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**AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PANTHER CREEK**

THE STATE OF TEXAS

1317 184

COUNTY OF HAYS

WITNESSETH:

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of this 30th day of May, 1997, by JAMES S. ERNST ("Declarant"), pursuant to Section 7.3 (a) of the original Declaration dated January 29, 1997, filed at Volume 1286, Page 153 of the Real Property Records of Hays County, Texas, and amends the Declaration to provide as follows:

RECITALS:

- A. Declarant is the owner of the Property (as defined below).
- B. The Lots (as defined below) are intended to be developed for single family residential purposes.
- C. Declarant desires to create upon the Property (as defined below) a residential community with agricultural benefits and to carry out a uniform plan for the improvement and development of the Property for the benefit of the present and future owners of the Lots.
- D. Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of common areas and, to that end, desires to subject the Property to the covenants, conditions and restrictions set forth in this Declaration, each of which is for the benefit of the Property and each Owner (as defined below).
- E. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an owners association, to which association Declarant, on and subject to the provisions of this Declaration, shall delegate and assign its powers and obligations with respect to (i) maintaining, administering and enforcing these covenants and restrictions, (ii) operating, maintaining and repairing the Common Area and Facilities (as defined below), and (iii) collecting and disbursing the assessments and charges herein created.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared that (i) all of the Property shall be held, owned, encumbered, elapsed, used, sold conveyed, occupied and enjoyed subject to the following covenants, conditions, restrictions, agreements, terms and provisions which are for the purpose of protecting the value and desirability of the Lots and other portions of the Property, (ii) the covenants, conditions, restrictions, agreements, terms and provisions of this Declaration shall run with the Property and shall be binding on, and shall inure to the benefit of, each and every Person (as defined below) having any right, title, or interest in or to all or any portion of the Property, and their respective heirs, executors, administrators, successors, and assigns; and (iii) each contract, deed, lease, or Mortgage (as defined below) which may hereafter be executed with regard to all or any portion of the Property shall conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions, restrictions, agreements, terms and provisions regardless of whether or not the covenants, conditions, restrictions, agreements, terms and provisions of this Declaration are set out or referred to in said contract, deed, lease or Mortgage.

ARTICLE 1 DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.1 Architectural Committee. "Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of improvements upon the Property.

1.2 Architectural Committee Rules. "Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as the same may be amended from time to time.

1.3 Articles. "Articles" shall mean the Articles of Incorporation of Panther Creek Owners Association, Inc., which have been filed in the office of the Secretary of State of the State of Texas, and as amended from time to time.

1.4 Assessment(s). "Assessment(s)" shall mean assessment(s) levied by the Association and includes both regular and special assessment(s) as provided in Article 5 hereof.

1.5 Association. "Association" shall mean Panther Creek Owners Association, as created and empowered under and in accordance with this Declaration.

1.6 Beneficiary. "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust.

- 1.7 Board. "Board" shall mean the Board of Directors of the Association.
- 1.8 Building. "Building" shall mean a structure, including a residence, having a roof supported by columns or walls.
- 1.9 Bylaws. "Bylaws" shall mean the Bylaws of the Association which may be adopted by the Board, as the Bylaws may from time to time be amended.
- 1.10 Common Area and Facilities. "Common Area and Facilities" shall mean (a) all portions of the Subdivision designated as common area on the Plat, (b) any and all lots, tracts or parcels of land out of the Development designated by Declarant as common areas or for the benefit of the Owners and conveyed to the Association for the common benefit of the Owners, (c) the Private Road, (d) any drainage facilities (such as culverts), which service the Lots (or any of the Lots) and require maintenance, repair or management by the Owners or the Association, and (e) all improvements, equipment, and other facilities located on any of the above described properties which are owned, operated, maintained, and/or repaired by the Association.
- 1.11 Declarant. "Declarant" shall mean James S. Ernst and his duly authorized representatives, heirs, successors, or assigns.
- 1.12 Declaration. "Declaration" shall mean this instrument, as this instrument may from time to time be amended or supplemented.
- 1.13 Development or Improvement(s). "Development" or "Improvement(s)," as used interchangeably in this Agreement, shall include Buildings, dwellings, roads and other structures and all appurtenances thereto of every type and kind, including but not limited to outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, playscapes, treehouses, swing sets, fences, screening walls, retaining walls, stairs, steps, porches, mailboxes, walkways, driveways, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, exterior lighting fixtures and equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, aerials, satellite dishes, wind generators, solar collectors, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television and other utilities.
- 1.14 Governmental Authority. "Governmental Authority" shall mean the United States of America, the State of Texas, the County, and any other political or governmental subdivision in which the Property is located, in whole or part, and any other political subdivision, agency or instrumentality exercising jurisdiction over the Property.
- 1.15 Governmental Requirements. "Governmental Requirements" shall mean all laws, statutes, codes, ordinances, rules and regulations of any government authority applicable to the Property and/or the use, enjoyment, operation, maintenance or ownership of the Property.

