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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PELICAN'S NEST SUBDIVISION

THIS DECLARATION (this "Declaration"), made as of the date hereinafter set forth by **Pelican's Nest, L.P.**, a Texas limited partnership (hereinafter referred to as "Declarant");

## WITNESSETH:

WHEREAS, Declarant is the owner of all that certain tract of land situated in Harris County, Texas, which has been platted and subdivided as **Pelican's Nest Subdivision** according to the plat recorded in Film Code No. 593018 of the Map or Plat Records of Harris County, Texas (the "Subdivision"); and

WHEREAS, it is the desire of Declarant to provide for the preservation of the values and amenities in such Subdivision and, to this end to subject the Lots (hereinafter defined) therein to the covenants, conditions and restrictions hereinafter set forth for the benefit of the Lots and all present and future owners thereof;

NOW, THEREFORE, Declarant hereby declares that the Subdivision shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with said Subdivision and shall be binding upon all parties having any right, title or interest in said Subdivision or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

## DEFINITIONS

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

**SECTION 1.** "Area of Common Responsibility" shall mean the Common Area, together with those areas, if any, which by contract or agreement become the responsibility of the Association. Road rights-of-ways within or adjacent to the Properties may be part of the Area of Common Responsibility.

**SECTION 2.** "Assessment" shall mean the General Assessments, special assessments, and/or any other amounts or sums due by any Owner to the Association pursuant to the provisions of this Declaration or a Supplemental Declaration, levied by the Association for purposes of obtaining funds to pay Association Expenses as provided herein.

**SECTION 3.** "Association" shall mean and refer to PELICAN'S NEST HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation, its successors, assigns and replacements.

**SECTION 4.** "Association Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board of Directors of the Association pursuant to this Declaration and the Association's organizational documents and by-laws.

SECTION 5. "Board of Directors" or "Board" shall mean the governing body of the Association.

SECTION 6. "Builder" shall mean and refer to any person or entity undertaking the construction of a residence on a Lot.

SECTION 7. "Common Area" shall mean and refer to any properties, real or personal, owned by the Association for the common use and enjoyment of Members (hereinafter defined) of the Association and shall include, but is not limited to, all trees, landscaping, sprinkler systems, drainage improvements, pavements, private streets, pipes, wires, conduits, and public utility lines situated thereon

SECTION 8. "Corner Lot" shall mean and refer to a Lot which abuts on more than one Street.

SECTION 9. "Declarant" shall mean and refer to **Pelican's Nest, L.P.**, a Texas limited partnership, its successors or assigns.

SECTION 10. "General Assessments" shall mean assessments levied for Association Expenses determined by the Board of Directors to benefit all Owners of the Lots in the Properties.

SECTION 11. "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat intended for the construction of a single family residence, excluding all reserve tracts shown on a Subdivision Plat, but including Lots hereafter created by a replat of any reserve tracts.

SECTION 12. "Member" shall refer to every person or entity which holds a membership in the Association.

SECTION 13. "Modifications Committee" refers to the committee created by the Board of Directors pursuant to Section 2(b) of Article II hereof.

SECTION 14. "New Construction Committee" refers to the committee created pursuant to Section 2(a) of Article II hereof.

SECTION 15. "Person" shall mean any natural person, corporation, joint venture, partnership, association, trust or other legal entity.

SECTION 16. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation or those owning an easement right, a mineral interest, or a royalty interest.

SECTION 17. "Properties" shall mean and refer to the real property within the jurisdiction of the Association, including the Subdivision and any additional property hereafter added to the jurisdiction of the Association as provided herein.

SECTION 18. "Single Family Residence" shall mean and refer to a detached residence constructed on a single Lot.

SECTION 19. "Street" shall refer to any public or private street, drive, boulevard, road, alley, lane, avenue, or thoroughfare as shown on the Subdivision Plat.

SECTION 20. "Subdivision" shall mean and refer to certain real property situated in Harris County, Texas, described more particularly as **Pelican's Nest**, a subdivision with sixty (60) residential lots, the map of which is recorded in Film Code No. 593018 of the Map or Plat Records of Harris County, Texas.

SECTION 21. "Subdivision Plat" shall mean and refer to the plat of Pelican's Nest Subdivision recorded in Film Code No. 593018 of the Map Records of Harris County, Texas and any duly recorded amended plat or replat thereof.

SECTION 22. "Supplemental Declaration" shall refer to (i) a separate declaration of covenants, conditions and restrictions which is imposed on property within the jurisdiction of the Association and which may be enforced by the Association, or (ii) an instrument which imposes additional restrictions on a portion of the Properties which may be enforced by the Association.

## ARTICLE II

## ARCHITECTURAL STANDARDS

SECTION 1. PURPOSE. In order to establish and preserve a harmonious and aesthetically pleasing design for the Pelican's Nest project and to protect and promote the value of the Properties, the Lots in the Subdivision shall be subject to the restrictions set forth in this Article II. Every grantee of any interest in a Lot in the Subdivision by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article.

SECTION 2. HOA ARCHITECTURAL REVIEW COMMITTEES.

(a) New Construction Committee. There is hereby established the PELICAN'S NEST HOMEOWNERS ASSOCIATION New Construction Committee (hereinafter called the "New Construction Committee" or "NCC"), which shall consist of at least three (3), but no more than five (5), individuals which shall have exclusive jurisdiction over all original construction on the Lots in the Subdivision. The New Construction Committee shall (i) adopt such standards or guidelines for the construction of improvements in the Subdivision as it determines (the "New Construction Committee Guidelines"), and (ii) establish application and review procedures for plans and specifications. The New Construction Committee shall make the New Construction Committee Guidelines available to Owners and Builders who seek to engage in development of or construction upon a Lot and who shall conduct their operations strictly in accordance therewith. Until the date on which it has sold all of its Lots within the Properties, the Declarant shall have the right to appoint all members of the New Construction Committee as well as the right to remove any member. There shall be no surrender of this right prior to that time, except by a written instrument executed by Declarant and recorded in the real property records of Harris County, Texas. Upon the expiration of such right, the Board of Directors shall appoint the members of the New Construction Committee. The New Construction Committee is authorized, but not obligated, to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the New Construction Committee in performing its functions set forth herein.

