

Denton County  
Juli Luke  
County Clerk

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DECLARATION

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COUNTY OF DENTON

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Juli Luke  
County Clerk  
Denton County, TX

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
KEENELAND**

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**Popular Name of Development:** KEENELAND  
**Name of Platted Subdivision:** KEENELAND  
**Location of Subdivision:** Aubrey, Denton County, Texas

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This document pertains to a residential development known as Keeneland, located in Aubrey, Denton County, Texas.

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Declarant: Aubrey 81 West, LP, a Texas limited partnership

**AFTER RECORDING, RETURN TO:**

**Aubrey 81 West, LP  
Attention: Steve Gee  
2727 Routh Street  
Dallas, Texas 75201**

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# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

## KEENELAND

**NOTICE TO PURCHASER: KEENELAND IS A DEED RESTRICTED COMMUNITY. THIS DOCUMENT AFFECTS YOUR RIGHT TO USE AND ENJOY THE PROPERTY YOU ARE PURCHASING. BY PURCHASING PROPERTY IN KEENELAND, YOU ARE BOUND BY ALL OF THE TERMS OF THIS DOCUMENT, INCLUDING ANY GUIDELINES, RULES, POLICIES, RESOLUTIONS, REGULATIONS, AND OTHER DEDICATORY INSTRUMENTS NOW OR HEREAFTER ADOPTED AND INCORPORATED HEREIN.**

This Declaration of Covenants, Conditions, and Restrictions for Keeneland (the "Declaration") is made and entered into to be effective upon recordation in the Official Public Records of Denton County, Texas, by Aubrey 81 West, LP, a Texas limited partnership (the "Declarant").

### RECITALS:

A. Declarant desires to establish a general plan of development for the planned community to be known as Keeneland. Declarant also desires to provide a reasonable and flexible procedure by which Declarant may expand the Property, herein defined, to include additional real property, and to maintain certain development rights that are essential for the successful completion and marketing of the Property.

B. Declarant further desires to provide for the preservation, administration, and maintenance of portions of Keeneland, and to protect the value, desirability, and attractiveness of Keeneland. As an integral part of the development plan, Declarant deems it advisable to create a property owners association to perform these functions and activities more fully described in this Declaration and the other Government Documents described below.

C. Declarant owns all of that 82.64 acres, more or less, tract of real property (the "Property") in Denton County, Texas, more particularly described by on Exhibit A attached hereto and incorporated herein by reference.

D. The Property has been or is to be subdivided pursuant to the Plat and known as "Keeneland", herein so called. Keeneland is to be developed as a quiet, high quality, private-single family, residential community. It is the intent of Declarant that all residences and other improvements in Keeneland shall be compatible with all other residences and improvements in the community, that they be in harmony with their natural surroundings, and that the agricultural and wildlife conservation uses of the land be continued and enhanced as appropriate and consistent with the terms hereof.

E. Declarant desires to adopt, establish, promulgate, and impress upon the Property the following reservations, covenants, restrictions, conditions, assessments, and liens for the benefit of Declarant, the Association, the Property, and the present and future Owners of the Property.



## DECLARATION

**NOW, THEREFORE**, Declarant hereby declares that the Recitals set forth above shall be a part of this Declaration and all the Property and each of the Lots which comprise the Property shall, to the fullest extent lawful, be held, sold, and conveyed subject to the following reservations, covenants, restrictions, conditions, assessments, and liens (collectively the "Restrictions," including, but not limited to, those matters set forth in the Design Guidelines or similarly titled instruments), duly promulgated dedicatory instruments, and the Restrictions shall run with the Property and each of the Lots and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any Lot or any part thereof, and shall inure to the benefit of Declarant, the present and future owner(s) of the Property, the Association, and their respective heirs, successors, executors, administrators, and assigns. **THE RESTRICTIONS SHALL BE DEEMED INCORPORATED INTO EACH DEED COVERING THE PROPERTY OR ANY LOT OR ANY PART THEREOF AS IF SET OUT FULLY IN SUCH DEED.**

### ARTICLE 1 – DEFINITIONS

**1.1. Specific Definitions.** The following words or phrases, whether or not capitalized, when used in this Declaration, or any supplemental declaration, unless the context shall prohibit, shall have the following meanings:

"ACC" shall mean the Architectural Control Committee of the Association.

"Applicable Law" means the statutes and public laws, codes, ordinances, and regulations in effect at the time a provision of the Declaration is applied and pertaining to the subject matter of the Declaration. Statutes and ordinances specifically referenced in the Declarations are "Applicable Law" on the date of the Declaration and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

"Approved Builder" shall mean any person or entity who purchases one (1) or more Lots for the purpose of constructing residential dwellings for later sale to consumers in the ordinary course of such person's or entity's business. Refer to Section 6.14 of the Declaration.

"Association" shall mean a Texas non-profit corporation formed to act as a property owners association and named Community Association of Keeneland Owners, Inc. Until transition of the Association to the Owners, Declarant shall have all of the rights, powers, and authority of the Association, but not the obligations of the Association unless specifically assumed herein. The failure of the Association to maintain its corporate charter, from time to time, does not affect the existence, authority, or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and Applicable Law.

"Board" shall mean the Board of Directors of the Association.

"Building Code" shall mean the applicable building code adopted by the County Seat of the County in which the Lot is located or, if a code has not been so adopted, the 2008 version of the International Residential Code (without reference to the energy code contained therein), as amended, supplemented, or replaced from time to time.

"Bylaws" shall mean the Bylaws of the Association adopted or be adopted by the Board and which shall be filed in the Official Public Records of Denton County, Texas, as required by Section 202.006 of the Texas Property Code.

"Certificate" shall mean the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

"Keeneland" shall mean the Subdivision referred to in the Recitals above as established by the Plat and this Declaration.

"City" shall mean the City of Aubrey, Texas. The Property is located within the jurisdiction of the city known as Aubrey, Denton County, Texas. The Property located in this extraterritorial jurisdiction may be subject to annexation by the applicable municipality.

"Common Area" shall mean the entrances and landscaping thereof, and any and all other areas of land within the Property which are described or designated as parkway areas, recreational easements, greenbelts, open spaces or private streets on any recorded subdivision Plat of the Property or other instrument or intended for or devoted to the common use and enjoyment of the Owners of the Association, and including all equipment, accessories and machinery used in the operation or maintenance of any of such Common Area and any additions to or replacements of such Common Area. In certain circumstances, Common Area may not be owned by the Declarant or Association in fee but may be maintained by the Association or Declarant for the use and benefit of the Association and the Owners. By way of example, and not by way of limitation, Common Area may include any entry features, pool or amenity center, signage, landscape easements, recreational facilities, trails, playground equipment, and/or other similar items. There may or may not be Common Area at the Property. Declarant may hold record title to any Common Area, consistent with the objectives envisioned herein and subject to the easement rights herein of the Owners to use and enjoy the Common Area, for an indefinite period of time and at a point in time (deemed appropriate and reasonable by Declarant) record title to the Common Area will be formally transferred from Declarant to the Association.

"Declarant" shall mean Aubrey 81 West, LP, a Texas limited partnership, and its successors or assigns, including any affiliate or person or entity who is designated as a successor Declarant in writing pursuant to the provisions of this Declaration.

**Declarant enjoys special rights and privileges to help protect its investment in the Property. These special rights are described in this Declaration. Many of these rights do not terminate until either Declarant: (i) has conveyed all Lots, including conveyance of Common Area to the Association, which may be created out of the Property; or (ii) voluntarily terminates these rights by a recorded written instrument.**

"Declaration" or "Restrictions" shall mean this Declaration of Covenants, Conditions, and Restrictions for Keeneland, as amended and/or supplemented from time to time.

"Declarant Control Period" means that period of time during which Declarant controls the operation and management of the Association by appointing at least a majority of the directors of the Association, pursuant to the rights and reservations contained in this Declaration, to the fullest extent and for the maximum duration permitted by Applicable Law. The Declarant Control Period shall run continuously from the date of this Declaration is recorded and until twenty (20) years after the date on which the Declaration is recorded. No act, statement, or omission by the Association may terminate the Declarant Control Period earlier than the term stated herein. Declarant, however, may terminate the Declarant Control Period at any earlier time by publicly recording a notice of termination. The Declarant Control Period is for a term of years.

**"Design Guidelines"** shall mean the Design Guidelines, including architectural standards, guidelines, and/or bulletins, which may be promulgated and published by the ACC, and as may be as amended from time to time, as described herein. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property.

**"Development Period"** means the period during which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape, and composition of the Property, pursuant to the rights and reservations contained in this Declaration, to the fullest extent permitted by Applicable Law. If Applicable Law requires a stated term, the Development Period runs continuously from the date this Declaration is recorded until the earliest of the following events: (1) twenty (20) years after this Declaration is recorded, or (2) the date on which every Lot in the Property is improved with a Residence. No act, statement, or omission by the Association may terminate the Development Period earlier than the term stated herein. Declarant, however, may terminate the Development Period at any earlier time by recording a notice of termination. The Development Period is for a term of years or until the stated status is attained and does not require that Declarant own a Lot or any other land in the Property.

**"Governing Documents"** shall mean, singly or collectively as the case may be, the Plat, this Declaration, the Bylaws of the Association, the Certificate, the Rules and/or Regulations, and duly promulgated dedicatory instruments of the Association, if any, all of which may be adopted, amended, supplemented, restated, or repealed from time to time. Although Governing Documents reference each other and may be recorded contemporaneously, each instrument is independent and may be amended pursuant to its own terms or Applicable Law.

**"Improvement"** shall mean all physical enhancements and alterations to the Property, including but not limited to grading, clearing, removal of trees, and site work, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, alteration of drainage flow, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

**"Law-Based Sections"** shall refer to those section in Exhibit B and address a referenced State law relating to an Owner's use of his Lot. The Law-Based Sections are to be liberally construed to give effect to the purposes and intent of the underlying statutes. The Association must remain mindful that certain actions are controlled by State law, that State law is subject to change, that State law should be consulted for applicability whenever enforcement issues arise, and that **the Law-Based Sections should not be changed or terminated without advice of legal counsel regarding applicable law then in effect**. Due to changes in State law, the Law-Based Sections may be amended by the Association without vote of the Owners.

**"Lot"** shall mean any one of the separate lots identified on the Plat that make up all or part of the Property.

**"Owner"** shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, and his or its respective heirs, successors, personal representatives, and assigns. Mortgagees and creditors who acquire title to a Lot through foreclosure or a deed in lieu of foreclosure are Owners.

Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a member of the Association.

"Plat" shall mean the preliminary plat of "Keeneland", located within the City of Aubrey, Denton County, Texas, and any and all amendments, modifications, revisions or replats to or of said plat, and any plat of any Annexable Land expressly annexed and made subject to this Declaration.

"Property" shall mean all the real property identified on Exhibit A attached hereto and incorporated herein by this reference, and any additions or supplements thereto.

"Residence" shall mean a single-family residential dwelling constructed or to be constructed on any Lot.

"Resident" shall mean individual that lives at or takes up residence on the Owner's Lot.

"Roads" means collectively the streets and roads within the Property, whether public or private. Roads shall exclude pavement, sidewalks, walkways leading to a front door or any other area on the Lot and driveways, curbs, streetlights, signs, and related facilities installed thereon.

"Rules and/or Regulations" means any and all rules and/or regulations promulgated by Declarant or the Board, as amended from time to time. The Rules and Regulations may, at the discretion of Declarant or the Board, be incorporated into and made a part of the Design Guidelines.

**1.2. Other Definitions.** Other terms are defined in other sections of this Declaration and are incorporated herein by this reference.

<b>TABLE 1: RESTRICTIONS</b>	
<b>Declaration (Recorded)</b>	Creates obligations that are binding upon the Association and all present and future owners of Property.
<b>Certificate of Formation (Recorded)</b>	Establishes the Association as a Texas nonprofit corporation.
<b>Bylaws (Recorded)</b>	Governs the Association's internal affairs, such as elections, meetings, etc.
<b>Design Guidelines (Recorded)</b>	Governs the design and architectural standards for the construction of Improvements and modifications thereto.
<b>Rules and Regulations (if adopted, Recorded)</b>	Regulates the use of property, activities, and conduct within the Property or the Common Area.
<b>Board Resolutions (adopted by the Board of the Association)</b>	Establishes rules, policies, and procedures for the Property, Owners, and the Association.

## ARTICLE 2 – SUBJECT TO DOCUMENTS

**2.1. Subject to Documents of Record.** The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms of all publicly recorded documents, and all other publicly recorded instruments that touch and concern the land, run with the Property, and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns.

**2.2. Covenants in Plat.** The dedications, covenants, limitations, restrictions, easements, notes, and reservations shown on the Plat are hereby incorporated by reference as covenants running with the land. Each Owner must inform himself about the Plat's covenants on the Lot. Similarly, the Association is bound by the platted covenants on Common Areas.

**2.3. Owner Agrees to be Bound.** Each Owner, by impliedly or expressly accepting or acquiring an ownership interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants, and agrees to be bound by this Declaration, the Plat, and the Governing Documents. Each Owner acknowledges that the Governing Documents may be amended, supplemented, or restated from time to time. Each Owner agrees to maintain any easement that crosses Owner's Lot and for which the Association does not have express responsibility.

### NOTICE

**The Restrictions are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with the Restrictions, as they may change from time to time.**

## ARTICLE 3 – PROPERTY EASEMENT

**3.1. General.** In addition to other easements and rights established by the Governing Documents, the Property is subject to the easements and rights contained or referenced herein.

**3.2. Owners Easements of Enjoyment.** Subject to the provisions of subsection, every Owner and every tenant of every Owner, who resides on a Lot, and each individual who resides with either of them, on such Lot shall have a right and easement of use, recreation and enjoyment in and to the Common Area, subject to other rights contained in the Governing Documents, and such easement shall be appurtenant to and shall pass with the title of every Lot, provided, however, such easement shall not give such person the right to make alterations, additions or improvements to the Common Area.

**3.3. Owner's Ingress/Egress Easement.** Every Owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from Owner's Lot.

**3.4. Extent of Owner's Easements.** The rights and easements of use, recreation, and enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to prescribe Rules and Regulations governing, and to charge fees and or deposits related to, the use, operation and maintenance of the Common Area, and the use, occupancy, and enjoyment of the Property;
- (b) Liens or mortgages placed against all or any portion of the Common Area with respect to the monies borrowed by Declarant to develop and improve the Property or by the Association to improve or maintain the Common Area;

- (c) The right of the Association to enter into and execute contracts with any party (including, without limitation, Declarant) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association;
- (d) The right of Declarant or the Association to take such steps as area reasonably necessary to protect the Common Area against foreclosure;
- (e) The right of Declarant or the Association to suspend the right of any individual to use or enjoy any of the Common Area, include the amenity center, if any, for any period during which any assessment (including, without limitation, violation fines) against a Lot resided upon by such individual remains unpaid, and for any period deemed reasonable by the Association for an infraction of the then-existing Rules and Regulations;
- (f) The right of Declarant and/or the Association to dedicate or transfer all or any part of the Common Area to any municipal corporation, public agency, authority, or utility company for such purposes and upon such conditions as may be agreed upon by Declarant and the Owners having a majority of the outstanding eligible votes of the Association;
- (g) The right of Declarant and/or the Association to convey, sell or lease all or part of the Common Area upon such terms and conditions as may be agreed upon by Declarant and the Owners having a majority of the outstanding eligible votes of the Association; and/or
- (h) The right of Declarant or the Association to enter into and execute contracts with the owners-operators of any community antenna television system or other similar operations for the purpose of extending cable or utility service on, over or under the Common Area to ultimately provide service to one or more of the Lots.

**3.5. Owner's Right to Build.** That a Lot remains vacant and unimproved for a period of years, even decades, does not diminish the right of the Lot Owner to construct improvements on the Lot. Nor does a vacant Lot enlarge the rights of Owners or neighboring lots, who may have become so accustomed to the open space that they expect it to remain unimproved forever.

**3.6. Perpetual Easements.** All easements reserved or created in any part of this Declaration for the benefit of Declarant or the Association are perpetual. All easements reserved or created herein for the benefit of Declarant may be granted or assigned by Declarant, in whole or in part, on an exclusive or nonexclusive basis, to any third party. Utility easements reserved or created herein for the benefit of the Association may be granted or assigned by the Association, in whole or in part, on an exclusive or nonexclusive basis, to any public utility or utilities.

**3.7. Condemnation or Governmental Taking.**

- (a) If all or any part of the Common Area are taken by any authority having the power of condemnation or eminent domain or are conveyed in lieu thereof, the funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Area to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair any damage suffered by the condemnation. If all of the funds cannot be used in such manner, any remaining funds may be distributed equitably to the Owners.

- (b) If, all, or any part of a Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and the Owner elects not to restore the remainder of the Lot, then the Owner shall promptly remove any remaining improvements damaged or destroyed by such taking or conveyance and shall leave the Lot in orderly, safe, and neat condition.
- (c) If any part of a Lot is taken by any authority having the power of condemnation or eminent domain or is conveyed in lieu thereof and the Owner elects to restore the remainder of the Lot, then, subject to the provisions of this Declaration, the Owner shall diligently restore, within ninety (90) days after the taking, the remainder of the Lot to the same condition it was in prior to such taking or conveyance.

**3.8. Association's Access Easement.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation all Common Areas and the Owner's Lot and all improvements thereon for the below-described purposes. If the exercise of this easement requires entry onto an Owner's Lot, the entry will be during reasonable hours and after notice to the Owner, unless entry is response to a situation that at the time of entry is deemed to be an emergency that may result in imminent damage to or loss of life or property. In exercising this easement on an Owner's Lot, the Association is not liable to the Owner for civil or criminal trespass. The Association may exercise this easement of access and entry for the following express purposes:

- (a) To inspect the Lot for compliance with maintenance and architectural standards.
- (b) To perform maintenance that is permitted or required of the Association by Governing Documents or by Applicable Law.
- (c) To perform maintenance that is permitted or required of the Owner by the Governing Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.
- (d) To enforce architectural standards.
- (e) To enforce use restrictions.
- (f) To exercise any self-help remedy permitted by the Governing Documents or by Applicable Law.
- (g) To enforce any other provision of the Governing Documents.
- (h) To respond to emergencies.
- (i) To assist utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- (j) To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by Applicable Law.
- (k) Maintenance of the Common Areas.

**3.9. General Easements for Declarant.** Declarant, so long as it shall retain record title to at least one (1) Lot, reserves for itself and for the Association the right and easement to the use of any Lot, or

any portion thereof, as may be needed for repair, maintenance, or construction on any of the Property in accordance with these Restrictions.

#### **ARTICLE 4 – SECURITY**

**4.1. Security.** The Association may, but is not obligated to, maintain, or support certain activities within the Property designed, either directly or indirectly, to improve safety or the perception of safety in or on the Property. Each Owner and Resident acknowledges and agrees, for himself/herself and his/her guests; that Declarant, the Association, and their respective directors, officers, shareholders, members, managers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Resident acknowledges and accepts his/her sole responsibility to provide security for his/her own person and property and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association their respective directors, officers, shareholders, members, managers, committees, agents, and employees have made no representation or warranty, nor has the Owner or Resident relied on any representation nor warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, shareholders, members, managers, committees, agents, and employees, may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. **EACH OWNER AND RESIDENT OF A LOT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY WITHIN THE PROPERTY AND THE COMMON AREA.**

#### **ARTICLE 5 – COMMON AREA**

**5.1. Title to the Common Area.** Declarant will hold record title to the Common Area for an indefinite period of time, subject to the easements set forth herein. The designation of real property as a Common Area may be determined by the Plat, the Declaration, the appraisal district, a taxing authority, a recorded deed into the Association, or any combination thereof. Mere ownership of the Property is not determinative. All costs attributable to Common Areas, including maintenance, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the Common Areas, unless this Declaration elsewhere provides for a different allocation for a specific Common Area. Declarant shall have the right and option (without the joinder and consent of any person or entity) to encumber, mortgage, design, redesign, reconfigure, alter, improve, landscape, and maintain the Common Area. At some point in time (deemed reasonable and appropriate by Declarant), Declarant will convey legal title to the Common Area to the Association for the purposes herein envisioned. Declarant reserves the right to execute any open space declarations applicable to the Common Area which may be permitted by law in order to reduce property taxes.

**5.2. Use.** On the date of this Declaration, the Property's Common Area are intended for the exclusive use of the Owners and their guests and are not intended to be a public accommodation or a public facility within the meaning of the Americans with Disabilities Act. This provision may not be construed to prevent the Association from enlarging the use of a Common Area if such expansion is deemed to be in the best interest of the Association, or from opening a Common Area to use by the public if public use is a condition of a status or benefit that is deemed to be in the best interest of the Association.



**5.3. Change of Use.** From time to time, the Association, by and through the Board, may modify a Common Area on a temporary or long-term basis to respond to changing lifestyles, economies, environmental conditions, public policies, or recreational values, provided (1) the Board deems the modification to be in the best interest of the Association, and (2) the modification does not affect an agreement with or requirement of a public or quasi-public entity without the entity's written approval of the modification. Modification may include (without limitation) a change of use, or the removal, addition, relocation, or change or improvements on a Common Area. Unless required by a public or quasi-public entity, a modification does not require an amendment of this Declaration or of the Plat, even if a Common Area has been platted or improved for a particular use.

