disrepair and become in need of paint, repair or restoration of any nature and become unattractive and not in keeping with the neighborhood, the Association and/or the Developer will give such owner written notice of such conditions. Fifteen (15) days after notice of such condition to owner, and failure of owner to begin and continue at a diligent, reasonable rate of progress to correct such condition, the Association and/or the Developer in addition to any and all remedies, either at law or in equity, available for the enforcement of these Restrictions, may at its sole discretion enter upon said premises, without liability to Owner, to do or cause to be done any work necessary to correct said situation. The owner thereof shall be billed for cost of necessary repairs, plus ten (10%) percent. All monies so owed the Association will be an additional Maintenance Charge and shall be payable on the first day of the next calendar month.

Section 3.24 Miscellaneous Use Restrictions. Without limiting the foregoing, the following restrictions shall apply to all Lots:

(a) No boat, jet-ski, aircraft, travel trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the front of any Dwelling or parked overnight on any street in the Subdivision, nor shall any such vehicle or equipment be parked for storage to the side or rear of any Dwelling unless completely concealed from public view. All boats so parked or stored on any Lot must at all times also be stored on a trailer. No such vehicle or equipment shall be used as a residence either temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a Dwelling in the Subdivision.

(b) Trucks with tonnage in excess of one and one-half tons shall not be permitted to park overnight within the Subdivision except those used by a builder during the construction of improvements in the Subdivision. No vehicle shall be permitted to park overnight on any street within the Subdivision except for those vehicles used by a builder during the construction of improvements on Lots or Common Area in the Subdivision.

(c) No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Subdivision at any time.

(d) No vehicles or similar equipment shall be parked or stored in an area visible from any Street except passenger automobiles, passenger vans, motorcycles and pick-up trucks that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas, and all such vehicles shall be parked in a driveway or garage and may not be parked in a yard.

Section 3.25 View, Obstructions and Privacy. In order to promote the aesthetic quality of "view" within the Subdivision, the Committee shall have the right to review and approve any item or structure placed on a Lot including, but not limited to the following:

- a. The probable view from second story windows and balconies and decks (particularly where there is potential invasion of privacy to an adjoining neighbor);
- b. Sunlight obstructions;
- c. Roof top solar collectors;
- d. Flagpoles, flags, pennants, ribbons, streamers, wind socks and weather vanes;
- e. Exterior storage sheds, propane tanks (all propane tanks shall be buried), outbuildings;
- f. Fire and burglar alarms which emit lights and sounds;
- g. Children's playground or recreational equipment;
- h. Exterior lights;
- i. Ornamental statuary, sculpture and/or yard art visible from a street or Common Area excluding those which may be a part of an otherwise approved landscape plan;
- j. The location of the Dwelling and other outbuildings on the Lot; and
- k. The location of satellite dishes and antennas.

Prohibited Items. The following items are prohibited on all Lots:

- a. Above ground swimming pool;
- b. Window unit air-conditioners (except in work shops or barns as may be approved by the Committee);
- c. Signs (except for signs permitted in Section 3.19 hereof);
- d. Storage of more than five (5) gallons of fuel outside of regular vehicle gas tanks; and
- e. Unregistered, unlicensed or inoperable motor vehicles.

Section 3.26 Antennas and Satellite Dishes. No electronic antenna or device for receiving or transmitting any signal other than an antenna for receiving normal television, marine signals, citizens band signals or cellular

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telephone signals shall be erected, constructed, placed or permitted to remain on any Lot, house, garage or other buildings unless otherwise approved by the Committee. The Committee's decision shall be final.

No satellite dish may be maintained on any portion of any Lot outside the building lines of said Lot or forward of the front of the improvements thereon if it is visible from a street. A satellite dish may not exceed thirty (30") inches in diameter and must be mounted as inconspicuously as possible to the rear of the home. However, in no event may the top of the satellite dish be more than two (2') feet above the roofline for roof mounted antennas or receivers. All dishes shall be of one solid color of black or earth tones of brown, gray, or tan. No multicolored dishes shall be permitted. Not more than two satellite dishes will be permitted on each Lot. No transmitting device of any type which would cause electrical or electronic interference in the neighborhood shall be permitted. Committee approval is required prior to the installation of any satellite dish. The Association reserves the right to seek the removal of any device that was installed without first obtaining approval or any dish that violates these restrictions. The Committee may vary these restrictions only as is necessary to comply with the Federal Communications Act (the "Act") and the Committee may promulgate rules and regulations in accordance with the Act.

Section 3.27 Solar Panels. All Solar Panels installed shall be framed in such a manner so the structural support members are not visible from public road. The framing material shall be one that is in harmony with the rest of the structure. Approval from the Committee is required prior to the installation of any solar panels. The Association reserves the right to require the removal of any solar panel that were installed without first obtaining approval or for any solar panel that violates these restrictions. Solar panels shall be installed in a location not visible from the public street in front of the residence.

Section 3.28 Wind Generators. No wind generators shall be erected or maintained on any Lot if said wind generator is visible or heard from any other Lot or public street.