1.16 Lot. "Lot" or "Lots" shall mean any lot included in the Subdivision as shown on the Plat.

1.17 Member. "Member" shall mean any person or entity holding membership rights in the Association.

1.18 Mortgage. "Mortgage" shall mean any lien covering any portion of the Property given to secure the payment of a debt.

1.19 Mortgagee. "Mortgagee" shall mean the holder of any Mortgage.

1.20 Owner. "Owner" shall mean a person or entity including Declarant, holding a fee simple interest in any Lot or other portion of the Property (other than the Common Area and Facilities), but shall not mean a Mortgagee until and unless any such Mortgagee acquires and owns a fee simple interest in a Lot or other portion of the Property (other than the Common Area and Facilities).

1.21 Person. "Person" shall mean any individual, corporation, partnership (general or limited, joint venture, trust (or trustee), executor, administrator, guardian, association, estate or other entity having the legal right to hold title to real property.

1.22 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction, erection, removal or material alteration of any Improvement on any Lot, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.23 Plat. "Plat" shall mean the map or plat recorded in Volume 7, Pages 309-311, in the Plat Records of Hays County, Texas, evidencing and providing for the subdivision of the Property as Panther Creek, a subdivision formed in accordance with applicable Governmental Requirements relating to the subdivision of property in Hays County, Texas.

1.24 Property. "Property" shall mean and refer to all real property located in the Subdivision subject to this Declaration, according to, and as set forth on, the Plat and more fully described by metes and bounds on Exhibit A attached to, and for all purposes made a part of, this Declaration.

1.25 Restrictions. "Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with the Rules, and the Articles and Bylaws of the Association from time to time in effect.

1.26 Private Roads. "Private Roads" shall mean the private roads located on the Property and providing access to the Lots and ingress to and egress from the Subdivision, as more fully shown and provided for on the Plat.

1.27 Rules. "Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

1.28 Subdivision. "Subdivision" shall mean Panther Creek, the subdivision formed and created out of the Property by Declarant.

ARTICLE 2 RESTRICTIONS

All of the Property shall be owned, encumbered, mortgaged, leased, used, occupied, enjoyed, sold and conveyed subject to the following terms, conditions, covenants, conditions and restrictions:

2.1 Dwellings. No more than two (2) dwellings shall be constructed or placed on any Lot without a further subdivision of the subject Lot. If any dwelling or dwellings are constructed on a particular Lot, at least one (1) dwelling located on that Lot shall be a detached single family residence that complies with Section 2.22. The other dwelling may be a detached guest house or apartment. The term "dwellings" shall include any improvement used, intended to be used, or allowed to be used as a temporary or permanent habitation for people. The restrictions and limitations in this Section 2.1 shall not prohibit, restrict or limit the number of other Improvements on a Lot which are appurtenant to any dwelling on a Lot or which are placed on a Lot for any other lawful and permitted purpose, including, without limitation, barns, corrals, storage sheds, greenhouses, patios, tennis courts, swimming pools, garages, storage buildings, cabanas, playscapes, tree houses, swing sets, fences, screening walls, retaining walls, porches, driveways, decks, air conditioning equipment, water softening fixtures or equipment, exterior lighting fixtures and equipment, poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, aerials, satellite dishes, wind generators, solar collectors, and towers. Unless the prior written approval of the Architectural Committee is obtained, no Improvement (other than antennae) constructed or placed on any Lot shall exceed the height of the principal dwelling on such Lot.

2.2 Rubbish, Debris and Solid Waste. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot and no odors shall be permitted to arise therefrom so as to render any Lot unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. No Lot shall be used as a dumping ground for any rubbish, trash, garbage, appliances, inoperable vehicles, inoperable trailers, equipment, hazardous or toxic materials or any other kind of solid waste. Refuse, garbage and trash shall be kept at all times in covered containers and all such containers shall at all times be kept within an enclosed structure or appropriately screened from view of all adjacent property, the private roads, and any public road

or street; provided, however, garbage containers shall be permitted to be placed outside of enclosed structures and may be removed from screened areas for purposes of regularly and routinely scheduled garbage collection.

2.3 Hazardous Activities: Fertilizers, Pesticides and Herbicides. No activities shall be conducted or allowed to exist on any Lots and no Improvements shall be constructed on any Lot that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, activities that are expressly prohibited include (1) any activities which may be offensive or hazardous by reason of odor, fumes, dust, smoke, noise, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion, or (2) the discharge or leakage of any type of hazardous or toxic chemical or material, provided, however, materials and activities that are customarily used for residential and agricultural purposes, including construction shall be allowed on the Lots.