(b) Modification Committee. There is also hereby established the PELICAN'S NEST HOMEOWNERS ASSOCIATION Modifications Committee (hereinafter called the "Modifications

Committee"), which shall consist of at least three (3), but no more than five (5), individuals which shall have exclusive jurisdiction over modifications, additions, or alterations made on or to the Single Family Residences and other improvements to the Lots within the Subdivision. The Modifications Committee shall adopt such standards and procedures governing its area of responsibility as it determines are appropriate from time to time (the "Modifications Committee Guidelines"). All members of the Modifications Committee shall be appointed by the Board of Directors which shall also have the right to remove any member.

SECTION 3. ARCHITECTURAL APPROVAL. To preserve the architectural and aesthetic appearance of the Subdivision, no construction of improvements, or modifications, additions, or alterations to existing improvements, shall be commenced or maintained by any Owner with respect to any of the Lots in the Subdivision, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the New Construction Committee or the Modifications Committee (collectively sometimes referred to herein as the "Architectural Review Committee"), as applicable, as to the compliance of such plans and specifications with the New Construction Committee Guidelines or the Modifications Committee Guidelines, as applicable, including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the applicable Architectural Review Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved." The Architectural Review Committees may establish a reasonable fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, or inspectors retained to assist such committees in the performance of its duties hereunder. Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally-approved color scheme, or to rebuild in accordance with originally-approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his improvements, or to paint the interior of the improvements on his property any color desired. The Architectural Review Committees shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

Upon approval of plans and specifications by the applicable Architectural Review Committee, no further approval under this Article II shall be required with respect thereto, unless construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Disapproval of plans and specifications may be based by the applicable Architectural Review Committee upon any ground which is consistent with the objects and purposes of this Declaration as determined by such Architectural Review Committee from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

SECTION 4. LANDSCAPING APPROVAL. To preserve the aesthetic appearance of the Subdivision, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed on a Lot in the Subdivision by the Owner thereof unless and until the plans therefor have been submitted to and approved in writing by New Construction Committee, in the case of the initial landscaping of a Lot, or the Modifications Committee otherwise.

**SECTION 5. APPROVAL NOT A GUARANTEE OR VARIANCE.** The review and approval of plans pursuant to this Article is made on the basis of aesthetic considerations only and no approval of plans and specifications and no publication of the New Construction Committee Guidelines or the Modifications Committee Guidelines shall be construed as representing or implying that such plans, specifications, or guidelines will, if followed, result in properly designed improvements. Such approvals and design guidelines shall in no event be construed as representing or guaranteeing that any improvements built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, the Architectural Review Committees, nor any of their respective officers, partners, directors or members, shall be responsible or liable in damages or otherwise to any Person who submits plans for approval by reason of mistake of judgment, negligence or nonfeasance arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications. The purpose of such reviews primarily seeks to conform the aesthetic appearances of development within the Properties.

In addition, the approval of plans pursuant to this Article shall not be deemed to be a variance from the specific restrictions of this Declaration. All variances must be issued in accordance with the provisions of Section 8 of this Article.

**SECTION 6. RIGHT TO INSPECT.** Any member of the Board of Directors or the Architectural Review Committees and their representatives shall have the right, but not the obligation during reasonable hours to enter upon and inspect any Lot with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In the event the applicable Architectural Review Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Association or the applicable Architectural Review Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In addition to any other remedies available to the Association, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

**SECTION 7. NO WAIVER OF FUTURE APPROVALS.** The approval by the Architectural Review Committees of any plans and specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committees, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

**SECTION 8. VARIANCES.** The Architectural Review Committees may grant variances from compliance with certain restrictions of this Declaration, a Supplemental Declaration, or from their respective guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, or (b) stop the Architectural Review Committees from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing, shall not be considered a hardship warranting a variance.

## ARTICLE III

## PELICAN'S NEST HOMEOWNERS ASSOCIATION, INC.

**SECTION I. ORGANIZATION.** Declarant has caused the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure, and management of the maintenance funds, enforcement of the restrictions contained herein, and providing for the maintenance, preservation and architectural control of the Subdivision.

**SECTION 2. BOARD OF DIRECTORS.** The Association shall act through a Board of three (3) Directors, which shall manage the affairs of the Association as specified in the by-laws of the Association. The number of Directors may be changed by amendment of the by-laws of the Association.

**SECTION 3. MEMBERSHIP.** Every Owner of a Lot in the Properties shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any property which is subject to assessment by the Association.

**SECTION 4. VOTING.** The Association shall initially have two classes of voting membership:

(a) CLASS A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all of such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) CLASS B. Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned.

The Class B membership shall cease and be converted to Class A membership on the happening of the earlier of the following events: (i) when the total votes in the Class A membership equal the total votes in the Class B membership, or (ii) on December 31, 2023 or such earlier date that the Declarant may hereafter elect and specify in a recorded instrument.

