

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
FOR BEACH PARK VILLAGE**

THE STATE OF TEXAS     §

COUNTY OF HARRIS     §

THIS DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR BEACH PARK VILLAGE (hereinafter referred to as this "Declaration") is made on the date hereinafter set forth by BAYWAY HOMES, INCORPORATED, a Texas corporation, and JON SKEELE, individually, (hereinafter collectively referred to as "Declarant").

WHEREAS Declarant, collectively, is the owner of all of Lots Twenty (20) and Twenty-One (21), in Block Thirty-One (31), and Lots Seven (7) through Seventeen (17), and Twenty (20) through Twenty-Seven (27), in Block Thirty-Two (32), all in Beach Park, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 67, Page 148, of the Map Records of Harris County, Texas, and all improvements thereon (hereinafter referred to as the "Subdivision"); and

WHEREAS Declarant desires that all of the real property within the Subdivision, along with any real property annexed thereto pursuant to the terms hereof, be held, sold and conveyed subject to the following restrictions, covenants, conditions, easements, stipulations, reservations, liens and charges, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness thereof.

NOW, THEREFORE, as more fully set forth below, Declarant hereby declares that this Declaration and the restrictions, covenants, conditions, easements, stipulations, reservations, liens and charges set forth herein shall run with the real property within the Subdivision and shall be binding on all parties having or acquiring any right, title or interest therein or thereto, or any part thereof, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

The following terms shall have the meanings set forth below:

**SECTION 1.1     CERTIFICATE OF FORMATION OR CERTIFICATE.** The Certificate of Formation of Beach Park Village Homeowners Association as filed, or to be filed, with the Secretary of State of Texas, and as hereafter may be amended.

**SECTION 1.2     ASSOCIATION.** Beach Park Village Homeowners Association, a Texas non-profit corporation, its successors and assigns. The "BOARD OF DIRECTORS" or "BOARD" shall be the elected body having its normal meaning under Texas corporate law.

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SECTION 1.3 BY-LAWS. The By-Laws of Beach Park Village Homeowners Association incorporated herein by reference and as they may be now or hereafter be amended from time to time.

SECTION 1.4 COMMON AREA. That portion of the Subdivision now or hereafter owned by Association for the common use and enjoyment of the Members (hereinafter defined) of Association, including but not limited to all recreational facilities, community facilities, trees, landscaping, greenbelts, private streets, irrigation systems, pavements, boardwalks, pipes, wires, conduits, and other public utility lines situated thereon, but not including any portion of the Subdivision described as Lots (hereinafter defined).

SECTION 1.5 COMMON EXPENSES. The actual and estimated expenses incurred by Association for the general benefit of all Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws and the Certificate of Formation.

SECTION 1.6 COMMUNITY PROPERTIES. All areas designated as common areas by the plat of the Subdivision; all Subdivision facilities; and all other properties, real or personal, conveyed to or dedicated to the use of, or otherwise acquired by Association for the common use and enjoyment of the Members of Association, together with all improvements thereon and appurtenances thereto.

SECTION 1.7 THE DECLARANT. Bayway Homes, Incorporated, and Jon Skeelee, individually, and their respective heirs, personal representatives, successors and assigns if (i) such heirs, personal representatives, successors and assigns should acquire more than one undeveloped Lot from Declarant for the purpose of development and (ii) such heirs, personal representatives, successors or assigns are designated in writing by Declarant as a successor or assign of all or part of the rights of Declarant hereunder, including, but not limited to, any assignment to a lender furnishing financing for the development of the Subdivision. In the event of foreclosure of the development loan (or deed-in-lieu thereof), the development lender joining in the execution of this Declaration is hereby designated a successor or assign of Declarant.

SECTION 1.8 DEVELOPMENT PERIOD. The period of time beginning on the date hereof and ending at such time as (a) Declarant no longer owns any Lots, or (b) Declarant records a statement in the Real Property Records of Harris County, Texas, terminating the Development Period, whichever occurs first.

