

Section 5. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit; provided, however, the term "Living Unit" shall not include a garage constructed on the Lot which is detached from the other improvements on the Lot.

Section 6. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 7. "Member" shall mean and refer to every person or entity that holds a membership in the Association.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. However, the term "Owner" shall include any mortgagee or lien holder who acquires fee simple title to any Lot through judicial or nonjudicial foreclosure.

Section 9. "Subdivision" shall mean and refer to all phases of the Meadowcreek Subdivision covering all of the land in the 74.86. Acre Tract and includes all of the Subdivision Plats; provided however, none of the Property (or portions thereof) shall be considered part of the Subdivision until such time as it is included within a Subdivision Plat (hereinafter defined)

Section 10. "Subdivision Plat(s)" shall mean and refer to one or more of the final recorded subdivision plats subdividing portions of the Property and filed in the Real Property Records of Brazos County, Texas.

ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Easement of Access and Enjoyment. Every Owner shall have an easement of access and a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge a reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;
- (b) The right of the Association to suspend a Member's voting rights and right to use the recreational and other facilities owned or operated by the Association, excluding domestic water, for any period during which any assessment against his Lot or any other sum due the Association by Owner remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations; and
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be determined by the Association.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, his right of enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the Lot owned by him. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefore, whether it shall be express in the Deed or the evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration of Covenants, Conditions and Restrictions and any rules and regulations published by the Association applicable to the Common Area and further providing that noncompliance with these terms of the lease shall be a default thereunder.

Section 3. Title to the Common Area. The Common Area shall be owned by the Association or its successors, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey,

dedicate or reserve easements over, on or under the Common Area for utility services as set forth in Article XI, Section 1 hereof.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. Declarant shall, when it is deemed appropriate by Declarant, cause the Association to be organized and formed as a nonprofit corporation under the laws of the State of Texas. The principal purposes of the Association shall be the collection, expenditure and management of the maintenance funds, enforcement of this Declaration, providing for the maintenance, preservation and architectural control (when the powers of the ACC terminate and the ACC's powers vest in the Association) within the Subdivision, the general overall supervision of all of the affairs and well being of the Subdivision and other Subdivisions within its jurisdiction and the promotion of the health, safety and welfare of the residents within the Subdivision and other Subdivisions within its jurisdiction. Until the Association is so organized, Declarant shall enjoy all of the rights which would otherwise be exercised by the Association hereunder.

Section 2. Membership. Every person or entity that is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot, which is a part of the Subdivision, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

Section 3. Board of Directors. The Association shall act through a Board of Directors who will manage the affairs of the Association as specified in the Bylaws of the Association.

Section 4. Voting Rights. There shall be two classes of membership entitled to voting rights in the Association with respect to the Subdivision and they shall be as follows:

- (a) Class A: All Owners, other than Declarant, shall be considered Class "A" Members, and for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article H, Section I(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class "A" Members, however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determined.
- (b) Class B: Class "B" Members shall be the Declarant, and for each Lot owned it shall be entitled to five (5) votes on each matter coming before the Members at any meeting or otherwise. Once a Lot is sold to an individual or individuals who would be classified as Class A Members, subject to paragraph (c) below, the five (5) votes attached to the Lot shall be extinguished, subject to paragraph (c) below. All Class "B" memberships with respect to the Subdivision shall cease and be automatically converted into Class A Memberships on the happening of any of the following events, whichever occurs earlier:
- (i) When the total number of votes entitled to be cast by the Class "A" Members, with respect to the Subdivision, at any meeting of the Members or otherwise equals the total number of votes entitled to be cast by the Class "B" Members, with respect to the Subdivision;
 - (ii) Ten (10) years from the date this Declaration of Covenants, Conditions and Restrictions is filed with the County Clerk of Brazos County, Texas, for recordation in the Official Public Records of Real Property of Brazos County, Texas; or
 - (iii) At such earlier time as the Class "B" Member, in its sole discretion, shall elect.