## ARTICLE IV

## COVENANT FOR MAINTENANCE ASSESSMENTS

**SECTION 1. PURPOSE OF ASSESSMENT.** The assessments provided for in this Declaration shall be used by the Association to maintain and keep in good repair the Area of Common Responsibility and for the general purposes of promoting the common benefit of the Owners and occupants in the Properties. The judgment of the Board of Directors as to the expenditure of assessments shall be final and conclusive so long as its judgment is exercised in good faith. General Assessments levied by the Association may be used to finance all or any of the following:

i. Operation, mowing, maintenance, repair, and improvement of the Area of Common Responsibility, including road rights-of-way and drainage easements within, adjacent to and in the vicinity of the Properties;

ii. Payment of taxes and premiums for insurance coverage in connection with the Common Area and for directors and officers liability insurance;

iii. Paying the cost of labor, equipment (including expense of leasing any equipment), material, and any associated management or supervisory services and fees;

iv. Paying the cost and fees of a manager or firm retained to carry out the duties of the Association or to manage the affairs and property of the Association;

v. Maintaining or replacing any landscaping in the Area of Common Responsibility;

vi. Designing, purchasing and installing any improvements to the Area of Common Responsibility;

vii. Removing debris from the Area of Common Responsibility;

viii. Contracting for street lights in the Properties;

ix. Collecting and disposing of trash, garbage, rubbish and other similar materials if the Board decides to provide such service to the Properties;

x. Payment of legal fees and expenses incurred to collect assessments and enforce this Declaration;

xi. Employing policemen or watchmen and/or a security service;

xii. Contracting for insect and pest control such as mosquito fogging;

xiii. Maintaining, repairing, or replacing private streets and related appurtuances within the Subivision

xiii. Carrying out the duties of the Board of Directors of the Association;

xiv. Creation and funding of such reserve funds as the Board of Directors of the Association deems necessary; and

xv. Carrying out such purposes of the Association as generally benefit the Members of the Association.

SECTION 2. TYPES OF ASSESSMENTS. Each Owner by acceptance of a deed to any Lot in the Properties, whether or not it shall be so expressed in such deed, covenants and agrees to pay

to the Association: (i) General Assessments; and (ii) Special Assessments to be established and collected as hereinafter provided in Section 5 of this Article IV.

(a) General Assessments. General Assessments shall be levied for Association Expenses which are determined by the Board to benefit all Members. The initial annual General Assessment shall commence on the date that the first Lot in the Properties is conveyed by the Declarant. If such assessment commences on a date other than January 1, such assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, annual General Assessments shall be levied for each calendar year in advance.

(b) Maximum General Assessment. The maximum annual General Assessment for 2006 shall be $40.00 per Lot. Each year thereafter the maximum annual General Assessment may be increased by the Board of Directors, at its sole discretion, by an amount equal to a fifteen percent (15%) increase over the maximum assessment for the previous year without a vote of the Members of the Association. The maximum annual per Lot General Assessment may be increased above fifteen percent (15%) by a vote of two-thirds (2/3rds) of each class of Members who are voting in person or by proxy, at a meeting of the Members duly called for such purpose.

(c) Rates of Assessment. Assessments shall be fixed at uniform rates on all Lots; provided, however, there shall be no Assessment against the Lots owned by the Declarant and the rate applicable to Lots owned by a Builder shall be equal to one-half (1/2) of the full assessment amount. The rate of assessment for each Lot shall change as the character of ownership changes with an appropriate proration of the Assessments for the year of the ownership change.

(d) Special Assessments. In addition to the other Assessments authorized herein, the Board may levy one or more special assessments in any year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located upon the Common Area, including fixtures and personal property related thereto; provided, however, except as otherwise hereinafter provided any such special assessment must have the written consent of the Class "B" Member, as long as such membership exists, and a per Lot special assessment in an amount greater than ten percent (10%) of the most recent annual General Assessment per Lot must be approved by majority vote of the Class "A" Members present in person or by proxy at a meeting of the Members. If a special assessment is approved as herein required and levied, it shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. Special assessments shall be allocated among all Owners in the same manner as General Assessments.

**SECTION 3. CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** All Assessments, together with interest commencing on the due date at a rate of interest to be set from time to time by the Board of Directors not in excess of the maximum lawful rate, costs (specifically including, but not limited to, any flat charges or percentage fees charged by any collection agencies used by the Association in collecting Assessments), and reasonable attorney's fees and court costs actually incurred, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which each Assessment is made. Each such Assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment fell due. Each such Owner shall be personally liable for his or her portion of each Assessment coming due while he or she is the Owner of the land, and each Assessment thereafter coming due unless and until such Owner notifies the Association of the sale or conveyance of the Lot against which the Assessment is made as hereinafter provided in this Section 3.

In order to extinguish any Person's personal liability with regard to Assessments coming due following the sale or conveyance of the land owned by such Person, such Person shall be obligated to notify the Association of such Person's sale or conveyance of the Lot against which Assessments may be levied. In that regard, each Person who at any time owned any Lot in the Properties against which Assessments may be levied shall no longer be liable or responsible for payment of Assessments coming due after the date upon which such Person furnishes to the Association a copy of the executed instrument of conveyance by which fee title to the land previously owned by such Person was conveyed or transferred to another Person, and the mailing address of the Person to whom such land was conveyed or transferred. Upon receipt of such information, the Association shall cause the name and address of the new Owner to be substituted for that of the prior Owner on the records of the Association, and the prior Owner shall no longer be liable or responsible for Assessments subsequently coming due. Each Person owning land against which Assessments may be made shall have the obligation to notify the Association of any change in its address, and notice of any such change shall become effective five (5) days after written notice thereof has been provided to the Association. With regard to mailing notices of Assessments payable by any Person to the Association, the Association shall be deemed to have satisfied any obligation that it might have to provide written notices or bills if the same are mailed or delivered to the Owner at the address of such Owner as reflected on the records of the Association, and no such Owner or other Person liable for the payment of any Assessment shall escape such liability or be entitled to any deferral or abatement of interest or any late charges or collection costs with regard to delinquent Assessments on the basis of such Person's failure to receive notice thereof if the Association did mail or deliver such notice to the most recent address of the Person according to the records of the Association.

General Assessments shall be payable annually on a date specified by the Board of Directors; provided, however, the Board may, at its option, require payment of such Assessments in annual, monthly or quarterly installments. Special Assessments shall be paid in such manner and on such date or dates as may be fixed by the Board.

**SECTION 4. COMPUTATION.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during each calendar year or such other fiscal year as the Board may adopt, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. In the event that the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year. The Association Expenses shall be levied as General Assessments, and shall be allocated among the Owners of all of the Lots in the Properties as provided in Section 2(a) of this Article IV.

The Board shall in good faith attempt to cause the budget and the Assessments to be levied against each Owner for the following year to be delivered to each Member at least thirty (30) days prior to the end of the current year.