SECTION 1.9 LOT. That portion of the Property on which there is or will be constructed a single family dwelling ( hereinafter referred to as "dwelling unit"). Such dwelling unit may or may not be attached or detached, with or without one or more walls, roof or foundation in common with another dwelling unit on an adjoining Lot. It is understood that at least twenty-one (21) dwelling units are planned for erection on the twenty-one (21) Lots presently comprising the Subdivision (hereinafter defined), subject to, however, the reserved rights of Declarant to make changes in the size and number of Lots, as provided in Section 5.5 below. Declarant is the owner of all of the said twenty-one (21) Lots as of the date hereof.

SECTION 1.10 MEMBER. Any Person entitled to membership in Association, as provided in Section 3.3 below.

SECTION 1.11 MORTGAGE. A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed covering any portion of the Lots.

SECTION 1.12 MORTGAGEE. A beneficiary or holder of a Mortgage.

SECTION 1.13 OWNER. Any Person, firm that is the record owner of fee simple title to any Lot, including contract sellers, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

SECTION 1.14 PERSON. A natural person, a corporation, a partnership, a trustee, or any other legal entity.

SECTION 1.15 PROPERTY. That certain real property within the Subdivision and such additions thereto as may hereafter be brought within the jurisdiction of Association.

SECTION 1.16 REGULATED MODIFICATION. The commencement, placement, construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, improvement, thing or device, and any usage thereof, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the Subdivision as of the date of establishment of the Regulated Modification, excluding any such matters or activities conducted by Association as to Community Properties, but including by way of illustration and not of limitation:

Any building, garage, porch, shed, greenhouse, bathhouse, bulkhead, deck, coop or cage, covered or uncovered patio, swimming pool, clothes lines, radio or television antenna, fence, wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters (including any mobile home) or any other temporary or permanent modification or alteration;

Any excavation, fill, ditch, canal, diversion, dam, drainage system or other thing or device which affects or alters the flow of surface or subsurface waters to, from, upon or across any Lot or any other portion of the Subdivision, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel to, from, upon, under or across any Lot or other portion of the Subdivision;

Any change in the grade of any Lot or other portion of the Subdivision, and any similar disturbance to the surface of the land within the Subdivision; and

Any erosion control system or devices permitted or required as to any Lot or other portion of the Subdivision.



SECTION 1.17 RULES AND REGULATIONS. Such Rules and Regulations as Association may promulgate from time to time with respect to the Subdivision, which may include reasonable provisions for fines for violation of such Rules and Regulations or this Declaration.

SECTION 1.18 SINGLE FAMILY. The term "single family" shall be defined as (a) one or more persons related by blood, marriage, or adoption, their children, only one (1) other person who is not so related, and domestic servants; or (b) no more than two (2) unrelated persons living together as a single housekeeping unit and their children, and domestic servants.

SECTION 1.19 SUBDIVISION. Shall mean Beach Park Village as developed by Declarant.

## ARTICLE II

### ESTABLISHMENT OF GENERAL PLAN

SECTION 2.1 GENERAL PLAN AND DECLARATION. This Declaration is hereby established pursuant to and in furtherance of a common and general plan for the improvement and sale of Lots within the Subdivision and for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Subdivision. The Subdivision and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, easements, exceptions, equitable servitudes, and other provisions set forth in this Declaration, for the duration thereof. The Lots and Common Area in the Subdivision shall be subject to the jurisdiction of Association.

SECTION 2.2 EQUITABLE SERVITUDES. The covenants, conditions, restrictions, limitations, reservations, easements, and exceptions of this Declaration are hereby imposed as equitable servitudes upon each Lot, and the Common Areas within the Subdivision as a servient estate, for the benefit of each and every other Lot and parcel of Common Area within the Subdivision, as the dominant estate.

SECTION 2.3 COVENANTS APPURTENANT. The covenants, conditions, restrictions, limitations, reservations, easements, exceptions, equitable servitudes, and other provisions set forth in this Declaration shall run with, and shall inure to the benefit of and shall be binding upon, all of the Subdivision, the Common Area and each Lot, if any, and shall be binding upon and inure to the benefit of: (a) the Subdivision; (b) Declarant and its successors and assigns; (c) Association and its successors and assigns; and (d) all Persons having, or hereafter acquiring, any right, title, or interest in all or any portion of the Subdivision and their respective heirs, executors, successors, and assigns.