Section 3.29 Hazardous Substances. No Lot shall be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition. Notwithstanding the foregoing, no Hazardous Substance shall be brought onto, installed, used, stored, treated, buried, disposed of or transported over the Lots or the Subdivision, and all activities on the Lots shall, at all times, comply with Applicable Law. The term "Hazardous Substance" shall mean any substance which, as of the date hereof, or from time to time hereafter, shall be listed as "hazardous" or "toxic" under the regulations implementing The Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq., The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 et seq., or listed as such in any applicable state or local law or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under applicable law. The term "Applicable Law" shall include, but shall not be limited to, CERCLA, RCRA, The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq. and any other local, state and/or federal laws or regulations that govern the existence, cleanup and/or remedy of contamination on property, the protection of the environment from spill deposited or otherwise in place contamination, the control of hazardous waste or the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

Section 3.30 Drying of Clothes in Public View. The drying of clothes in public view is prohibited.

Section 3.31 Mailboxes. Mailboxes must be purchased, installed or placed in the front of all Dwellings by the Owner. Only mailboxes installed or approved by the United States Postal Service and installed in accordance with the guidelines set by the Committee shall be permitted. All mailboxes must be of a consistent model and type as required by the Committee. Unless otherwise changed by the Committee, all mailboxes will be of the type manufactured by Brandon Industries model FAC45-2164-1X.

Section 3.32 Landscaping. Within six (6) months after construction of the main Dwelling is complete, the front yard from the front of the Dwelling to the street must be appropriately Landscaped, meaning that all natural underbrush is removed, trees are trimmed, appropriate trees and decorative plants are installed, and open areas are either seeded or sodded with grass or other attractive ground cover. On Lots adjacent to a designated park area, the entire portion of the Lot visible from the park and street must be appropriately Landscaped within six (6) months after construction of the main Dwelling is completed. If the grass is seeded and does not grow uniformly within two months of seeding, additional seeding will be required until the grass does have a uniform appearance. Any variances from this specification will require the approval of the Committee.

Section 3.33 Tree Preservation. All Lots within the town limits of the Town of Cross Roads are subject to the applicable Town of Cross Roads tree ordinance.

ARTICLE IV
ARCHITECTURAL CONTROL COMMITTEE

Section 4.01 Basic Control.

(a) No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced, or changes made in the design or exterior appearance thereof, (including, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original construction, on any Lot in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Prior to obtaining approval from the Committee to construct a Dwelling, a permit for an aerobic septic system must be obtained from the Denton County Health Department. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality of materials, drainage, harmony of external design and color with existing and proposed structures in the Subdivision and location with respect to topography and finished grade elevation. The granting of approval shall in no way serve as a guaranty or warranty as to the quality of the plans or specification nor the habitability, feasibility or quality of the resulting improvements. All new construction must comply with the Town of Cross Roads ordinances and must have all applicable permits from the applicable governing authorities.

(b) The sole authority for determining whether construction plans and specifications for proposed improvements are in compliance with the provisions of this Declaration as to quality and color of materials, drainage, harmony of external design and color with existing and proposed structures and location with respect to topography, finished grade elevations and other relevant factors, rests with the Committee. Disapproval of plans and specifications, including location of the proposed improvements, may be based by the Committee, which shall seem sufficient in the sole discretion of the Committee.

(c) Each application made to the Committee shall be accompanied by two sets of professionally drawn plans and specifications for all proposed construction (initial or alterations) to be done on such Lot, including the drainage plan for the Lot, plot plans showing the location and elevation of the improvements on the Lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the Committee shall be the address of the principal office of the Developer or the Association. If approved, one of the two sets of plans submitted shall be returned to the Owner with said approval noted thereon. The Committee may set reasonable application and inspection fees, as well as, the damage deposit set forth in Section 3.16 hereof. The Owner must obtain from the Committee a receipt for said plans indicating the date said plans are received by the Committee.

(d) After the form of the foundation has been constructed, but prior to any further construction of the foundation, the Owner/Builder must submit a Form Board Survey to the Committee to ensure that the location of the Dwelling is in the location and at the elevation previously approved by the Committee..

Section 4.02 Architectural Control Committee.

(a) The authority to grant or withhold architectural control approval as referred to above is initially vested in the Developer; provided, however, the authority of the Developer shall cease and terminate upon the election of the Committee of the Association, in which event such authority shall be vested in and exercised by the Architectural Control Committee (as provided in (b) below), hereinafter referred to, except as to plans and specifications and plot plans theretofore submitted to the Developer which shall continue to exercise such authority over all such plans, specifications and plot plans. The term "Committee," as used in this Declaration, shall mean or refer to the Developer or to Stone Mountain Estates Architectural Control Committee composed of members of the Association appointed by the Board of Directors, as applicable.

(b) At the discretion of the Developer or in any event at such time as eighty percent (80%) of the Lots in all sections of the Subdivision are conveyed by Developer (from time to time hereafter referred to as the "Control Transfer Date"), the Developer shall cause an instrument transferring control of the Subdivision to the Association to

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be placed of record in the Real Property Records of Denton County, Texas (which instrument shall specify the Control Transfer Date). Thereupon, the Board of Directors of the Association shall elect a committee of three (3) members to be known as Stone Mountain Estates Architectural Control Committee. From and after the Control Transfer Date, at least two members of the Committee must be Owners of property in some Section of Stone Mountain Estates. Additionally, the Developer shall have the right to discontinue the exercise of architectural control privileges and arrange for the transfer to the Association at any time prior to the Control Transfer Date by filing a statement and instrument to such effect in the Real Property Records of Denton County, Texas.