(c) Reinstatement of Class "B" Members: Notwithstanding the prior provisions of paragraph (b) above, if additional land (other than the Property) is subject to the jurisdiction of the Association such that the Declarant owns more than 10% of the total lots in the Subdivision and any other subdivision subject to the jurisdiction of the Association, then the provisions in the first sentence of paragraph (b) above shall be automatically reinstated ipso facto.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessment. The Declarant and Main Street for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenant, that each Owner of any Lot that shall be or thereafter become assessable, by acceptance of a Deed therefore, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument. Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorney's fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fell due notwithstanding any subsequent transfer of title to such Lot. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association and, at the option of the Board of Directors of the Association, for any or all of the following purposes: lighting, improving and maintaining signs, streets, alleyways, sidewalks, paths, parks, parkways, any entry fence, monuments and/or signage, easements, and drainage areas in the Subdivision and in other subdivisions within its jurisdiction; collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing the planting and upkeep of trees and shrubbery in any of the Common Areas; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision and in other subdivisions within its jurisdiction in neat and good order, or which they consider of general benefit to the Owners or occupants of the Subdivision and in other subdivisions within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided. The judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum Level of Annual Assessments. Until January 1, of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the initial annual assessment shall be Three Hundred and No/100 Dollars (\$300.00) per Lot. Prior to the beginning of each calendar year, the Board of Directors of the Association (the "Board") shall estimate the expenses to be incurred by the Association during such year in

performing its functions and the cost of enforcing the Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. Thereafter, at the Board's sole and absolute discretion, the maximum regular annual Assessments per Lot permitted herunder may be increased by no more than eight percent (8%) per year, unless approved by at least two-thirds of each Class of Members who are voting in person or by proxy at a meeting duly called for such purpose, with the same quorum as required for Special Assessments herein. Notwithstanding the foregoing, the Declarant shall not pay any assessments so long as there is a Class B membership, and Declarant hereby covenants and agrees that in the event that the annual maintenance fund revenues are insufficient to pay the direct operation expenses of the Association, it shall provide the funds necessary to make up the deficit, within thirty (30) days of receipt of request for payment thereof from the Association. In the alternative, Declarant shall have the right to pay full Class A assessments on its Lots without relinquishing its Class B status and shall then be excused from the payment of any budget deficits.

Section 4. Special Assessments for Capital Improvement. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of a particular capital improvement located upon the Common Area, easements or drainage area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the written approval of fifty one percent (51%) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 5. Notice of Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting of the Members of the Association called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be sent to all members and shall be posted at a public place within the Subdivision not less than fifteen (15) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of the Members holding ten percent (10%) of all membership votes entitled to be cast in each membership class or their proxies shall constitute a quorum. If the required quorum is not present, additional meetings may be called subject to the same notice requirements and the required quorum at each subsequent meeting shall be one-fourth (1/4) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than (60) days following the preceding meeting.

Section 6. Rates of Assessments. Both annual and special assessments on all Lots, whether or not owned by the Declarant, must be fixed at uniform rates as follows:

(a) Occupied Lots: Those Lots containing an occupied Living Unit (there is, a Living Unit that has been initially occupied, although it may no longer be occupied) shall be assessed the full assessment as set by the Board of Directors of the Association;

(b) Completed Living Unit: Those Lots conveyed from builder to subsequent purchaser shall pay the full assessment, as set by the Board of Directors of the Association, during the year the builder conveys title to subsequent owner; and

(c) Vacant Lots: Those Lots which are vacant or upon which a residence is under construction shall not be assessed annual assessments by the Board of Directors of the Association. However, if such Owner fails to maintain said Lot in accordance with the requirements set forth in this Declaration, the Association is hereby authorized to do so and any expense the Association incurs thereby shall become a lien on the Lot and the general personal obligation of said Owner.

Section 7. Date of Commencement and Determination of Annual Assessment. The annual assessment provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. On or before the 30th day of November in each year, the Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each Lot in the next calendar year. Written notice of the figure at which the Board of Directors of the

Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof. However, the failure by the Board of Directors of the Association to fix an annual assessment for any year will not be deemed a waiver with respect to any of the provisions of this Declaration or a release of liability of any Owner to pay annual assessments, or any installments thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessment established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors of the Association shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid by each Owner within thirty (30) days after receipt of a statement therefor. Assessments shall be due and payable yearly in advance on the first day of January or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or charges, which are not paid when due, shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest from the due date of the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum rate permitted by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for the payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a Lien on such Lot which may be foreclosed on by a nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Official Public Records of Brazos County, Texas. In the event that the Association has determined to nonjudicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt request, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Official Public Records of Brazos County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting *through the Board*, upon ten (10) days prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists. It is the intent of the provisions of this Section 8 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to nonjudicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Official Public Records of Brazos County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. In addition to the above rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