2.4 Drainage Patterns. There shall be no interference with the established patterns on, over and across any Lot which would materially alter or affect the established drainage pattern on, over and across any other Lot or the Road unless adequate provision is made for proper drainage in accordance with all applicable Governmental Requirements and the prior written approval of the Architectural Committee or the Owners of all affected Lots is obtained.

2.5 Compliance with Provisions of this Declaration and Development Agreement. Each Owner shall comply with the provisions of this Declaration. Failure to comply with any provision of this Declaration shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover the sums due for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.

2.6 Insurance Rates. Without the prior written approval of the Board, nothing shall be done or kept on any Lot or any other portion of the Property which would increase the rate of insurance or cause the cancellation of insurance on any other Lot or any of the Improvements located on any other Lot.

2.7 Subdividing. Except as otherwise expressly provided in this Declaration, no Lot shall be further divided or subdivided unless the Lot contains fifty (50) acres or more. A Lot containing fifty (50) acres or more may be subdivided provided the minimum acreage in each resulting Lot will contain twenty-five (25) acres or more and the subdivision of Lot satisfies to all applicable Governmental Requirements.

2.8 Signs. Except as otherwise expressly provided in this paragraph, no sign of any kind shall be displayed to the public view on the Property without the prior written approval of the Architectural Committee. Declarant may erect and maintain a sign or signs deemed reasonable and necessary for the construction, development, operation, promotion, leasing and sale of any or all of the Lots or any other portion of the Property. During the period of construction of the principal dwelling on any Lot, the Owner, or the Owner's builder or

construction lender, may place one professional sign (of not more than six square feet in size) on the subject Lot for advertising and sale promotion. Finally, a dignified "for sale" sign (of not more than six square feet in area) may be placed by the Owner of the Lot on such owner's Lot, and a sign of not more than four (4) square feet at the entrance to the Subdivision for purposes of marketing and selling the subject Lot. Notwithstanding anything in this paragraph to the contrary, no paper or cardboard signs may be placed or located on any Lot.

2.9 Noise. Except as provided below, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any of the Property; provided, that an Owner may install exterior speakers on a dwelling or other Building located on the Owner's Lot. No 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 Lot or to the occupants of any other Lot or on any Improvement connected to, or ancillary to, the dwelling located on the Owner's Lot.

2.10 Construction of Improvements. Except for Improvements included in the Common Area and Facilities, no Improvement may be constructed, removed or materially altered upon or from any portion of the Property without the prior written approval of the Architectural Committee. Prior to commencement to any construction, removal or material alteration of any Improvement or landscaping on any Lot, the Plans and Specifications therefore shall be submitted to the Architectural Committee for approval in accordance with the provisions of Article 3 below, and the subject construction, alteration or removal may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing in accordance with the provisions of Article 3 below. Once approved in writing by the Architectural Committee, the subject construction, alteration or removal shall be substantially completed in conformance to the approved Plans and Specifications. In approving the Plans and Specifications for any such construction, alteration or removal of any Improvement on any Lot, the location and placement of all Improvements on any Lot is, and shall be, subject to the prior written approval of the Architectural Committee. The Architectural Committee may reasonably require that garages, decks, guest houses, cabanas or other Improvements be placed so as not to be visible from the otherwise be screened from visibility from the private roads.

2.11 Repair of Improvements. All Improvements upon any of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof.

2.12 Alteration or Removal of Improvements. The construction or material alteration of any Improvement on any Lot other than normal maintenance, which in any way materially alters the exterior appearance of any Improvement, and/or the removal of any material portion of any Improvement on any Lot, shall be performed only with the prior written approval of the Architectural Committee.

2.13 Temporary Structures. Except as provided below, no tent, shack or other

temporary building, improvement or structure shall be placed upon the Property without prior written approval of the Architectural Committee; provided, however, that temporary structures necessary for storage of tools and equipment, restrooms and office space for architects, builders and foremen during the period of actual construction on a Lot only may be maintained with the prior approval of the Architectural Committee, which most expressly limit the approval based on the nature, size, duration and location of such structure.

2.14 Mining and Drilling. Except as provided below, no portion of the Property shall 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; provided, however, that water wells may be drilled and maintained on any Lot subject to compliance with all applicable Governmental Requirements and any applicable Restrictions; and, provided further, that, at any and all times prior to substantial completion of the Private Roads, Declarant may excavate and remove caliche, earth, gravel, sand and other materials from any location within the Property. Declarant, however, shall not have the right to excavate or remove any material on any lot that has been placed under Contract or sold unless written permission has been provided to Declarant. In the event a water well is drilled on a Lot, the subject well shall be of standard construction and should be cased in a workman like manner from the surface of the ground to the producing strata. Any water well drilled and maintained on a Lot shall be installed in a manner so as to prevent contamination of the underground water supply servicing the Lots and other portions of the Property. Except with the prior written approval of the Architectural Committee, no water well shall be located less than (i) fifty (50) feet from any boundary line of a Lot, or (ii) one hundred fifty (150) feet from the boundaries of any septic system located on any Lot.