SECTION 2.4 ANNEXATION. Declarant shall have authority, without approval of the membership to annex other property which is located outside the Subdivision until Declarant has sold all Lots in the Subdivision. Thereafter, annexation of other property which is located outside the Subdivision shall require the assent of two-thirds (2/3) of the Members at a meeting duly called

for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth above, and the required quorum of such subsequent meeting shall be one half (1/2) of the required quorum of the preceding meeting. No subsequent meeting shall be held more than fifty (50) days following the preceding meeting. In the event that two-thirds (2/3) of the membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat.

### ARTICLE III

#### MANAGEMENT AND OPERATION OF THE SUBDIVISION

**SECTION 3.1**      MANAGEMENT BY ASSOCIATION. The affairs of the Subdivision shall be administered by Association. Association shall have the right, power and obligation to provide for the management, acquisition, construction, maintenance, repair, replacement, administration, and operation of the Subdivision as herein provided for and as provided for in the Certificate of Formation, By-Laws and the Rules and Regulations. In the event of any conflict between the Certificate of Formation and the By-Laws, the Certificate of Formation shall control; and in the event of a conflict between the Certificate of Formation or the By-Laws and the provisions of this Declaration, the provisions of this Declaration shall control. The business and affairs of Association shall be managed by its Board of Directors, unless otherwise reserved to the Members of Association by law, the terms of this Declaration, Certificate of Formation or the By-Laws. It shall be the responsibility of each Owner or occupant of a dwelling unit (hereinafter defined) to obtain copies of and become familiar with the terms of this Declaration, Certificate of Formation, By-Laws and Rules and Regulations.

Association, acting through the Board, shall be entitled to enter into such contracts and agreements concerning the Subdivision as the Board deems reasonably necessary or appropriate to maintain and operate the Subdivision in accordance with the Declaration, including without limitation, the right to grant utility and other easements for uses the Board shall deem appropriate and the right to enter into agreements with adjoining or nearby land owners or governmental entities on matters of maintenance, trash pick-up, repair, administration, security, traffic, operation of recreational facilities, or other matters of mutual interest. In addition to other powers granted the Board of Directors herein or in the Certificate of Formation, the Board of Directors shall also have the power to create procedures for resolving disputes between Owners or occupants of dwelling units, including appointment of committees to consider or reconsider resolutions of any disputes.

**SECTION 3.2**      BOARD OF DIRECTORS. The number, term, and qualifications of the members of the Board of Directors shall be governed by the Certificate of Formation and the By-Laws.

**SECTION 3.3**      MEMBERSHIP. Every Owner, as defined in Section 1.11 above, shall be deemed to have a membership in Association. No Owner, whether one or more Persons, shall

have more than one (1) membership per Lot owned. In the event the owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Lot owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

SECTION 3.4 POWER TO ADOPT RULES AND REGULATIONS. Association, through its Board of Directors, may adopt, amend, repeal, and enforce Rules and Regulations, fines, levies and enforcement provisions as it deems necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of Association, the use and enjoyment of the Common Areas, and the use of any property within the Subdivision, including the Lots. Any such Rules and Regulations shall be reasonable and uniformly applied to all Members and their family, tenants and guests. Such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment or repeal of any Rule and Regulation shall be given by depositing in the mail to each Member a copy of such Rules and Regulations, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of supplying same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in, and were part of, this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

SECTION 3.5 IMPLIED POWERS. Association may exercise any right, power or privilege given to it expressly by this Declaration or the By-Laws, and every other right, power or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right, power or privilege.