Section 9. Subordination of the Lien to Mortgages. As hereinabove provided, the title to each Lot shall be subject to a vendor's lien and power of sale securing the payment of all assessments and charges due the Association, but said vendor's lien and power of sale shall be subordinate to any valid purchase money lien or mortgage covering a Lot and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said vendor's lien or power of sale. However, the sale or transfer of any Lot pursuant to a judicial or nonjudicial foreclosure under a purchase money lien or lien securing the cost of construction of home improvements shall extinguish the vendor's lien and power of sale securing such assessment or charge only as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or the Owner thereof from liability from any charges or assessments thereafter becoming due or from the lien thereof. No extinguishment of the vendor's lien and power of sale shall relieve the delinquent Owner from his personal obligation and liability therefore. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and devoted to public use and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot, which is used as a residence, shall be exempt from said assessments and charges.

Section 11. Transfer Fee. Declarant has created a master planned subdivision and has agreed to set aside land for amenities, common areas, landscape areas, streets, drainage and such other improvements of such type, size and location as determined by Declarant, (hereinafter collectively referred to as the "Improvements"). Upon each transfer of and acceptance of deed, title and/or ownership interest to a Lot in the master planned subdivision, the Owner acknowledges, agrees and stipulates (i) the Improvements, all and singularly benefit said Lot and (ii) in consideration thereof and for other good and valuable independent consideration, the receipt of which is acknowledged by acceptance of the deed, title and/or ownership interest, and as a covenant running with the land, that the Owner, including all heirs, successors and assigns, shall be obligated to pay to Declarant or Declarant's assign(s) a "Transfer Fee" described below.

The Transfer Fee shall be in the amount of three fourths of one percent (.75 %) of the Total Sales Price paid for the Lot and/or any improvements thereon. Such Transfer Fee shall be due and payable immediately at the closing of each transfer and/or sale of title and/or a title interest to a Lot. The Total Sales Price shall include total of all consideration for the Lot paid by or on behalf of the purchaser of the Lot and shall exclude prorated or prepaid taxes, interest, title policy fees and, escrow fees. The Transfer Fee shall be due contemporaneously with the transfer of title and/or title interest. Notwithstanding any of the foregoing, the Transfer Fee shall be waived for the transfer of a Lot by (a) Declarant, or (b) anyone who acquires title to a Lot directly from Declarant, or (c) transfers of land or a Lot that occur on or after January 1, 2012, or (d) transfer between spouses, or (e) transfers by will or probate, or (f) transfers by an institutional lender or Trustee by judicial or non-judicial foreclosure. The obligation of the Owner to pay the Transfer Fee shall expire on December 31, 2111, being ninety nine years after the obligation to pay the Transfer Fee begins on January 1, 2012. By acceptance of the deed, title or title interest to a Lot, the Owner agrees that all claims, disputes and other matters arising out of or related to the Transfer Fee shall be decided by binding arbitration in accordance with commercial arbitration rules of the American Arbitration Association then in effect. Neither Owner nor Declarant shall be entitled to recover costs or attorney fees that exceed three times the amount of the Transfer Fee claimed or assessed in connection with a disputed transfer. Owner and Declarant hereby waive all claims for exemplary, punitive, consequential, emotional and like kind damages arising from or related to the Transfer Fee or this Article to the extent permitted by law. The obligation to pay the Transfer Fee shall be a personal obligation of the Owner of record. In addition, Declarant shall have a lien against each transferred Lot which is subject to a Transfer Fee, to secure payment of the Transfer Fee as well as interest on such fee at the maximum non-usurious rate of interest allowed by law. Such lien shall be superior to all other liens, except liens for taxes, bonds, assessments and other levies which by law would be superior, and the lien or charge of any recorded first mortgage made in good faith and for value. Declarant may enforce its lien and the obligor's personal obligation to pay by suit, judgment, and/or judicial or non-judicial foreclosure in the same manner as the

Association or as otherwise allowed by law. All cost to collect the Transfer Fee shall be added to the Transfer Fee amount due. Election of one of the foregoing remedies shall not constitute an election of remedies. This Section cannot be amended without Declarant's written consent, and any amendment without such consent shall be void and of no force and effect. If this Section is found to conflict with any applicable law, including, but not limited to, the rule against perpetuities, then this Section shall be amended as necessary to comply with applicable law, but shall otherwise remain in full force and effect. This Section shall survive termination, expiration and/or modification of all or part of this Declaration.