**5.4. Components of Common Area.** The Common Area may be improved or unimproved, and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. The Common Area of the Property may consist of the following components on or adjacent to the Property, even if located on a Lot or a public right-of-way:

- (a) All of the Property, save and except the Lots.
- (b) The land described in Exhibit A as the Common Area and all improvements thereon.
- (c) Any area shown on the Plat as Common Area or an area to be maintained by the Association.
- (d) The formal entrances to the Property, including (if any) the signage, landscaping, electrical and water installations, non-standard pavement, and planter boxes.
- (e) The screening features along the perimeters of the Property, if any.
- (f) The right-of-way of perimeter streets around the Property to the extent that the Association has a right or duty to maintain or regulate that portion of the right-of-way.
- (g) The grounds between the perimeter streets around the Property and the screening walls, fences, or berms, to the extent that the Association has a right or duty to maintain or regulate that portion of the right-of-way.
- (h) Landscaping on street islands (if any), to the extent it is not maintained by a public or quasi-public entity.
- (i) Any modification, replacement, or addition to any of the above-described areas and improvements.
- (j) Personal property owned by the Association, such as books and records, office equipment, and supplies.

**5.5. Limited Common Area.** If it is in the best interest of the Association, as determined by the Board, a portion of the Common Area may license, lease, grant an easement, or allocate to one or more Lots for their sole and exclusive use, as a limited Common Area, whether or not the area is so designated on the Plat. Inherent in the limiting of a Common Area, maintenance of the limited Common Area becomes the responsibility of the Owner to whom use it is limited. For example, a Common Area that is difficult to access and maintain except via the adjoining Lot might be a candidate for limited Common Area.

**5.6. Personal Responsibility.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance and by occupying a Residence on the Property, acknowledges, understands, and agrees to each of the following statements:

- (a) Each Owner agrees to be informed about and to comply with the published or posted Common Area rules, including the Association's right to suspend use and access privileges of the Owner.
- (b) The use and enjoyment of Common Areas involve risk of personal injury, risk of death, and risk of damage or loss to person and/or property.
- (c) Each person using a Common Area assumes all risks of personal injury, death, and loss or damage to property resulting from such use.
- (d) Parents, guardians, hosts, caretakers, and supervisors are at all times responsible for the well-being and safety of their children and guests in their use of Common Areas.
- (e) The Association, Declarant, Approved Builders, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of personal safety in or on the Common Areas.
- (f) The Association, Declarant, Approved Builders, and their respective directors, officers, committees, agents, and employees have made no representations or warranties – verbal or written – relating to safety or lack of risks pertaining to the Common Areas.

## **ARTICLE 6 – ARCHITECTURAL CONTROL COMMITTEE**

Declarant has a substantial interest in ensuring that Improvements within the Property maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the Architectural Control Committee ("ACC") to the Board as provided below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a single person, including Declarant or an affiliate of Declarant, to exercise the rights of the ACC.

**6.1. Architectural Control Committee.** To protect the overall integrity of the development of Keeneland, as well as the value of the Improvements of all Owners, a committee of representatives designated as the ACC is hereby established to carry out all duties as noted herein with full authority to approve, disapprove, and monitor all construction, development, and improvement activities of any kind within the Property and to help ensure that all such activities are in accordance with the Restrictions and architecturally and aesthetically designed to be compatible with Declarant's conceptual plan for the Property. At the discretion of the Board, the duties of the ACC may be delegated in whole or in part to a third-party representative of the ACC who need not be an Owner or a member of the Board.

**6.2. Appointment of ACC Members.** During the Development Period, the number and identity of the ACC members shall be decided by Declarant. In the event of the death or resignation of any member of the ACC, Declarant shall have full power and authority to appoint a successor committee member or members, chosen in its absolute and sole discretion. When the Development Period expires or when the Declarant has otherwise elected to cede control of the Association to the Owners, the Board shall appoint the successor members of the ACC, which shall consist of at least three (3) but no more than five (5)

members, and which may not be a current Board member, a current Board member's spouse, or a person residing in a current Board member's household. The members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion, with or without cause. Members of the Declarant appointed ACC need not be Owners. The Association may hire professionals, such as architects, engineers, and design consultants, to serve on or to advise the ACC at a compensation determined by the Board and such expenses may be charged to the Owner requesting the modification or improvement.

**6.3. ACC Approval Required.** The ACC shall review all plans and modifications submitted for compliance with the Restrictions, Design Guidelines, Rules, if any, and for compatibility with the architectural and aesthetic goals of the Property. Without ACC approval, an Owner, other than Declarant, may not construct and/or reconstruct a Residence, garage, outbuilding, fence, storage tank, or Improvement of any kind (excluding exterior cosmetic alterations such as painting with a color or hue substantially similar to the existing color or hue) on a Lot or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to a Lot if it will be visible from a street or Common Area, or if it may have an adverse impact on neighboring Residences. The ACC has the right, but not the duty, to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Generally, the architectural and aesthetic style of the improvements shall harmonize as much as may be reasonable and practicable with each other and with the heritage and historical architecture of the area. Landscaping generally shall be in harmony with the natural occurring flora of the area using native or native hybrid plants as much as is practicable. Each Owner may be required to pay certain fees to the ACC to reimburse it for the cost of its plan review as provided in the Design Guidelines.

**6.4. Application for Approval.** To request approval from the ACC, an Owner must make written application to the ACC, in a form approved by the ACC, and submit final plans and specifications of the proposed Improvement, including all elevations, floor plans, foundation plans, plot plan, roof, outbuildings, colors, exterior lighting, showing the nature, kind, shape, color, size, materials, and locations of the work to be performed (collectively, the "Plans"). Additionally, the ACC is authorized to levy, in appropriate instances, a Plan review fee to the ACC at the offices of the Association or at such address as may hereafter be designated in writing from time to time. For purposes of this Section and the calculation of time, the first business day after the Association or its managing agent receives the Plans and submission fee (if applicable) shall constitute Day 1, not the date set forth on the Plans. **VERBAL OR ORAL APPROVALS ARE INVALID AND ARE EXPRESSLY NOT AUTHORIZED OR BINDING UPON THE ASSOCIATION.**

**6.4.1. Deemed Denial.** If the Owner has not received the ACC's written response, approving, denying, or requesting further information for the proposed Improvement within thirty (30) days after delivering a complete application to the ACC, then the Plans shall be deemed denied or disapproved. Under no circumstances may approval of the ACC be deemed implied or presumed for an addition or modification.

**6.4.2. Timing of Completion of Approved Items.** Notwithstanding the original construction of a Residence, all other applications approved by the ACC shall be completed within six (6) months after approval by the ACC or a such shorter period that the ACC may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACC. If construction in accordance with such plans and specifications or variance is not commenced within ninety (90) days after notice of approval and diligently prosecuted to completion, the approval shall be deemed withdrawn and the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications. All work and related Improvements shall be in compliance with the items approved by the ACC. Extensions may be granted by the ACC, with consent from the Board, upon written request by the Owner.

**6.5. Subjective Standards.** Standards for some rules and restrictions are inherently subjective, such as what is unattractive or offensive. The Association is not required to honor every Owner's individual tolerances. The use restrictions set forth herein, in particular, are not intended to shield a hypersensitive Owner from actions or circumstances that would be tolerable to a typical resident of the Property. On lifestyle related rules, the Association may refrain from acting on a perceived violation unless the Board determines the violation to be significant or a community-wide problem. The Association may not be compelled by one Owner to enforce rules and restrictions against another Owner. Owners are expected to deal directly and peaceably with each other about their differences.

The ACC may base its approval or disapproval on, among other things:

- (1) architectural character all proposed Improvements, taking into consideration the aesthetic quality or any structures with respect to height, form, siding, exterior materials and roofing materials (with regard to type, scale, texture, color and durability);
- (2) harmony of external design with Improvements on other Lots;
- (3) relation of topography, grade and finish ground elevations to that of adjoining Lots and drainage functions;
- (4) screening of mechanical and other installations;
- (5) extent and quality of landscaped areas; and
- (6) compliance with the purpose and general plan, intent, and provisions of this Declaration.

Each Owner acknowledges that opinions on aesthetic matters are subjective, and opinions may vary as to the desirability and/or attractiveness of particular Improvements and as the ACC and its members change over time.

**6.6. Limits to Owner's Rights.** No right granted to an Owner by this Article or any provision of any Governing Document is absolute. The Governing Documents grant rights with the expectation that the rights will be exercised in ways, places, and times that are customary for the KEENELAND neighborhood. This Article and the other Governing Documents as a whole do not try to anticipate and address every creative interpretation of the restrictions. For example, an Owner's right to have a sign advertising the Residence for sale is not the right to mount the sign on the chimney and illuminate it with pulsating neon lights. The rights granted by this Article and the Governing Documents are at all times subject to the Board's discretion, authority, determination that a particular interpretation and exercise of a right is significantly inappropriate, unattractive, or otherwise unsuitable for the neighborhood, and thus constitutes a violation of the Governing Documents. In other words, the exercise of a right or restriction must comply with the spirit of the restriction as well as with the letter of the restriction.

**6.7. ACC Discretion.** The ACC will approve or disapprove all Plans in accordance with, among other things, this Declaration, Design Guidelines, and the Governing Documents. The ACC shall have full right and authority to utilize its sole discretion in approving or disapproving any Plans which are submitted. Approval may be withheld if the construction or architectural design of any improvement is deemed, on any grounds, including purely aesthetic grounds, necessary to protect the continuity of design or value of the Property, or to preserve the serenity and natural beauty of any surroundings. The ACC may exercise

discretion with respect to taste, design, and all standards specified by this Declaration. Prior approvals or disapprovals of the ACC pertaining to any improvement activities or regarding matters of design or aesthetics shall not be deemed binding upon the ACC for later requests for approval if the ACC feels that the repetition of such matters will have an adverse effect on the Property. The ACC shall have the express power to construe and interpret any covenant herein that may be capable of more than one construction, and to grant variances for certain requirements when, in its discretion, it is appropriate to do so (but no variance will be effective unless in writing and signed by the ACC). All approvals or disapprovals by the ACC are for the sole benefit of the Association and the Owner to whom the approval or disapproval is addressed, and no other Owner or any third party is or shall be deemed to be a third-party beneficiary of such approval or disapproval.

**6.8. ACC Right to Inspect.** During reasonable hours and, if the Residence is occupied, after reasonable advance notice, Declarant, members of the ACC, any member of the Board, or any authorized representative of any of them, shall have the right (but not the obligation) to enter upon and inspect any Lot, any Improvement, and any structure thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and said persons shall not be deemed guilty of trespass by reason of such entry. All inspections by the ACC are for the sole benefit of the Association and no Owner or other third party is or shall be deemed to be a third-party beneficiary of such inspections.

**6.9. Variances.** The Board and/or the ACC may grant a variance or waiver to a Design Guideline, Restriction, or rule on a case-by-case basis when unique circumstances dictate and may limit or condition its grant and such variance will not impair or detract from the high-quality development of the Property. To be effective, a variance must be in writing. The grant of a variance does not affect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance.

**6.10. Appeal of ACC Decision.** An Owner may appeal to the Board any decision by the ACC if the Owner submits a written application for hearing to the Board, with a copy to the ACC, within thirty (30) days of the date the decision is mailed to the Owner. The Board may affirm, overrule, or modify the ACC's decision. The decision of the Board shall be final and unappealable, and shall be, as determined by the Board, in the best interest of the Association. An Owner waives its right of appeal if it fails to submit a written request to the Board within thirty (30) days after the date the decision is mailed to the Owner.

**6.11. Design Guidelines.** The Design Guidelines are or may be incorporated into this Declaration by this reference. A copy of the Design Guidelines will be furnished to any Owner on request. The Design Guidelines will supplement this Declaration and may make other and further provisions as to the approval and disapproval of Plans, suggested or prohibited materials, and other matters relating to the appearance, design, quality, and construction of improvements. The Design Guidelines may be more restrictive than the Restrictions. The Design Guidelines may be amended from time to time upon the affirmative vote of two-thirds of the members of the ACC and the consent of the Board. The Design Guidelines may include or incorporate any Rules and Regulations promulgated by Declarant or the Board.

**6.12. Most Restrictive Instrument Applies.** To the extent of any conflict between this Declaration, the Design Guidelines, or the Plat, the most restrictive instrument shall control. Accordingly, each Owner must obtain and study all three instruments and provide them to their architects, builders, contractors, and other appropriate parties prior to purchasing a Lot or commencing the construction of any improvements thereon.

**6.13. No Liability.** Neither the Association, Board, ACC, its members, nor Declarant shall be liable to any person (including Owners) for any damage or injury to property arising out of their acts hereunder, except in the case of gross negligence or willful misconduct. Further, neither the Association, Board, ACC, its members, nor Declarant shall be deemed to have made any warranty or representation to any Owner or other third party about any matter whatsoever arising out of any approvals or inspections. Without limiting the foregoing, it is expressly agreed that no approval of Plans by the ACC and no construction inspection approvals shall be deemed a representation or warranty by the ACC that any Residence has been or will be completed in a good and workmanlike manner or pursuant to the applicable building code. No discretionary acts by the ACC (such as approval or disapproval of Plans) shall give rise to any liability of the ACC, its members, Declarant, the Association, or the Board. The ACC, Association, Board, and Declarant, as applicable, shall not be liable for (1) errors in or omissions from the Plans and specifications submitted to the ACC, (2) supervising construction for the Owner's compliance with the approved Plans, or (3) the compliance of the Owner's Plans with governmental codes, ordinances, and public laws.

**6.14. Approved Builders.** Declarant may, without obligation to do so, convey Lots in the Property to one or more persons or entities engaged in the business of new Residence construction for the purpose of constructing single-family Residences on such Lots. Each person or entity approved by Declarant as having authority to construct single-family Residences in the Property will be referred to herein as an "Approved Builder" and be included on the list of Approved Builders described in paragraph B of this Article below. The phrase "Approved Builder" shall refer only to those builders, other than Declarant, that currently own or acquire future Lots within the Property but will specifically exclude any party that assumes a contract to purchase Lots from an original Approved Builder who contracted directly with Declarant. Each Approved Builder shall be subject to the following:

A. **Architectural Guidelines.** In connection with any Initial Improvements for a Residence, an Approved Builder may elect to submit standard Plans for any Initial Improvements and typical site plans for the Lots ("**Plans**") and upon approval of such Plans, an Approved Builder may build the Initial Improvements in accordance with such pre-approved Plans and typical site plans on any Lot within the Property without further approval by the Declarant; provided, however, any Residence or structure constructed by an Approved Builder within the Property shall meet and continue to meet after a certificate of occupancy is issued the conditions and requirements of this Declaration.

B. **Approved Builder List.** To maintain the high standards of the community, the identity of those permitted to build new Residences within Keeneland will be a critical point of concern. Declarant will publish and the Board may update, from time to time, an "Approved Builder List" for the purpose of designating those entities that are authorized to construct a Residence on a Lot within the Property. Any party not identified as an Approved Builder will not be authorized and is expressly excluded from commencing or completing a Residence on any Lot within the Property. The Approved Builder List will not affect those persons or entities that an Owner hires or seeks to hire for purposes of remodeling existing Residences in the Property. For purposes of this Declaration, becoming an Approved Builder will also mean that such entity will remain an Approved Builder for so long as it owns Lots or has control of Lots under a pending contract with Declarant.

C. **Approved Builder Signs.** In addition to the regulations relating to signs set forth herein, an Approved Builder shall not erect any signs elsewhere pertaining to Initial Improvements until Plans for such signs have been approved by the Declarant as a part of the Initial Improvements. Each Approved Builder may place a standard builder availability sign or standard builder sold sign, on any Lot that is substantially completed according to the contract between the Declarant and the Approved Builder, with the understanding that the type of signage, size, and locations must be acceptable to Declarant, or the Board, as applicable, within the Declarant or Board's reasonable discretion, such permission not to be unreasonably withheld. Such Approved Builder signage may include the logo of the Keeneland development on

condition that such usage tastefully reflects the standards of the Keeneland community and does not misstate or misrepresent any of the features, amenities, or attributes of Keeneland.

Each Approved Builder indemnifies and holds harmless Declarant and the Association of and from any and all liability, costs, damages, or expenses arising from any claim, debt, demand, action, or cause of action related in any way to that Approved Builder's use of the name of the Property. Use of the name of the Property shall not confer any proprietary or other interest in the name of the Property to the Approved Builder. The name may only be used in conjunction with the direct sales of Lots in the Keeneland addition and no other. Declarant reserves the right to notify any Approved Builder to cease, desist, or modify their use of the Keeneland name, at Declarant's sole and absolute discretion, and an Approved Builder must immediately comply with all such directives.

D. Construction Standards.

1. Completion of Construction. Each Approved Builder shall complete the construction of all Initial Improvements on each Lot (including without limitation, the landscaping) and obtain a certificate of occupancy for each Residence, within twelve (12) months following the commencement of construction, subject to Force Majeure. "Force Majeure" shall include, but not be limited to the following: acts of God, the unavailability of materials, strikes, other labor problems, governmental orders, or other events reasonably beyond an Approved Builder's control.
2. Installation of Sidewalks. Each Approved Builder shall install sidewalks on all Lots in accordance with the sidewalk plan approved by the City and shall be in accordance with all applicable government regulations.
3. Tree Plantings and Landscaping. Each Approved Builder shall plant trees, shrubbery, and other landscaping in accordance with City standards and the architectural guidelines adopted by the ACC as such guidelines adopted by the ACC, may be amended from time to time.

E. Governmental and Utility Charges. Each Approved Builder shall complete the construction of all Initial Improvements on each Lot, including without limitation, those fees assessed for governmental services, schools, water, sewer, roads, and parks imposed against the lots, and shall pay other permitting fees imposed against the lots in connection with City requirements for construction of the Initial Improvements. Each Approved Builder shall also be required to pay any utility connection charges for the water and sewer imposed by any governmental body or utility company.

F. Approved Builder Contracts with Purchasers. In connection with the Approved Builder constructing Residences for purchase by Owners, each Approved Builder shall be required to fully disclose to such Owners at the time of execution of their purchase and sale agreements the following:

1. A copy of this Declaration.
2. Keeneland is being developed by Declarant, and Declarant is not a co-venturer, partner, stockholder, member, or other owner of any Approved Builder. Notwithstanding the preceding sentence, Declarant or Declarant's partner(s) may have ownership interest in an Approved Builder. Neither Declarant nor its owners or representatives is a guarantor of the performance by any Approved Builder of any of its obligations to any Owner, including without limitation, obligations provided in a purchase and sale agreement or otherwise.

3. Any additional disclosures required by this Declaration, any purchase agreement between an Approved Builder and Declarant, or disclosures required at law.

Each Approved Builder will receive and should provide to each Owner as a part of this Declaration, at the time of Closing, the Homeowners' Association Disclosure Sheet attached hereto as Exhibit "D" and incorporated herein by reference, that discloses the existence of the Association and related notifications for the Owners.

**G. Existing Governmental Approvals.** Declarant and its predecessors in title have obtained certain zoning, planning and environmental approvals for development of the Property and the surrounding portions of Keeneland. Collectively, the zoning, approvals, development agreements, if any, entered into by Declarant and Declarant's predecessors, and all applicable City or other governmental regulations shall be referred to as the "Regulations". Approved Builders shall adhere to all development and design criteria and other requirements contained in the Regulations.

**H. Future Governmental Approvals and Submissions.** Approved Builders shall not, without the prior written consent of Declarant: (i) make any submissions to, nor meet with, any governmental authority for the purpose of changing or modifying any existing zoning, plat, site plan, or other development plan affecting the Property; (ii) file any new plat, site plan, or other development plan affecting the Property with any governmental authority; or (iii) except for changes which are consistent with the Regulations, make any request or submission which require discretionary action on the part of any governmental authority. Duplicate copies of all intended submissions, applications, written communications, and requests to any governmental authority shall be submitted to Declarant for prior review, and, if Declarant consents to same, Declarant shall thereafter be informed of all dates and times for meetings between an Approved Builder and the appropriate governmental personnel, and Declarant shall be entitled to have a representative present at all such meetings. Approval of such consent shall be provided by Declarant in writing and given within fifteen (15) days after the request. Declarant's failure to timely approve a request in writing with responses specified shall automatically be deemed a denial of the request.

Notwithstanding the foregoing, and in addition to all other provisions contained in the Declaration, any governmental approvals which Approved Builders may seek shall be consistent with all Regulations. Approved Builders shall not take any of the following actions, which might have an adverse impact on the potential development of Keeneland: (i) rezone all or a portion of the Property; (ii) change the use or, contemplated use of all or a portion of the Property; or (iii) change the density of all or a portion of the Property. The foregoing restrictions are made in recognition of the fact that Declarant, as a material inducement to selling Lots to an Approved Builder, insisted that Approved Builder agree that it would not do, permit, fail to do, or fail to permit anything that might adversely impact Declarant's development of any portion of Keeneland, but for such agreement, Declarant would not have sold the Lots to Approved Builder.

An Approved Builder shall not object to any application or request made by Declarant for a special use, variance, zoning change, development permit application, development agreement or any such similar governmental approval with respect to any portion of Keeneland, as long as such special use, variance, zoning change, application or approval does not materially and adversely affect the Lots sold to an Approved Builder or an Approved Builder's intended use of the Lots for the construction of single family residences on the Lots.

Notwithstanding anything to the contrary in this section, the foregoing shall not be deemed to require Declarant's consent, further review, or participation in any submissions, meetings, or other contacts with governmental authorities with respect to an Approved Builder's procurement of building permits and other approvals and permits necessary for construction of the Residences.



I. General Governmental Regulation. The City and other duly constituted governmental authorities may, at any time in the future, further regulate and restrict the use of the Property; the character, location, size, and use of improvements to be constructed thereon; the preservation of trees; the disposition of earth; the preservation of wetlands; and other matters relating to the development and use of the Property. Each Approved Builder covenants and agrees that it will strictly observe and comply with all governmental regulations and restrictions applicable from time to time to the Property or any part thereof, whether in effect on the date hereof or on any subsequent date; provided that the foregoing shall not limit an Approved Builder's rights to contest the applicability of such regulations to the Property or to seek a variance therefrom.