Section 4.03 Effect of Inaction. Approval or disapproval as to architectural control matters as set forth in the preceding provisions of this Declaration shall be in writing. In the event that the authority exercising the prerogative of approval or disapproval (whether the Developer or the Committee) fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within forty-five (45) days following such submission, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof. The time to approve or disapprove shall not commence until professionally drawn plans are submitted to the Committee. Professionally drawn plans shall mean those plans prepared by an architect, engineer or certified house planner in sufficient detail to allow the Committee to review in accordance with the criteria set forth herein.

Section 4.04 Effect of Approval. The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof.

Section 4.05 Minimum Construction Standards. The Developer or the Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only and the Developer or Committee shall not be bound thereby.

Section 4.06 Variance. The Developer, or after Control Transfer Date the Committee, as the case may be, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Developer or the Committee, when circumstances such as topography, natural obstructions, Lot configuration, Lot size, hardship, aesthetic or environmental considerations may require a variance. The Developer and the Committee reserve the right to grant variances as to building setback lines, minimum square footage of the residence, fences, and other items. Such variances must be evidenced in writing and shall become effective when signed by the Developer or by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

Section 4.07 No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or Board of Directors with respect to the construction of any improvements within the Subdivision. Specifically, the approval by the Committee or Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications or other materials submitted with respect to any other residential construction by such person or other Owners.

Section 4.08 Disclaimer. No approval of plans and specifications and no publication or designation of architectural standards shall ever be construed as representing or implying that such plans, specifications or standards will result in a properly designed structure or satisfy any legal requirements.

Section 4.09 Subject to Association. The Committee is a committee of the Association and is subject to supervision by the Association. Without limitation of the foregoing the Association has authority to remove members of the Committee with or without cause and to appoint successors to fill any vacancies which may exist on the Committee.

ARTICLE V
STONE MOUNTAIN ESTATES PROPERTY OWNERS ASSOCIATION

Section 5.01 Membership. Every person or entity who is a record owner of any Lot which is subject to the Maintenance Charge (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, including contract sellers, shall be a "Member" of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, upon the Control Transfer Date as defined in section 4.02(b) hereto, the Directors of the Association must be Members of the Association (as more particularly described in the By-laws). Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association. The initial Board of Directors of the Association shall be designated by the Developer.

Section 5.02 Non-Profit Corporation. Stone Mountain Estates Property Owners Association, Inc., a non-profit corporation (the "Association"), has been (or will be) organized and it shall be governed by the Certificate of Formation and Bylaws of the Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 5.03 Bylaws. The Association has adopted or may adopt whatever Bylaws it may choose to govern the organization or operation of the Subdivision and the use and enjoyment of the Lots and Common Area, provided that the same are not in conflict with the terms and provisions hereof.

Section 5.04 Owner's Right of Enjoyment. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Area and such right shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) The right of the Association, with respect to the Common Area, to limit the number of guests of Owners;
- (b) The right of the Association to make rules and regulations regarding use of any Common Area and to charge reasonable admission and other fees for the use of any facility situated upon the Common Area;
- (c) The right of the Association, in accordance with its governing documents (and until the Control Transfer Date, subject to the prior written approval of the Developer), to (i) borrow money for the purpose of improving and maintaining the Common Area and facilities (including borrowing from the Developer or any entity affiliated with the Developer) and (ii) mortgage said property, however, the rights of any such mortgagee of said property shall be subordinate to the rights of the Owners hereunder;
- (d) The right of the Association to suspend the Member's voting rights and the Member's and "Related Users" (as hereinafter defined) right to use any recreational facilities within the Common Area during any period in which the Maintenance Charge or any assessment against his Lot remains unpaid;
- (e) The right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration or the "Rules and Regulations," defined in Article VIII hereof, which suspension shall continue for the duration of such infraction or violation, plus a period not to exceed sixty (60) days following the cessation or curing of such infraction or violation; and,
- (f) The right of the Association, subject, until the Control Transfer Date, to the prior written approval of the Developer, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, for such purposes and subject to the provisions of this Declaration.

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Section 5.05 Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the Member's immediate family living in the Member's residence, and his contract purchasers who reside on the Lot (collectively, the "Related Users").

ARTICLE VI
MAINTENANCE FUND

Section 6.01 Maintenance Fund Obligation. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association, in advance, an annual maintenance charge on January 10th of each year, (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made.

Section 6.02 Basis of the Maintenance Charge.

(a) The Maintenance Charge referred to shall be used to create funds to be known as the "Maintenance Fund" and the "Road Reserve Fund," which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot (or residential building site) to the Association annually, in advance, on or before the tenth day of January of each calendar year, or on such other date or basis (monthly, quarterly or semi-annually) as the Developer or the Board of Directors of the Association may designate in its sole discretion.

(b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Area or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Lot.

(c) The exact amount of the Maintenance Charge applicable to each Lot will be determined by the Developer until the Control Transfer Date, and thereafter by the Board of Directors of the Association during the month preceding the due date of the Maintenance Charge. The initial annual Maintenance Charge shall be a minimum of \$1,500.00 per Lot. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Developer or the Board of Directors of the Association, subject to the provision hereof.