**SECTION 5. LIEN FOR ASSESSMENTS.** All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with interest, collection and other costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on the property owned by each Owner in favor of the Association. All Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the real property records of Harris County, Texas shall be deemed to consent that such

liens or encumbrances shall be inferior to future liens for Assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**SECTION 6. SUBORDINATION OF THE LIEN TO MORTGATES.** The lien securing the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages, with the exception of liens created pursuant to Section 50(a)(6), Article XVI, of the Texas Constitution, granted or created by the Owner of any Unit to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to a foreclosure under such purchase money or improvement mortgages, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien for any such assessments due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**SECTION 7. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.** Any Assessments which are not paid in full by the date specified by the Board shall be delinquent. Any delinquent Assessment shall commence to bear interest on the due date at such interest rate not in excess of the maximum lawful rate of interest as the Board may from time to time determine. If the Assessment is not paid when due, the lien herein retained and created against the affected property shall secure the Assessment due, interest thereon from the date due and payable, all costs of collection, court costs, reasonable attorney's fees actually incurred, and any other amount provided or permitted by law. In the event that the Assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit for collection against the Owner personally obligated to pay the Assessment or foreclose the lien created and reserved hereby against the Lot of such Owner.

The Association's lien is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien shall be or is required. By acquiring a Lot, an Owner grants to the Association a power of sale in connection with the Association lien. By written resolution, the Board of Directors of the Association may appoint, from time to time, an officer, agent, trustee, or attorney of the Association to exercise the power of sale on behalf of the Association. The Association shall exercise its power of sale pursuant to Section 51.002 of the Texas Property Code, and any applicable revision(s), amendment(s), or modifications thereof in effect at the time of the exercise of such power of sale. The Association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created hereby. Costs of foreclosure may be added to the amount owed by the Owner to the Association. An Owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the Owner's debt. The Association may bid for and purchase the Lot at the foreclosure sale utilizing funds of the Association. The Association may own, lease, encumber, exchange, sell, or convey a Lot. The purchaser at any such foreclosure sale shall be entitled to sue for recovery of possession of the Lot by an action of forcible detainer without the necessity of giving any notice to the former owner or owners of the Lot sold at foreclosure. The Owner shall have no right of redemption after or resulting from a foreclosure sale of the Association's lien. Nothing herein shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien. At any time before a nonjudicial foreclosure sale, an Owner of a Lot may avoid foreclosure by paying all amounts due the Association. Foreclosure of a tax lien attaching against a Lot under Chapter 32, Tax Code, shall not discharge the Association's lien under this paragraph for amounts becoming due to the Association after the date of foreclosure of the tax lien.

No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, by non-use of Common Area or abandonment of the land owned by such Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Association's By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of Declarant and each other Owner.

All payments shall be applied first to costs and attorney's fees, then to interest, and then to delinquent Assessments.

**SECTION 8. SUBSIDY OBLIGATION OF DECLARANT.** As specified in Section 2(c) above, the Declarant shall have no obligation to pay Assessments on the Lots it owns. However, as long as the Class "B" membership exists in the Association, the Declarant shall in each year pay to the Association the difference between the amount of Assessments collected on all property subject to assessment and the amount of the actual expenditures incurred to operate the Association during the fiscal year. Any such annual payment by the Declarant shall, at the Declarant's option, be considered a loan which shall be evidenced by a promissory note and shall bear interest at the prime commercial lending rate and be payable within five (5) years or such later date as the Declarant approves.

**SECTION 9. EXEMPT PROPERTY.** The following property shall be exempt from General Assessments and special assessments:

(a) all property owned by any governmental authority or public utility, including, without limitation, fire stations, police stations, public libraries, water plants, sewage treatment plants, governmental offices (city halls, court houses, etc.), public schools, public streets, and public parks;

(b) all property owned by non-profit organizations and restricted for use or used as private schools or churches; provided, however, the availability of such exemption is contingent upon prior approval by the Board; and

(c) Common Area and property designated on the Declarant's land plan for conveyance to the Association, or a governmental body at a future date.

The Person owning Exempt Property as defined herein shall have no right to be a Member of the Association with regard to its ownership of the Exempt Property, nor shall such Person be entitled to any votes attributable to its ownership of the Exempt Property.

## ARTICLE V

## PROPERTY RIGHTS IN THE COMMON AREA

**SECTION 1. OWNER'S EASEMENT FOR ACCESS AND ENJOYMENT.** Subject to the further provisions hereof, every Member shall have an easement of access and a right and easement of enjoyment in the Common Area, and such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights of the Association:

(a) The Association shall have the right to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The Association shall have the right to borrow money and to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred.

(c) The Association shall have the right to take such steps as are reasonably necessary to protect the Common Area against foreclosure of any such mortgage.

(d) The Association shall have the right to suspend the enjoyment rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid in excess of thirty (30) days.

(e) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Common Area, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.

(f) Upon approval by two-thirds (2/3rds) of each class of Members, the Association shall have the right to dedicate, sell or transfer all or any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be approved by said two-thirds (2/3rds) of each class of Members provided, however, nothing contained herein shall be construed to limit the right of the Association to grant or dedicate easements in portions of the Common Area to public or private utility companies.

**SECTION 2. DELEGATION OF USE.** Each Member shall have the right to extend his rights and easements of enjoyment to the Common Area to the members of his family, to his tenants who reside in the Properties, and to such other Persons as may be permitted by the Association.

## ARTICLE VI

## USE RESTRICTIONS

**SECTION 1. SINGLE FAMILY RESIDENCES.** Each and every Lot in the Subdivision is hereby restricted to one (1) Single Family Residence and related outbuildings and improvements, including guest houses, servants' quarters and greenhouses, and use for single-family residential purposes exclusively and no Single Family Residence shall be occupied by more than a single

family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (I) 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 and the children of either of such individuals, and the household employees of either such household unit. It is not the intent of the Declarant to exclude from a Single Family Residence any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law. As used herein, the term "residential use" shall be construed to prohibit the use of any Lot for duplex houses, garage apartments for rental purposes, apartment houses, or mobile homes.