2.15 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining Lots, the Private Roads, or public roads adjacent to or near the subdivision. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickup trucks, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Lot Owners shall not keep more than two (2) automobiles in such manner as to be visible from adjacent Lots, the Private Roads, or public roads adjacent to or near the Subdivision for any period in excess of seventy-two (72) hours. No automobiles or other vehicles may be parked overnight on the Private Roads. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse of trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.

2.16 Mobile Homes and Recreational Vehicles. Except for temporary construction office trailers, no mobile homes, mobile offices, pre-manufactured home or modular type home shall be parked or placed at any time on any Lot on the Private Roads.

2.17 Animals - Domestic Pets and Livestock. Except as otherwise provided below (i) no domestic pet or livestock shall be allowed to make an unreasonable amount of noise, or to become a nuisance; (ii) no domestic pets or livestock will be allowed to run at large on the Property beyond the boundaries of the Lot of the Owner of the subject domestic pets or livestock; and (iii) all domestic pets and livestock kept by an Owner on the Owner's Lot shall be kept within enclosed areas within the Owner's Lot; provided that domestic pets are allowed beyond the boundaries of the Lot of its Owner if confined to a leash, and two or more Owners may by express agreement nullify (ii) and (iii) with respect to Lots they own. The enclosures on a Lot for domestic pets and livestock required under the preceding sentence shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions of this Declaration. The number of livestock maintained, raised and/or kept on any Lot (other than a Lot owned by Declarant) shall be limited and restricted to the numbers and amounts per acre set forth below. For each five acres of area within a Lot, the Owner of the Lot may raise and maintain one cow, one horse, two sheep, two goats, two rheas, two emus, two ostriches, or five (5) adult chickens or similar poultry. The limitations on livestock set forth in the preceding sentence are exclusive by type of livestock and maintaining one type of livestock per five acres of area within a Lot shall restrict and exclude maintaining any other type of livestock for the five acres of area allocated to the type of livestock actually maintained. Except for the livestock expressly mentioned above, (i) no other type of livestock may be kept and maintained on any Lot without the prior written consent of the Association, and (ii), even with the consent of the Association, no hogs, pigs or swine of any type may be maintained on any Lot. As used in this Section 2.17, the term "livestock" shall mean farm and ranch animals customarily and commonly kept for use and/or profit by farmers and ranchers in Hays County, Texas and counties contiguous with Hays County, Texas, and all types of livestock permitted under this Section 2.17.

2.18 Lawns, Plantings and Gardens. Each Owner shall keep all shrubs, trees, grass, plantings and other Landscaping of every kind on such Owner's Lot cultivated, pruned, free of trash and other unsightly material. Gardens for planting, growing and harvesting crops may be maintained on a Lot provided that no crops are grown for commercial purposes.

2.19 Construction Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot or other portion of the Property (including the Private Roads and other Common Area and Facilities and any easements located within the Property). Specifically, no such construction activities shall 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

reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for a reasonable period of such construction.

2.20 Liability of Owners for Damage to Common Area and Facilities. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area and Facilities without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to (i) the Common Area and Facilities, or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damage is caused by the neglect, misuse or negligence of such Owner any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectible in the same manner as provided in Section 7.06 hereof, including but not limited to foreclosure of such lien.

2.21 Residential Use of Lots. Except as otherwise permitted under Section 2.30 of this Declaration, all Lots (but excluding the Private Road and any other Common Area and Facilities) shall be improved and used solely for (i) single family residential use, inclusive of a garage, fencing and other Improvements as are necessary, or customarily incident to residential use in comparable single family residential subdivisions and developments, (ii) agricultural uses expressly permitted under the provisions of this Declaration, and/or (iii) greenbelt, open space or other use approved by the Declarant or permitted under the provisions of this Declaration. Except as expressly otherwise provided in other Sections of this Declaration, no business or commercial enterprises of any kind shall be conducted or permitted on any Lot or any other portion of the Property.

2.22 Dwelling Size. The single family residence constructed and built on each Lot shall contain not less than 1,800 square feet of enclosed living space, exclusive of porches (open or covered), decks, garages and carports. This shall not apply to any residence or structure existing prior to the date of the original Declaration.

2.23 Building Materials. All building materials shall be approved by the Architectural Committee, and only new building materials (except for used brick) shall be used in constructing any Improvements. Roofing materials will be used with the prior written consent of the Architectural Committee, which may specify a minimum quality or grade of materials. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the color of the surface from which they project, or shall be of a color approved by the Architectural Committee. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including without limitation the exterior surfaces of any Improvements. All of the exposed surface of the exterior front and side walls of the first story of all single-family dwellings (exclusive of roofs, eaves, soffits,

windows, gables, and trim work) shall be constructed of masonry, stone or other materials specifically approved in writing by the Architectural Committee.