(d) The Maintenance Charge described in this Article VI and other charges or assessments described in this Declaration shall not apply to the Lots owned by the Developer. The Developer, prior to the Control Transfer Date, and the Association, from and after the Control Transfer Date, reserve the right at all times in their own judgement and discretion, to exempt any Lot ("Exempt Lot"), in the Subdivision from the Maintenance Charge, in accordance with Section 6.07 hereof. If an Exempt Lot is sold to any party, the Maintenance Charge shall be automatically reinstated as to the Exempt Lot and can only be waived at a later date pursuant to the provisions of the preceding sentence. The Developer, prior to the Control Transfer Date, and the Association, from and after the Control Transfer Date, shall have the further right at any time, and from time to time, to adjust or alter said Maintenance Charge from month to month as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

(e) The Board of directors of the Association, from time to time by the adoption of a resolution for such purpose may levy and impose, against each Lot in the Subdivision, a special assessment for a specific amount, which shall be equal for each such Lot, for the purpose of purchasing equipment or facilities for Roadways, Common Area or Common Facilities in the Subdivision and/or for defraying in whole or in part the cost of constructing new capital improvements or altering, remodeling, restoring or reconstructing previously existing capital improvements upon such Roadways, Common Area or common facilities, including fixtures and personal property related thereto. The Owner of each Lot subject to such assessment shall pay his special assessment to the Association at such time or times and in such manner as provided in such resolution.

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Section 6.03 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments (including, but not limited to, attorney's fees incurred in the enforcement of these Restrictions) hereby levied, a vendor's (purchase money) lien for the benefit of the Association, shall be and is hereby reserved in the deed from the Developer to the initial purchaser and all subsequent purchasers of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Association. As additional security for the payment of the Maintenance Charge and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code (and any successor statute) and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Denton County, Texas. In the event that the Association has determined to nonjudicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Denton County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgement for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 6.03 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Denton County, Texas, amend the provisions hereof so as to comply with said amendments or successor statutes to Section 51.002 of the Texas Property Code.

Section 6.04 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection, including reasonable attorneys' fees, which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Trustees to cover the preparation and recordation of such release of lien instrument.

Section 6.05 Liens Subordinate to Mortgages. The liens described in this Article VI and the superior title herein reserved shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or other bona fide, third party lender, including

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Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof. The liens described in this Article VI shall also be deemed subordinate to home equity liens, home equity lines of credit and reverse mortgages. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Lot which accrued prior to the time such holder acquires title to such Lot. No such sale or transfer shall relieve such transferee of title to a Lot from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot shall not affect the Association's lien for Maintenance Charges or other charges or assessments. The Association shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of the lien described in Section 6.01 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VI.

Section 6.06 Purpose of the Maintenance Charge. The Maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health and welfare of the Owners of the Subdivision and other portions of the Annexable Area which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described in Article VIII, including the maintenance of the Common Area, or Drainage Easements, and the establishment and maintenance of a reserve fund for maintenance of the Common Area, or Drainage Easements. The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgment of the Developer or Association, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area, etc. as may from time to time be authorized by the Association. Payment of all legal and other expenses incurred in connection with the enforcement of all charges and assessments, conveyances, restrictions, and conditions affecting the properties to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charges and assessments, landscaping in Common Area, utilities, insurance, taxes, employing policemen and a security force and doing any other things or things necessary or desirable in the opinion of the Association to keep the Property neat and in good order, or which is considered a general benefit of the Owners or occupants of the Property, it being understood that the judgment of the Association in the expenditure of said fund shall be final and conclusive so long as such judgment is exercised in good faith. The Maintenance Charge is for the purpose of promoting the recreation, health and welfare of the Owners of the Subdivision and other portions of the Annexable Area, which may hereafter become subject to the jurisdiction of the Association. The Road Reserve Fund shall be used to set aside sufficient funds to provide for the reconstruction or repair of the private roads in the Subdivision every ten (10) years, if necessary. The amount to be set aside shall be determined yearly by the Board of Directors at the annual meeting of the association.

Section 6.07 Exempt Property. The following property subject to this Declaration shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by the Developer or the Association or a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas; however, no land or improvements devoted to Dwelling use shall be exempt from said Maintenance Charge.

Section 6.08 Handling of Maintenance Charges. The collection and management of the Maintenance Charge or other charge or assessment levied hereunder, shall be performed by the Developer until the Control Transfer Date, at which time the Developer shall deliver to the Association all funds on hand together with all books and records of receipt and disbursements. The Developer and, upon transfer, the Association, shall maintain separate special accounts for these funds, and Owners shall be provided at least annually, information on the Maintenance Fund as provided in Section 8.07 hereof.

ARTICLE VII
DEVELOPER'S RIGHTS AND RESERVATIONS

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Section 7.01 Period of Developer's Rights and Reservations. Developer shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association from the date hereof, until the earlier to occur of (i) the Control Transfer date or (ii) Developer's written notice to the Association of Developer's termination of the rights described in Article VII hereof. The "Control Transfer Date" is defined in Section 4.02 (b). The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of a Lot by Developer to an Owner whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Area is conveyed by Developer. The rights, reservations and easements hereafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Developer's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Developer's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.