No business or business activity shall be carried on, in or upon any Single Family Residence at any time except with the written approval of the Board. No deliveries of stock or merchandise for sale or distribution, no traffic of customers or clients to or from a Lot, and no storage of materials, products or stock are permitted on any Lot. Garage sales or yard sales (or any similar vending of merchandise) conducted on any Lot more than once within a 12-month period shall be considered a business activity and is therefore prohibited.

Notwithstanding the foregoing, a Single Family Residence on a Lot may be used for a Home Occupation provided that:

(i) no person other than a resident of the Single Family Residence shall be engaged or employed in the Home Occupation at the site;

(ii) there shall be no visible storage or display of occupational materials or products;

(iii) there shall be no exterior evidence of the conduct of a Home Occupation and no Home Occupation shall be conducted on the Lot outside of the Single Family Residence; and

(iv) no additional parking shall be provided for the Home Occupation.

As used herein, the term "Home Occupation" shall mean a commercial enterprise conducted in a Single Family Residence which is incidental to the principal residential use.

**SECTION 2. ANIMALS AND LIVESTOCK.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of a maximum of three (3) dogs, cats or other usual and common household pets (excluding in such maximum number, fish and birds): provided, however, those pets which are permitted to roam free, or which in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners within the Properties may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Single Family Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pet, the owner of a pet that has caused damage to property shall be responsible for compensating the owner of the damaged property, but the Association shall have no obligation to enforce such obligation. Animal control authorities shall be permitted to enter the Properties to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.

SECTION 3. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to residents of the Properties.

SECTION 4. STORAGE AND REPAIR OF VEHICLES. Unless otherwise approved by the Modifications Committee, no boat, boat trailer, boat rigging, motor home, trailer, truck larger than a one ton pick-up, bus, inoperable automobile, or camper shall be parked or kept in the Street in front of or side of any Lot or on any Lot unless such vehicle is stored within a garage or otherwise screened from public view from all Streets; provided, however, boats, boat trailers, boat riggings, motor homes, trailers, and campers may be temporarily parked in the Street in front of or side of any Lot or on any Lot for a period not exceeding twenty-four (24) hours in any thirty day period. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or Streets other than work of a temporary nature. For the purposes of the foregoing the term "temporary" shall mean that the vehicle shall not remain in driveways or Streets in excess of twenty-four (24) hours.

SECTION 5. PERMITTED HOURS FOR CONSTRUCTION ACTIVITY. Except in an emergency or when other unusual circumstances exist or during the period of new home buildout on the Lots, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted on the Lots in the Subdivision only between the hours of 7:00 A.M. and 8:30 P M. on each day other than Sunday and between the hours of 9:00 A.M. and 7:00 P.M. on Sundays.

SECTION 6. DISPOSAL OF TRASH. No trash, rubbish, garbage, manure, debris, or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping ground for such materials. All such matter shall be placed in sanitary refuse containers constructed of metal, plastic or masonry materials with tight fitting sanitary covers or lids and placed in an area adequately screened by planting or fencing. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal. In a manner consistent with good housekeeping, the Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense. Vacant Lots shall not be used as dumping grounds for rubbish, trash, rubble, or soil, except that Declarant may designate fill areas into which materials specified by Declarant may be placed.

SECTION 7. BUILDING MATERIALS. Unless otherwise approved by the Modifications Committee, no Lot shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced. During initial construction or remodeling of the residences by Builders in the Subdivision, building materials may be placed or stored outside the property lines. Building materials may remain on Lots for a reasonable time, so long as the construction progresses without undue delay after which time these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. Under no circumstances shall building materials be placed or stored on the Streets.

SECTION 8. MINERAL PRODUCTION. No oil drilling, oil development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks,

tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

## ARTICLE VII

## ARCHITECTURAL RESTRICTIONS

**SECTION 1. TYPE OF RESIDENCE.** Only one detached Single Family Residence not more than two stories in height shall be built or permitted on each Lot. All residences shall have an attached or detached enclosed garage. Carports on the Lots are prohibited. All structures shall be of new construction and no structure shall be moved from another location onto any Lot. All residences and all improvements thereon including, but not limited to, fences, mailboxes, driveways and sidewalks must be kept in good repair and residences must be painted when necessary to preserve their attractiveness. Any change in the color of the paint on the exterior of a residence must be approved by the Modifications Committee.

**SECTION 2. LIVING AREA REQUIREMENTS.** The total living area of any Single Family Residence constructed on a Lot in the Subdivision, exclusive of open porches and garages, shall not be less than 1500 square feet.

**SECTION 3. LOCATION OF RESIDENCE ON LOT.** The location of each residence on a Lot will be approved by the New Construction Committee with its approval of the site plan and the final working plans and specifications. No building shall be located on any Lot nearer to a Street than the minimum building setback lines shown on the Subdivision Plat and no building shall be located on any utility easement. No residence shall be located nearer than five (5) feet to an interior lot line, however, a residence may be located not less than three (3) feet from an interior lot line provided that the construction of a residence on the adjacent Lot is complete and such residence is no closer than seven (7) feet to the same interior lot line, and, provided further, an attached or detached garage located more than sixty-five (65) feet from the front lot line may be located no nearer than three (3) feet from an interior lot line. No residence shall be located nearer than seven (7) feet to the rear lot line. For the purposes of this section, eaves, steps and open porches or driveways shall not be considered as a part of a residence.