2.24 Construction in Place. All dwellings constructed on the Property shall be built in place on the Lot and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Committee.

2.25 Setback Requirements. Without the prior written consent of the Architectural Committee, no building shall (i) be located or erected nearer than one hundred and fifty (150) feet from any road, one hundred (100) feet from the rear property line, and one hundred (100) feet from all side property lines; (ii) be located or erected nearer to any Lot line bordering a street right of way than is indicated by any building line shown on the Plat or (iii) be located within an easement (whether shown on the Plat or otherwise of record). Additionally, except with the prior written approval of the Architectural Committee, no part of any stable, corral or other ancillary building shall be located nearer to the Road than the rear building line of the principal dwelling located on the Lot. For the purposes of these covenants, eaves, steps and open porches shall not be considered as part of the building; provided, however, that this shall not be construed to allow any such structure to encroach upon another Lot.

2.26 Rentals. Any dwelling on a Lot, or any Lot, may not be rented to any other Person or Persons except as permitted under the provisions of this Section 2.26. No Lot, portion of a Lot, or combination of one or more dwellings on a Lot may be leased to more than four adults at any one time.

2.27 Unfinished Structures. No house or other structure shall remain unfinished for more than twelve (12) months after construction of the subject home or structure has been commenced.

2.28 Septic Systems. Any septic system placed, maintained and operated on any Lot shall comply with all applicable Governmental Requirements and all applicable Restrictions. The septic system located on any Lot shall not be placed nearer than one hundred fifty (150) linear feet from any water well located on any Lot. The preceding restriction relating to the location of septic systems in relation to water wells applies to all portions of each septic system, including the absorption field.

2.29 Fences. Except as otherwise provided in this Section 2.29 the prior written approval of the Architecture Committee must be obtained before any fence is built. The Architectural Committee may, in its discretion, prohibit the construction of any proposed fence, specify the height or location of the proposed fence, specify the materials of which any proposed fence must be constructed, or require that any proposed fence be screen by Landscaping or other approved materials; provided, however, that the Architectural Committee shall permit barbwire, net wire, rock, ornamental pipe, and bull wire as materials for fences on any Lot. This Section

2.29 shall not limit or restrict the construction, maintenance and/or repair of any fence located on the portion of any Lot between the dwelling located on the subject Lot and the rear property line of the subject Lot.

2.30 Home Occupations. The Owner of any Lot may use the dwelling and any ancillary Buildings located on the subject Lot for a home occupation, subject to the following terms, conditions and limitations:

- (a) The home occupation shall be conducted entirely within the single family residence and/or any ancillary building(s) located on the Lot. The single family residence located on the Lot shall be the bona fide residence of the Owner and the practitioner of the home occupation conducted on the subject
- (b) In addition to the Owner's family members residing in the single family residence located on the Lot, no more than one (1) natural person may participate in any and all home occupations conducted on the subject Lot.
- (c) The residential character of the Lot and the single family residence located on the subject Lot shall be maintained at all times. Neither the interior nor the exterior of the single family residence, or any other Improvement located on the Lot shall be structurally altered so as to require compliance with non-residential construction codes to accommodate any home occupation conducted on the subject Lot.
- (d) Any and all home occupations conducted on the Lot shall not generate customer related vehicular traffic in excess of eight (8) vehicles per twenty-four (24) hour day in the Subdivision (excluding vehicle trips for family, household or other residential purposes). Parking for all vehicular traffic generated from any and all home occupations conducted on any Lot shall be provided on the subject Lot and not on any other Lot, any Common Area, Facilities or the Private Roads; provided, however, that parking on the Private Roads may be permitted in accordance with rules and regulations promulgated from time to time by the Association or the Board.
- (e) No equipment or materials associated with any home occupation conducted on the Lot shall be displayed or stored where visible from any other location in the Subdivision outside the boundaries of the subject Lot.
- (f) Any home occupation conducted on the Lot shall not produce external noise, vibration, smoke, dust, odor, heat, fumes, electrical interference or waste runoff outside the boundaries of the subject Lot.
- (g) For purposes of this Section 2.30, an agricultural use of a Lot permitted under any other provision of this Declaration shall not be a home occupation subject to the

provisions of this Section 2.30.

2.31 Hunting. No hunting shall be permitted or firearms discharged on any Lot that is less than 50 acres.

2.32 Restrictions Against Unlicensed Vehicles. No unlicensed vehicles, including but not limited to 3-wheelers, 4-wheelers, golf carts or go-karts, shall be allowed to be driven upon the private roads.

ARTICLE 3 ARCHITECTURAL COMMITTEE

3.1 Membership and Duties of Architectural Committee.

(a) The Architectural Committee shall be composed of not more than three (3) persons. The members of the Architectural Committee shall be appointed by Declarant until the expiration of the Declarant Control Period (as defined below), at which time the members of the Architectural Committee shall be designated by the Board.