ARTICLE V INSURANCE

The Association, through the Board of Directors, or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

- (a) Property insurance covering the Common Area, easements and esplanades and all improvements thereon in an amount not to exceed the full replacement value of the improvements and facilities located upon the Common Area, easements and esplanades and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent and, if necessary an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or the equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, and any such other risk as shall customarily be covered with respect to projects similar in construction, location and use;
- (b) A comprehensive policy of public liability insurance covering all of the Common Area, easements and esplanades, and insuring the Association, within such limits as it may consider acceptable (for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowner and hired -automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and
- (c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the ASSOCIATION; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners. Premiums for all such insurance policies carried by the Association shall be a common expense payable from the annual assessments on all of the Lots. Liability and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds on a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members, and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, they shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from contractors, and acceptance of a bid received thereby, may negotiate with the contractor, who shall, unless waived by the Board of Directors, be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all owners to make up the deficiency. This shall be done only after compliance with all the requirements for imposition of special assessments.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. There is hereby created an Architectural Control Committee (herein referred to as the "ACC") comprised of three (3) members, which shall initially be Rick Jenkins, David LeBoeuf and Steve Bartholomew each of who shall serve until his successor is appointed. Any two (2) of the members of the ACC shall have the full authority and power to act for the ACC. Any member of the ACC may be removed, with or without cause, by the Declarant. In the event any member of the ACC should be so removed from the ACC or if any member of the ACC should die, resign, refuse to act, or become unable or ineligible to act, Declarant shall have the authority to designate a successor. No member of the ACC or its designated representative(s), as herein defined, shall be entitled to any compensation for services performed pursuant to this Article. The ACC may, however, employ one or more architects, engineers, attorneys or other consultants to assist the ACC in carrying out its duties hereunder, and the Association shall pay such consultants for such services as they render to the ACC. A majority of the ACC may designate one or more representative(s) to act for it and such representative(s) shall have the full right, authority, and power to carry out the functions of the ACC.

Section 2. Duties and Powers. The purpose of the ACC is to protect the environmental and architectural integrity of the Subdivision in accordance with the provisions of this Declaration. No building, fence, wall or other structure or improvement of any nature shall be placed, constructed, erected or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been submitted to and approved in writing by the ACC as to (a) conformity and harmony of external design and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted shall specify, in such form as the ACC may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof as well as appropriate information concerning the structural, mechanical, electrical and plumbing details and the nature, kind, shape, heights, color scheme and materials of the proposed improvements or alterations. The ACC shall also have the right, where not otherwise set forth herein, to specify:

- (a) Minimum setbacks;
- (b) The location, heights and extent of fences, walls, or other screening devices;
- (c) The orientation of structures and landscaping on Lots with respect to streets, walks and structures on adjacent properties, however, the ACC shall not require setbacks further away from the streets than any platted building line; and
- (d) A limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement. Further, no person exercising any prerogative of approval or disapproval by the ACC shall incur any liability by reason of the good faith exercise thereof.

Section 3. ACC Approval. Any approval or disapproval by the ACC or its designated representative(s) on any of the above matters shall be in writing and either conveyed in person or by registered or certified mail, return receipt requested or over-night delivery service. In the event said ACC or its designated representative(s) fail to approve or disapprove such design and location within thirty (30) days after all said plans and specifications have been submitted to it in writing and either conveyed in person or by registered or certified mail, return receipt requested or over-night delivery service, then such plans and specifications shall be deemed approved (except for any required variances as provided below). The ACC shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the ACC in good faith deems that such variance does not adversely affect the architectural and environmental integrity of the Subdivision or the common scheme of the development. If the ACC shall approve a request for variance, the ACC may evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the ACC to permit the variance, describing (when applicable) the conditions on which the variance has been approved and signed by a majority of the then members of the ACC. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for

any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lots and with the Plat. Failure by the ACC to respond within thirty (30) days to the request for a variance shall operate as a denial of the variance.