Each Approved Builder further agrees that it will, for no consideration, grant, upon request by any governmental authority, public utility, or Declarant, easements or rights-of-way for the installation and maintenance of public utilities and other services, including, without limitation, telephone lines, power lines, gas mains, water mains, sewer and drainage mains and facilities, and cable television lines, provided that said easements or rights-of-way do not interfere with the site location or construction of Improvements in accord with approved Plans. Each Approved Builder agrees to execute such documents as may be reasonably required to evidence Approved Builder's agreements as set forth in this section and to impose similar covenants and requirements in any agreements entered into by Approved Builder, its permitted grantees, assignees, and mortgagees.

J. Damage to Improvements. Each Approved Builder shall be responsible for relocating, replacing, or repairing damage to: (i) any site improvements installed by Declarant (including, without limitation, any water lines, storm sewers, sanitary sewers, grade stakes, surveyors' markers, curbs, sidewalks, hydrants, valves, water meter boxes, storm or sanitary sewer connections, electric cables, transformers, telephone and cable television lines and appurtenances, drainage structures, and landscaping), and (ii) any improvements located within Keeneland, whether owned by Declarant, by others, designated as Common Areas for Keeneland or dedicated to the public; where such relocation, replacement, or repair is made necessary by the location of a Unit constructed or to be constructed by an Approved Builder, or by any negligent action or omissions of an Approved Builder or any of its agents, employees, workmen, or contractors.

K. Road Clearance. Each Approved Builder agrees to keep all road rights-of-way in Keeneland reasonably clear of machinery, equipment, building materials, debris, and earth deposited by Approved Builder, its agents, contractors, subcontractors, so that the employees, agents, or contractors of Declarant, and all other persons, may proceed with the installation of utilities and service and with all other lawful work or occupancy without interruption and in a condition suitable for marketing. Each Approved Builder further agrees not to obstruct any granted utility or right-of-way easement to the Property, nor to impede access by governmental authorities, utility companies or Declarant, or their respective contractors or residents of Keeneland.

L. Construction Details. It shall be each Approved Builder's sole responsibility to maintain swales on or about the Lots to assure proper on-site drainage, consistent with all governmental approvals and regulations and the approved engineering plans for the Lots. Each Approved Builder agrees to keep the Lots in a reasonably neat and orderly condition during construction of all Residences or related Improvements, and to comply with all reasonable requests of Declarant or any governmental agency with respect to the appearance of the Lots during construction. Each Approved Builder shall provide, at a minimum, containers or wire fenced areas for construction debris, which shall be emptied not less than once a week. All supplies and building materials shall be stored only in areas reasonably approved by Declarant upon an Approved Builder's request. Declarant will respond to such requests within three (3) days and when practical will endeavor to specify in writing the reasons for any disapproval. Any request not approved or disapproved within three (3) days shall be deemed disapproved. Each Approved Builder will remove all

construction debris upon the completion of construction in each area. All vehicles of an Approved Builder and the vehicles of any of its contractors, agents, or supplies will follow only such routes of egress and ingress to the Lots as may be reasonably designated by Declarant, and that at all times the roadways of Keeneland will be kept free of waste and debris caused by an Approved Builder's construction. No weeds, underbrush, or other unsightly growths shall be permitted to remain upon the Lots under development or previously developed but unsold Lots, and no waste, trash, refuse, or unsightly objects shall be allowed to remain anywhere in Keeneland. Notwithstanding, it shall not constitute a violation of this provision for an Approved Builder to utilize one of its Lots for a reasonable time as a "concrete wash-out" lot to wash tools and equipment and for so long as the Lot is otherwise maintained in accord with this Declaration and the contract between Declarant and the Approved Builder.

M. Declarant's Right to Cure. If an Approved Builder fails after reasonable notice to perform its obligations under this Declaration, then in addition to all other rights and remedies of the Declarant under this Declaration, Declarant may perform such obligations as Declarant in its reasonable discretion may deem necessary, and such Approved Builder shall reimburse Declarant for the cost thereof plus twenty percent (20%) for overhead within five (5) days following written demand therefore. If such Approved Builder does not reimburse Declarant as provided herein, such amount shall be required to be paid, together with interest thereon, at the highest rate permitted by law.

**6.15. Reasonable Accommodation for Handicap.** To the extent required by applicable law and subject to the requirements of this Section, the ACC will accept an application for "reasonable accommodation" (within the context of Fair Housing Act) by or for a person with a valid handicap that qualifies for protection under the Fair Housing Act. The ACC may require adequate documentation of the handicapped person's qualification for Fair Housing Act protection as a condition of reviewing the application. To the extent permitted by applicable law, the ACC may specify aspects of the reasonable accommodation that affect the appearance and value of the Property, and the right to choose an alternate method for the reasonable accommodation. No reasonable accommodation for a handicap is permitted on portions of the Property that are visible from a street or Common Area without the prior written approval of the ACC.

## **ARTICLE 7 – USE RESTRICTIONS**

**All Lots within the Property will be owned, held, encumbered, used, occupied, and enjoyed subject to the Restrictions, as the Restrictions may be amended or modified from time to time as herein provided.**

No use shall be permitted on the Property which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City or other controlling public authorities. Each Owner, occupant, or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations, and orders of all federal, state, county and municipal governments other agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. **IN SOME INSTANCES, GOVERNMENTAL REQUIREMENTS MAYBE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY**

GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NONCOMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL. All Lots shall be developed in accordance with this Declaration, as this Declaration may be amended or modified from time to time as herein provided. The provisions of this Article 7 set forth certain requirements which, in addition to the other provisions of this Declaration, shall apply with respect to the development and use of the Property.

All master plans, site plans, brochures, illustrations, information, and marketing materials relating to the Property ("Conceptual Plans") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Approved Builder makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property will likely extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

**7.1. Single Family Residential Uses Only.** No part of a Lot or improvements thereon, shall be used for any purpose other than one (1) Residence on each Lot and certain accessory improvements, to the extent accessory improvements are specifically authorized elsewhere in this Declaration. It is the intent of Declarant that Keeneland be a private, single family residential community. For purposes of this Declaration, the term "private, single family residential" is expressly intended to exclude the residency or occupancy of multiple persons who are not related by blood or marriage, *i.e.*, leasing individual rooms, permitting a boarding house, hotel/motel, or apartment environment or setting. Without limiting the foregoing, the construction of any triplex, quadplex apartment house, or other multi-tenant building is expressly prohibited. No garage may be converted or used as living quarters, and no garage apartment for rental purposes shall be permitted. However, Declarant or an Approved Builder, in Declarant's sole discretion, shall have the right, in connection with construction and sales operations on the Property, to use a garage as a sales or construction office.

**7.2. No Commercial Use.** An Owner may maintain an office in a Residence for business purposes so long as: (a) the business does not involve any employee, customer, client, co-worker, or other party being present at the Residence; and (b) there is no sign or other visible evidence of the business on the Lot. No other business or commercial activity of any kind shall be conducted on a Lot, whether for profit or nonprofit. No hobby may be conducted on any Lot which attracts vehicular or pedestrian traffic to the Lot. Notwithstanding the foregoing, Declarant or Approved Builder, in Declarant's sole discretion, shall have the right to construct a model home on a Lot, and may, in connection with construction and sales operations on the Property, operate a sales office out of the model home.

**7.3. Lease Restrictions.** A Residence may be leased for a period of not less than six (6) consecutive months. Short term house swapping, renting or leasing arrangements, including agreements (any term less than six (6) consecutive months) through Airbnb, VRBO, or similar platforms is specifically and expressly prohibited. No portion of a Residence (other than the entire Residence) may be leased. All leases must be in writing and a copy of the lease, along with contact information for the adult occupants and vehicles, shall delivered to the Association within ten (10) days after its execution. In lieu of providing

a copy of the lease, the Owner may complete the lessee information sheet, as promulgated by the Board. The decision to lease a Residence is solely the Owner's decision and the receipt of information by the Association shall neither be construed or interpreted as the Association's approval or consent of the tenant nor performance of any due diligence as to the tenant's qualifications. All tenants and occupants shall be bound by the Restrictions, but the lease of a Residence shall not discharge the Owner from compliance with any of the obligations and duties of the Owner. All leases shall make reference to the Restrictions and the Owner shall provide tenants with a copy of this Declaration and Governing Documents. All leases shall be subject to this Declaration and the other documents of the Association, regardless of whether the lease makes specific reference to them or whether the Owner delivers this Declaration to the tenant. The Board may adopt and enforce reasonable rules regulating leasing. This Section shall also apply to assignments and renewals of leases. The Board shall have the express authority to promulgate additional leasing or occupancy rules, including penalties for infractions thereof.

**7.4. No Mobile Homes.** Except as otherwise specifically set forth herein, no mobile home, trailer home, manufactured home, modular home (single or double wide), or pre-fabricated home of any kind, whether or not it has wheels or the wheels have been removed, shall be allowed on any Lot, except Declarant or an Approved Builder.

**7.5. No Temporary Structures.** Except for the benefit of Declarant, including Approved Builders during the construction of a Residence, or as otherwise allowed herein, no structure of a temporary character (whether trailer, tent, shack, etc.) shall be used on any Lot at any time for storage or as an office or residence, either temporarily or permanently. With prior ACC approval, a job site trailer may be temporarily placed on the Lot during construction of the Residence thereon.

**7.6. No Subdividing/Consolidating Lots.** No Lot shall be further divided, subdivided, or consolidated nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Board and ACC; provided, however, that when Declarant is the Owner thereof, Declarant may further divide, subdivide, or consolidate any Lot and convey any easements or other interests less than the whole, all without the approval of the ACC. No Owner shall initiate or support any proposed zoning change affecting the Property or any portion thereof without first obtaining the prior written consent of Declarant during the Development Period, and thereafter, the Board and ACC.

**7.7. Vehicles/Parking.** No parking of vehicles on the Lot except on the driveway or enclosed garage. No tractor trailer rigs may be parked on any part of the Property. No travel trailer, motor home, camper, boat, aircraft, recreational vehicle, motorcycle, four-wheeler, tractor, or vehicles with three (3) or more axles or greater than one (1) ton carrying capacity, or the class equivalent, or similar vehicle or trailer shall at any time be parked overnight in front of any Residence or within any building setback area. Recreational vehicles and other similar vehicles may be temporarily parked on any Street within the Property or on a Lot for the purpose of loading or unloading, *i.e.*, no greater than 24 consecutive hours. No such vehicles or trailers that are stripped down, wrecked, junked, or inoperable shall be kept, parked, stored, or maintained on any Lot unless in an enclosed structure or in a screened area which prevents the view thereof from any other Lot or street. Vehicles with painted advertisement(s) or wraps shall not be permitted on any part of the Property except for vehicles (1) kept fully enclosed within a garage located on such Lot or (2) is in use for the construction, maintenance, or repair of a Residence. No more than two (2) vehicles bearing commercial insignia or names shall be parked on any Lot, and then only if the vehicle is utilized by the Owner as transportation to and from the Owner's place of employment. No vehicle of any size which transports flammable or explosive cargo may be kept on a Lot at any time other than the temporary parking of a properly licensed fuel truck that dispenses propane to an Owner's approved on-site propane tank. No dismantling or assembling of any such vehicle or trailer or any other machinery or equipment shall be

permitted unless in an enclosed structure or in a screened area which prevents the view thereof from any other Lot or Road. The Board shall have the absolute authority to determine from time to time whether a vehicle is operable and, if not, adequately screened from public view. Upon an adverse determination by the Board, the vehicle shall be removed or otherwise brought into compliance with these Restrictions.

Owners shall not block or otherwise impede access to driveways or sidewalks. Owners are encouraged to not park vehicles on the Roads overnight. Owners may temporarily park vehicles on Roads, *i.e.*, no greater than 48 consecutive hours. If Owners need additional time to park vehicles on the Roads, then please contact the Board or managing agent.

Overnight guests of Owners shall first look to park in the garage and, if garage space is unavailable, may park in the driveway of the Residence they are visiting. As a final alternative, in the event driveway space is not available, these guests must park directly in front of the Residence they are visiting.

**7.8. No Drilling Operations.** No portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property by the Declarant. Furthermore, this provision will not be interpreted to prevent the drilling of water wells approved in advance by the ACC which are required to provide water to all or any portion of the Property. All water wells must also be approved in advance by the ACC and any applicable regulatory authority. EACH MEMBER UNDERSTANDS AND AGREES THAT TO THE EXTENT THE MINERALS ASSOCIATED WITH THE PROPERTY MAY HAVE BEEN RESERVED BY OTHERS, DECLARANT HAS NO CONTROL OVER THE LEASING ACTIVITIES OF THESE MINERAL OWNERS OR THE OIL AND GAS EXPLORATION OR PRODUCTION ACTIVITIES OF THEIR LESSEES. THERE MAY BE OIL AND GAS EXPLORATION OR PRODUCTION ON THE PROPERTY BY OTHERS OVER WHOM NEITHER DECLARANT NOR ANY OWNER HAS CONTROL. Declarant may, in its sole discretion, convey any Lot or Lots to any mineral owner or mineral lessee for purposes of oil and gas drilling, exploration and production. To the extent there is any conflict between this Section and any other section of the Declaration, this Section shall control.

**7.9. Trash.** No trash, garbage, debris, or other refuse may be burned, stored, disposed of, or allowed to remain upon any Lot or road, whether the Lot is vacant or otherwise. No Lot will be used or maintained as a dumping ground for rubbish, rocks, brush, grass clippings, garbage, or trash. Garbage and other waste will be kept in sealed, sanitary receptacle prior to disposal. Rubbish, trash, garbage, or other waste material to be disposed of shall be placed at all times in an appropriate varmint resistant receptacle. If receptacles are not provided by the garbage selection service with whom the Association (if applicable) or Owner contracts, then each Owner shall be responsible for purchasing and maintaining its own garbage receptacles. No such receptacle shall be placed for collection in a location visible from any road more than twelve (12) hours prior to the scheduled collection time or allowed to remain in a location visible from any road more than twelve (12) hours after the scheduled collection time.

Trash containers and recycling bins must be stored in one of the following locations: (i) inside the garage of the single-family residence constructed on the Lot; or (ii) behind the single-family residence or fence constructed on the Lot in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Lot. The Board shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

**Owners and Residents are required to remove all trash and recycling containers from the street within 24 hours of trash or recycling pick up. Violations of this provision may result in a fine.**

**7.10. No Nuisance or Noxious Activity.** No noxious or offensive activity shall be carried on upon any Lot or Road by any Owner, construction workers hired by any Owner, or an Owner's guest, nor shall anything be done upon any Lot or Road which may be or become an annoyance or nuisance to the neighbors (such as, but not limited to, the noise created by the operation of an excessive or unreasonable number of off-road vehicles or motorcycles on a Lot). No junk, railroad cars, buses, inoperative cars or other vehicles, or other noxious, offensive, or unsafe equipment or materials may be stored on the Property. No horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any portion of the Property. No unreasonable noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents.

**7.11. Animals – Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such as pot-bellied pigs, miniature horses, goats, exotic snakes or lizards, monkeys, chickens or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner may keep more than three (3) animals, unless otherwise approved by the Board. No Owner shall allow a pet to run loose or become a nuisance to the other Residents. No pets may be raised for sale, and commercial kennels of any kind are expressly prohibited. Exotic animals (*i.e.*, lions, monkeys, tigers, etc.) and animals or pets with vicious, dangerous propensities (*i.e.*, the propensity to jump on people, bite, aggressively growl or snarl at people) that may pose a safety or health threat to the community shall not be kept on any Lot. All animals shall be kept in strict accordance with all Applicable Laws and ordinances. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed, and vaccinated as required by Applicable Law. The Board may restrict pets to certain areas on the Property. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property.

**7.12. Lawns and Landscaping Maintenance.** All grass, weeds, and vegetation on each Lot shall be maintained by the Owner at regular intervals as needed to maintain a neat and well-maintained appearance. All trees, grass, weeds, and vegetation located on any Lot must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept, and clean condition, as determined by the Board, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass, and vegetation of every kind on his or her Lot cultivated, pruned, free of trash and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flower beds and planter areas. Such Owner maintenance includes, but is not limited to, mowing, edging, pruning, and trimming of trees and shrubs, application of herbicides and pesticides, fertilization, weed treatment, weeding, mulching, eradication of mosquitos, chinch bugs, fire, ants, or other pests. In addition to the maintenance responsibilities, the Owner is responsible for replacement of landscaping materials, plants, or trees which are damaged or destroyed because of pests, disease, weather conditions or other causes.

If, at any time, and from time to time, an Owner shall fail to control weeds, grass or unsightly growth, the Association shall have the right, to go onto such Lot, or direct a third-party service to go onto such Lot, for the purpose of mowing and cleaning such Lot, and shall have the authority and right to assess

and collect from the Owner of such Lot the reasonable costs incurred in connection with such mowing or cleaning. Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in this Declaration for assessments and may be collected by any means provided in this Declaration for the collection of assessments.

**7.13. Signs.** Signs are not otherwise allowed on any Lot except as set forth herein. The following signs may be permitted without prior written approval from the ACC: (i) one (1) sign advertising the Lot for sale will be allowed and shall be no larger six (6) square feet; (ii) one (1) professional security system sign will be allowed and shall be no larger than one (1) square foot; (iii) one (1) "No Trespassing" or "No Soliciting" sign providing public notice of the preceding and shall be no larger than one (1) square foot; and (iv) signs that signify the arrival of a newborn or the participation of an immediate family member in a school activity or sport and the number of signs shall be limited to the number of newborns and/or immediate family members residing on the Lot. Declarant is permitted to use more signs and larger signs and to erect permanent signs at each entrance to the Property. Signs advertising contractors, subcontractors, or suppliers may be authorized by the Design Guidelines.

**7.14. No Adverse Conditions.** No Owner or occupant shall construct any improvements or perform any work that will impair any easement or right-of-way or do any act or allow any condition to exist which will adversely affect the other Lots or their Owners or residents.

**7.15. Insurance.** Each Owner must carry casualty insurance for the full insurable value of the Residence on the Lot. Each Owner must use all insurance proceeds required to properly rebuild in case of a partial loss or damage or, in the case of complete damage, to either rebuild or clear all debris and return the Lot to substantially the natural state, as it existed prior to destruction. Reconstruction must be promptly commenced and diligently pursued to completion (and in any event must be completed within twelve (12) months). No damaged buildings, including the foundation, shall be allowed to remain on any Lot unless they are to be promptly repaired or restored.

**7.16. Property Taxes.** Each Owner shall be responsible for the payment of all ad valorem and other property taxes owing on the Owner's Lot.

**7.17. Underground Utilities.** All utility lines and other facilities installed by or for any Owner for electricity, water, cable, telephone, sewer, storm sewer, or other utilities must be installed underground; but this provision shall not apply to above-ground utilities existing on the date hereof and any replacement thereof by Declarant or those otherwise expressly authorized in writing by the ACC.

**7.18. Hazardous Activities.** No activities may be conducted on or within the Property and no improvements may be constructed on any portion of the Property which, in the opinion of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Property unless discharged in conjunction with an event approved in advance by the Board and no open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

**7.19. Basketball Goals; Permanent and Portable.** No permanent or portable basketball goals may be permitted on any Lot without the prior written approval of the ACC. Basketball goal locations designated by the ACC may be on any portion of the Lot (including side yards) that is behind any portion of the rear of the Residence. Basketball goals may not be attached to the Residence and may not be utilized with chain nets. All basketball goals must be well maintained and only permissible so long as they have a

well-kept appearance. Examples of property maintenance and appearance of basketball goals include, but are not limited to, the following (i) nets replaced when tattered; (ii) poles painted as needed; (iii) backboards not missing, broken, or cracked; (iv) base not piled with rocks, bricks or sandbags; and (v) base placed in grass must be edged at all times.

**7.20. Athletic and Recreational Facilities.** No outdoor athletic and recreational facilities, including sports courts, shall be permitted on any Lot without the prior written approval of the ACC. Such approval will include location with respect to other Lots, lighting, screening, and such other matters as the ACC shall deem appropriate to protect neighboring Lots from annoyance. Athletic and recreational facilities locations designated by the ACC may be on any portion of the Lot (including side yards) that is behind any portion of the rear of the Residence.

**7.21. Lighting, Yard Art, and Holiday Decorations.** Lighting and/or decorations on a Lot may not be used or placed in a manner which, in the Board's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Outside lighting fixtures shall be placed so as to illuminate only the yard of the applicable Lot and so as not to affect or reflect into surrounding residences or yards. No decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be placed on the Residence or on any other portion of a Lot which is visible from any street, unless such specific items have been approved in writing by the ACC. Except for lights and decorations within the interior of a Residence that are not displayed in a window, customary seasonal decorations for holidays are permitted without approval but shall be removed within thirty (30) days of the applicable holiday.

**7.22. On-Street Parking.** Owners and residents are strongly encouraged not to park on any Road or street within the Property unless in the event of an emergency. "Emergency" for purposes of the foregoing sentence shall mean an event which jeopardizes life or property. "Parked" as used herein shall be defined as a vehicle left unattended by a licensed operator for more than thirty (30) consecutive minutes. This provision will not apply to Declarant or its designee or an Approved Builder during the Development Period. Visitor parking areas, if available, (being a street or alley) shall only be used for temporary parking by visitors. "Temporary" for the purposes of the foregoing sentence shall mean no more than twenty-four (24) hours.

**7.23. Clotheslines; Window Air Conditioners.** No clotheslines and no outdoor clothes drying or hanging shall be permitted within the Property, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Residence, and no awnings, canopies or shutters shall be affixed or placed upon the exterior walls or roofs of Residences, or any part thereof, nor relocated or extended, without the prior written consent of the ACC. Window air conditioners are prohibited. This Section 7.23 does not apply to such temporary items installed by Declarant or an Approved Builder during the Development Period.