(b) The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board. The Architectural Committee shall review Plans and Specifications submitted for its review and such other information as it may require relating to the provisions of this Declaration or to the question of whether any proposed Improvement would unreasonably obstruct the view from other portions of the Property. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth herein and the decision of the Architectural Committee shall be final and binding so long as it is not in conflict with these Restrictions and is made in good faith. The Architectural Committee may hire consultants, including engineers and architects, to assist it in its duties hereunder. The Architectural Committee, and its agents and employees, shall not be responsible for inspecting any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval of any Improvement as to structural safety, engineering soundness or conformance with any building or other codes, regardless of the hiring by the Architectural Committee of any consultants to assist it in its duties hereunder.

3.2 Term. Each member of the Architectural Committee shall hold office until such time as he has resigned or has been removed and his successor has been appointed.

3.3 Appointment and Removal of Architectural Committee; Declarant's Rights.

(a) Declarant, its successors and assigns, shall have the right to appoint and remove any and all members of the Architectural Committee at any time and from time to time until this right has been delegated or deemed delegated as provided below. Declarant may delegate this right to the Board by written instrument, and such right shall be deemed delegated to the Board effective upon any termination of Declarant's privileges, exemptions, rights and duties hereunder as provided in Section 7.8(b) below. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee.

(b) Until the earlier of the appointment of an Architectural Committee by Declarant or the expiration of the Declarant Control Period, (i) all rights, powers, duties, and obligations of the Architectural Committee shall be exercised, enforced, enjoyed, performed and/or satisfied by Declarant acting alone, and (ii) any provision of this Declaration requiring or permitting any action, election, approval, consent, determination of or by the Architectural Committee shall be satisfied and performed by Declarant acting alone.

3.4 Review of Construction, Alteration or Removal of Developments.

(a) Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts, materials, construction samples, reports and other information which it considers, in its sole discretion, to be relevant. As provided in Article 2 above, prior to commencement of any construction, any removal or any alteration of any Improvement on any Lot, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and such construction, alteration or removal may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. All such construction, alteration or removal shall conform to the approved Plans and Specifications.

(b) An Owner, other than Declarant, proposing to construct, remove or materially alter an Improvement or the landscaping on any Lot shall submit an application to the Architectural Committee together with three (3) sets of the Plans and Specifications for such construction, removal or alteration. Within fifteen (15) days after receipt by the Architectural Committee of such Plans and Specifications, it shall act on the Plans and Specifications as follows:

(i) The Architectural Committee may request in writing that the Owner submit to it such additional materials, construction samples, reports and

information that the Architectural Committee considers relevant in reviewing the Plans and Specifications for compliance with this Declaration. Until receipt by the Architectural Committee of all information requested by it, it may postpone review of such Plans and Specifications. Upon receipt of all such information requested by it, the Architectural Committee shall act upon such Plans and Specifications within fifteen (15) days.

(ii) If the Architectural Committee approves such Plans and Specifications, it shall mark all sets of the Plans and Specifications "Approved" with the date thereof, and retain one set for its records and return two sets to the Owner. The owner must commence construction of the Development or activity shown in approved Plans and Specifications within ninety (90) days of the Architectural Committee's approval thereof or such approval shall lapse. Upon written request of an Owner, the Architectural Committee shall grant up to two (2) fifteen (15) day extensions of such approval.

(iii) If the Architectural Committee disapproves such Plans and Specifications, it shall mark all sets of the Plans and Specifications "Disapproved" with the date thereof, and retain one set for its records and return two sets to the Owner, with a written statement of all of the items that were found not to comply with this Declaration and/or the Development Agreement. Thereafter, the Owner shall submit to the Architectural Committee three (3) revised sets of Plans and Specifications pursuant to Section 3.4 (b), with notations thereon sufficient to identify the revised portions, and the Architectural Committee shall act on such revised Plans and Specifications within fifteen (15) days after receipt by it of such revised Plans and Specifications and all information requested by it as provided herein with respect to initial Plans and Specifications.

(iv) If the Architectural Committee fails to act on any Plans and Specifications submitted to it within (15) days after receipt by the Architectural Committee of all information requested by it in connection with such Plans and Specifications, approval of the matters submitted to it be presumed.

3.5 Actions of the Architectural Committee. The Architectural Committee may, by resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on its behalf. In the absence of such designation, the vote of a majority of all of the members of the Architectural Committee taken at a meeting shall constitute an act of the Architectural Committee. In the event that the members of the Architectural Committee cannot agree by majority vote on any matter submitted to them, the matter may be raised at any meeting of the Board and decided by a majority of the Board members present, provided that a quorum is present.

3.6 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with the provisions of this Declaration, as it may deem necessary or proper for the performance of its duties, including, but not limited to, a building code, a housing code, a fire code, a landscaping code, and other similar codes as may be deemed necessary and desirable. Any and all rules adopted by the Architectural Committee may be amended, repealed or otherwise modified at any time and from time to time by the Architectural Committee.