Section 4. Term. The duties and powers of the members of the ACC herein named, their successors, assigns and designated representative(s) shall cease on the earlier of twenty (20) years from the date this Declaration of Covenants, Conditions and Restrictions is recorded in the Official Public Records of Real Property of Brazos County, Texas, or the date upon which all Lots subject to the jurisdiction of the Association become Occupied Lots. Thereafter, the duties and powers of the ACC shall vest in the Board of Directors of the Association or an ACC composed of three (3) or more representatives appointed by the Board of Directors of the Association. The approval required in this Article and the duties and powers vested in the ACC and its successors shall continue so long as this Declaration of Covenants, Conditions and Restrictions remain in force and effect. The then current members of the ACC may at any time voluntarily transfer all their duties and powers to the Board of Directors of the Association. To be effective, such a transfer shall be evidenced by a document executed by each of the then current members of the ACC.

Section 5. No implied Waiver or Estoppel. No action or failure to act by the ACC or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the ACC or Board of Directors with respect to the construction of any improvements within the Subdivision. Specifically, the approval by the ACC or Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications or other materials submitted with respect to any other residential construction by such person or other Owner.

ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Obligation. All Living Units and other buildings located within the Subdivision must be kept in good repair and must be painted when necessary to preserve their attractiveness. Grass, vegetation and weeds on each Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. All damaged, diseased beyond recovery or dead trees shall be cut and removed from any Lot at the expense of the Owner. Vacant Lots shall be mowed and maintained in clean, neat appearance by the Owner and shall not be used as dumping grounds for rubbish, trash, rubble or soil, except that Declarant or the ACC may designate fill areas into which materials specified by Declarant or the ACC may be placed. The Association may plant, install and maintain shrubbery and other screening devices around boxes, transformers and other aboveground 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. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment and woodpiles or storage piles.

Section 2. Failure to Maintain. In the event any Owner of any Lot in the Subdivision fails to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after seven (7) days notice to the Owner of said Lot, setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right (but not the obligation), through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements located thereon. To the extent necessary to prevent rat infestation, diminish fire hazards and accomplish any of the above needed repair, maintenance and restoration, the Association shall have the right (but not the obligation), through its agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association or its agents or employees shall be liable, and are expressly relieved from any liability for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized in this Article. The cost of such exterior maintenance and other work shall be the personal obligation of the Owner of the Lot on which it was performed and shall become a part of the assessment payable by said Owner and secured by the liens herein retained.

ARTICLE VIII USE RESTRICTIONS

Section 1. Residential Use. Each and every Lot in the Subdivision is hereby restricted to site built residential dwellings for single-family residential use only, except those Lots designated as drainage lots, park lots and/or common area lots. As used herein, the term "residential use" shall be held and construed to exclude hospitals, clinics, apartments houses, manufactured houses, duplex houses, garage apartments used for rental purposes, boarding houses, hotels and commercial and professional uses whether from homes, residences, or otherwise, and all such uses of said property are hereby expressly prohibited.

Section 2. Business Activity. No business activities of any kind whatsoever shall be conducted in any portion of the Subdivision; provided, however, the foregoing covenant shall not apply to the business activities of the Declarant, its agents and assigns during the construction and sale period, or of the Association, its successors and assigns in furtherance of its powers and purposes as herein set forth. Each builder on Lots in the Subdivision shall be allowed to use the garage structure constructed on the Lot as an office; provided, however, that such structure must be converted back to a garage prior to the sale of the home on the Lot affected to a purchaser.

Section 3. Common Area. The Common Area shall not be used for any commercial purposes; however, this provision shall not preclude the Association from charging reasonable fees for the use of the recreational facilities, which are part of the Common Area.

Section 4. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain, during the period of construction and sale of Lots within the Subdivision, upon any portion of a Lot, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots, including, without limitation, a business office, storage area, construction yards, model units and a sales office.