## ARTICLE IV

### VOTING RIGHTS

The Subdivision shall be administered and these Deed Restrictions shall be enforced and administered by Declarant, and Declarant shall have the right, power and authority to exercise all rights and remedies granted herein to Association (hereinafter defined), until such time as Declarant is no longer an Owner of any Lots in the Subdivision, and thereafter by Association. Declarant shall have the right, in its sole discretion, to turn over all or any part of its administrative and/or enforcement duties and rights to Association at any time prior to the time that Declarant is no longer an Owner of any Lots in the Subdivision. Association shall appoint an Architectural Control Committee (hereinafter called the "Committee" as herein defined). Association shall be governed by its Certificate of Formation, its By-Laws and this Declaration. The Committee shall also be governed by the dedicatory instruments of Association. Notwithstanding the foregoing, Declarant shall have the sole and only vote with respect to any and all matters that the Members have the right

to vote on or elect, until such time as Declarant is no longer an Owner of any Lots in the Subdivision. At the end of the Development Period, Members shall be entitled for each Lot owned by the Member to one (1) vote on each matter with respect to which Members are entitled to vote pursuant to this Declaration or the By-Laws of Association; provided, however, in no event shall more than one (1) vote be cast with respect to any Lot.

## ARTICLE V

### PROPERTY RIGHTS

**SECTION 5.1**      MEMBERS' EASEMENT OF ENJOYMENT. Every Member shall have a right and easement of enjoyment in and for the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

The right of Association to limit the number of guests of the Members.

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

The right of Association, in accordance with its Certificate and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of a mortgagee in said properties shall be subordinated to the rights of the Members hereunder.

The right of Association to suspend the voting rights and right to use the recreational facility by a Member for any period during which any assessment against his or her Lot remains unpaid, and for a period not to exceed thirty (30) days for any violation of its published rules and regulations.

The right of Association 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 such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by the Members entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication or transfer and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than fifty (50) days in advance.

**SECTION 5.2**      DELEGATION OF USE. Any Member may delegate, in accordance with the By-Laws, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, his or her tenants or his or her contract purchasers who reside on the Member's property.

**SECTION 5.3**      TITLE TO THE COMMON AREA. Declarant hereby covenants for itself, its successors and assigns that it will convey fee simple title to the Common Area to Association free and clear of all encumbrances and liens. As a right running with the real property, ownership of each Lot shall entail the use and enjoyment of all walks, stairs, pavements, driveways, parking areas, entrances and exits owned by Association and there shall always be access by both



pedestrians and vehicles to and from each dwelling unit to a street dedicated to public use without hindrance of such common access ways by Association and/or Owners of any dwelling unit. Title to the Common Area shall remain undivided in Association so as to preserve the rights of the Owners with respect to their use and enjoyment of the Common Area.

**SECTION 5.4**      **DECLARANT'S USE OF LOTS.** Declarant, its successors and assigns may elect to use any of the Lots in the Subdivision for the location of a sales or construction office, a model dwelling unit or units, and/or parking related to such sales or construction office and model dwelling unit or units. Declarant's successors' and assigns' use of the Lots for such purposes shall be subject to the approval of Declarant until such time as Declarant is no longer an Owner of any Lots in the Subdivision, at which time Association shall have the right of any such approval. Any portion of the Subdivision, including the private streets, may be used for sales offices, sales purposes, guardhouses, customary sales and other signs, and for other purposes deemed proper and approved by Declarant until such time as Declarant is no longer an Owner of any Lots in the Subdivision, at which time Association shall have the right of any such approval.

**SECTION 5.5**      **DECLARANT'S RESERVATION OF RIGHTS FOR FUTURE CHANGES.** So long as Declarant owns any part of the Subdivision, Declarant reserves the right to impose further reasonable restrictions and to dedicate, grant and/or reserve additional easements, roadways and other rights-of-way with respect to such Lots and other portions of the Subdivision by instrument(s) recorded in the Office of the County Clerk of Harris County or by express provision in any conveyance. Declarant further reserves the right to increase the size of the Lots in the Subdivision to the extent any are owned by Declarant until such time as Declarant is no longer an Owner of any Lots in the Subdivision. (Such action by Declarant could reduce the number of Lots in the Subdivision.)