**7.24. Outbuildings, Sheds, and Detached Buildings.** No detached buildings (including, but not limited to, outbuildings, gazebos, pool pavilions, cabanas, trellises, greenhouses, detached garages and storage buildings, and sheds) (collectively referred to as "buildings") shall be erected, placed or constructed upon any Lot, unless (a) the building is approved in writing by the ACC prior to the installation or construction of the building; (b) such building is compatible with the Residence in terms of its design and material composition; and (c) the exterior paint and roofing materials of such building shall be consistent with the existing paint and roofing materials of the Residence. Metal buildings are expressly prohibited. Further, unless approved by in writing by the ACC, the building shall be no greater than eight feet (8') in height at the tallest point and shall not be visible from street-view. Furthermore, the Owner is required to



comply with any applicable governmental requirements, including, without limitation, any necessary setbacks and permits.

**7.25. Spas, Pools, Hot Tubs, and Related Equipment.** All applications submitted to the ACC for the approval of plans and specifications for swimming pools, hot tubs or spas must be accompanied by the applicable City permits for the construction of same. No above ground pools, portable pools, fiberglass pools, or prefabricated or manufactured pools are permitted. Above ground spas and hot tubs visible from public view shall be skirted, decked, screened, or landscaped in a manner which excludes pumps, plumbing, heaters, filters, etc. from view. All service equipment shall be either screened, fenced and located in either (a) the side yard between the front and rear boundaries of the Residence, or (b) the rear yard. No pool, spa or hot tub shall be drained onto property other than the Lot on which the swimming pool, spa and hot tub is constructed. The pool, spa or hot tub and fencing, if any, shall comply with City codes and be approved in writing by the ACC.

**7.26. Exterior Improvement Maintenance.** All Improvements upon any Lot will, at all times, be kept in good condition and repair, and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board, in its sole and absolute discretion. Each Owner shall keep the sidewalk and walkway on such Owner's Lot, including the adjacent right of way, in good condition and repair. Such maintenance includes, but is not limited to, the following, which shall be performed in a timely manner, as determined by the Board, in its sole discretion:

- (a) Prompt removal of all litter, trash, refuse, and wastes.
- (b) Lawn mowing and edging of all curbs and edgeways.
- (c) Tree and shrub pruning.
- (d) Watering landscaped areas as necessary to maintain turf and vegetation in a healthy living condition and in harmony with the community-wide standards.
- (e) Keeping exterior lighting and mechanical facilities in working order.
- (f) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (g) Keeping planting beds free of turf grass.
- (h) Keeping sidewalks and driveways in good repair.
- (i) Complying with Applicable Law.
- (j) Repainting of Improvements.
- (k) Repair of exterior damage, and wear and tear to Improvements.

If, at any time, and from time to time, an Owner shall fail to control weeds, grass or unsightly growth, the Board shall have the authority and right to access such Lot, or direct a third party service to access such Lot, for the purpose of mowing and cleaning such Lot, and shall have the authority and right to assess an Individual Assessment against the Owner of such Lot for the reasonable costs incurred in connection with such mowing or cleaning.

**7.27. Drainage Alteration Prohibited.** Unless approved in writing by the ACC, no Owner will: (a) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Residence; or (b) install landscaping or other Improvements that may interfere with, obstruct or divert drainage flows established by Declarant or Approved Builder. The foregoing shall not prevent or limit Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot. The Association is not responsible for any aspect of water drainage on a Lot.

**7.28. Construction Activities.** This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board, in its sole good faith judgment, the Board will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

**7.29. No Hunting/Firearms.** No hunting or trapping (except the trapping of varmints) shall be allowed on any Lot. No firearms shall be discharged on any Lot.

**7.30. Fires.** Only controlled fires, in compliance with all Applicable Laws, shall be allowed outdoors on any Lot. All fires must be supervised by an adult at all times, and each Owner bears the sole responsibility and risk of any such fires.

## **ARTICLE 8 – CONSTRUCTION RELATED RESTRICTIONS**

**8.1.** Additional restrictions are attached hereto and incorporated as fully set forth herein as Exhibit C.

**8.2. Amendments.** During the Development Period, the Declarant has the unilateral right to amend, correct, clarify, or replace the construction related restrictions. After the Development Period, amendments must be approved by at least a majority of the Board, and by Owners of at least a majority of the Lots that are present, in person or by proxy, at a duly called meeting of the Association.

## **ARTICLE 9 – MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**9.1. The Association.** The existence and legitimacy of the Association are derived from this Declaration, the Certificate, and the Bylaws of the Association. The Association must be a non-profit organization. The subsequent failure of the Association to maintain its corporate charter, from time to time, does not affect the existence or legitimacy of the Association. The Association is subject to the Texas Business Organization Code (the "TBOC"). Because provisions of this Declaration address issues covered by the TBOC, this Declaration is a "Governing Document" as defined by TBOC, and any such provision herein is a "Bylaw" as defined by TBOC. The Association is subject to TBOC Chapter 22 – the Nonprofit Corporation Law.

**9.2. Name.** A name is not the defining feature of the Association. Although the initial name of the Association is Community Association of Keeneland Owners, Inc., the Association may operate under any name that is approved by the Board and (1) registered by the Association with the County Clerk of County in which the Property is located as an assumed name, or (2) filed by the Association with the Secretary of State as the name of the filing entity. The Association may also change its name by amending the Governing Documents. Another legal entity with the same name as the Association or with a name based on the name of the Property is not the Association, which derives its authority from this Declaration.

**9.3. Duties.** The duties and powers of the Association are those set forth in the Governing Documents, together with the general and implied powers of a property owners association and, as applicable, a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Governing Documents.

**9.4. Control by Declarant.** Except as otherwise required by law, during the Declarant Control Period and notwithstanding any provision of the Bylaws to the contrary, Declarant shall, at Declarant's option, have exclusive and complete control of the Association and Board by being the sole voting Owner. Declarant may, at any time and at Declarant's option, turn over control of the Association to the Owners by filing an instrument to that effect in the Official Public Records of County Clerk for the county in which the Property is located. At the point in time that Declarant no longer owns any Lot, control shall be delivered to the Owners without the need for any further act or action on the part of Declarant. At such time as Declarant cedes control of the Association to the Owners, or at such earlier time as Declarant may choose, Declarant shall also deed to the Association title to the Common Area.

**9.5. Membership in Association.** Membership is automatic, mandatory, and appurtenant to ownership of a Lot, and terminates automatically when the Member is divested of his/her ownership interest in the Lot to which it is tied and from which it may not be separated. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security, unless such persons or entities acquire title to a Lot through judicial or non-judicial foreclosure, or deed in lieu of foreclosure. If a Lot is owned by more than one person, the co-owners share the membership and must decide for themselves how it will be exercised. The Board may require satisfactory evidence of transfer of ownership before a purported owner is recognized by the Association as an Owner. Ownership of such Lot shall be the sole qualification for membership in the Association.

**9.6. Voting Rights.** Subject to Section 9.4 above, all Owners shall be entitled to cast one (1) vote per Lot. When more than one (1) Owner holds an interest in any Lot, all such Owners shall be Members. The vote for such Lot shall be exercised as they may determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The one vote appurtenant to each Lot is indivisible. All votes are uniform in weight, regardless of the value, size, or location of the Lot or its improvements. Cumulative voting is not allowed.

(a) CLASS A: "Class A Members" (herein so called) shall be all Members other than Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. If any Lot is owned by more than one (1) Owner, the number of votes attributable to such Lot still shall be one (1), and such one (1) vote may be cast only if all of the Owners owning such Lot, prior to or at the time of the vote in question, have delivered to the Association a written agreement as to how such vote is to be cast or a written designation of one (1) of such Owners to cast the vote attributable to such Lot. Any Owner, who is not an individual, must designate, upon request of the Board, a representative to act for such Owner in Association matters and to cast the vote of such Owner,

such designation to be made in writing to the Board. The Association shall have no affirmative obligation to take any action to determine which Member is the person designated to cast the Lot's vote. If the Members fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.

(b) **CLASS B:** Declarant (and Declarant's successors and assigns) shall be the sole "Class B Member" (herein so called) so long as Declarant, or any such successor or assign, owns a single Lot or any portion of the Property, including Common Area. The Class B Member shall be entitled to (i) twenty (20) votes for each Lot it owns, regardless of the time of the vote is within or after the Development Period. The Class B Member shall cease to be a Class B Member upon the closing of the sale of the last Lot owned by the Class B Member, and Class B shall cease to exist at such time; provided, however, upon inclusion of any Annexable Land by Declarant into the Property that is subject to this Declaration, the Class B voting rights of the Class B Member shall be automatically reinstated until the last Lot or portion of land within the Property, inclusive of the Annexable Land, is sold by Declarant or Class B Member.

(c) No later than the tenth (10th) anniversary of the date this Declaration is recorded, at least one-third (1/3rd) of the members of the Board must be elected by the Owners other than the Declarant and such vote shall be at a meeting of the Members called for such purpose.

**9.7. Quorum of Meeting of Owners.** Unless the Bylaws or Applicable Law provide otherwise, the presence of holders of twenty percent (20%) of the votes of the Association, represented in person, by proxy, absentee ballot, or electronic ballot, shall constitute a quorum for any meeting of Members.

**9.8. Registration with the Association.** Such that Declarant and the Association can properly determine voting rights and acquaint every Lot purchaser and every Owner with these Restrictions and the day-to-day matters of the Association, each Owner shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as: (a) the full name and address of each Owner; (b) the telephone number and email address of each Owner; (c) the description and license plate number of each automobile owned or used by an Owner and brought within the Property; (d) the name, address and telephone numbers of other individuals who can be contacted (in the event the Owner cannot be located) in case of an emergency; and (e) such other information as may be reasonably requested from time to time by the Association. If any Owner fails, neglects, or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

**9.9. Determination of Percentages.** A reference in a Governing Documents or Applicable Law to a percentage or share of Owners means Owners of at least that percentage or share of the Lots, unless a different meaning is specified. For example, "a majority of owners" mean Owners of at least a majority of the Lots. In a different context, to make a point, a representative of the Association who appears before a tribunal on behalf of the Association may properly refer to Owners of the Association as "citizens" and "voters" in the jurisdiction in which the Property is located, without evidence of citizenship or voter registrations to substantiate the reference. In that context, the actual number of individual Owners may be used.

**9.10. Communications.** Drafted in an era of rapidly changing communications technologies, this Declaration does not intend to limit the methods by which the Association, Owners, and Residents

communicate with each other. Such communications may be by any method or methods that are available and customary. For example, if the Association is required by the Governing Documents or Applicable Law to make information available to Owners of all Lots, that requirement may be satisfied by posting the information on the Association's website or by using electronic means of disseminating the information, unless Applicable Law requires a specific method of communication. It is foreseeable that meetings of the Association and voting on issues may eventually be conducted via technology that is not widely available on the date of this Declaration. As communication technologies change, the Association may adopt as its universal standard any technology that is reasonably believed to be used by Owners of at least eighty-five (85) percent of the Lots. Also, the Association may employ multiple methods of communicating with Owners.

**9.11. Books and Records.** The Association will maintain copies of the Governing Documents and the Association's books, records, and financial statements. The Association will make its books and records available to Owners, on request, for inspection and copying pursuant to the requirements of Applicable Law and the Bylaws.

## **ARTICLE 10 – MANAGEMENT OF THE ASSOCIATION**

**10.1. Board.** Subject to Section 9.4 above, the Association is governed by a Board of Directors. The Board shall have the exclusive right to contract for all goods, services, and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein. Unless the Governing Documents expressly reserve a right, action, or decision to another party, such as the Owners or Declarant, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Governing Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors." The Board may authorize or direct officers or initiate committees of the Association, who serve at the pleasure of the Board, to implement its decisions.

**10.2. Action by the Association.** Unless otherwise specifically set forth herein, all actions required to be taken by the Association shall be taken by the Association through the actions of the Board, and all action which may be taken by the Association, within its discretion, may be taken through the action of the Board.

**10.3. Managers.** The Board may delegate the performance of certain functions to one (1) or more managers or managing agents for the Association. Notwithstanding a delegation of its functions, the Board is ultimately responsible to the members for governance of the Association.

**10.4. Arrangements with other Associations.** The Association may participate in contractual arrangements with other property owners associations or with owners or operators of nearby property for products, services, or opportunities that the Association deems to be in the best interests of the Association's members, such as to consolidate similar maintenance programs while providing consistency and economy of scale. Common funds of the Association may be used to pay the Association's pro-rata share of the contractual arrangements.

#### **10.5. Powers and Duties of Board.**

- (a) By example and not by limitation, the Board shall have the right, power, and duty to provide, on behalf of the Association, to pay its expenditures from the assessments provided for herein, the following:
- (1) Maintenance, care, preservation, and repair of the Common Area and the furnishing and upkeep of any desired personal property for use in the Common Area;
  - (2) Any private trash and garbage collection service provided by the Association;
  - (3) Taxes, insurance and utilities (including, without limitation, electricity, gas, water and sewer charges) which pertain to the Common Area only;
  - (4) Any security arrangements;
  - (5) The services of a person or firm (including Declarant and any affiliates of Declarant) to manage the Association or a separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by a manager designed by the Board;
  - (6) Legal and accounting services; and
  - (7) Any other materials, supplies, furniture, labor, service, maintenance, repairs, structural alteration, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.
- (b) Without limiting the foregoing, the Board shall have the following additional rights, powers, and duties:
- (1) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Area owned by the Association;
  - (2) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of first mortgage liens on the individual Lots with respect to: (i) taxes on the Common Area; (ii) insurance coverage (if any) on Common Area, as they relate to the assessment, collection and disbursement process envisioned herein; and (iii) utility installation, consumption and service matters;
  - (3) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit or secured by such assets of the Association as deemed appropriate by the lender and the Association;
  - (4) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
  - (5) To protect or defend the Common Area from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

- (6) To make available to each Owner, upon request, within ninety (90) days after the end of each year an annual report;
- (7) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;
- (8) To enforce the provisions of this Declaration, the Governing Documents, and any rules made hereunder and to fine, enjoin and/or seek damages from any Owner for violation of such provisions or rules.

**10.6. Rules and Regulations.** The Board may promulgate the Rules and Regulations. The Rules and Regulations, as promulgated and amended from time to time, are incorporated into this Declaration by this reference. A copy of the Rules and Regulations will be furnished to any Owner on request. The Rules and Regulations will supplement this Declaration and may make other and further provisions as to the activities of Owners or their Lots and within the Property. The Rules and Regulations may be amended from time to time by the Board. The Rules and Regulations may, at the discretion of Declarant or the Board, be incorporated into and made a part of the Design Guidelines.

**10.6.1. Right to Promulgate Rules.** The Board has the right to adopt, amend, repeal, and enforce reasonable rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Lots and Property. The right to make rules, or to regulate, includes the right to prohibit or to restrict. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish rules, and penalties for infractions thereof, governing:

- (a) Use of Common Area.
- (b) Hazardous, illegal, or annoying materials or activities on the Property.
- (c) Use of Property wide services provided through the Association.
- (d) Consumption of utilities billed to the Association.
- (e) Use, maintenance, and appearance of exteriors of dwellings and Lots.
- (f) Landscaping and maintenance of Lots.
- (g) Occupancy and leasing of Residences.
- (h) Animals.
- (i) Vehicles.
- (j) Disposition of trash and control of vermin, termites, and pests.
- (k) Anything that interferes with maintenance of the Property, operation of the Association, or the quality of life for residents.

**10.7. Indemnification.** The Association shall indemnify each Board member, officer, director, committee chair, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligence or otherwise. A Leader is liable for his/her willful misfeasance, malfeasance, misconduct, or bad faith and the Association shall have no duty to indemnify the Leader for such acts. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors and officer's liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

**10.8. Contracts with Owners.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner (including, without limitation, Declarant) for the performance, on behalf of the Association, of services which the Board is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interest of the Association.

**10.9. Reserve Funds.** The Board may establish reserve funds that may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Association.

## **ARTICLE 11 – COVENANT FOR ASSESSMENT**

**Yes, the Association *can* foreclose on your Residence!**  
**If you fail to pay assessments to the Association, you may lose title to your Residence if the Association forecloses its assessment lien.**

**11.1. Creation of the Lien and Personal Obligation of Assessment.** Each Owner, other than Declarant, by acceptance of the deed therefore, whether or not it shall be so expressed in the deed, hereby covenants and agrees to pay to the Association regular assessments and special assessments as provided for in this Declaration, and covenants to the enforcement of payment of the assessments and the lien of the Association as hereinafter provided. Such assessments shall be fixed, established, and collected from time to time as provided by the Association. The regular and special assessments, together with any interest thereon and costs of collection thereof, including reasonable attorney's fees, shall be a charge upon the Lot and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with any interest and costs of collection thereof, including reasonable attorney's fees, shall also be a personal obligation of the Owner at the time when the assessment became due. Such personal obligation shall not pass to the Owner's successors in title unless expressly assumed by them but shall pass as a lien upon the applicable Lot. No Lot shall be assessed until conveyed by Declarant to an Owner. The following real property, being otherwise subject to this Declaration, shall be exempted from all assessments, charges, and liens created herein: (a) all Lots and/or other real property Owned by Declarant or its affiliates, (b) all property dedicated to and accepted by any public authority and devoted to public use; (c) all Common Area; and (d) all property exempted from taxation by the laws of the State of Texas upon the terms and to the extent to such legal exemption.



Except as provided in Section 11.10 below, all Lots owned by Declarant shall be exempt from any and all assessments (annual assessments, special assessments, and/or specific assessments) and Declarant shall not be obligated to pay any assessments for the Lots. Notwithstanding anything contained herein to the contrary, Declarant shall never be obligated to pay assessments.

**11.2. Purpose of Assessments.** The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety, enjoyment, and welfare of the residents in the Property, for the improvement and maintenance of any capital improvements owned or controlled by the Association, establishing and maintaining repair and replacement reserves as determined by Declarant or the Association, and any other purpose reasonable, necessary, or incidental to such purposes as determined by the Association. The Association shall not be obligated to spend all monies collected in a year, and may carry forward, as surplus, any balances remaining. The Association shall not be obligated to apply such surplus to the reduction of the amount of the annual assessments in any later year, but may carry forward a surplus, as the Board deems desirable for the greater financial security of the Association.

**11.3. Basis and Amount of Annual Assessments.** The regular assessments shall be based upon the cash requirements, as the Association shall determine necessary to provide for the payment of all estimated expenses arising out of or connected with the purposes described above. The regular assessments may be due monthly, quarterly, or annually, as determined by the Board. Assessments shall be established and assessed in the following manner:

(i) In determining each regular, annual assessment, the Board shall separately assess each Lot in the manner herein provided and each Lot shall be charged with and subjected to a lien for the amount of such separate assessment which shall be deemed the "Annual Assessment" with respect to such Lot.

(ii) The initial annual assessment for each Lot shall be Six Hundred and Fifty No/100 Dollars (\$650.00).

(iii) Approved Builders shall pay fifty percent (50%) of the annual assessment attributable for each Lot.

Owners, including potential Owners, are encouraged to contact the Board to determine the then-current assessment rate.

The annual assessment may not be increased by the Board by more than twenty-five percent (25%) without the affirmative vote of fifty-one (51%) of the votes of those Members who are present and voting, in person or by proxy, at a meeting duly called for such purpose. The assessments described in this section shall be referred to as the "Annual Assessments". The Board shall prescribe the applicable due date(s) for each Annual Assessment and the Board shall prepare a roster of the Lots and assessments applicable thereto, which shall be kept in the office of the Declarant and/or the Association.

**11.4. Special Assessments.** The Association may levy, in addition to the Annual Assessments, one (1) or more special assessments in any calendar year applicable to that year only: (a) applicable to all Owners, for the purpose of defraying in whole or in part the costs of construction, reconstruction, repair or replacement of a capital improvement, including necessary fixtures and personal property related thereto, or for such other lawful purposes related to the use and maintenance of the Property as the Association may determine; (b) applicable only to a particular Owner(s), for the purpose of defraying the costs of reconstruction, repair or replacement of a capital improvement, including necessary fixtures and personal

property related thereto, in the event a particular Owner (or Owners) has taken any action or has failed to take action which has resulted in damage to, or extraordinary wear and tear of, a capital improvement; and (c) applicable only to a particular Owner (or Owners), to reimburse the Association as otherwise provided for herein. Any such special assessment must have an affirmative vote of sixty-seven percent (67%) of the votes of those Members who are present, in person or represented, at a meeting duly called for such purpose.

**11.5. The Effect of Non-Payment of Assessments: Remedies of the Association.** Each Owner shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and each Owner agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner against whom collection or enforcement or other action is taken agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. With respect to any assessment or other sum due herein not timely paid, the Association shall have the right to: (a) charge a late fee, in an amount determined by the Board; (b) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; (c) charge costs and fees related to the collection of the sum due; (d) suspend the right of the Owner to use any of the Common Area amenities or facilities; and/or (e) exercise any other remedies available to the Association as provided elsewhere in this Declaration. The Association may adopt a Collection Policy to establish equitable policies and procedures for the collection of Assessments. In the event of a default in payment of any such assessment when due, the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, specifically including:

- (a) **ENFORCEMENT BY SUIT.** The Association may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the highest legal rate from the date of delinquency, plus court cost, and reasonable attorney's fees.
- (b) **ENFORCEMENT BY LIEN.** There is, to the full extent permitted by law, hereby created and granted a lien, with power of sale, on each Lot to secure payment to the Association of any and all assessments levied against all Owners of such Lots under these Restrictions and all damages owed by any Owner to the Association, however incurred, together with interest thereon at the highest legal rate from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time after the occurrence of any default in payment of any such assessment, the Association, or any authorized representative, may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. The demand shall state the date and the amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid after delivery of such demand, or even without such a written demand being made, the Board may elect to file a claim of lien on behalf of the Association against the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:
  - (1) The name of the delinquent Owner;
  - (2) The legal description and, if applicable, street address of the Lot against which the claim of lien is made;

(3) The total amount claimed to be due and owing, as of the date of the filing, for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees; and

(4) That the claim of lien is made by the Association pursuant to the Restrictions.