Section 7.02 Right to Construct Additional Improvements in Common Area. Developer shall have and hereby reserves the right (without the consent of any other Owner), but shall not be obligated, to construct additional improvements within the Common Area at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners. Developer shall, upon the Control Transfer Date, convey or transfer such improvements to the Association and the Association shall be obligated to accept title to, care for and maintain the same as elsewhere provided in this Declaration.

Section 7.03 Developer's Rights to Use Common Area in Promotion and Marketing of the Property and Annexable Area. Developer shall have and hereby reserves the right to reasonable use of the Common Area and of services offered by the Association in connection with the promotion and marketing of land within the boundaries of the Property and Annexable Area. Without limiting the generality of the foregoing, Developer may erect and maintain on any part of the Common Area such signs, temporary buildings and other structures as Developer may reasonably deem necessary or proper in connection with the promotion, development and marketing of land within the Property and Annexable Area; may use vehicles and equipment within the Common Area for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Property and Annexable Area, who are not Owners or Members of the Association, to use the Common Area at reasonable times and in reasonable numbers; and may refer to the services offered by the Association in connection with the development, promotion and marketing of the Property and Annexable Area. Further, the Developer may establish Rules and Regulations for the use of the Common Area in the Subdivision.

Section 7.04 Developer's Rights to Grant and Create Easements. Developer shall have and hereby reserves the right, without the consent of any other Owner or the Association, to grant or create temporary or permanent easements, for access, utilities, pipeline easements, cable television systems, communication and security systems, drainage, water and other purposes incident to development, sale, operation and maintenance of the Subdivision, located in, on, under, over and across (i) the Lots or other property owned by Developer, (ii) the Common Area, and (iii) existing utility easements. Developer also reserves the right, without the consent of any other Owner or the Association, to (i) grant or create temporary or permanent easements for access over and across the streets and roads within the Subdivision to other public roads for the benefit of owners of property, regardless of whether the beneficiary of such easements own property which is hereafter made subject to the jurisdiction of the Association and (ii) permit owners of property within the Annexable Area which is not made subject to the jurisdiction of the Association to use the recreational facilities of the Association and other Common Area, provided that said owners pay to the Association their proportionate share of the cost of operating and maintaining said recreational facilities and Common Area.

Section 7.05 Developer's Rights to Convey Additional Common Area to the Association. Developer shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and improvements thereon, if any, to the Association as Common Area at any time and from time to time in accordance with this Declaration, without the consent of any other Owner or the Association.

Section 7.06 Annexation of Annexable Area. Additional residential property and common areas outside of the Subdivision including, without limitation, the Annexable Area, may, at any time and from time to time, be annexed by the Developer into the real property which becomes subject to the jurisdiction and benefit of the Association, without the consent of the Owners or any other party; provided, however, such additional residential property outside of the Annexable Area may be made subject to the jurisdiction of the Association by the Developer. The owners of Lots in such annexed property, as well as all other Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all of the Common Area, including any lake, pond or creek, that is or may become subject to

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the jurisdiction of the Association, provided that such annexed property is impressed with and subject to at least the Maintenance Charge imposed hereby.

ARTICLE VIII
DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION

Section 8.01 General Duties and Powers of the Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members, to maintain, improve and enhance the Common Area and to improve and enhance the attractiveness and desirability of the Subdivision and any portion of the Annexable Area which becomes subject to the jurisdiction of the Association. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration.

Section 8.02 Duty to Accept the Property and Facilities Transferred by Developer. The Association shall accept title to any of the Common Area or other real property, including any improvements thereon and personal property transferred to the Association by Developer, and equipment related thereto, together with the responsibility to perform any and all administrative functions and recreation functions associated therewith (collectively herein referred to as "Functions"), provided that such property and Functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Developer may include fee simple title, easements, leasehold interests and licenses to use such property. Any property or interest in property transferred to the Association by Developer shall be within the boundaries of the Property or Annexable Area. Any property or interest in property transferred to the Association by Developer shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens and mortgages (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, the terms of any declaration of covenants, conditions and restrictions annexing such property to the Common Area, and all easements, covenants, conditions, restrictions and equitable servitude or other encumbrances which do not materially affect the Owners authorized to use such property. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Association by the Developer shall impose upon the Association any obligation to make monetary payments to Developer or any affiliate of Developer including, but not limited to, any purchase price, rent, charge or fee. The property or interest in property transferred to the Association by Developer shall not impose any unreasonable or special burdens of ownership of property, including the management maintenance replacement and operation thereof.

Section 8.03 Duty to Manage and Care for the Common Area and Drainage and Landscape Reserve and Easement. The Association shall manage, operate, care for, maintain and repair all Common Area and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Common Area shall include, but not be limited to the following: establishment, operation and maintenance of a security system, if any, for the Subdivision; landscaping, maintenance, repair and replacement of the nature trails, if any; maintenance, repair and replacement of the drainage easements; mowing of street right-of-ways and other portions of the Subdivision; and management, maintenance, repair and upkeep of the Common Area. The Association shall be responsible for maintaining the rights-of-way of all Drainage and Landscape Reserves and Easements as shown on the Plat of the Subdivision or referenced thereon. The Association shall also be responsible for Maintenance of all Reserves in the Subdivision commencing upon the transfer of such Reserves from the Developer to the Association.