## ARTICLE VI

### ASSESSMENTS

**SECTION 6.1**      **CREATION OF ASSESSMENTS.** There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth herein. There shall be two (2) types of assessments: (a) annual assessments and (b) special assessments. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments. All assessments, together with interest (at a rate not to exceed the highest rate allowed by Texas law) as computed from the date a delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made until paid. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose, and, in the event of a transfer of title, his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first lien mortgagee who obtains title to a Lot pursuant to the remedies provided in a Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Association shall, upon

demand at any time, furnish to any Owner liable for any type of assessment a statement in writing signed by an officer of Association setting forth whether such assessment has been paid as to any particular Lot. Such statement shall be conclusive evidence of payment to Association of any assessments therein stated to have been paid. Association may require the advance payment of a reasonable processing fee for the issuance of any such statement.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Unless the Board of Directors otherwise provides, the annual assessment shall be due and payable on the first day of each year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board of Directors may require any unpaid installments of the annual assessment and/or any other assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of Association or the Board of Directors to take some action or perform some function required to be taken or performed by Association or the Board of Directors under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of Association, or from any action taken to comply with any law, ordinance, or with any other order or directive of any municipal or other governmental authority.

Both annual and special assessments must be fixed at a uniform rate; provided, however, any assessments on Lots that do not have a dwelling unit thereon shall be ten percent (10%) of the then assessed charge for Lots which have dwelling units thereon.

The annual assessment charged to Declarant, or either of them, as well as to any builder of a dwelling unit who has title to a Lot, shall be twenty-five percent (25%) of the base assessment that would be paid upon each Lot with a dwelling unit once the Lot and dwelling unit thereon is complete and landscaping has been installed.

**SECTION 6.2**      **PURPOSE OF THE ANNUAL ASSESSMENT.** The assessments levied by Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in and of the Property and in particular for the improvement and maintenance of the Property, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the dwelling units situated upon the Property. Such uses shall include, but are not limited to, the cost to Association of all taxes, repairs, replacement, and maintenance of the Common Area and other facilities and properties, and of other activities as may from time to time be authorized by the Board of Directors, including but not limited to maintenance of Guest Parking Area, if any, and of the front and back yards of the Lots with dwelling units, mowing grass, caring for grounds, landscaping, and recreational facilities and equipment, garbage pick-up service furnished to the dwelling units by Association, dredging and other maintenance of waterways, whether adjacent to or otherwise serving the Property, and other charges required by this Declaration or that the Board of Directors of Association shall determine to be

necessary or desirable to meet the primary purpose of Association, including the establishment and maintenance of a reserve for repair, maintenance, taxes, and other charges as specified herein. It is understood that the judgment of Association in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith. Nothing herein shall constitute a representation that any of the above will, in fact, be provided by Association.

Mowing of back yards shall be on a regularly scheduled day each week, two weeks or month depending on the season of the year, weather conditions permitting. Owners are responsible for removing any obstacles to mowing including, but not limited to, trash cans, wading pools, toys, grills and other cooking paraphernalia. Association will not move any items in yard but will, instead, mow around any such items. The Owner shall then be responsible for moving any items left in the yard and completing the mowing of the yard.

**SECTION 6.3**      **ANNUAL ASSESSMENTS.** It shall be the duty of the Board of Directors to prepare a budget covering the estimated Common Expenses of Association during the current or coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared, as provided in Section 6.6. However, in determining the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

The initial maximum annual assessment on each Lot with a dwelling unit shall be Seven Hundred Twenty and No/100 Dollars (\$720) per year.

From and after January 1 of the year immediately following the recordation of this Declaration, the maximum annual assessment may be increased each year not more than ten percent (10%) above the annual assessment for the previous year without a vote of the membership.

From and after January 1 of the year immediately following the recordation of this Declaration, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

The Board of Directors shall use good faith efforts to cause the notice of the amount of the annual assessment to be levied against each Lot prior to the beginning of each calendar year. The Board's failure, for any reason, to timely comply with this Section shall not affect the power of the Board to levy any assessment at any time. The Board of Directors may fix the annual assessment at an amount not to exceed the maximum permitted herein.