Notwithstanding the foregoing, it is expressly intended that the lien herein described shall immediately attach and become effective in favor of the Association as a lien upon any Lot against which an assessment is levied regardless of whether any demand is made or claim of lien filed. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot assessments in favor of any municipal or other governmental assessing unit, and the liens which are hereinafter specifically described below. To the extent permitted by law, any such lien may be foreclosed by judicial or non-judicial methods. A nonjudicial foreclosure sale must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Texas Property Code §51.002 or in any manner permitted or not prohibited by Applicable Law and must comply with prerequisites required by Applicable Law. In any foreclosure, Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to any limitations of Applicable Law. The Association has the power to bid on the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The lien provided for herein shall be in favor of the Association and all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. If such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest, and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

**11.6. Subordination of the Lien to Mortgages.** The assessment lien described herein shall be subordinate to any first deed of trust lien on the Property or a Lot which was recorded before the delinquent assessment became due and any deed of trust home equity lien or lien for improvements on a Lot which was recorded before the delinquent assessment became due.

**11.7. Certificates.** The Declarant, the Board, and/or the manager shall upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by Declarant and/or an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

**11.8. Collection Policy and Alternative Payment Schedule Guidelines.** It is the policy of the Association that any agreement entered into by and between the Association and any Owner shall comply with Section 209.0062, Texas Property Code. The Board is authorized to promulgate and adopt a collection policy setting forth the collection procedures and alternate payment schedule terms.

**11.9. Capitalization of Association – HOA Reserve, Transfer Fees and Fees for Issuance of Resale Certificates.**

(a) Each purchaser (other than Declarant) of any Lot will pay to the Association a reserve contribution ("Contribution") in an amount equal to Six Hundred and No/100 Dollars (\$600.00), which

amount shall be due immediately upon the transfer of title to the Lot. The Contribution shall apply to subsequent resales of a Residence, *i.e.*, sales subsequent to the initial purchaser of the Residence and shall exclude transfers or sales by and between the Declarant, Approved Builder(s), and any other entity that will develop, market, or construct a Residence for later sale to consumers in the ordinary course of such entity's business. The Contribution may be increased without amendment to this Declaration, by a resolution of the Board, by no more than twenty-five percent (25%) per year. The resolution must be signed and acknowledged by an officer of the Board and recorded with the Real Property records to effectuate the change. The Board may transfer the funds to the Association's reserve fund account or operating fund account. The Contribution will be in addition to, not in lieu of, any other assessments or other charges levied in accordance with this Article and will not be considered an advance payment of such assessments.

(b) Notwithstanding the foregoing provision, the following transfers will not be subject to the requirement to pay the Contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; or (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child or parent. In the event of any dispute regarding the application of the Contribution to a particular Owner, the Board's determination regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this Section.

(c) The Board may, at its sole discretion, enter into contracts with third parties to oversee the operation and management of the Association. The Association and/or these third parties may, and likely will, have fees ("Transfer Fees") that will be charged to an Owner for costs in connection with the transfer of title to a Lot and the issuance of any "Resale Certificate" (herein so called). The Association or its agent shall not be required to issue a Resale Certificate until payment of the Transfer Fees has been received by the Association and/or its agent, as applicable. Transfer Fees are not refundable and may not be regarded as a prepayment or credit against any Assessments. This Section does not obligate the Board or any third party to levy such Transfer Fees. Additionally, upon transfer of title to any Owner (the purchaser) shall be obligated to pay Transfer Fees in connection with such sale, including an Approved Builder's sale of a Lot to a homebuyer.

## **ARTICLE 12 – ADMINISTRATION AND MANAGEMENT**

**12.1. Governing Documents.** The administration of the Property shall be governed by these Restrictions, the Bylaws, the Certificate, the Design Guidelines, the Rules and Regulations, and other duly adopted dedicatory instruments of the Association, as promulgated, recorded, and published from time to time.

**12.2. Evidence of Compliance with Declaration.** Records of Declarant or the Association with respect to compliance with this Declaration shall be conclusive evidence as to all matters shown by such records. A certificate of completion and compliance issued by Declarant, the secretary of the Association, or designated agent, stating that the improvements to a Lot were made in accordance with this Declaration, or a certificate as to any matters relating to this Declaration issued by Declarant or the secretary of the Association, shall be conclusive evidence that shall justify and protect any title company insuring title to any portion of the Property and shall fully protect any purchaser or lender in connection therewith.

**12.3. Personal Property for Common Use.** The Association may acquire and hold property, tangible, and intangible, real and personal, in the name of the Association, for the use and benefit of all Owners and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by the Owners, and their interest therein shall not be transferable; however, the interest of an Owner shall be deemed to be transferred upon the transfer of title to the Owner's Lot, including foreclosure.

## **ARTICLE 13 – RIGHTS OF DECLARANT**

During the Development Period, Declarant hereby specifically excepts, excludes, and reserves the following rights and interests in the Property:

**13.1. Amendments.** Declarant shall have the right to unilaterally amend this Declaration and each amendment shall apply to all of the Property, whether owned by Declarant or not.

**13.2. Plat Revision.** Declarant reserves the right to replat the Property and revise the acreage and configuration of Lots owned by Declarant, to change any building lines or setback lines, or change the course or size of easements so long as Declarant holds legal title to the affected Lots.

**13.3. Sales and Construction Activities.** Declarant shall have the right to maintain sales and administrative offices, construction offices or trailers, model homes, and parking facilities, storage facilities, and signs on the Property and to conduct sales activities on the Property.

**13.4. Construction Work by Declarant.** Declarant shall have the right to construct and complete the construction of roads and any common improvements on the Property. In connection therewith, Declarant reserves the right to use, occupy, and excavate the surface and subsurface of the ground for the erection, construction, and installation of said improvements including, but not limited to, the right to locate, install, maintain, and repair all utilities and utility lines, whether temporary or permanent, necessary for Declarant's construction, reconstruction, maintenance, and operation. Declarant also reserves the right to extend the roads located or to be located on the Property to other property. Declarant, in addition, reserves the right to convey to any county, water district, sanitary sewer district, or other municipal or quasi municipal corporation all sewer lines and mains, water lines and mains, and any other utilities constructed or to be constructed on the Property, together with suitable rights-of-way over said lands for the required maintenance, repair, replacement, and operation thereof. The foregoing rights reserved by Declarant do not impose on Declarant the obligation to construct or install any improvements of any kind.

**13.5 Declarant Reimbursement.** While Declarant controls the Association, Declarant may from time to time, and solely at Declarant's discretion, provide financial assistance to the Association. Providing financial assistance one time, or from time to time, does not obligate Declarant to provide additional or continual financial assistance. The purpose of this Section is to describe the relationship between Declarant and the Association regarding Declarant's financial support and the duty of the Association to reimburse Declarant for some of Declarant's contributions under certain circumstances. In case of conflict between this Section and other provision of the Declaration, this Section controls. Declarant hereby reserves the right to be reimbursed by the Association for any shortfall loan and hereby creates an affirmative duty for the Association to fund the reimbursement if and when Declarant exercises this right. A shortfall loan arises automatically, with or without formality. A shortfall loan may be evidenced by a promissory note executed by the Association in favor of Declarant or a person or entity designated by Declarant. A shortfall loan incurs no interest and will be repaid - upon demand - as the Association receives reimbursement of prepaid expenses, payment of delinquent assessments, or funding from loans or levied assessments.

**13.6. Development of Property.** Declarant reserves the right to facilitate the development, construction, and marketing of the Property and the right to direct the size, shape, and composition of the Property. Notwithstanding Applicable Laws that link a declarant's control of real property development with its control of the governing body, Declarant and this Declaration recognize the independence of those realms and functions. Declarant may terminate its reserved right to appoint officers and directors of the Association without affecting any of Declarant's other rights and reservations under this Declaration or Applicable Law.

**13.7. Independent of Reservation Periods.** This Declaration creates a number of periods of time for the exercise by Declarant of certain reserved rights, such as the Declarant Control Period and Development Period, for example. Each reservation period is independent of the others. Each reservation period is for a term of years and does not require that Declarant own a Lot or any other land in the Property. No act, statement, or omission by the Association, an Approved Builder, or any other party may effect a change or termination of any reservation period. Declarant, however, may unilaterally change any reservation period by amending this Declaration. To document the end of a reservation period, Declarant may (but is not required to) execute and publicly record a notice of termination of the period.

**13.8. Assignment of Declarant Rights.** Declarant may assign its rights to a successor Declarant hereunder by execution of a written document, recorded in Official Public Records of Denton County, Texas, specifically stating that Declarant has assigned its rights, duties, and obligations, as such to a designated assignee and declaring such assignee to be the new "Declarant" hereunder.

## **ARTICLE 14 – INSURANCE AND INDEMNIFICATION**

### **14.1. Association Insurance.**

- (a) The Association is vested with the authority to and shall obtain and maintain in full force and effect commercial general liability insurance and such other insurance, as it deems necessary or desirable. All such insurance shall be obtained from responsible companies duly authorized and licensed to do business in the State of Texas. To the extent possible, the insurance shall provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, and Owners and provide that the policy of insurance shall not be terminated, canceled, or substantially modified without at least thirty (30) days prior written notice to the Board. Any insurance policy may contain such deductible provisions, as the Board deems consistent with good business practice. The cost and expense of all insurance obtained by the Association shall be paid out of Association funds.
- (b) The Association will not carry any insurance pertaining to, nor does it assume any liability or responsibility for, the real or personal property of the Owners (and their respective family members and guests). Each Owner expressly understands, covenants and agrees with Declaration and the Association that neither Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner and each Owner shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner covering his or her real and personal property. If a loss is due wholly or partly to an act or omission of an Owner or their invitees, the Owner shall reimburse the Association for the amount of the deductible that is attributable to the act or omission upon demand from the Association.

**14.2. Appointment of Association as Trustee.** Each Owner irrevocably appoints the Association as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association

**14.3. Common Area Insurance.** To the extent it is reasonably available; the Association will obtain blanket all-risk insurance for insurable Common Areas. If blanket all risk insurance is not reasonably

available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any Lot owned by the Association.

**14.4. General Liability.** To the extent it is reasonably available, the Association will maintain a commercial general liability insurance policy over the Common Areas – expressly excluding the liability of each Owner and resident within his Lot for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

**14.5. Directors & Officers Liability.** The Association shall maintain directors and officer's liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

**14.6. Other Coverages.** The Association may maintain any insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by a national institutional underwriting lending for planned unit developments as long as the underwriting lender is a mortgagee or an owner.

**14.7. Indemnification.** EACH BOARD MEMBER, OFFICER, DIRECTOR, ACC OR OTHER COMMITTEE MEMBER, OR AGENT OF THE ASSOCIATION SHALL BE INDEMNIFIED BY THE ASSOCIATION AGAINST ALL EXPENSES AND LIABILITIES, INCLUDING ATTORNEY'S FEES, REASONABLY INCURRED BY OR IMPOSED UPON HIM IN ANY PROCEEDING TO WHICH HE MAYBE A PARTY, OR IN WHICH HE MAY BECOME INVOLVED, BY REASON OF HIS BEING OR HAVING BEEN A BOARD MEMBER, OFFICER, DIRECTOR, COMMITTEE MEMBER, OR AGENT OF THE ASSOCIATION; PROVIDED, HOWEVER, THAT (A) IN THE CASE OF DECLARANT OR ANY AFFILIATE ENTITY OF DECLARANT, OR ANY OFFICER, DIRECTOR, OR EMPLOYEE OF DECLARANT OR ANY AFFILIATE, THIS INDEMNIFICATION SHALL NOT APPLY IF DECLARANT OR ANY AFFILIATE OR THE INDEMNIFIED OFFICER, DIRECTOR, OR EMPLOYEE OF DECLARANT OR ANY AFFILIATE IS ADJUDGED GUILTY OF GROSS NEGLIGENCE OR MALFEASANCE IN THE PERFORMANCE OF ITS OR HIS OBLIGATIONS HEREUNDER, AND (B) IN THE CASE OF ANY OTHER INDEMNIFIED PARTY, THIS INDEMNIFICATION SHALL BE APPLICABLE ONLY AS SET FORTH IN THE BYLAWS OF THE ASSOCIATION.

## **ARTICLE 15 – OWNER ACKNOWLEDGMENTS**

**15.1. Adjacent Land Use.** By acquiring an ownership interest in a Lot, each Owner acknowledges that the uses, platting, and development of land within, adjacent to, or near the Property may change over time, and from time to time, and that such a change may affect the value of Owner's Lot. Whether an Owner is consulted about a proposed change to real property within the vicinity of the Owner's Lot is a function of local government, and not a function of the Association. Nothing in this Declaration or the other Governing Documents may be construed as a representation of any kind by the Association, Approved Builders, or Declarant as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property, regardless of what the Plat shows as potential uses of adjoining land. The Association, Approved Builders, and Declarant cannot and do not guaranty scenic views, volumes of traffic on streets around and through

the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air.

**15.2. Site Inspection.** A prospective owner or resident must make his own inspection of the Property, its location, and adjoining land uses, and make inquiries of anything that concerns him. Although the Plat and this Declaration may contain a limited number of disclosures about the Property and its location of the date of the Declaration, neither the Association nor Declarant makes any representation that these are the only noteworthy features of the Property or its location.

**15.3. Notice of Imprecise Terminology.** Words, acronyms, labels, and legends used on a Plat to describe land uses are imprecise terms which may be modified by subsequent acts and decisions by public or quasi-public authorities without the formality of amending the Plat.

**15.4. Rights of City.** The City, including its agents and employees, has the right of immediate access to the Common Areas at all times if necessary for the welfare or protection of the public, to enforce City ordinances, or to improve the appearance of or to preserve public property, public easements, or public rights of way. If the Association fails to maintain the Common Areas to a standard acceptable to the City, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's written demand (at least 90 days), the City may maintain the Common Areas at the expense of the Association after giving written notice of its intent to do so to the Association. The City may give its notices and demands to any officer, director, or agent of the Association, or alternatively, to each owner of a Lot as shown on the City's tax rolls. To fund the City's cost of maintaining the Common Areas, the City may levy assessments against the Lots and Owners in the same manner as if the Association levied a special assessment. The rights of the City under this Section are in addition to other rights and remedies provided by law.

**THE CITY IS NOT RESPONSIBLE FOR THE MAINTENANCE OF THE COMMON AREAS, INCLUDING BUT NOT LIMITED TO, THE MASONRY WALLS SCREENINGS, ENHANCED ENTRYWAY FEATURES, IF ANY.**

**15.5. Mineral Interests.** In the era in which this Declaration is written, there is renewed interest in oil and gas exploration.

**15.5.1. Mineral Interests Reserved.** On the date of this Declaration, it is expected that all mineral interests and water rights will have been reserved by a prior owner of the Property or conveyed pursuant to one or more deeds or other instruments recorded in the Real Property Records of the County Clerk of the county in which the Property is located, including but not limited to rights to all oil, gas, or other minerals and water lying on, in, or under the Property and surface rights of ingress and egress. Because the instruments conveying or reserving mineral interests and water rights were recorded prior to this Declaration, those interests in the Property are superior and are not affected by any provision to the contrary in this Declaration. By accepting title to or interest in a Lot, every Owner acknowledges the existence of the mineral and water rights and/or reservations referenced in this Section and the attendant rights in favor of the owner or owners of the mineral interests.

**15.5.2. Mineral Reservation by Declarant.** In the event (1) a mineral interest or water right for any part of the Property has not been reserved or conveyed prior to Declarant's conveyance of the Property, or (2) a reservation or conveyance of mineral interests and water rights is determined to be invalid or to have terminated, Declarant hereby reserves for itself all right, title, and interest in and to the oil, gas, and other minerals and water in, on, and under and that may be produced from the Property, to have and to hold forever.



**15.5.3. Association as Trustee.** By accepting title to or interest in a Lot, each owner acknowledges that any oil, gas, mineral, water, or other natural element in, on, under, or over any part of the Property that has not previously been reserved or conveyed is owned by the Association for the collective and undivided benefit of all owners of the Property. In support of that purpose, each Owner, by accepting title to or interest in a Lot, irrevocably appoints the Association as his trustee to negotiate, receive, administer, and distribute the proceeds of any interest in oil, gas, mineral, water, or other natural element in, on, under, or over the Owner's Lot and that may be produced from the owner's Lot for the collective and undivided benefit of all Owners of the Property.

**15.6. Notice of Limitation on Liability. THE DEVELOPMENT OF THE PROPERTY OCCURS DURING A PERIOD WHEN MANY LOCAL GOVERNMENTS ARE TRYING TO BE ABSOLVED OF LIABILITY FOR FLOOD DAMAGE TO PRIVATE PROPERTY. AS A CONDITION OF PLAT APPROVAL, A GOVERNMENTAL ENTITY MAY REQUIRE A PLAT NOTE THAT NOT ONLY DISAVOWS THE ENTITY'S LIABILITY FOR FLOOD DAMAGE, BUT CONVEYANCE IS REQUIRED BY THE DISTRICT OR ENTITY, OR IF THE BOARD DEEMS SUCH A CONVEYANCE TO BE IN THE BEST INTEREST OF THE ASSOCIATION, THE ASSOCIATION MAY ACCEPT OR CONVEY A REAL PROPERTY INTEREST IN A COMMON AREA FROM OR TO, AS THE CASE MAY BE, A PRIVATE PERSON IF THE CHANGE OF OWNERSHIP DOES NOT RESULT IN A SIGNIFICANT CHANGE OF LAND USE AND IF THE CONVEYANCE IS APPROVED BY OWNERS REPRESENTING AT LEAST A MAJORITY OF VOTES IN THE ASSOCIATION. ANY OTHER CONVEYANCE OF COMMON AREAS, EXCEPT TO AND FROM DECLARANT, OR FROM A BUILDER, MUST BE APPROVED BY OWNERS OF AT LEAST TWO-THIRDS OF THE LOTS. PROPERTY INTERESTS CAPABLE OF CONVEYANCE INCLUDE, WITHOUT LIMITATIONS, FEE TITLE TO ALL OR PART OF A COMMON AREA, AN EASEMENT ACROSS REAL PROPERTY, AND A LEASE OR LICENSE OF REAL PROPERTY.**

**15.7. Soil Movement.** Each Owner acknowledges that the failure or excessive movement of any foundation of any Residence can result in the diminished value and overall desirability of the entire Property. Each Owner agrees and understands that the maintenance of the moisture content of the soils on each Lot is necessary to preserve the structural integrity of each Residence in the Property. Each Owner also acknowledges that the long-term value and desirability of the Property is contingent upon each Owner maintaining his Residence so that no structural failure or excessive soil movement occurs within the Property.

**EACH OWNER IS HEREBY NOTIFIED THAT THE SOIL COMPOSITION IN NORTH TEXAS IN GENERAL AND THE PROPERTY IN PARTICULAR AND THE CONDITION OF THE LOTS MAY RESULT IN THE SWELLING AND/OR CONTRACTION OF THE SOIL IN AND AROUND THE LOT IF THE OWNER OF THE LOT DOES NOT EXERCISE THE PROPER CARE AND MAINTENANCE OF THE SOIL REQUIRED TO PREVENT SOIL MOVEMENT.**

If an Owner fails to exercise the necessary precautions, then damage, settlement, movement or upheaval to the foundation and structural failure may occur. Owners are highly encouraged to install and maintain proper irrigation around their Residence or take such other measures to ensure even, proportional, and prudent watering around the foundation of the Residence.

## **ARTICLE 16 – INTENTIONALLY DELETED**

## ARTICLE 17 – GENERAL PROVISIONS

**17.1. Term of Restrictions.** Unless amended as provided herein, the provisions of this Declaration run with and bind the Property and will remain in effect perpetually to the extent permitted by Law.

**17.2. Amendment by Declarant.** During the Development Period, the Declaration, the Restrictions, and any other Governing Document may be amended, revised, or revoked only by Declarant, and no other Owner shall have a vote regarding amendment, revision, or revocation. Nor may this Declaration or any other Governing Document be amended to increase the liabilities or responsibilities of Declarant without Declarant's written and acknowledged consent, which must be part of the recorded amended instrument.

**17.3. Amendment by Board.** The Board may not unilaterally amend the Declaration, Restrictions, or Governing Documents, except for the following limited purposes, which must be clearly identified in the instrument of amendment, and then only to the extent necessary to achieve the permitted goal, and only with the unanimous written consent of all directors, there being no vacancy on the Board:

- (a) To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, or any public or quasi-public program or benefit, if doing so is in the best interests of the Association and its members.
- (b) To correct an obvious error that affects the validity or enforceability of the document, if doing so is in the best interests of the Association and its members.
- (c) To comply with a requirement of Applicable Law that requires a specific provision to be included in or removed from a document.

**17.4. Amendment by Owners.** Except for certain amendments of this Declaration that may be executed by Declarant alone, or by the Board alone, amendments to this Declaration must be approved with the consent of sixty-seven percent (67%) of all outstanding votes of the Owners, with each Lot being entitled to one (1) vote. Cumulative voting will not be permitted. For an amendment of this Declaration that requires the approval of the Owners, the consents may be solicited by any method selected by the Board, from time-to-time, pursuant to the Bylaws and Applicable Law, provided the method gives each Owner the exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment. To be effective, an amendment approved by the requisite number of Owners or directors must be in the form of a written instrument (a) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (b) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners or directors, and (c) recorded in the Real Property Records of Denton County, Texas. An amendment to terminate the Declaration and Restrictions must be approved by Owners of at least eighty (80) percent of the Lots.

- (a) **AMENDMENT BY LAW.** If the Board determines that the significance of the provision that is changed by operation of law should be brought to the attention of the Owners and the public, the Board, without a vote of the Owners, may issue a Notice of Change that references the provision of a Governing Document and how it was affected by Applicable Law. The Notice may be recorded in the Real Property records and does not constitute an amendment of the Governing Document. If such a Notice is issued, the Association will notify Owners of its existence and will make it available to Owners as a record of the Association. This provision

may not be construed to give the Board unilateral amendment Powers, nor to prevent an amendment of a Governing Document to achieve the same purpose.