3.7 No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatsoever, subsequently or additionally submitted for approval or consent by the same or a different Owner.

3.8 Variances. The Architectural Committee may grant variances from compliance with any of the covenants, conditions, restrictions or provisions of this Declaration with respect to any Improvements constructed or to be constructed on a Lot when (i) the specific Section of this Declaration with respect to which the variance is to be granted provides that the Architectural Committee may modify the restrictions imposed under the subject Section of this Declaration, approve or otherwise consent to a variance or waiver of the provision of the subject Section of this Declaration, or consent to an Improvement, use or activity which does not conform with, or conflicts with, the restrictions imposed under the subject Section of this Declaration, (ii) the specific section or provision of this Declaration provides for an exception from its requirements or restrictions when the prior approval or consent of the Architectural Committee is given or obtained, or (iii), in the opinion of the Committee, such variance will not be materially adverse to the overall quality of the Property and any other Improvements in the Subdivision, or is justified due to unusual or aesthetic considerations, topographic considerations or similar circumstances; provided, however, that the Architectural Committee shall not permit or grant any such variance which would in any way violate or cause the Lot(s) or the Owner(s) to fail to comply with any Governmental Requirement. Such variances must be evidenced in writing and must be signed by at least a majority of the members of the Committee. In the event a requested variance requires any license, permit, consent or approval of a Governmental Authority or other evidence of compliance with a Governmental Requirement, the Architectural Committee may grant the subject to and conditioned upon the Owner requesting such variance obtaining such required license, permit, consent or approval of the Governmental Authority or providing evidence of compliance with any such Governmental Requirement. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance in accordance with the provisions of this Section 3.8 shall not operate to waive any of the covenants, conditions, restrictions or provisions of this Declaration for any purpose except for the particular purpose(s) of the subject variance and only as to the Lot or Lots with respect to which the subject variance was granted.

3.9 Nonconforming or Unapproved Developments. The Architectural Committee, at its option, may review all work in progress to ensure compliance with approved Plans and Specifications. The Architectural Committee may, with the prior approval of the Board, require any Owner to restore such Owner's Lot to the condition existing prior to construction, alteration or removal of any Improvement or landscaping thereon, including without limitation the demolition and removal of any unapproved or nonconforming Improvement or landscaping, if such Improvement or landscaping was constructed or altered in violation of this Article 3. In addition, the Architectural Committee may, with the prior approval of the Board, but has no obligation to, cause such restoration, demolition and removal of any such Improvement or landscaping, and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such unapproved or nonconforming Improvement or landscaping was constructed or altered.

3.10 Nonliability of Architectural Committee and Board Members. Notwithstanding anything to the contrary in this Declaration, neither the Architectural Committee nor the members thereof, nor the Board nor the members thereof, nor such Persons' respective agents, employees, heirs, successors, legal representatives and assigns, shall be liable to any Owner or any other third party due to the construction of any Improvement within the Property or the creation thereby of an obstruction to the view from any Lot or Lots.

3.11 Nondiscrimination. In performing, observing and carrying out its duties, obligations, rights, powers and privileges under this declaration, the Architectural Committee shall (a) act in a nondiscriminatory manner as to each Owner, (b) shall apply the provisions of this Declaration and any of the rules adopted by the Architectural Committee in a uniform and consistent basis to all owners, Lots and Improvements, and (c) shall not act in a manner which is unreasonable or arbitrary.

3.12 Address. Plans and Specifications shall be submitted to the Architectural Committee in care of the Board at the current address of the Board, or such other address as may be designated from time to time in writing by the Architectural Committee.

3.13 Costs and Expenses of Architectural Committee. All reasonable costs and expenses incurred by the Architectural Committee in performing and satisfying and observing its duties, obligations, rights and powers under this Declaration shall be paid or reimbursed by Declarant, during the period in which Declarant retains its right to appoint and remove the members of the Architectural Committee. Thereafter the Association shall bear such costs and expenses.

ARTICLE 4 THE ASSOCIATION

4.1 Organization. The Association is a non-profit corporation created, or to be created, by Declarant for the purposes, and charged with the duties and vested with the powers, prescribed by law and set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor

1317 201

Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration; if a tribunal of competent jurisdiction determines that an inconsistency exists, this Declaration shall control.

4.2 Membership. Any Person upon becoming an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such property interest.

4.3 Voting Rights. Subject to the provisions of this Section 4.3, the right to cast votes, and the number of votes which may be cast, for election of Persons to the Board of the Association and on all other matters voted, or to be voted, on by the Members shall be calculated as follows:

(a) The Owner (excluding Declarant) of each Lot shall have one(1) vote for each Lot so owned. If there is more than one Owner of a Lot, all such Owners shall be Members, and the vote for such Lot may be exercised as the Owners thereof mutually agree; provided, however, in no event shall more than one vote per Lot be cast.