**SECTION 6.4**      **SPECIAL ASSESSMENTS.**

**Entire Membership.** Association may levy special assessments from time to time provided such assessment receives the affirmative vote of two-thirds (2/3) of the Members who are voting in person, at a meeting duly called for this purpose. Special assessments levied against the entire membership shall be allocated to the Lots and Lots with dwelling units in the same manner as annual



assessments. Special assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the special assessment is approved, if the Board so determines.

Less Than All Members. Association may levy a special assessment against any Member or Members individually and against such Member's or Members' Lot to reimburse Association for costs incurred in bringing a Member or Members and his or her Lot into compliance with the provisions of this Declaration, any amendments thereto, the Certificate, the By-Laws or any Rules and Regulations promulgated by Association as herein provided, which special assessment may be levied upon the vote of the Board after reasonable notice to the Member or the Members and an opportunity for a hearing in front of the Board.

**SECTION 6.5**      LIEN FOR ASSESSMENTS. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except, (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and judicial or non-judicial foreclosure in accordance with Texas Property Code Chapter 51, as same may be amended. Association, acting on behalf of the Owners, shall have the power to bid for the Lot at any foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period in which a Lot is owned by Association following any foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

**SECTION 6.6**      RESERVE BUDGET AND CAPITAL CONTRIBUTION. The Board of Directors shall make a reasonable effort to annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of Association, as shown on the budget, with respect to both amount and timing over the period of the budget to the extent achievable under current funding. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided in Section 6.3 of this Article.

**SECTION 6.7**      SUBORDINATION OF THE LIEN TO FIRST MORTGAGES. The lien of assessments, including interest, late charges (subject to the limitations of Texas law), and costs (including attorney's fees) provided for herein, shall (as stated above) be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first priority Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage



of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall continue to be deemed to be Common Expenses that are collectible from the foreclosed Owners by personal suit or other collection activity.

**SECTION 6.8**      **EXEMPT PROPERTY**. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of annual and special assessments: (a) all Common Areas; and (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks, if any.

**SECTION 6.9**      **SALE OR TRANSFER FEE**. There shall not be a sale, transfer or other fee due upon the sale or transfer of a Lot.

## ARTICLE VII

### INSURANCE

The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain a form public liability policy covering the Common Area, and all damage or injury caused by the negligent acts of Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be a part of the Common Expenses. All such insurance coverage obtained by the Board of Directors shall be written in the name of Association.

Each Owner of a dwelling unit shall be obligated to obtain insurance for the exterior structure for said Owner's dwelling unit, insuring against loss or damage by fire or other hazards in an amount to cover the replacement costs of any repair or reconstruction work, in the event of damage or destruction from any hazard. Each Owner shall also obtain a form public liability policy covering the property and all damage or injury caused by the negligent acts of the Owner, its agents, servants and invitees. The insurance may, at the option of said Owner include coverage for the interior and contents of the dwelling unit. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form and issued by insurance companies with a general company and financial size rating of "A-IX" or better as established by Best's Rating Guide or "AA" or better by Standard & Poor's Rating Group. Each such policy shall provide it may not be cancelled or materially changed except upon thirty (30) days prior written notice of intention of non-renewal or cancellation or material change to Association and no act or thing done by an Owner shall invalidate the policy as against Association. Association shall be shown as an additional insured or co-insured on all such policies. Failure to provide such insurance shall be a default under the obligations of this Declaration. Owners shall provide Association with proof of acceptable insurance coverage prior to taking title to any Lot, and shall provide proof of renewal of all policies at least ten (10) days prior to the expiration of any policy. Should an Owner not provide proof of insurance coverage to Association, Association may acquire such coverage as it deems necessary and charge the cost thereof back to the Owner, as well as exercise all rights and liens available to Association upon any default by any Owner.

## ARTICLE VIII

### PARTY WALLS

SECTION 8.1 GENERAL RULES OF LAW TO APPLY. Each wall which is built as a part of the original construction of the dwelling unit in the Subdivision and placed on the dividing line between the Lots shall constitute a Party Wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omission shall apply thereto. The Owner of a dwelling unit shall not cut through or make any penetration through a Party Wall for any purpose whatsoever.