**17.5. Complaints by Association.** If an Owner is in violation of the Governing Documents, the Association may so notify such Owner in writing. If the Owner fails to remedy the violation within ten (10) days following delivery of such notice, then the Association shall have the right (but not the obligation or duty) to commence with the enforcement process, including, but not limited to, legal action, at law or in equity, to obtain a temporary restraining order and subsequent injunction, to enforce the Governing Documents, and may recover the damages owed by such Owner pursuant to the section below, any other damages incurred by the Association, and its reasonable expenses, including attorney's fees. Without limiting the foregoing, the Association may take such other action as it deems necessary to cure the Owner's violation and the cost expended by the Association in doing so shall be a charge and lien upon the subject Lot.

**17.6. Damages for Violations.** Any Owner in breach or violation of the Governing Documents may incur a monetary penalty until the breach or violation is remedied or cured. The Board may establish a fine policy or structure consistent with this Section 17.6. Such sum shall be payable to the Association as damages. The right to impose damages shall be cumulative and not restrictive of any other remedies at law or in equity.

**17.7. Enforcement.** Except as otherwise provided herein, any Owner of Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce, by a proceeding at law or in equity, all of the provisions of this Declaration. The Association and/or the Declarant may initiate, defend, or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein. Failure to enforce any right, provision, covenant, or condition set forth in the Restrictions will not constitute a waiver of the right to enforce such right, provision, covenants, or condition in the future. Failure of the Declarant or the Association to enforce the terms and provisions of the Restrictions shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS, OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE RESTRICTIONS, REGARDLESS OF WHETHER SUCH FAILURE TO ENFORCE WAS THE DUE TO THE NEGLIGENCE, INCLUDING GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT ON THE PART OF DECLARANT OR THE ASSOCIATION, OR THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS.

**17.8. Waiver of Enforcement.** Waiver of enforcement of any provision of the Governing Documents shall be limited to that particular provision which is waived, in writing, as to a particular matter as it relates to a particular Lot, and shall not be construed to be a waiver of any other provision of the Governing Documents. A variance granted by Declarant or the Association is not a waiver.

**17.9. Effect of Ordinances.** Police, fire, and other public safety ordinances of any governmental corporation or unit having jurisdiction over any portion of the Property shall govern where more restrictive than this Declaration.

**17.10. Bylaws.** To the extent of any conflict between this Declaration and the Bylaws, this Declaration shall control.

**17.11. Severability.** Invalidation of any provision of this Declaration by judgment or court decree shall in no way affect any other provisions which shall remain in full force and effect. Nothing herein shall be in conflict with Texas homestead law. Should a provision herein be in conflict, Texas homestead law shall apply. All other provisions shall remain in full force and effect.

**17.12. Intentionally Omitted.**

**17.13. Annexation.** Declarant unilaterally, or the Association upon an affirmative vote of two-thirds (2/3) of the Lots in the Property, may at any time subject additional land to this Declaration and the Restrictions by filing an amendment or supplement to this Declaration covering the additional land and declaring it to be subject hereto. Unless the additional land is an easement interest or Common Area, the land covered by the amendment to this Declaration shall be deemed to be a Lot or Lots, as described in the amendment or supplement, and part of the Property and each Owner of the additional land shall be deemed an Owner, and entitled to membership in the Association, in accordance with the terms of this Declaration. No further action or approval shall be required or necessary for the Declarant to annex additional properties into the Property for the purpose of subjecting it to the Declaration. Any instrument subjecting additional property to the Declaration may also include a separate set of restrictive covenants or additional restrictive covenants not found in this Declaration. Upon the annexation and platting of any additional property as herein provided, each lot described therein shall become a "Lot" for all purposes hereunder.

Nothing herein contained shall establish any duty or obligation on the part of Declarant to annex any property to this Declaration.

In determining the number of Lots owned by Declarant for the purpose of Class B membership status according to Section 9.6 hereof, the total number of Lots covered by this Declaration, including all Lots annexed thereto, shall be considered. If Class B membership has previously lapsed but annexation of additional property restores the ratio of Lots owned by Declarant to the number required by Class B membership, such Class B membership shall be reinstated until it expires pursuant to the terms of Section 9.6.

**17.13.1. Platting and Replatting.** Any unplatted land subject to this Declaration may be platted in whole or in part, and in phases. Additionally, any platted portion of the Property may be replatted, in whole or in part, for any reason, such as to change lot boundaries, to increase or decrease the number of lots in the Property, to change land use, to convert residential lots into common area and common area into residential lots, to impose or remove easements, and to effect any other land use which, in the sole discretion of Declarant, is conducive to development of the Property.

**17.13.2. Expansion.** Whether or not expansion is anticipated by the original development plan for the Property, Declarant reserves the unilateral right (not duty) to make additional real property subject to this Declaration and to the jurisdiction of the Association. Declarant may - but is not required to - subject any or all of the Annexable Land to this Declaration in one or more installments by recording a supplemental declaration in the Official Public Records of Denton County, Texas.

**17.13.3. Recording of Annexation.** The annexation of such real property shall be evidenced by a written Recorded document which provides for the following information:

- (i) A legally sufficient description of the Annexable Land being added or annexed;
- (ii) That the Annexable Land is being annexed in accordance with and subject to the provisions of this Declaration, that all of the provisions of this Declaration, as amended, shall apply to the Annexable Land being added or annexed with the same force and effect as if said Annexable Land were originally included in this Declaration, and that the Annexable Land being annexed shall be developed, held, used, sold and conveyed in accordance with, and subject to, the provisions of this Declaration as theretofore and thereafter amended;
- (iii) The Supplemental Declaration is only intended to annex the Annexable Land and shall not contain any terms or provisions that are in conflict, inconsistent or contradictory to this Declaration. In the event of any conflict, inconsistency, or contradiction, the terms of this Declaration shall control and supersede the terms of the Supplemental Declaration; and
- (iv) That an assessment lien is therein created and reserved in favor of the Association to secure collection of the Assessments as provided in this Declaration, and as provided for, authorized, or contemplated in the Supplemental Declaration, and setting forth the Assessment and the amount of any other then applicable Assessments (if any) for the Lots within the Annexable Land being made subject to this Declaration.

**17.14. Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men, or women, in all cases shall be assumed though fully expressed in each case.

**17.15. Notices.** Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested (if required by Applicable Law), addressed to the Owner at the Lot or such other address and Owner has registered with the ACC.

**17.16. Liberal Interpretation.** The terms and provisions of each Governing Document are to be liberally construed to give effect to the purposes and intent of the Governing Document. All doubts regarding a provision in any Governing Document or Applicable Law, including restrictions on the use or alienability of property, will be resolved in the following order of preferences, regardless which party seeks enforcement: first to give effect to Declarant's intent to protect Declarant's interests in the Property; second to give effect to Declarant's intent to direct the expansion, build-out, and sell-out of the Property; third to give effect to Declarant's intent to control governance of the Association for the maximum permitted period; then in favor of the operation of the Association and its enforcement of the Governing Documents for the benefit of owners collectively; and finally to protect the rights of individual owns.

**17.17. Reservation of Rights.** Declarant hereby reserves for itself each and every right, reservation, privilege, and exception available or permissible under Applicable Law for declarants and developers of residential subdivisions, if and to the full extent that such right, privilege, or exception is beneficial to or protective of Declarant or Builders. If the benefit or protection of Applicable Law is predicated on an express provision being in this Declaration or other Governing Document, such provision is hereby incorporated by reference unless Declarant executes an instrument to disavow such benefit or protection.

**17.18. Email Registration Policy.** The Declarant hereby adopts this policy to establish a means by which members of the Association might register and maintain their email addresses for the purpose of receiving certain required communications from the Association. Should the Association maintain a community website capable of allowing Owners to register and maintain an email address with the Association, then the Owner is responsible for registering and updating whenever necessary such email address so that the Owner can receive email notifications of certain required communications from the Association. Should the Association not maintain a community website, and then the Association shall provide each Owner with an Official Email Registration Form so that the Owner might provide to the Association an email address for the purpose of receiving email notifications of certain required communications from the Association. It shall be the Owner's responsibility to complete and submit the form to the Association, as well as updating the Association with changes to their email address whenever necessary.

**17.19 Provisions for the Benefit of the City.** The following provisions are intended to incorporate various provisions of Section 8.11 of the City's Subdivision Ordinance, including certain definitions, and shall prevail and control in the event of any conflict with the terms and conditions of the Governing Documents:

- (a) The City shall have no obligation or responsibility for the enforcement of the Restrictions, the Design Guidelines or any of the Governing Documents, the sole authority and responsibility for doing so being reserved exclusively to the Association.
- (b) None of the Governing Documents relating to the maintenance of the amenities, private streets, Major Creeks and tributaries, thoroughfare screening, any other Association-maintained area or facility, or related reserve fund shall be valid or effective without the City's prior written approval.
- (c) The Association hereby releases the City from any responsibility or obligation to maintain the amenities, private streets, any area within or adjacent to Major Creeks and tributaries, thoroughfare screening, common area landscaping or any other Association-maintained area or facility.
- (d) Under no circumstances shall the City be liable to the Association or any property owner or their respective heirs, executors, administrators, devisees, personal representatives, successors or assigns for any damages, injuries (including death), and/or liability resulting from any amenity, private streets, any area within or adjacent to Major Creeks and tributaries, thoroughfare screening, common area landscaping or any other Association-maintained area or facility.
- (e) The City is hereby granted access for emergency vehicles, equipment and personnel and granted the right to engage in improvements and maintenance for any area within the 100-Year Floodplain in the event same is not properly maintained by the Association, as determined by the Director of Engineering Services, and all such costs for maintenance incurred by the City shall be reimbursed by the Association.
- (f) Certain portions of the Property may contain streets which are private or have not been dedicated to public use. In the event any specific City approval for private streets is revoked or the private streets are otherwise converted to public streets, any reserve fund established and maintained by the Association for the maintenance, repair and replacement of private streets shall become the property of the City. With regard to any portion of the Property which has private streets or to the extent the Property has private streets:

- (i) The City shall have no obligation to maintain, repair or reconstruct private streets, such obligation and responsibility being reserved exclusively to the Association as such private streets are owned and maintained by the Association;
- (ii) The City shall have the right, but not the obligation, to inspect private streets and require the Association to perform maintenance or repairs necessary to insure the private streets are maintained to City standards;
- (iii) The City may revoke any specific approval or Specific Use Permit for private streets and take appropriate action should the Association fail to bring the Property into compliance with any regulations applicable to Private Street Development;
- (iv) The City shall not be required to provide certain services including, but not limited to: police enforcement of traffic and parking ordinances and preparation of accident reports;
- (v) The Association shall provide unrestricted access to emergency vehicles, utility personnel, the U.S Postal Service, and governmental employees, agents or representatives in the performance of their official duties. All required access gates shall be designed and constructed in accordance with the emergency access design standards set forth in the Engineering Standards and shall be equipped with an Opticom gate opening system or with another opening system that is acceptable to the Fire Chief.; and
- (vi) The dissolution of the Association shall be ineffective without the prior written consent of the City Council, which consent shall not be withheld by the City if it determines that an adequate reserve funds exists, and the streets and alleys are in satisfactory condition as determined by the Director of Public Works.

**17.20. Incorporated Documents.** The following documents are attached hereto and incorporated as if fully set forth herein:

- Exhibit A – Legal Description of the Property
- Exhibit B – Law-Based Sections
- Exhibit C – Construction Related Restrictions
- Exhibit D – Homeowners' Association Disclosure Sheet

## **ARTICLE 18 – DISPUTE RESOLUTION**

### **18.1. Agreement to Encourage Resolution of Disputes Without Litigation.**

**INTRODUCTION AND DEFINITIONS.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "Parties"), agree to encourage the amicable resolution of disputes involving the Property and the Common Area to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. This Article 18 may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding 100% of the votes in the Association.

As used in this Article only, the following words, when capitalized, have the following specified meanings:

"Claim" means:

1. Claims relating to the rights and/or duties of the Declaration, the Association, or the ACC, under the Restrictions.
2. Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during control and administration of the Association, any claim asserted against the ACC.
3. Claims relating to the design or construction of the Common Area or any Improvements located on the Property.

"Claimant" means any Party having a Claim against any other Party.

"Respondent" means any Party against which a Claim has been asserted by a Claimant.

**18.2. Mandatory Procedures.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in Section 18.9 below, a Claim will be resolved by binding arbitration.

**18.3. Claim by the Association – Common Areas.** In accordance with this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as defined in Section 18.1(a) above, relating to the design or construction of Improvements on a Lot. In the event the Association or a Lot Owner asserts a Claim related only to the Common Area, as a precondition to providing the Notice defined in Section 18.5, initiating the mandatory dispute resolution procedures set forth in this Article 18, or taking any other action to prosecute a Claim related to the Common Area, the Association or a Lot Owner, as applicable, must:

(a) **INDEPENDENT REPORT ON THE CONDITION OF THE COMMON AREAS.** Obtain an independent third-party report (the "Common Area Report") from a licensed professional engineer which: (i) identifies the Improvements or Common Areas subject to the Claim including the present physical condition of the Common Areas; (ii) describes any modification, maintenance, or repairs to the Common Areas performed by the Lot Owner(s) and/or the Association; and (iii) provides specific and detailed recommendations regarding remediation and/or repair of the Common Areas subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Association or a Lot Owner and paid for by the Association or a Lot Owner, as applicable, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or a Lot Owner in the Claim. As a precondition to providing the Notice described in Section 18.5, the Association or Lot Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date of receipt of such notice, to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Common Area Report, the specific Common Areas to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Common Area Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in Section 18.5, the Association or Lot Owner shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Common Area Report.

(b) **CLAIM BY THE ASSOCIATION - OWNER MEETING AND APPROVAL.** If the Claim is prosecuted by the Association, the Association must obtain approval from Members holding at least sixty-seven percent (67%) of the votes in the Association to: (i) provide the Notice described in Section 18.5, (ii) initiate the mandatory dispute resolution procedures set forth in this Article 18, or (iii) take any other action to prosecute a Claim, which approval from Members must be obtained



at a special meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the Claim (the "Engagement Letter"); (iv) a description of the attorney's fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not proceed with the Claim; (v) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (vi) an estimate of the impact on the value of each Lot if the Claim is prosecuted and an estimate of the impact on the value of each Lot after resolution of the Claim; (vii) an estimate of the impact on the marketability of each Lot if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each Lot during and after resolution of the Claim; (viii) the manner in which the Association proposes to fund the cost of prosecuting the Claim; and (ix) the impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party. The notice required by this paragraph must be prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association or Lot Owner, as applicable, in the Claim. In the event Members approve providing the Notice described in Section 18.5, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

**18.4. Claim by Owners – Improvements on Lots.** Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to a Lot Owner by Declarant or a Builder relating to the design or construction of any Improvements (designed or constructed by Declarant or a Builder) located on a Lot, then this Article 18 shall not apply to those items, and the Lot Owner's sole and exclusive remedies shall be pursuant to the agreement between the Owner and Builder. If a warranty has not been provided to a Lot Owner relating to the design or construction of any Improvements located on a Lot, then this Article 18 will apply. If a Lot Owner brings a Claim, as defined in Section 18.1, relating to the design or construction of any Improvements located on a Lot (whether one or more), as a precondition to providing the Notice defined in Section 18.5, initiating the mandatory dispute resolution procedures set forth in this Article 18, or taking any other action to prosecute a Claim, the Lot Owner must obtain an independent third-party report (the "Owner Improvement Report") from a licensed professional engineer which: (i) identified the Improvements subject to the Claim including the present physical condition of the Improvements, (ii) describes any modification, maintenance, or repairs to the Improvements performed by the Lot Owner(s) and/or the Association, and (iii) provides specific and detailed recommendations regarding remediation and/or repair of the Improvements subject to the Claim. For purposes of this Section, an independent third-party report is a report obtained directly by the Lot Owner and paid for by the Lot Owner, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Lot Owner in the Claim. As a precondition to providing the Notice described in Section 18.5, the Lot Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date of receipt of such notice, to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Owner Improvement Report, the specific Improvements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Lot Owner Improvement Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in Section 18.5, the Lot Owner shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Owner Improvement Report.

**18.5. Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve

the Claim; and (iv) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in Section 18.6 below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with Section 18.6, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 18.6 does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in Section 18.7 below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 18.7 is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) a true and correct copy of the Common Area Report; (b) a copy of the Engagement Letter; (c) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Common Area which forms the basis of the Claim; (d) a true and correct copy of the special meeting notice provided to Members in accordance with Section 18.3(b) above; and (e) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Areas, the Notice will also include a true and correct copy of the Common Area Report. If the Claimant is not the Association and pertains to Improvements on a Lot, the Notice will also include a true and correct copy of the Owner Improvement Report.

**18.6. Negotiation.** The Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action.

**18.7. Mediation.** If the Parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed upon by the Parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent may submit the Claim to mediation in accordance with this Section 18.7.

**18.8. Termination of Mediation.** If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was termination. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

**18.9. Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 18.9.

(a) **GOVERNING RULES.** If a Claim has not been resolved after mediation as required by Section 18.7, the Claim will be resolved by binding arbitration in accordance with the terms of this

Section 18.9 and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Denton County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this Section 18.9, this Section 18.9 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal except as provided in Section 18.9(d) but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

- (i) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;
- (ii) One arbitrator shall be selected by Claimant, in its sole and absolute discretion;  
and
- (iii) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

(b) EXCEPTIONS TO ARBITRATION; PRESERVATION OF REMEDIES. No provision of, nor the exercise of any rights under, this Section 18.9 will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(c) STATUTE OF LIMITATIONS. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section 18.9.

(d) SCOPE OF AWARD; MODIFICATION OR VACATION OF AWARD. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this Section 18.9 and subject to Section 18.10 below (attorney's fees and costs may not be awarded by the arbitrator); provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of federal or state law; or (iv) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

(e) **OTHER MATTERS.** To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Denton County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

**18.10. Allocation of Costs.** Notwithstanding any provision in this Declaration to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

**18.11. General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

**18.12. Period of Limitation.**

(a) **FOR ACTIONS BY AN OWNER.** The exclusive period of limitation for any of the Parties to bring any Claim shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four (4) years and one (1) day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; or (iii) for all Claims, the applicable statute of limitations under Texas law. In no event shall this Section 18.12(a) be interpreted to extend any period of limitations under Texas law.

(b) **FOR ACTIONS BY THE ASSOCIATION.** The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas, four (4) years and one (1) day from the date that the Association discovered or reasonably should have discovered evidence of the Claim; or (iii) for all Claims, the applicable statute of limitations under Texas law. In no event shall this Section 18.12(b) be interpreted to extend any period of limitations under Texas law.

**18.13. Funding Arbitration and Litigation.** The Association must levy a Special Assessment to fund the estimate costs of arbitration, including estimated attorney's fees, conducted pursuant to this Article 18 or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

DISCLOSURE: IT IS ACKNOWLEDGED AND AGREED BY THE MEMBERS OF KEENELAND COMMUNITY ASSOCIATION, INC., A TEXAS NONPROFIT CORPORATION, THAT (A) HENRY ODDO AUSTIN AND FLETCHER, P.C., HAS REPRESENTED ONLY THE INTERESTS OF AUBREY 81 WEST, LP, A TEXAS LIMITED PARTNERSHIP, IN CONNECTION WITH THIS DECLARATION, AND MATTERS RELATED THERETO, AND, SPECIFICALLY, HENRY ODDO AUSTIN AND FLETCHER, P.C., HAS NOT REPRESENTED THE ASSOCIATION OR ANY OF ITS INDIVIDUAL MEMBERS; AND (B) HENRY ODDO AUSTIN AND FLETCHER, P.C., HAS ADVISED THE ASSOCIATION TO SEEK INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THIS DECLARATION.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on the day and year written below.

**DECLARANT**

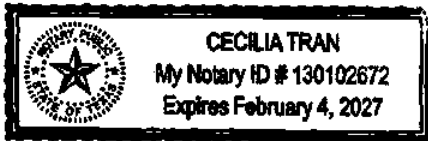
**AUBREY 81 WEST, LP,  
a Texas limited partnership**

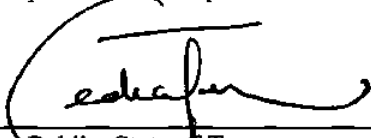
By:   
Its: BOB LADD  
Manager

**ACKNOWLEDGMENT**

STATE OF TEXAS            §  
  §  
COUNTY OF DENTON       §

Before me, the undersigned authority, on this the 17<sup>TH</sup> day of JANUARY, 2024, appeared BOB LADD, Manager of AUBREY 81 WEST, LP, a Texas limited partnership, on behalf of said entity, known to me to be the person whose name is subscribed on the foregoing instrument and acknowledged to me that he executed the same for the purposes therein expressed and in the capacity therein stated.