Section 8.04 Other Insurance Bonds. The Association shall obtain such insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 8.05 Duty to Prepare Budgets. The Association shall prepare budgets for the Association, which budgets shall include a reserve fund for the maintenance of all Common Area.

Section 8.06 Duty to Levy and Collect the Maintenance Charge. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.

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Section 8.07 Duty to Provide Annual Review. The Association shall provide for an annual un-audited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same.

Section 8.08 Duties with Respect to Architectural Approvals. The Association shall perform functions to assist the Committee as elsewhere provided in Article IV of this Declaration.

Section 8.09 Power to Acquire Property and Construct Improvements. The Association may acquire property or an interest in property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on the Property and may demolish existing improvements.

Section 8.10 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations ("Rules and Regulations"), fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Area, and the use of any other property, facilities or improvements owned or operated by the Association.

Section 8.11 Power to Enforce Restrictions and Rules and Regulations, Covenant Enforcement and Fining Policy. The Association (and any Owner with respect only to the remedies described in (ii) below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (i) by entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (iii) by exclusion, after notice and hearing, of any Member or Related User from use of any recreational facilities within the Common Area during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or any Related User, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues; (iv) by suspension, after notice and hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or a Related User which assessment reimbursed the Association for the costs incurred by the Association in connection with such breach; (vi) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or such Rules and Regulations by such Member or a Related User; and (vii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Members, plus attorneys' fees incurred by the Association with respect to exercising such remedy.

a. Establishment of Violation. Any condition, use, activity or improvement which does not comply with the provisions of the Declaration, Bylaws, the Rules and Regulations of the Association or the architectural control standards bulletins or guidelines, shall constitute a "Violation" under this Policy for all purposes.

b. Report of Violation. The existence of a Violation will be verified by a field observation conducted by the Board or its delegate. For the purpose of this Enforcement Policy, the delegate of the Board may include Management, an officer or member of the Board, a member of the Architectural Control Committee, or a member of any other committee established by the Board for this purpose. A timely written report shall be prepared by the field observer for Violation, which will include the following information:

- i) Identification of the nature and description of the Violation(s);
- ii) Identification by street address and legal description, if available, of the Lot on which the Violation exists.

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- iii) Identification of the authority establishing that the subject improvements, modifications, conduct, conditions, etc. constitute a Violation(s).
- iv) Date of the verification observation and name of the person making such observation.

c. Notice of Violation. As soon as practicable after the field observation report is prepared, the Association will forward to the Owner of the Lot in question written notice of the Violation(s) by first class mail or personal delivery and by certified mail, return receipt requested (the "Notice of Violation"). A Notice of Violation need not be sent if the alleged violator has previously received a Notice of Violation relating to a similar Violation within six (6) months of the occurrence of the current Violation and was given a reasonable opportunity to cure the Violation. If the alleged violator was given notice and an opportunity to cure the similar Violation within the previous six (6) months, the Board may impose sanctions as authorized by this Declaration without notice to the Owner other than the Final Notice of Violation described in paragraph (d) below. The Notice of Violation will state the following:

- i) The nature, description and location of the Violation, including any property damage caused by the Owner.
- ii) The authority for establishing the Violation, including the authority for recovering property damages caused by the Owner.
- iii) The proposed sanction to be imposed, including the amount of any fine or the amount claimed to be due from the Owner for property damage.
- iv) If the Violation is corrected or eliminated within a reasonable time after the Owner's receipt of the Notice of Violation that a fine will not be assessed and that no further action will be taken.
- v) The recipient may, on or before thirty (30) days from the receipt of the Notice of Violation, deliver to the Association a written request for a hearing.
- vi) If the Violation is not corrected or eliminated within the time period specified in the Notice of Violation, or if written request for a hearing is not submitted on or before thirty (30) days from the receipt of the Notice of Violation, that the sanctions delineated in the Notice of Violation may be imposed and that any attorney's fees and costs will be charged to the Owner.

d. Final Notice of Violation. A formal notice of the Violation and the sanction to be imposed, including the amount of any fine or the amount of any property damage (the "Final Notice of Violation") will be sent by the Association to the Owner by regular first class mail and by certified mail, return receipt requested, under any of the following situations:

- i) Where, within the time period specified in the Notice of Violation, the Violation has not been corrected or eliminated;
- ii) Where, within thirty (30) days from the date of receipt by the Owner of the Notice of Violation, the Association has not received written request for a hearing; or
- iii) Where, the Owner was previously notified of, and was given a reasonable opportunity to cure, a similar Violation within the preceding six (6) months.

e. Request for a Hearing. If the Owner challenges the proposed action by timely requesting a hearing, the hearing shall be held in executive session of the Board affording the alleged violator a reasonable opportunity to be heard. Such hearing shall be held no later than the 30th day after the date the Board receives the Owner's request for a hearing. Prior to the effectiveness of any sanction hereunder, proof of proper notice of the hearing shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, agent or delegate who delivered such notice. The notice requirement shall be sent no later than the 10th day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed by the Board. The Board shall notify the Owner in writing of its action within ten (10) days after the hearing. The Board may, but shall not be obligated to, suspend any proposed sanction if the Violation is cured within the ten-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Owner.