**SECTION 4. TYPE OF CONSTRUCTION.** At least twenty-five percent (60%) of the exterior wall area of all residences below eight (8) feet and above the foundation [excluding detached (but not attached garages), gables, windows, and door openings] shall be constructed of masonry, brick veneer, stucco or another material approved by the New Construction Committee. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the New Construction Committee. Every garage and accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character which incorporates frame construction on the exterior shall be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

**SECTION 5. TEMPORARY BUILDINGS.** Unless otherwise approved by the Modifications Committee, temporary buildings or structures shall not be permitted on any Lot. Notwithstanding the foregoing, Declarant may permit temporary toilet facilities, sales and construction offices and storage areas to be used by Builders in connection with the construction and sale of residences. Builders may use garages as sales or construction offices for the time during which such Builders are marketing homes within the Properties. At the time of the sale of a residence by a Builder any

garage appurtenant to such residence used for sales or construction purposes must be reconverted to a garage. An Owner may not convert his garage into living space unless such conversion is approved by the Modifications Committee and such conversion is either not visible from the street or another garage is constructed on the Lot.

**SECTION 6. DRIVEWAYS.** On each Lot the Builder shall construct and the Owner shall maintain at his expense the driveway from the garage to the abutting Street, including the portion of the driveway in the street easement, and the Builder shall repair at his expense any damage to the Street occasioned by connecting the driveway thereto.

**SECTION 7. ROOF MATERIAL.** Unless otherwise approved by the New Construction Committee, the roofs of all residences shall be constructed so that the exposed material is asphalt or composition type shingles with a minimum 20-year warranty (currently No. 225 or heavier weight), clay or concrete tile, fiber-cement, aluminum, or slate, of a weathered wood or darker color.

**SECTION 8. WALLS AND FENCES.**

(a) All fences or walls must be approved in writing by the NCC. Each Lot must have NCC-approved fencing constructed thereon, not to exceed six feet (6') feet in height along and immediately adjacent to all rear and side property lines of the Lot, and not to be constructed closer than the building set-back along the front boundary of the Lot. However, with respect to corner Lots, such fencing will not be closer to the Lot boundary siding on the Street than the applicable building set-back line established on the Subdivision Plat. Specific guidelines for all fencing materials and styles for use on all Lots will be established by the NCC and enforced by the Association.

(b) No fence or wall shall be erected on any Lot nearer to the Street than the minimum building setback lines as shown on the Plat. The erection of chain link fences on any Lot is prohibited. Owners shall construct and maintain a fence or other suitable enclosure to screen from public view yard equipment and wood piles or storage piles.

**SECTION 9. LANDSCAPING AND TREE PLANTING.** All landscaping plans for Lots must be submitted to the NCC for approval. All Lots shall have a minimum of one (1) live tree at least two and one-half inches (2.5") in diameter planted and maintained in the front yard. All such trees that die shall promptly be removed and replaced by the Owner of the Lot in question so as to be in compliance herewith. If dead trees are not removed by the Owner after (15) days written notice thereof, or in the event the Owner or occupant has not proceeded with due diligence to complete appropriate action after such notice, Declarant or the Association shall have the right (but not the obligation), through its agents or employees, to enter upon such Lot and may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damage caused by such removal. The Declarant or the Association, in compliance with these restrictions, may then replace with a live tree at least two and one-half inches (2.5) in diameter at the Owner's expense. The Declarant or Association may render a statement of charge to the Owner or occupant of such Lot for the cost of such work. The Owner or occupant agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt. In the event of the failure to pay for such work, the amount of such statement may be added to the annual maintenance charge provided for herein and shall be secured by a lien on the Lot in the same manner as such annual charge. In order to maintain the theme and character of the Property, the Owner of each Lot agrees and shall be bound as a covenant running with title thereto to maintain and, from time to time if same dies promptly replace, any trees planted by Declarant on such Lot, or in the rights-of way between said Lot and the

curb of the adjoining Street. The Association may plant, install and maintain shrubbery and other screening devices around boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain and replace such shrubbery or other screening devices.

SECTION 10. SIGNS. No signs, billboards, posters, or advertising devices of any kind shall be permitted on any Lot without the prior written consent of the Modifications Committee other than (a) one sign of not more than six (6) square feet advertising the particular Lot on which the sign is situated for sale or rent, or (b) one sign of not more than six (6) square feet to identify the particular Lot during the period of actual construction of a single family residential structure thereon. The right is reserved by Declarant to construct and maintain, or to allow Builders within the Property to construct and maintain, signs, billboards and advertising devices as is customary in connection with the sale of newly constructed residential dwellings. In addition, the Declarant and the Association shall have the right to erect identifying signs and monuments at each entrance to the Subdivision. The Association shall have the right to remove all signs posted in violation of this Declaration.

SECTION 11. TRAFFIC SIGHT AREAS. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the Street shall be permitted to remain on any Corner Lot within fifteen (15) feet of the point formed by the intersection of the building set back lines of such Lot.

SECTION 12. EXTERIOR ANTENNAE. Unless otherwise approved by the Modifications Committee, satellite dishes, radio antennae, television antennae, and other electronic signal-receiving or transmitting equipment are prohibited on the Lots; provided, however one small and inconspicuous satellite dish antennae, having a diameter of 18" or less, which is integrated with the residential structure and surrounding landscaping and is not visible from the Street in front of the property, may be placed on a Lot without the requirement of approval by the Modifications Committee.

SECTION 13. MAILBOXES. Mailboxes, house numbers and similar matter used on the Lots must be harmonious with the overall character and aesthetics of the community.

SECTION 14. BURGLAR BARS. No burglar bars will be permitted inside or outside the window units and doors.

SECTION 15. AIR CONDITIONERS. No window or wall type air conditioners shall be permitted in any residence and all air conditioner units shall not be visible from any Street.

SECTION 16. PRIVATE UTILITY LINES. All electrical, telephone, and other utility lines and facilities which are located on a Lot and are not owned by a governmental entity or a public utility company shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the New Construction Committee.

SECTION 17. WINDOW TREATMENT. No window in any residence that is visible from any other residence or a Street may be covered with any (i) aluminum foil, (ii) other reflective material, or (ii) light-colored opaque material that is adhered to the surface of the window.

SECTION 18. LIGHTING. No light fixture or other light source shall be installed on any Lot in such a way that it interferes with the peaceful use and enjoyment of other residences.