  
Notary Public, State of Texas

**EXHIBIT A -- LEGAL DESCRIPTION OF THE PROPERTY**

BEING all that tract of land in Denton County, Texas, out of the Francisco Trevino Survey, A-1243, and being part of that called 94.58 acres of land described in deed to Robert J. Houlihan, Trustee of the Jacqueline A. Houlihan Family Trust as recorded under Document No. 2015-75670 of the Official Public Records of Denton County, Texas, and being all of that called 5.000 acres of land described in deed to Robert J. Houlihan as recorded under Document No. 2015-75669 of the Official Public Records of Denton County, Texas, and being part of that called 16.597 acres of land described in deed to Phillip J. Anton and Karen M. Anton as recorded under Document No. 95-065740 of the Official Public Records of Denton County, Texas, and being all of that called 6.703 acres of land described in deed to Phillip John Anton and Karen Marie Anton as recorded under Document No. 2005-92268 of the Official Public Records of Denton County, Texas, and being all of that called 0.496 acres of land described in deed to Robert J. Houlihan, Trustee of the Jacqueline A. Houlihan Family Trust as recorded under Document No. 2015-75671 of the Official Public Records of Denton County, Texas, and being further described as follows:

BEGINNING at a 1/2 inch steel rod found on the North line of F.M. Highway No. 428 (Spring Hill Road), at the Southeast corner of said 6.703 acres, and at the Southwest corner of that called 12.381 acres of land described in deed to Ganesh V. Ramachandru and Naga Srivalli Paramathmuni as recorded under Document No. 2020-156040 of the Official Public Records of Denton County, Texas;

THENCE along the North line of said F.M. Highway No. 428 as follows:

South 89 degrees 45 minutes 31 seconds West, 1256.89 feet to a 5/8 inch steel rod set at point of curve;

Southwesterly, 381.54 feet along said curve to the left having a radius of 1185.92 and a central angle of 18 degrees 26 minutes 00 seconds (Chord bears South 80 degrees 32 minutes 31 seconds West, 379.89 feet) to a 5/8 inch steel rod set at point of tangent;

South 71 degrees 19 minutes 31 seconds West, 315.74 feet to a 1/2 inch steel rod found at the Southwest corner of said 0.496 acres, and at the Southeast corner of that called 27.106 acres of land described in deed to Aubrey Farms, LLC as recorded under Document No. 2019-83125 of the Official Public Records of Denton County, Texas;

THENCE North 01 degrees 48 minutes 48 seconds East (Directional Control Line), 1679.05 feet along the West line of said 94.58 acres to a point at the Northwest corner of said 94.58 acres, and at the Northeast corner of said 27.106 acres, from which a 1/2 inch steel rod found bears South 01 degrees 48 minutes 48 seconds West, 2.24 feet;

THENCE North 89 degrees 32 minutes 37 seconds East, 2643.52 feet to a 1/2 inch pipe found at the Northeast corner of said 16.597 acres;

THENCE South 01 degrees 18 minutes 33 seconds East, 991.42 feet along the East line of said 94.58 acres to a point in the center of a creek, and at the Northeast corner of said 12.381 acres, from which a 5/8 inch steel rod set bears North 01 degrees 18 minutes 33 seconds West, 30.00 feet for witness;

THENCE along the center of said creek as follows:

North 67 degrees 11 minutes 54 seconds West, 134.20 feet;  
North 60 degrees 12 minutes 12 seconds West, 47.31 feet;  
North 00 degrees 39 minutes 21 seconds East, 145.86 feet;  
North 24 degrees 22 minutes 23 seconds West, 181.86 feet;  
North 76 degrees 53 minutes 43 seconds West, 76.64 feet;  
South 41 degrees 19 minutes 15 seconds West, 43.91 feet;  
South 06 degrees 33 minutes 05 seconds East, 72.95 feet;  
South 53 degrees 04 minutes 26 seconds West, 120.49 feet;  
South 15 degrees 35 minutes 17 seconds West, 231.79 feet;  
North 86 degrees 39 minutes 17 seconds West, 169.91 feet;  
South 61 degrees 41 minutes 28 seconds West, 156.28 feet to a point on the East line of said 6.703 acres, and at the Northwest corner of said 12.381 acres, from which a 5/8 inch steel rod set bears South 01 degrees 17 minutes 30 seconds East, 65.00 feet for witness;

THENCE South 01 degrees 17 minutes 30 seconds East, 478.49 feet along the common line of said 6.703 acres and said 12.381 acres to the POINT OF BEGINNING, containing 82.64 acres of land.



## EXHIBIT B

### LAW-BASED SECTIONS

**L-B.1 POLITICAL SIGNS.** Political signs may be erected upon a Lot by the Owner of the Lot advocating the election of one (1) or more political candidates or the sponsorship of a political party, issue, or proposal provided that such signs shall not exceed four (4) square feet, shall be erected no more than ninety (90) days in advance of the election to which they pertain, and are removed within ten (10) days after the election. Declarant or the Association shall have the right to remove any sign that does not comply with the above, and in doing so shall not be subject to any liability in connection with such removal.

**L-B.2 DISPLAY OF CERTAIN RELIGIOUS ITEMS.** An Owner or Resident is permitted to display or affix to the entry of the Owner's Residence one or more religious items, the display of which is motivated by the Owner's or Resident's sincere religious belief. This policy outlines the standards that shall apply with respect to the display or affixing of certain religious items on the entry to the Owner's Residence.

- (a) **General Guidelines.** Religious items may be displayed or affixed to an Owner's entry door or door frame of the Owner's Residence; provided, however, that individually or in combination with each other, the total size of the display is no greater than twenty-five square inches (5"x5"= 25 square inches).
- (b) **Prohibitions.** No religious item may be displayed or affixed to an Owner's Residence that: (i) threatens the public health or safety; (ii) violates applicable law; (iii) contains language, graphics, or any display that is patently offensive for reasons other than its religious content; (iv) is in a location other than the owner's or resident's property or dwelling, *i.e.*, installed on property owned or maintained by the Association, or owned in common by two or more members of the Association; (v) is located in violation of any applicable building line, right-of-way, setback, or easement; or (vi) is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture. No religious item may be displayed or affixed in any location other than the entry door or door frame and in no event may extend past the outer edge of the door frame of the Owner's Residence. Nothing in this policy may be construed in any manner to authorize an Owner to use a material or color for an entry door or door frame of the Owner's Residence or make an alteration not the entry door or door frame that is not otherwise permitted pursuant to the Governing Documents.
- (c) **Display Parameters.**
  - (i) All religious displays must be located within 5' of the dwelling's frontmost building line (*i.e.*, within 5' of the front facade of the dwelling.)
  - (ii) Displays may not be located within building setbacks.
  - (iii) No portion of the display may extend above the lowest point of the dwelling's front roof line.
  - (iv) All displays must be kept in good repair.
  - (v) Displays may not exceed 5' in height x 3' in width x 3' in depth.
  - (vi) The number of displays is limited to three (3).
  - (vii) These display parameters shall not apply to seasonal religious holiday decorations.
  - (viii) All religious item displays other than seasonal religious displays must receive prior approval from the ACC prior to installation, except for displays on any exterior door or door frame of the Residence that are 25 square inches or smaller. For example, and

without limitation, no prior permission is required from the ACC to place a cross, mezuzah, or other similar religious symbol smaller than 25 square inches on the dwelling's front door or door frame.

- (d) Removal. The Association may remove any item which is in violation of the terms and conditions of this section.
- (e) Covenants in Conflict with Statutes. To the extent that any provision of the Restrictions restrict or prohibit an Owner from displaying or affixing a religious item in violation of the controlling provisions Texas Property Code § 202.018, the Association shall have no authority to enforce such provisions and the provisions of this policy shall hereafter control.

L-B.3 RAINWATER HARVESTING SYSTEMS. Texas statutes presently render null and void any restriction in the Declarations which prohibits the installation of rain barrels or a rainwater harvesting system on a residential Lot. The policy is adopted in lieu of any express prohibition against rain barrels or rainwater harvesting systems, or any provision regulation such matters which conflict with Texas law, as set forth in the Restrictions.

L-B.3.1 ACC APPROVAL REQUIRED. Approval by the ACC is required prior to installing rain barrels or a rainwater harvesting system on a Lot ("Rainwater Harvesting System"). The ACC is not responsible for (a) errors in or omissions in the application submitted to the ACC for approval; (b) supervising installation or construction to confirm compliance with an approved application; or (c) the compliance of an approved application with governmental codes and ordinances and state and federal laws.

L-B.3.2 PROCEDURES AND REQUIREMENTS.

(a) APPROVAL APPLICATION. To obtain ACC approval of a Rainwater Harvesting System, the Owner or Resident shall provide the ACC with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction ("Rain System Application"). A Rain System Application may only be submitted by an Owner unless the Owner's Resident provides written confirmation at the time of submission that the Owner consents to the Rain System Application.

(b) APPROVAL PROCESS. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the Restrictions. A Rain System Application submitted to install a Rainwater Harvesting System on property owned by the Association will not be approved. A proposal to install a Rainwater Harvesting System on property owned by the Association must be approved in advance and in writing by the Board and the Board need not adhere to this policy when considering any such request. Each Owner is advised that if the Rain System Application is approved by the ACC, installation of the Rainwater Harvesting System must: (i) strictly comply with the Rain System Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. IF the Owner fails to cause the Rain System Application to be installed in accordance with the approved Rain System Application, the ACC may require the Owner to: (i) modify the Rain System Application to accurately reflect the Rain System Device installed on the Lot; or (ii) remove the Rain System Device and reinstall the device in accordance with the approved Rain System Application. Failure to install a rain System Device in accordance with the approved Rain System Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement

imposed by the ACC to resubmit a Rain System Application or remove and relocate a rain System Device in accordance with the approved Rain System shall be at the Owner's sole cost and expense.

(c) APPROVAL CONDITIONS. Unless otherwise approved in advance and in writing by the ACC, each Rain System Application and each Rain System Device to be installed in accordance therewith must comply with the following:

(i) The Rain System Device must be consistent with the color scheme of the Residence constructed on the Owner's Lot, as reasonably determined by the ACC.

(ii) The Rain System Device does not include any language or other content that is not typically displayed on such a device.

(iii) The Rain System Device is in no event located between the front of the Residence constructed on the Owner's Lot and any adjoining or adjacent street.

(iv) There is sufficient area on the Owner's Lot to install the Rain System Device, as reasonably determined by the ACC.

(v) If the Rain System Device will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, common area, or another Owner's property, the ACC may regulate the size, type, shielding of, and materials used in the construction of the Rain System Device. See below for additional guidance.

(d) GUIDELINES FOR CERTAIN RAIN SYSTEM DEVICES. If the Rain System Device will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, common area, or another Owner's property, the ACC may regulate the size, type, shielding of, and materials used in the construction of the Rain System Device. Accordingly, when submitting a Rain Device Application, the application should describe methods proposed by the Owner to shield the Rain System Device from the view of any street, common area, or another Owner's Lot. When reviewing a Rain System Application for a Rain System Device that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, common area, or another Owner's Lot, any additional regulations imposed by the ACC to regulate the size, type, shielding of, and materials used in the construction of the Rain System Device may not prohibit the economic installation of the Rain System Device, as reasonably determined by the ACC.

**LB-4** FLAG DISPLAY AND FLAGPOLE INSTALLATION. Texas statutes presently render null and void any restriction that restricts or prohibits the display of certain flags or the installation of certain flagpoles on a residential lot in violation of the controlling provisions of Texas Property Code § 202.011 or any federal or other applicable state law. The Declarant has adopted this policy in lieu of any express prohibition against certain flags and flagpoles, or any provision regulating such matters which conflict with Texas law, as set forth in the Restrictions

**LB-4.1** ARCHITECTURAL REVIEW APPROVAL.

(a) APPROVAL REQUIRED. Approval by the ACC is required prior to installing a flagpole no more than five feet (5') in length affixed to the front of a Residence near the principal entry or affixed to the rear of a Residence ("Mounted Flagpole"). A Mounted Flag or Mounted Flagpole must be approved in advance by the ACC. The ACC is not

responsible for: (i) errors in or omissions in the application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved application; or (iii) the compliance of an approved application with governmental codes and ordinances, state, and federal laws.

(b) **APPROVAL REQUIRED.** Approval by the ACC is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot (the "Freestanding Flagpole"). The ACC is not responsible for: (i) errors in or omissions in the application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved application; or (iii) the compliance of an approved application with governmental codes and ordinances, state, and federal laws.

#### **LB-4.2 PROCEDURES AND REQUIREMENTS**

(a) **APPROVAL APPLICATION.** To obtain ACC approval of any Freestanding Flagpole, the Owner shall provide the ACC with the following information: (a) the location of the flagpole to be installed on the Lot; (b) the type of flagpole to be installed; (c) the dimensions of the flagpole; and (d) the proposed materials of the flagpole (the "Flagpole Application"). A Flagpole Application may only be submitted by an Owner unless the Owner's Resident provides written confirmation at the time of submission that the Owner consents to the Flagpole Application.

(b) **APPROVAL PROCESS.** The decision of the ACC will be made within a reasonable time, or within the time period otherwise required herein, which govern the review and approval of improvements. A Flagpole Application submitted to install a Freestanding Flagpole on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install a Freestanding Flagpole on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Each Owner is advised that if the Flagpole Application is approved by the ACC, installation of the Freestanding Flagpole must: (i) strictly comply with the Flagpole Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Freestanding Flagpole to be installed in accordance with the approved Flagpole Application, the ACC may require the Owner to: (i) modify the Flagpole Application to accurately reflect the Freestanding Flagpole installed on the Lot; or (ii) remove the Freestanding Flagpole and reinstall the flagpole in accordance with the approved Flagpole Application. Failure to install a Freestanding Flagpole in accordance with the approved Flagpole Application or an Owner's failure to comply with the post approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Flagpole Application or remove and relocate a Freestanding Flagpole in accordance with the approved Flagpole Application shall be at the Owner's sole cost and expense.

**LB-4.3 INSTALLATION, DISPLAY, AND APPROVAL CONDITIONS.** Unless otherwise approved in advance and in writing by the ACC, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

(a) No more than one (1) Freestanding Flagpole or no more than two (2) Mounted Flagpoles

are permitted per Lot, on which only Mounted Flags may be displayed;

- (b) Any Mounted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;
- (c) Any Mounted Flag displayed on any flagpole may not be more than three feet (3') in height by five feet in width (3'x5');
- (d) With the exception of flags displayed on Common Area owned and/or maintained by the Association and any Lot which is being used for marketing purposes by a builder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. §§ 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;
- (e) The display of a flag, or the location and construction of the flagpole must comply with all applicable zoning ordinances, easements and setbacks of record;
- (f) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the Residence;
- (g) A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced, or removed;
- (h) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and
- (i) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

**LB-5 SOLAR DEVICE AND ENERGY EFFICIENT ROOFING.** Texas statutes presently render null and void any restriction that prohibits the installation of solar devices or energy efficient roofing on a residential lot. The Declarant has adopted this policy in lieu of any express prohibition against solar devices or energy efficient roofing, or any provision regulating such matters which conflict with Texas law.

**LB5-1 DEFINITIONS AND GENERAL PROVISIONS.**

- (a) **Solar Energy Device Defined.** A "Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for Use in heating or cooling or in the production of power.
- (b) **Energy Efficiency Roofing Defined.** As used in this Policy, "Energy Efficiency Roofing" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities.
- (c) **Architectural Review Approval Required.** Approval by the ACC is required prior to installing a Solar Energy Device or Energy Efficient Roofing. The ACC is not

responsible for: (i) errors in or omissions in the application submitted to the ACC for approval; (ii) supervising the installation or construction to confirm compliance with an approved application; or (iii) the compliance of approved application with governmental codes and ordinances, state, and federal laws.

**LB-5.2 SOLAR ENERGY DEVICE PROCEDURES AND REQUIREMENTS.**

(a) **Approval Application.** To obtain ACC approval of a Solar Energy Device, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application.

(b) **Approval Process.** The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the Restrictions. The ACC will approve a Solar Energy Device if the Solar Application complies with this Section UNLESS the ACC makes a written determination that placement of the Solar Energy Device, despite compliance with this Section will create a condition that substantially interferes with the use and enjoyment of the property within the community by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of property immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Notwithstanding the foregoing provision, a Solar Application submitted to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by members of the Association will not be approved despite compliance with this Section. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request. Each Owner is advised that if the Solar Application is approved by the ACC, installation of the Solar Energy Device must (i) strictly comply with the Solar Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Solar Energy Device to be installed in accordance with the approved Solar Application, the ACC may require the Owner to: (i) modify the Solar Application to accurately reflect the Solar Energy Device installed on the property; or (ii) remove the Solar Energy Device and reinstall the device in accordance with the approved Solar Application. Failure to install a Solar Energy Device in accordance with the approved Solar Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Solar Application or remove and relocate a Solar Energy Device in accordance with the approved Solar Application shall be at the Owners sole cost and expense.

**LB-5.3 APPROVAL CONDITIONS.** Unless otherwise approved in advance and in writing by the ACC, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

- (a) The Solar Energy Device must be located on the roof of the Residence located on the Owner's lot, entirely within a fenced area of the Owner's lot, or entirely within

a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the residence, the ACC designate the placement shall not be on the roof facing the Street or Road unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten (10) percent above the energy production of the Solar Energy Device if installed in the location designated by the ACC. If the Owner desires to contest the alternate location proposed by the ACC, the Owner should submit information to the ACC which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

- (b) If the Solar Energy Device is mounted on the roof of the principal Residence located on the Owner's lot, then: (i) the Solar Energy Device may not extend higher than or beyond the roofline; (ii) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (iii) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

**LB-5.4 ENERGY EFFICIENT ROOFING.** The ACC will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in the Restrictions. In conjunction with any such approval process, the Owner should submit information which will enable the ACC to confirm the criteria set forth in the previous paragraph.

**LB-6 DROUGHT RESISTANT LANDSCAPING.** As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping (the "Xeriscaping") upon written approval by the ACC. All Owners implementing Xeriscaping shall comply with the following:

**LB-6.1 APPROVAL REQUIRED.** As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping ("Xeriscaping") upon written approval by the ACC. All Owners implementing Xeriscaping shall comply as follows.

#### **LB6-2 PROCEDURES AND REQUIREMENTS**

- (a) **APPROVAL APPLICATION.** To obtain ACC approval to install Xeriscaping, the Owner shall provide the ACC with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks, and cacti (the "Xeriscaping Application"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's Resident provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The ACC is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved

Xeriscaping Application or (iii) the compliance of an approved application with Applicable Law.

(b) APPROVAL PROCESS. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth when considering any such request.

(c) APPROVAL CONDITIONS. Unless otherwise approved in advance and in writing by the ACC, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

- i. The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the ACC. For purposes of this Section LB6, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the ACC determines that: a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or b) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.
- ii. No Owners shall install gravel, rocks or cacti that in the aggregate encompass over ten percent (10%) of such Owner's front yard or ten percent (10%) of such Owner's back yard.
- iii. The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Lots, as reasonably determined by the ACC.

(d) APPROVAL. Each Owner is advised that if the Xeriscaping Application is approved by the ACC, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the ACC may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

**LB-7 SWIMMING POOL ENCLOSURES.** Texas statutes presently render null and void any restriction in the Declaration which prohibits the installation of a swimming pool enclosure on a residential Lot. The policy is adopted in lieu of any express prohibition against a swimming pool enclosure, or any



provision regulation such matters which conflict with Texas law, as set forth in the Restrictions. A "Swimming Pool Enclosure", as used herein shall mean and refer to a fence that surrounds a water feature, including a swimming pool or a spa, installed as a safety measure to prevent accidental drownings of children. A Swimming Pool Enclosure may not be installed upon or within common area or any area which owned or maintained by the Association. An Owner may submit plans for and install a Swimming Pool Enclosure upon written approval by the ACC. All Owners installing a Swimming Pool Enclosure shall comply as follows.

General Guidelines. The Swimming Pool Enclosure may be installed after receiving written approval from the Association's architectural review authority. The submittal shall include a pictorial design of the Swimming Pool Enclosure which includes, at a minimum, the height of the fence and the colors of all materials. The Swimming Pool Enclosure:

- a. may not exceed six feet (6') in height;
- b. may not include, as part of the design, any aspect or feature which would allow a child to climb on, up or over the fence;
- c. may consist of black metal frames; and
- d. may consist of clear plastic panels or black transparent mesh.

The Owner is solely responsible, to the exclusion of the Association, to ensure that all aspects of the Swimming Pool Enclosure function properly to effectuate its intended purpose as a safety measure to prevent accidental drownings of children.

**LB-8 SECURITY MEASURES.** Texas statutes presently render null and void any restriction in the Declarations which prohibits the installation or construction of security measures, including but not limited to a security camera, motion detector, or perimeter fence on a residential Lot ("Security Measure"). The policy is adopted in lieu of any express prohibition against security measures, or any provision regulation such matters which conflict with Texas law, as set forth in the Restrictions. Owners may install or build security measures on their lot for the purpose of deterring criminal acts or to increase personal security while adhering to and promoting the design, harmony, and aesthetics of the subdivision.

Owners may place cameras and motion detectors on their lot for security measures, not on the lot of any other owner, and not on any Association property. Cameras shall be used for the primary purpose of capturing images of the lot on which the camera is installed and shall not unreasonably interfere with the use and enjoyment of any neighbor's lot or Association property. Camera use will be limited to situations that do not violate the reasonable expectation of privacy as defined by law

**L-B.8.1 ACC APPROVAL REQUIRED.** Approval by the ACC is required prior to installing or constructing Security Measures on a Lot. The ACC is not responsible for (a) errors in or omissions in the application submitted to the ACC for approval; (b) supervising installation or construction to confirm compliance with an approved application; or (c) the compliance of an approved application with governmental codes and ordinances and state and federal laws.

**L-B.8.2 PROCEDURES AND REQUIREMENTS.**

(a) **APPROVAL APPLICATION.** To obtain ACC approval of a Security Measure, the Owner or Resident shall provide the ACC with the following information: (i) the proposed installation location of the Security Measure; and (ii) a description of the Security Measure, including the color, dimensions, manufacturer, and photograph or other accurate depiction ("Security Measure Application"). A Security Measure Application may only be submitted by an Owner unless the Owner's Resident provides written confirmation at the time of submission that the Owner consents to the Security Measure Application.