f. Correction of Violation. Where the Owner corrects or eliminates the Violation(s) prior to the imposition of any sanction, no further action will be taken (except for collection of any monies for which the Lot Owner may become liable under this Enforcement Policy). Written notice of correction or elimination of the Violation may be

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obtained from the Board upon request for such notice by the Owner and upon payment of a fee for same, the amount of which is set by the Board.

g. Corrective Action. Notwithstanding any other provision contained herein to the contrary, where a Violation is determined or deemed to exist, the Board may undertake to cause the Violation to be corrected, removed or otherwise abated, if the Board, in its reasonable judgment, determines the Violation may be readily corrected, removed or abated without undue expense and without breach of the peace. Where the Board decides to initiate any such action, the following will apply:

- i) The Board must give the Owner and any third party that is known to the Association to be directly affected by the proposed action prior written notice of undertaking of the action.
- ii) Costs incurred in correcting or eliminating the Violation will be referred to the Association to be recovered from the Owner.
- iii) The Association, and its agents and contractors, will not be liable to the Owner or any third party for trespass or any damages or costs alleged to arise by virtue of action taken under this paragraph g.

h. Referral to Legal Counsel. Where a Violation is determined or deemed determined to exist and where the Board deems it to be in the best interests of the Association to refer the Violation to legal counsel for appropriate action, the Board may do so at any time. Such legal action may include, without limitation, sending demand letters to the violating Owner and/or seeking injunctive relief against the Owner to correct or otherwise abate the Violation. Attorney's fees and all costs incurred by the Association in enforcing the Governing Documents and administering this Enforcement Policy shall become the personal obligation of the Owner, secured with a lien against his Lot.

i. Fines. Subject to provisions of this Enforcement Policy, the imposition of fines will be on the following basis:

- i) Fines will be based on a per notice or Violation charge. For a first Violation, a fine ranging from \$50 to \$500 will be assessed. In the event the Violation is not cured within the timeframe specified in the Final Notice of Violation, an additional fine ranging from \$100 to \$500 will be assessed thereafter for every thirty (30) day period in which the Violation is not corrected.
- ii) Imposition of fines will be in addition to and not exclusive of any other rights, remedies and recoveries of the Association as created by this Enforcement Policy or this Declaration. The Board of Directors may elect to set up a payment arrangement. The Board of Directors may elect to suspend voting privileges.
- iii) Fines are imposed against Lots and become the personal obligation of the Owners of such Lots.
- iv) Fines related to and during the construction period of a new home: Fines will be based on a per notice or Violation charge. For a first Violation, a fine in the amount of \$100 will be assessed and will be accompanied by a Stop Work Order. Failure to cease construction activity while in non-compliance will result in a daily assessed fine of \$100 until such time as construction activity ceases or the Violation is cured. In the event the violation is not cured within fifteen (15) days after the date of the Final Notice of Violation, an additional fine of \$150 will be assessed, and the fine will increase to \$200 thereafter for every fifteen (15) day period in which the Violation is not corrected.

j. Notices. Unless otherwise provided in the Enforcement Policy, all notices required by this Enforcement Policy shall be in writing and shall be deemed to have been duly given if delivered personally and/or if sent by United States Mail, first-class postage prepaid, to the Owner at the address which the Owner has designated in writing and filed with the Secretary of the Association or, if no such address has been designated, to the address of the Lot of the Owner.

- i) Where the notice is directed by personal delivery, notice shall be deemed to have been given, sent, delivered or received upon actual receipt by any person accepting delivery thereof at the address of the recipient as set forth in such notice or if no person is there, by leaving the notice taped to the front door of the residence.
- ii) Where the notice is placed into the care and custody of the United States Postal Service, notice shall be deemed to have been given, sent, delivered or received, as of the third (3rd) calendar day following the date of postmark of such notice bearing postage prepaid and the appropriate name and address as required herein.

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- iii) Where a day required for an action to be taken or a notice to be given, sent, delivered or received, as the case may be, falls on a Saturday, Sunday or United States Postal Service holiday, the required date for the action or notice will be extended to the first day following which is neither a Saturday, Sunday or United States Postal Service holiday.
- iv) Where the Board has actual knowledge that such situation exists, any action to be taken pursuant to this Enforcement Policy which would directly affect the property of a third party or would be the responsibility of a party other than the Owner, notices required under this Enforcement Policy may be given, if possible, to such third party in addition to the Owner. Notwithstanding any notice sent to a third party, the Owner remains the party responsible for compliance with the requirements of the Declaration. The Board shall accept a response from any such third party only upon the written direction of the Owner of the Lot upon the Violation exists.
- v) Where the interest of an Owner in a Lot has been handled by a representative or agent of such Owner or where an Owner has otherwise acted so as to put the Association on notice or communication from the Association pursuant to this Enforcement policy, it will be deemed full and effective for all purposes if given to such representative or agent.
- vi) Where an Owner transfers record title to a Lot at any time during the pendency of any procedure prescribed by this Enforcement Policy, such Owner shall remain personally liable for all costs and fines under this Enforcement Policy. As soon as practical after receipt by the Association of a notice of a change in the record title to a Lot which is the subject of enforcement proceedings under this Enforcement Policy, the Board may begin enforcement proceedings against the new Owner in accordance with this Enforcement Policy. The new Owner shall be personally liable for all costs and fines under this Enforcement Policy which are the result of the new Owner's failure and/or refusal to correct or eliminate the Violation in the time and manner specified under this Enforcement Policy.

k. Cure of Violation During Enforcement. An Owner may correct or eliminate a Violation at any time during the pendency of any procedure prescribed by this Enforcement Policy. Upon verification by written report to the Board and sent, where appropriate, to the Board that the Violation has been corrected or eliminated; the Violation will be deemed no longer to exist. The Owner will remain liable for all costs and fines under this Enforcement Policy, which costs and fines, if not paid upon demand therefore by Management, will be referred to the Board of Directors to the Association for collection.

l. Definitions. The definitions contained in the Certificate of Formation and Bylaws are hereby incorporated herein by reference.