SECTION 8.2 SHARING OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in equal properties.

SECTION 8.3 DESTRUCTION BY FIRE OR OTHER CASUALTY. If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they will contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

SECTION 8.4 WEATHERPROOFING. Notwithstanding any other provisions of this Article, to the extent that such damage is not insured and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

SECTION 8.5 RIGHT TO CONTRIBUTION RUNS WITH LAND. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with land and shall pass to such owner's successors in title.

SECTION 8.6 ARBITRATION. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, such party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors shall select an arbitrator for the refusing party.

## ARTICLE IX

### ARCHITECTURAL CONTROL

SECTION 9.1 LIMITATIONS ON CONSTRUCTION. No building, structure or improvement shall be placed, erected or installed upon any Lot, no construction (which term shall

include within its definition staking, clearing, excavation, grading, and other site work) shall occur on any Lot, and no exterior alteration or modification of existing buildings, structures or improvements upon any Lot shall be commenced until the requirements below have been fully met, and until the written approval of the Architectural Control Committee has been obtained pursuant to Section 9.2 below.

All dwelling units constructed on any of the Lots shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Lot or within any part of the Subdivision unless and until complete plans and specifications have been submitted to and approved in writing by the ACC as to compliance with applicable architectural review criteria as set forth in Section 9.2.

The Board of Directors shall have the authority and standing, on behalf of Association, to enforce in courts of competent jurisdiction decisions of the committee established under Section 9.2.

**SECTION 9.2**      **ARCHITECTURAL CONTROL COMMITTEE ("ACC")**. The ACC shall consist of at least two (2), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction and all modifications, additions, or alterations on any portion of the Property. The Board of Directors shall appoint the members of the ACC, who shall serve and may be removed at the discretion of the Board of Directors. The members of the ACC may include Board members, architects, engineers and other persons who need not be members of the Board. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such new construction, modifications, additions, or alterations, shall be submitted to the ACC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her dwelling unit, or to paint the interior of his or her dwelling unit any color desired; provided modifications or alterations to the interior of screened porches, patios, and similar portions of a dwelling unit visible from outside the dwelling unit shall be subject to approval hereunder. In the event that the ACC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved. The paint colors of the exteriors of the dwelling units shall remain as originally completed by the builder unless variations are approved by the ACC.

**SECTION 9.3**      **MINIMUM CONSTRUCTION STANDARDS**. The ACC from time to time may establish, supplement or amend minimum construction standards or provide an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only, and the ACC may impose other requirements in connection with its review of any proposed buildings, structures or improvements. If the minimum construction standards impose requirements that are more stringent than the provisions of this Declaration, the provisions of the minimum construction standards shall control.

SECTION 9.4 NO WAIVER OF FUTURE APPROVALS. The approval of the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

SECTION 9.5 VARIANCE. The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or environmental considerations require, but only in accordance with this Declaration and any promulgated 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 ACC 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.

SECTION 9.6 NO LIABILITY. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only. The ACC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Association, the Board of Directors, any committee of Association, or any member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot or dwelling unit thereon.

## ARTICLE X

### MAINTENANCE

SECTION 10.1 EXTERIOR MAINTENANCE. In addition to maintenance of the Common Area, Association shall maintain the landscaping of each Lot (front, side and back) which is subject to assessment hereunder, including trees, shrubs and grass. No member shall alter or change the landscaping of his or her yard unless he or she first obtains permission from the ACC. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, and not covered or paid for by insurance on such Lot, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. Lot maintenance shall not include glass surfaces, windows and doors, window and door fixtures and hardware, balcony decks, railings, walls and ceilings, paint, repair, replacement, and care for roofs, gutters, downspouts, exterior building surfaces, driveways, and other exterior improvements; maintenance and repair of these areas and items shall be the sole responsibility of the individual Lot owner.

SECTION 10.2 GENERAL. All maintenance of each Lot and all improvements thereon, except as set out in Section 10.1 above, is the sole responsibility of the Owner(s) thereof. Each Owner shall maintain his or her Lot and improvements thereon in a manner consistent with