(b) APPROVAL PROCESS. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the Restrictions. A Security Measure Application submitted to install a Security Measure System on property owned by the Association will not be approved. Each Owner is advised that if the Security Measure Application is approved by the ACC, installation of the Security Measure must: (i) strictly comply with the Security Measure Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Security Measure Application to be installed in accordance with the approved Security Measure Application, the ACC may require the Owner to: (i) modify the Security Measure Application to accurately reflect the Security Measure installed on the Lot; or (ii) remove the Security Measure and reinstall the measure in accordance with the approved Security Measure Application. Failure to install a rain System Device in accordance with the approved Security Measure Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Security Measure Application or remove and relocate a rain System Device in accordance with the approved Security Measure Application shall be at the Owner's sole cost and expense.

(c) APPROVAL CONDITIONS AND GUIDELINES. Unless otherwise approved in advance and in writing by the ACC, each Security Measure Application and each Security Measure device to be installed in accordance therewith must comply with the following:

(i) Perimeter Fencing. Plans and specifications, including an application for the installation of a perimeter fence, will not be reviewed or approved by the ACC *unless* accompanied by: (i) the drawing showing materials, dimensions and location submitted in order to obtain a permit; and (ii) a permit issued by the applicable governmental municipality or agency allowing the installation. Perimeter fencing is permitted by the ACC as a security measure and must be ground-mounted on the boundary line of the Owner's lot and installed in a contiguous manner around the entirety of the Lot boundaries. No gaps in perimeter fencing are permitted, *i.e.*, the perimeter fencing must fully enclose the lot. Perimeter fencing shall not exceed six feet (6') in height or be lower than four feet (4') in height. A gate in a perimeter fence is for all purposes considered part of the fence. Any gate shall open towards the interior of the lot. The ACC may prohibit fencing other than perimeter fencing. All fencing including perimeter fencing must receive prior written approval from the architectural review authority. Perimeter fencing shall not consist of any barbed wire, razor wire, wire mesh, chain link, vinyl, or privacy fencing, including board-on-board or solid fencing. Electrically charged fencing is prohibited. The construction requirements for the original or existing fencing (located in or enclosing the backyard areas) are not replaced or superseded by this policy.

(ii) Plans and Specifications. Prior to installation of any Security Measure, the Owner must submit plans and specifications including dimensions, colors, materials, and proposed location on the Owner's Lot, scaled in relation to all boundary lines and other improvements on the Lot. Plans must be submitted to the ACC, and the Owner must receive prior written approval prior to installation of any Security Measure. All proposed installations must be of a type, including materials, color, design, and location, approved by the ACC. The ACC may require the use of, or prohibit, specific materials, colors, and designs and may require a specific location(s) for the Security Measure. An Owner who builds or installs a Security Measure must ensure that compliance with all laws, ordinances and codes. An approval of an application for a

Security Measure by the ACC is not a guaranty or representation of compliance with any laws, ordinances, codes or drainage requirements, and the owner assumes all risks, expenses and liabilities associated with Security Measures built or installed, including, but not limited to, the any governmental municipality or agency requiring the removal of perimeter fencing for any reason.

(iii) AN APPROVAL OF AN APPLICATION FOR A SECURITY MEASURE BY THE ACC SHALL IN NO WAY BE CONSIDERED OR CONSTRUED THAT THE ASSOCIATION OR ITS ACC ARE INSURERS OR GUARANTORS OF SECURITY OR SAFETY OF PERSONS, PROPERTY OR POTENTIAL CRIMINAL ACTIVITY. FURTHER, NEITHER THE ASSOCIATION NOR ITS ACC SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE OR INEFFECTIVENESS OF THE OWNER'S SECURITY MEASURE(S).

(iv) Any security measure built or installed must be properly maintained, kept in good repair, and not permitted to go into a state of disrepair or become an eyesore, as determined in the sole and absolute discretion of the Association.

**L-B-9 STANDBY ELECTRIC GENERATORS.** Texas statutes presently render null and void any restriction in the Declaration which prohibits the installation of a standby electric generator on a residential Lot. The policy is adopted in lieu of any express prohibition against a standby electric generator, or any provision regulation such matters which conflict with Texas law, as set forth in the Restrictions. A standby electric generator may not be installed upon or within Common Area properties or any area which is owned or maintained by the Association. An Owner may submit plans for and install a standby electric generator upon written approval by the ACC. All Owners installing a standby electric generator shall comply as follows.

A standby electric generator means a device that converts mechanical energy to electrical energy and is: (1) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen; (2) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure; (3) connected to the main electrical panel of a Residence by a manual or automatic transfer switch; and (4) rated for a generating capacity no greater than thirty (30) kilowatts.

**L-B-9.1 APPROVAL REQUIRED.** As part of the installation and maintenance of a standby electric generator on an Owner's Lot, an Owner may submit plans for and install the standby electric generator (the "Standby Electric Generator") upon written approval by the ACC. All Owners implementing a Standby Electric Generator shall comply with the following.

**L-B-9-2 PROCEDURES AND REQUIREMENTS**

- (e) **APPROVAL APPLICATION.** To obtain ACC approval to install a Standby Electric Generator, the Owner shall provide the ACC with the following information: (i) the proposed site location of the Standby Electric Generator on the Owner's Lot and (ii) a description of the Standby Electric Generator, including screening materials. The ACC is not responsible for: (i) errors or omissions in the Standby Electric Generator Application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved Standby Electric Generator Application or (iii) the compliance of an approved application with Applicable Law.
- (f) **APPROVAL PROCESS.** The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the Restrictions.

(g) APPROVAL CONDITIONS. Unless otherwise approved in advance and in writing by the ACC, each Standby Electric Generator Application and all Standby Electric Generators to be installed in accordance therewith must comply with the following:

- iv. Standby Electric Generators may not be installed or operated prior to approval by the Association pursuant to the Association's usual and customary policies and procedures set forth in the Restrictions.
- v. Standby Electric Generators shall be installed and maintained in compliance with the manufacturer's specifications and applicable governmental health, safety, electrical, and building codes.
- vi. All liquefied petroleum gas fuel line connections shall be installed in accordance with rules and standards promulgated and adopted by the Railroad Commission of Texas and other applicable governmental health, safety, electrical, and building codes.
- vii. All fuel (including natural gas, diesel fuel, biodiesel fuel and hydrogen fuel) and electrical connections shall be installed in accordance with applicable governmental health, safety, electrical, and building codes.
- viii. Non-integral Standby Electric Generator fuel tanks shall be installed and maintained to comply with applicable municipal zoning ordinances and governmental health, safety, electrical, and building codes.
- ix. Any Standby Electric Generator and its electrical lines and fuel lines shall be maintained in good condition.
- x. Any Standby Electric Generator, including its components, electrical lines, and fuel lines, shall be repaired, replaced, or removed if it becomes deteriorated or unsafe.
- xi. Standby Electric Generators shall be tested only between the hours of 9:00 a.m. and 6:00 p.m., and only consistent with the manufacturer's recommendations.
- xii. Other than testing, Standby Electric Generators shall not be used to generate all or substantially all of the electrical power to a Residence, except when utility-generated electric power to the Residence is not available or is intermittent due to other causes other than nonpayment for utility service to the Residence.
- xiii. Standby Electric Generators shall not be placed in the front yard of any Residence.
- xiv. A Standby Electric Generator shall be screened if it:
  - (D) is visible from the street faced by the Residence;
  - (E) is located in an unfenced side or rear yard of a Residence and is visible either from an adjoining Residence or from adjoining property owned by the Association; or
  - (F) is located in an unfenced side or rear yard fenced by a wrought iron or residential aluminum fence and is visible through the fence either from an adjoining Residence or from adjoining property owned by the Association.
- xv. Standby Electric Generators shall not be placed on property owned or maintained by the Association or owned in common by the Association's members, and no portion of the Generator may encroach on adjacent properties.
- xvi. Standby Electric Generators may be installed only with advance approval of the ACC subject to these guidelines.

- xvii. All electrical, plumbing, and fuel line connections must be installed only by licensed contractors. Licensed craftsmen must be used where required by law. Permits must be obtained where required by law.

**(h) APPROVAL.** Each Owner is advised that if the Standby Electric Generator Application is approved by the ACC, installation of the Standby Electric Generator must: (i) strictly comply with the Standby Electric Generator Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Standby Electric Generator to be installed in accordance with the approved Standby Electric Generator Application, the ACC may require the Owner to: (i) modify the Standby Electric Generator Application to accurately reflect the Standby Electric Generator installed on the property; or (ii) remove the Standby Electric Generator and reinstall the Xeriscaping in accordance with the approved Standby Electric Generator Application. Failure to install Standby Electric Generator in accordance with the approved Standby Electric Generator Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Standby Electric Generator Application or remove and relocate Standby Electric Generator in accordance with the approved Standby Electric Generator Application shall be at the Owner's sole cost and expense.

## **EXHIBIT C – CONSTRUCTION RELATED RESTRICTIONS**

The Declarant has used its best efforts to promote and ensure a high level of taste, design, quality, harmony, and conformity throughout the Property, consistent with the standards specified herein and in the Declaration, provided, however, that Declarant shall have sole discretion with respect to taste, design, and all standards specified herein so long as Declarant owns a Lot. These Construction Related Restrictions are attached to better insure that all individual improvements in Keeneland will conform to the same high standards of design excellence. The guidelines seek to establish a design framework which the individual Builder or homeowner will use as a guide for site improvement. These guidelines will, hopefully, serve to guide, inform, aid and inspire to the same extent as they serve to prohibit, restrict and require. While some features are mandated, it should be understood that the Architectural Control Committee ("ACC") may make discretionary judgments to reduce or waive any requirement when it can be demonstrated (to the reasonable satisfaction of the ACC) that appropriate mitigating measures have been taken. However, such discretionary approval(s) shall not represent or constitute a binding precedent since no two or more tracts or circumstances are likely to be the same. In this regard, Declarant promulgates the following construction related restrictions.

Governmental ordinances and regulations are applicable to all Lots within Keeneland. It is the responsibility of each Owner to obtain all necessary permits and inspections. Compliance with the construction related restrictions or Design Guidelines is not a substitute for compliance with the applicable ordinances and regulations. Please be advised that the construction related restrictions or Design Guidelines do not list or describe each requirement which may be applicable to a Lot within Keeneland. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot prior to submitting plans to the ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

**The Declarant or ACC may disapprove the construction or design of a Residence or Improvement on purely aesthetic grounds. Any prior decisions of the Declarant or ACC regarding matters of design or aesthetics will not be considered to establish a precedent for any future decision of the Declarant or ACC.**

The ACC shall bear no responsibility for ensuring plans submitted to the ACC comply with Applicable Law.

The architectural design philosophy of the project is intended to develop a look and feel of "timeless" architectural design. The vocabulary selected is based on the architectural traditions and design heritage of old-world classical architecture. French Eclectic, English Tudor, Italian Renaissance, Spanish Eclectic, Tuscan Italianate, Colonial Revival, and Early Classical Revival will be the typical influences. Other architectural styles will be considered. All street front exteriors are subject to aesthetic determination by the ACC. The ACC encourages architectural continuity through traditional architectural style and the use of complimentary materials. The ACC also encourages architectural diversity through variances of hips and gable roofs, roof pitch, building offsets, garage entrances, garage sizes, etc. While each Residence should complement adjacent structures, every Residence should have a unique identity through the use of detailing like cast stone, wrought iron, window treatments, dormers, turrets, flat work, tree placement, brick details, natural stone, combining brick and natural stone, gas lights, landscape illumination, etc. The ACC encourages the use of wood timbers, architectural structures, finials, decorative cornices, copper vents, decorative features, paint grip sheet metal, copper gutting and architectural details that individualize each residence.

1. Lot Standards.

- a) Lot Standards for 40' Lots (Fee-Simple, Detached Single-Family Homes):
  - (i) Minimum Lot width of 40'
  - (ii) Minimum Lot Depth of 120'
  - (iii) Front Yard Setback of 20'
  - (iv) Rear Yard Setback of 10'
  - (v) Side Yard Setback of 5'
  
- b) Lot Standards for 50' Lots (Fee-Simple, Detached Single-Family Homes):
  - (i) Minimum Lot width of 50'
  - (ii) Minimum Lot Depth of 120'
  - (iii) Front Yard Setback of 20'
  - (iv) Rear Yard Setback of 20'
  - (vi) Side Yard Setback of 5'
  
- c) Minimum Floor Area:
  - (i) 40' Lots 1,200 sf
  - (ii) 50' Lots 1,400 sf

2. Height Limitation. The maximum height of a Residence constructed on a Lot shall be two (2) stories or a maximum of forty-five (45) feet as measured to the midpoint of the pitched roof. Architectural projections above the forty-five (45) foot level may be allowed however these may not exceed sixty (60) feet in height. Lots 63-67 of Block A and Lots 1-11 Block J shall be limited to single story elevations unless approved by the ACC.

3. Sitework. Finished grades shall not direct concentrated water (*i.e.*, downspouts, pool overflows, sub-grade drainage systems) flow onto adjacent properties and should follow the applicable governmental ordinances, regulations, and requirements. Anytime a site is altered, it is the Approved Builder's or Owner's responsibility to provide the retainage. Retaining walls are to be consistent with retaining walls on site. The ACC reserves the right, upon reasonable advance notice, to require a topographical survey done by a registered surveyor before, during, or after construction.

4. Roof. All roofs shall have a minimum slope of 6:12 roof pitch on any front and side and a minimum slope of 4:12 on the rear. Roof pitches shall be appropriate to the style of the house. Vent stacks and other roof penetrations shall be placed on roof planes other than those visible from streets or common areas, unless specifically approved by the ACC. Roof material shall be architectural grade asphalt shingles, or better or other approved roof materials, and at all times shall comply with all applicable governmental ordinances, regulations, and requirements. The ACC shall maintain a list of all approved colors and will encourage a neutral color palate. Gabled roofs or hipped roofs are allowed. Gabled roofs or hipped roofs shall have a minimum pitch of 6:12, excluding porches, patios, and dormers.

5. Walls/Fencing/Screening:

- a) Fences. All perimeter fences must be constructed of wooden, or brick masonry material or materials. All fences shall be constructed so that the sides of the fence containing the structural supports are not facing any street right-of-way, Common Area, or school yard. All wood fences must be stained with Lone Star Dark Sierra Concent rate number 805111-5. Wood fences must include steel posts and the slats/pickets must be vertical. Tubular steel and metal picket fences shall be powder coated.

- b) Except for retaining walls constructed by Declarant, retaining walls built in front yards and side or rear yards facing green spaces shall be addressed in the following manner: (i) walls that do not cross property lines shall be constructed of brick, stone or complimentary material to coordinate with the residence on that particular lot; or (ii) walls that will need to cross property lines may be constructed of singular complimentary materials as determined by the ACC to avoid a "patchwork" look. The ACC shall approve all retaining wall locations, materials, and detailing.

6. Required Landscaping. All landscape is to be installed by the Approved Builder within thirty (30) days of substantial completion of a Residence on a Lot or change of ownership (closing) to an Owner and shall meet or exceed the minimum landscaping requirements established below. The minimum requirements are as follows:

- d) One Three-inch tree shall be planted on each Lot and one 50 gallon ornamental tree.
- e) 40' Lots shall have a minimum of Eight – 1 Gallon Shrubs, Eight 3 gallon shrubs, and One 10 Gallon Corner Plant.
- f) 50' Lots shall have a minimum of Ten – 1 Gallon Shrubs, Ten 3 gallon shrubs, and One 10 Gallon Corner Plant.

7. Irrigation. Each Lot must have a comprehensive front-yard and rear-yard automatic irrigation system.

8. Sidewalks & Driveways. Unless otherwise approved by the ACC, the Approved Builder of each single-family Residence shall construct, install, and provide a public sidewalk which shall comply with an applicable subdivision improvement plan and all applicable governmental ordinances, regulations, and standards. Concrete flatwork which is within the public right-of-way must be broom finished and may not be stained. Concrete flatwork not within the public right of way (including driveways and lead walks) may be stained, but only with ACC approval and with a stain color approved by the ACC.

9. Elevations. The intent of this guideline is to avoid the negative "look alike" effect of frequent repetition, while allowing sufficient latitude for the builder in satisfying market demand. The guidelines in the subsequent paragraph shall apply to all single family detached Residences only; all attached product offerings shall be subject ACC review and approval but shall not be required to adhere to the following guidelines.

Elevations cannot be repeated more frequently than every fourth (4<sup>th</sup>) house on the same side of the street and every third (3<sup>rd</sup>) house on the opposite side of the street. There must be a minimum of three (3) other elevations between Lots with same elevation.

10. Paint Colors. The trim colors of the house will be limited to a specific color family complimentary of the masonry selection. All exposed exterior flashing is to be painted a color to match the masonry color. Roof vents are to be painted a color to match the roof color or black. Once a house is completed by an Approved Builder, the ACC must approve any changes to the exterior color.

11. Exterior Construction. The masonry requirement for all residential construction is a minimum of 75% of the total structure. For this requirement Hardie Plank or similar products will count as masonry except as follows:



- a) 100% brick and or stone, or stucco coverage where structurally possible (exclusive of openings, insets, protrusions or areas under covered porches) is required on the front elevation; and
- b) The rear elevation of residences on all Perimeter Lots along FM 428 road shall be 100% brick and or stone, or stucco coverage where structurally possible (exclusive of openings, insets or protrusions); and
- c) The rear and/or side elevation of residences on any corner Lot or adjacent to streets, parks, playgrounds, or open space where the rear yard or side elevation is visible to public view shall be 100% brick and or stone, or stucco coverage, where structurally possible (exclusive of openings, insets or protrusions).

12. Garages. Each Residence shall have a garage capable of housing at least two (2) vehicles. No garage or accessory improvements shall exceed in height the Residence to which it is appurtenant. Garage doors shall be closed at all times except to allow the entry and exit of vehicles and persons and except when the garage is being cleaned or items are being stored in the garage. No carport is permitted on any Lot. All garages shall correspond in style, architecture, and exterior building materials with the Residence to which it is appurtenant.

13. Recreational Improvements. All children's play equipment, including, but not limited to, sand boxes and wading pools shall be kept in good repair and shall not be placed so as to be visible from a public right-of-way.

14. Storage of Building Materials. Subsequent to the initial construction of the Residence on the Lot, no building materials of any kind may be stored on any Lot for longer than one (1) week prior to the commencement of work for which the materials were purchased unless they are stored in an enclosed building or located such that they cannot be viewed from any other Lot.

15. Construction Clean-up. From time to time during construction as required to maintain a neat and orderly appearance, and upon completion of construction, the Owner of the Lot will be responsible for the removal of any trash or debris that may have been thrown, placed, or discarded on any part of the Lot or on any other Lot if the trash or debris originated at the Owner's Lot.

16. Lighting. In general, exterior lighting used in connection with the occupancy of a Residence shall be kept to the minimum required for safety and security. Landscape lighting is allowed. All exterior lights must have a bonnet or shield preventing the light from traveling in an upward direction and limiting its vertical travel. No mercury vapor or neon lights shall be used to illuminate the outside areas of a Lot. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to other Owners or Lots as determined by the ACC (or Board).

17. Antenna. No microwave dishes, radio, citizen band or otherwise, or television axial wires or antennas (collectively, "antenna") shall be maintained on any portion of any Lot, or in the Common Area, except direct broadcast satellite (DBS) antennae no more than 18" in diameter, multichannel multipoint distribution system (MMDS) antennae no more than 18" in diameter, or television broadcast antennae, all of which Owner shall screen from view as much as possible without impairing the installation, maintenance or use. All matters set forth in this provision require the express approval, in advance, of the ACC, which shall be exercised in conformity with the rules of the Federal Communications Commission.

**Except as expressly provided herein, no exterior radio or television antennae or aerial or satellite dish or disc, shall be erected, maintained, or placed on a Lot without the prior written approval of the ACC.**

(a) **Location of Antennae.** An antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, or any other portion of the Property. An antenna shall be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Property, other than the Lot. In order of preference, the locations of an antenna which will be considered least visible by the ACC are as follows:

- (i) Attached to the back of the principal single-family residence constructed on the Lot, with no part of the antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then
- (ii) Attached to the side of the principal single-family residence constructed on the Lot, with no part of the antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The ACC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of antennae.

18. **Building Codes.** All construction will comply with the Building Code, any other applicable local building codes or fire codes, and any other Applicable Laws, ordinances or regulations of any governmental body or agency.

19. **Subdividing or Combining Lots.** No Lot shall be subdivided into smaller lots and no Lot shall be platted into larger Lots, unless approved by the Declarant.

**EXHIBIT D -- HOMEOWNERS' ASSOCIATION DISCLOSURE SHEET**

We appreciate your choice to purchase a Residence and live in the Keeneland community. As you know, Keeneland is an Addition to the City of Aubrey and bound by certain restrictions related to the use of Owners' Lots and the maintenance of Common Areas in the subdivision. This information sheet is submitted for your and your Approved Builder's assistance to insure you have received the appropriate information to be well informed about the Keeneland subdivision. Please execute this sheet below to signify your voluntary acknowledgement and agreement to each of the following:

- You have received a copy of the Declaration of Covenants, Conditions and Restrictions for Keeneland.
- You acknowledge that the "Declarant" (Aubrey 81 West, LP, a Texas limited partnership) has developed the Keeneland addition and is not a co-venturer, partner, stockholder, member, or other owner of any Approved Builder in Keeneland. Neither Declarant nor its owners or representatives will stand behind or guarantee the performance by any Approved Builder of any of its contractual or other obligations to an Owner.
- You acknowledge that traffic control and law enforcement shall be enforced by the applicable governmental agency. Association may, but is under no obligation or duty, also seek to hire private traffic control and security to the extent such does not violate any municipality or agency requirements and as deemed reasonable and necessary in the Board's sole discretion.
- You have received the Homeowner's Association Information Sheet for Keeneland.
- You have received all disclosures required by (i) the Declaration, or (ii) your Contract with your Approved Builder.

Homeowner's Signature:

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Date: \_\_\_\_\_

Homeowner's Signature:

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Date: \_\_\_\_\_