Section 5. Animals and Livestock. The raising, breeding or keeping of animals, livestock or poultry of any kind on any Lot in the Subdivision is strictly prohibited; provided, however, consistent with the Living Unit's use as a residence, dogs, cats or other household pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purposes and further provided, no more than three (3) such pets shall be kept on a Lot. All pets must be properly tagged for identification and penned in an approved enclosure. No pet may be chained or leashed outside an enclosure unless being walked on a leash. Whenever, a pet is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash of chain, rope, plastic, leather or similar material.

Section 6. Mineral Production. No oil drilling, oil development operations or oil refining, quarrying or mining operations of any kind shall be permitted upon any portion of the Subdivision, nor any kind shall be permitted upon any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Subdivision.

Section 7. Disposal of Trash. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage or other wastes. All rubbish, trash, garbage or other waste shall be kept in sanitary containers and out of sight of the Common Area and any street or adjacent Lot, except on days designated by the Association for pick-up of such garbage. 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. No incinerator may be maintained on any portion of the Subdivision.

Section 8. Storage of Vehicles. No recreation vehicles, commercial vehicles, boats, trailers, campers or inoperable automobiles shall be allowed to be parked within the streets, common area, front yard or any other area of the Subdivision, unless same are parked in garages and the garage doors remain closed except when in use. No portion of the front yards, streets or Common Area shall, without the express written permission of the Association, be used for any items, which the Association deems unsightly or inappropriate. No Owner of any Lot in the Subdivision or any visitor or guest of any Owner shall be permitted to perform work on any vehicle in any driveway, front yard or street

other than for work of a temporary nature. For the purpose of the foregoing term, "temporary" shall mean that the vehicle shall not remain in a driveway or street in excess of twenty-four (24) hours. Garage doors shall be closed at all times, except for immediate entry or exit.

Section 9. Storage of Building Materials. No Lot shall be used for storage of any material except that required for landscaping or construction which materials shall not be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the Lot, at which time such materials shall be placed within the property lines of the Lot upon which the improvements are to be constructed, and shall not be placed in the street or upon any Common Areas. All material stored on a Lot must be removed within 21 days, unless the Owner obtains a written extension of this time from the ACC.

Section 10. Signs. No advertising signs (except not more than one six (6) square foot "For Rent" or "For Sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Subdivision. Declarant and the Association, however, shall have the right to erect identifying signs at each entrance of the Subdivision and Declarant may place and maintain, or permit to be placed and maintained, such builder advertising signs as it may desire in its sole discretion in connection with the construction of homes in the Subdivision. The Board of Directors of the Association shall have the right to approve the design and working of all signs and the right to enter in and upon any Lot for the purpose of removing any sign being maintained thereon which has to be approved by it. In no event shall the Association or its Board of Directors be liable to any person or persons for any damages of whatever nature for removing such signs in a reasonable manner.

Section 11. Clotheslines. No outside clothesline shall be constructed or maintained on any Lot within sight of the Common Area or any street or adjacent Lot.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the Subdivision or in any way endanger the health of the residents.

Section 13. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or by any conduct in violation of the laws of the State of Texas, or the United States, or of the police, health, sanitary, building or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 14. Control of Sewage Effluent. No outside toilets will be permitted, except temporarily during the construction of improvements, and no installation of any type of device for disposal of sewage shall be allowed that would result in raw or untreated or unsanitary sewage being carried into the streets or into any body of water. Drainage of storm waste into sewage pipes shall not be permitted. No septic tank or other means of sewage disposal will be permitted.

ARTICLE IX ARCHITECTURAL RESTRICTIONS

Section 1. Type of Living Unit. No building shall be erected, altered, placed or permitted to remain on any Lot other than a detached single family dwelling of not more than two (2) stories and the maximum height of residential structures shall be 40 feet. All structures shall be of new construction and no structure shall be moved from another location onto any Lot.

Section 1. I. Adequacy of Parking. Each lot shall provide adequate parking spaces sufficient to accommodate all parking needs for the intended uses within each lot. Not less than sixty seven (67%) percent of the lots shall have a minimum of four (4) parking spaces, two of which may be in the garage. Not more than thirty three (33%) percent shall have a minimum of three (3) parking spaces one of which may be in the garage. No garage shall be converted into bedrooms, dens, studies or any living areas for the occupants; provided, however, builders may temporarily convert the garage if used as a model home, such garage must be reconverted for the parking of automobiles within 90 days when no longer in use as a model home. Carports on Lots are not permitted.