Failure of the Association, the Developer, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

Section 8.12 Power to Grant Easements. In addition to any blanket easements described in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area.

Section 8.13 Power to Convey and Dedicate Property to Government Agencies. The Association shall have the power to grant, convey, dedicate or transfer any Common Area or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, which power may be exercised (i) prior to the Control Transfer Date by the Board of Directors and (ii) from and after the Control Transfer Date by the Association, with the approval of not less than two-thirds (2/3rds) of the Members agreeing in writing or by voting at any scheduled meeting of the Members and with the prior written approval of the Developer. The Association may, subject to the limitations of the preceding sentence, convey property to a public or governmental agency or authority in lieu of such property being condemned by such public or governmental agency or authority.

Section 8.14 Power to Remove and Appoint Members of a Committee. The Association shall have the power to remove any member of a Committee with or without cause. The Association shall have the power to appoint new members to a Committee to fill any vacancies on any Committee.

ARTICLE IX
GENERAL PROVISIONS

Section 9.01 Term. The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the then Owners (including any Lots owned by the Developer) of the Lots has been recorded agreeing to cancel, amend or change, in whole or in part, this Declaration.

Section 9.02 Amendments. This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners (including the Developer) entitled to cast not less than two-thirds (2/3rds) of the votes of all of the Owners. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Owners of the Association, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facie evidence of the date of execution of said amendment by such Owner. Those Members (Owners, including the Developer) entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Members of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members (Owners, including the Developer) duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Notwithstanding any provision contained in the Bylaws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of the County, accompanied by a certificate, signed by a majority of the Board of Trustees, stating that the required number of Members (Owners, including the Developer) executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination. Any attempt to amend these restrictions to change the density provisions of Article III must obtain the prior approval of the Town of Cross Roads

Section 9.03 Amendments by the Developer. The Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or his mortgagee. Additionally, Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of permitting the Owners to enjoy the benefits from technological advances, such as security, communications or energy-related devices or equipment which did not exist or were not in common use in residential Subdivisions at the time this Declaration was adopted. Likewise, the Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of prohibiting the use of any device or apparatus developed and/or available for residential use following the date of this Declaration if the use of such device or apparatus will adversely affect the Association or will adversely affect the property values within the Subdivision. Any attempt to amend these restrictions to change the density provisions of Article III must obtain the prior approval of the Town of Cross Roads.

Section 9.04 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision. Any attempt by the developer to amend these restrictions to change the density provisions of Article III must obtain the prior approval of the Town of Cross Roads.

Section 9.05 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

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Section 9.06 Successors and Assigns. The provisions hereof shall be binding upon and inure to the benefit of the Owners, the Developer and the Association, and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 9.07 Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien, or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

Section 9.08 Terminology. All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limits nor amplifies the provisions of this Declaration itself. The terms "herein," "hereof" and similar terms, as used in this instrument, refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear. All references in this Declaration to Exhibits shall refer to the Exhibits attached hereto.

Section 9.09 Developer's Rights and Prerogatives. Prior to the Control Transfer Date, the Developer may file a statement in the Real Property Records of the County, which expressly provides for the Developer's (ii) discontinuance of the exercise of any right or prerogative provided for in this Declaration to be exercised by the Developer or (i) assignment to any third party owning property in the Subdivision or Annexable Area, of one or more of Developer's specific rights and prerogatives provided in this Declaration to be exercised by Developer. The assignee designated by Developer to exercise one or more of Developer's rights or prerogatives hereunder shall be entitled to exercise such right or prerogative until the earlier to occur of the (i) Control Transfer Date or (ii) date that said assignee files a statement in the Real Property Records of the County, which expressly provides for said assignee's discontinuance of the exercise of said right or prerogative. From and after the date that the Developer discontinues its exercise of any right or prerogative hereunder and/or assigns its right to exercise one or more of its rights or prerogatives to an assignee, the Developer shall not incur any liability to any Owner, the Association or any other party by reason of the Developer's discontinuance or assignment of the exercise of said right(s) or prerogative(s). Upon the Developer's Assignment of its rights as of the Control Transfer Date to the Association, the Association shall be entitled to exercise all the rights and prerogatives of the Developer.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand as of this _____ day of September, 2007.

SM RANCH PARTNERS, LTD.
BY: MJ Operating Company, General Partner

By: _____
J. Benjamin Johnson, President

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of September, 2007, by J. Benjamin Johnson, President of MJ Operating Company, General Partner of SM Ranch Partners, Ltd., in the capacity therein stated.

Notary Public, State of Texas