SECTION 19. ENFORCEMENT OF LOT MAINTENANCE. In the event of the violation of any covenant herein by any Owner or occupant of any Lot and the continuance of such violation after ten (10) days written notice thereof, or in the event the Owner or occupant has not proceeded with due diligence to complete appropriate repairs and maintenance after such notice, Declarant or the Association shall have the right (but not the obligation), through its agents or employees, to enter upon such Lot and to secure compliance with these restrictions and restore such Lot to a neat, attractive, healthful and sanitary condition. The Declarant or Association may render a statement of charge to the Owner or occupant of such Lot for the cost of such work. The Owner or occupant agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt. In the event of the failure to pay for such work, the amount of such statement may be added to the annual maintenance charge provided for herein and shall be secured by a lien on the Lot in the same manner as such annual charge. The Declarant, the Association, or their agents and employees shall not be liable, and are hereby expressly relieved from any liability, for trespass or other tort in connection with the performance of the maintenance and other work authorized herein.

SECTION 20. STORAGE OF VEHICLES. No outdoor parking space on the Property shall, without written permission of the Association, be used for storage of campers, boats, trailers, unused or inoperable automobiles or any other items which the Association deems unsightly or inappropriate, and all outdoor parking spaces shall be used by Owners subject to the rules and regulations of the Association

## ARTICLE VIII

## EASEMENTS

SECTION 1. GENERAL. Easements for the installation and maintenance of utilities are reserved as shown and provided for on the Plat or as dedicated by separate instruments. Neither Declarant nor any utility company or authorized political subdivision using the easements referred to herein shall be liable for any damages done by them or their assigns, agents, employees or servants, to fences, shrubbery, trees, flowers, improvements or other property of the Owner situated on the land covered by such easements as a result of construction, maintenance or repair work conducted by such parties or their assigns, agents, employees or servants.

SECTION 2. UNDERGROUND ELECTRICAL DISTRIBUTION SYSTEM. An underground electric distribution system will be installed in each Subdivision within Subdivision (designated herein as the Underground Residential Subdivision), which underground service area embraces all the Lots which are platted in the Subdivision at the execution of the agreement between the electric company and Declarant. This electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has, either by designation on the plats of the subdivision or by separate instrument(s), granted necessary easements to the electric company providing for the installation,

maintenance, and operation of its electric distribution system and has also granted to each Owner of a Lot reciprocal easements providing for the access to the area occupied by and centered on the service wires of the various Owners to permit installation, repair and maintenance of each Owner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit shall, at his own cost, furnish, install, own, and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character, and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed the underground electric distribution system in the Underground Residential Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Underground Residential Subdivision is being developed for residential dwelling units, all of which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) and which are built for sale or rent. Should the plans of the Owners in the Underground Residential Subdivision be changed so as to permit the erection therein of one or more mobile homes, the electric company shall not be obligated to provide electric service to any such mobile home unless the Owner of each affected Lot, or the applicant for service to any mobile home, shall pay to the electric company the sum of (1) $1.75 per front Lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such Lot or dwelling unit over the cost of equivalent overhead facilities to serve such Lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such Lot, which arrangement and/or addition is determined by the electric company to be necessary.

The provisions of the two preceding paragraphs also apply to any future residential development in reserve(s) shown on the plat(s) of the Subdivisions within Subdivision, as such plat(s) exists at the execution of the agreement for underground electric service between the electric company and Declarant or thereafter. Specifically, but not by way of limitation, if an Owner in a former reserve undertakes some action which would have invoked the above per front Lot foot payment if such action had been undertaken in the Underground Residential Subdivision, such Owner or applicant for service shall pay the electric company $1.75 per front Lot foot, unless Declarant has paid the electric company as above described. The provisions of the two preceding paragraphs do not apply to any future nonresidential development in such reserve(s).

**SECTION 3. CABLE TELEVISION.** Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies and Declarant shall have the right and power in such agreement or agreements to grant to such cable television company or companies the uninterrupted right to install and maintain communications cable and related ancillary equipment and appurtenances within the utility easements and right-of-ways dedicated by the applicable Subdivision Plat or by separate instruments pertaining to the Subdivisions.

**SECTION 4. ENTRANCE GATE EASEMENT.** Declarant or the Association shall have the right, but no obligation, at its sole option to construct an access gate or shall maintain such access gate or facility. Accordingly, there is hereby created in favor of the Declarant and the Association an easement ingress and egress, installation, construction, replacing, repairing and maintaining such access gate or facility.

SECTION 5. **BLANKET EASEMENT.** There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, examination, replacing, repairing, providing, and maintaining all private streets, common improvements, and utilities and drainage systems servicing the Property, including but not limited to water, storm water, sewer, gas, telephone and electrical, and a master/cable television antenna systems. An easement is, in addition, specifically granted to the United States Post Office Services, its agents and employees to enter upon the Common Area and Lots in the performance of mail delivery or any other United States Post Office services. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the Common Area, private streets and Lots in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or to cross over the Common Area and/or any Property to perform the duties of maintenance and repair of the Common Area including private streets as provided for herein. The easements provided for in this paragraph shall in no way affect any other recorded easement on said premises.

## ARTICLE IX

## ENFORCEMENT

The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, the covenants, conditions, restrictions, and liens contained herein. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE X

## ANNEXATION OF ADDITIONAL PROPERTY

**SECTION 1. UNILATERAL ANNEXATION BY DECLARANT.** The Declarant, as the owner thereof or, if not the owner, with the consent of the owner thereof, shall have the unilateral right, privilege, and option at any time, to annex additional real property adjacent to or in the vicinity of Subdivision to the jurisdiction of the Association by filing for record a Supplemental Declaration in respect to the property being annexed which impresses the property being annexed with and subjects such property to the assessments of the Association on a uniform basis with all other property with the Association's jurisdiction. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

The right reserved by Declarant to annex additional land to the jurisdiction of the Association shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such land to this Declaration or to annex such land to the jurisdiction of the Association. If such additional land is not annexed, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such land nor shall such rights in any manner limit or restrict the use to which such land may be put by Declarant or by any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

**SECTION 2. OTHER ANNEXATIONS.** With the consent of the owner thereof, the Association may annex other real property to the jurisdiction of the Association. Such annexation shall require the affirmative vote of each class of Members of the Association present at a meeting duly called for such purpose.

Annexation shall be accomplished by filing of record in the public records of Harris County, Texas, an annexation agreement describing the property being annexed. Such annexation agreement shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein.

**SECTION 3. RIGHTS OF OWNERS OF ANNEXED AREA.** The Owners of land in annexed property shall be entitled to use the Common Area in the same manner and to the same extent as the Owners of the property subject to the jurisdiction of the Association prior to the annexation. Annexed property shall be impressed with and subject to Assessments imposed by the Association on a uniform basis, consistent with provisions of this Declaration.

## ARTICLE XI

## GENERAL PROVISIONS

**SECTION 1. TERM.** These covenants shall run with the land and shall be binding upon all parties and all persons claiming under them until December 31, 2046, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the Owners of a majority of the Lots in the Subdivision has been recorded, agreeing to change or terminate the covenants herein, in whole or in part.

**SECTION 2. SEVERABILITY.** Invalidation of any one of these covenants by judgment or other court order shall in no wise affect any other provisions, which shall remain in full force and effect except as to any terms and provisions which are invalidated.

**SECTION 3. GENDER AND GRAMMAR.** The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

**SECTION 4. TITLES.** The titles of this Declaration of Articles and Sections contained herein are included for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

**SECTION 5. REPLATTING.** Declarant shall have the right, but shall never be obligated, to resubdivide into Lots, by recorded plat or in any lawful manner, any reserve tracts contained within a Subdivision and such Lots as replatted shall be subject to these restrictions as if such Lots were originally included herein.

**SECTION 6. AMENDMENT.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the property subject to this Declaration; (c) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the property subject to this Declaration; or (d) for any other

purpose, provided that the amendment has no material adverse effect upon any right of any Owner or that the Owner or Owners so affected have consented thereto.

In addition to the amendments described above, this Declaration may be amended at any time by an instrument signed by the Owners a minimum of sixty percent (60%) of the Lots in Subdivision; provided, however, no amendment may be contrary to the provisions of Article XI hereof and no amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant. Any amendment to this Declaration must be recorded in the real property records of Harris County, Texas.

**SECTION 7. MERGER AND CONSOLIDATION.** Upon a merger or consolidation of the Association with another non-profit corporation organized for the same purposes, the Association's properties, rights, and obligations may be transferred to the surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions and restrictions established by this Declaration, together with the covenants, conditions and restrictions applicable to the properties of the other association as one scheme. However, such merger or consolidation shall not effect any revocation, change or addition to the covenants established by this Declaration and no merger or consolidation shall be permitted except with the assent of two-thirds (2/3) of each class of Members of the Association.

**SECTION 8. DISSOLUTION.** The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

**SECTION 9. MECHANICAL GATE AND PERIMETER FENCE.** The Declarant and the Association reserve the right, but are under no obligation, to arrange for the utilization of an unmanned mechanical gate at the entrance to the Property. The Declarant and the Association also reserve the right, but are under no obligation, to have the Property encompassed by a perimeter fence.

Although the Declarant and the Association reasonably believe that, if utilized, the existence and visibility of controlled access points may discourage the commission of criminal acts (e.g., burglary, theft, etc.) within the Property, nevertheless neither the Declarant nor the Association warrant or guarantee that: (a) any fence and/or gate arrangements would be sufficient and adequate to diminish or eliminate the commission of crimes against persons or property; and (b) such acts will not be attempted or actually occur within the Property. These arrangements would not be designed or intended to replace the conventional police and fire protection and paramedical services available from the City of **Seabrook, Texas.**

The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, members or authorized representatives of the Association. The Association will not carry any insurance pertaining to, nor does it assume any liability or responsibility for, the real or personal property of the Owners and Members (and their respective family members and guests).

Each Owner and Member expressly understands, covenants and agrees with the Declarant and the Association that:

(a) Each Owner and Member releases and holds Declarant and the Association harmless from any liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all aspects of any fence or gate system within the Property, including without limitation the functioning (whether mis- mal-, or non-) or maintenance of any mechanical gate access devices or any appurtenances thereto;

(b) Each Owner and Member will cooperate with Declarant and the Association in connection with the establishment, evolution and maintenance of reasonable controls on the pedestrian and vehicular traffic into and within the Property and abide by any and all rules and regulations of the Association, as adopted and promulgated from time to time, related to the entry upon and use of any Driveway Easement and Common Area within the Property.

**SECTION 10. SECURITY.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY, HOWEVER, AND NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNITS, TENANTS, GUESTS, AND INVITEES OF ANY OWNERS, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE ARCHITECTURAL CONTROL COMMITTEE DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ARCHITECTURAL CONTROL COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY UNIT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, THE ARCHITECTURAL CONTROL COMMITTEE, DECLARANT OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER ASSUMES ALL RISKS FOR LOSS OF DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, THE ARCHITECTURAL CONTROL COMMITTEE, DECLARANT OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

IN WITNESS WHEREOF, this Declaration is executed this 23rd day of August, 2006.

**PELICAN'S NEST, L.P.**
a Texas limited partnership

By: M-Properties, Inc.,
A corporation – General Partner

By: _____
Scott Monroe, President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Scott Monroe, President of M-Properties, Inc., a Corporation and General Partner of **PELICAN'S NEST, L.P.**, a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

GIVEN under my hand and seal of office this 23rd day of August, 2006.

MELISSA CONCIDINE
Notary Public, State of Texas
My Commission Expires
October 05, 2008

_____
Notary Public in and for
the State of Texas

Melissa Concidine
Name printed or typed
My commission expires: October 5, 2008

After Recording Return To:

Lance Fox
P.O. Box 1751
Beaumont, TX 77704