(b) Declarant shall have five (5) votes for each Lot owned by Declarant.

The election of directors to the Board and the act, approval or disapproval of the Members, as the case may be, with respect to all other matters voted, or to be voted, on or by the Members shall be determined by the vote of the majority of the aggregate votes entitled to be cast by the Members present or represented by legitimate proxy at a legally constituted meeting at which a quorum of the Members is present, except where a vote by a greater percentage is required pursuant to other provisions of this Declaration, the Articles, the Bylaws or a Governmental Requirement. Any Member, including Declarant, may give a revocable written proxy to any person authorizing such person to cast all or any portion of the Member's votes on any matter. Such written proxy shall be executed in writing by the Member or by his duly authorized attorney in fact, but no such proxy shall be valid for a period of greater than eleven (11) months. The cumulative system of voting shall not be allowed at any vote of the Members. The rights of any Member to cast votes on Association matters shall automatically be suspended during any period of time when such Member owes any past due Assessments to the Association. Any Owner may collaterally assign his voting rights hereunder to the Mortgagee of a first Mortgage affecting the Lot or Lots owned by such Owner, which said assignment shall not be effective until written notice thereof is actually received by the Association, together with evidence of such assignment.

4.4 Duties of the Association. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have and perform each of the following duties:

(a) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by, licensed to or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(b) To obtain and maintain in effect policies of insurance, including public liability policies of insurance and errors and omissions policies of insurance, which, in the Board's judgment, are reasonably necessary or appropriate to the Association and the Owners and/or to carry out the Association's functions.

(c) To maintain any Landscaping and Improvements along or in the medians located in the public streets and rights-of-way in the Subdivision and to maintain all signs identifying the Development and the Subdivision.

(d) To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Association Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

(e) To keep books and records of the Association's affairs.

(f) To carry out and enforce all duties of the Association set forth in this Declaration.

(g) Upon the substantial completion by Declarant of the Common Area and Facilities (including, without limitation, the Private Roads), to accept, own, operate and maintain all Common Area and Facilities and to maintain in good repair and condition all lands (to the extent not maintained by a Governmental Authority or any other Person), improvements and other property real or personal owned by and leased to the Association.

4.5 Powers and Authority of the Association. Subject to such limitations and restrictions as are set forth in this Declaration, the Association shall have the powers of a Texas non-profit corporation, including, but not limited to, all powers provided under the provisions of the Texas Non-Profit Corporation Act, as amended from time to time, or any successor act or statute. It shall further have the power to do and perform any and all of the Association's duties set forth in Section 4.4 above and any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the power and authority at all times as follows:

(a) To levy Assessments as provided in Article 5 below.

(b) To enter upon any Lot at any time in an emergency, involving an immediate threat of serious injury to persons or property, or in a non-emergency after one hundred sixty-eight (168) hours written notice, without being liable to any Owner, for the purpose of enforcing this Declaration maintaining or avoiding any injury to persons or property or repairing any area, Improvement or other facility to conform to this Declaration, reasonably calculated to notify the Owner of the Association's intentions so as to provide the Owner an opportunity to address them after prior such entry. The expense incurred by the Association in connection with the entry made in accordance with this Section upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be secured immediately by a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article 5 hereof for special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of this Declaration. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce this Declaration.

(c) To retain and pay for the services of a Manager to manage and operate the Association, to the extent deemed advisable by the Board. To the extent permitted by law, the Association and the Board may delegate any duties, powers and functions to the Manager. The Members hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

(d) To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(e) To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or the terms of this Declaration.

(f) To enter into contracts with any Person, including, but not limited to, Declarant, to carry out the purposes and duties of the Association on such terms and provisions as the Board shall determine.

(g) To establish and thereafter adjust from time to time as the Board may determine, in its sole discretion, an application fee to be paid in cash by each Owner at the time of submittal of any application to the Architectural Committee as provided in Section 3.4 (c) of this Declaration.

4.6 Power to Indemnify and to Purchase Indemnity Insurance. The Association, acting through the Board, shall indemnify and may reimburse and/or advance expenses and/or purchase

and maintain insurance, including errors and omission policies of insurance, or any other arrangement on behalf of any person who is or was a director or officer of the Association against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person to the maximum extent permitted by Article 1396 S 2.22A of the Texas Non-Profit Corporation Act, as such Act may from time to time be amended (without regard, however, to Section Q of such Article with respect to officers of the Association who are not directors of the Association). Further, the Association, acting through the Board, may indemnify and/or reimburse and/or advance expenses and/or purchase and maintain insurance, including errors and omission policies of insurance, or any other arrangement on behalf of any person, other than any person who is a director of the Association, who is or was an officer, employee or agent of the Association or a member of the Architectural Committee, or is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trustee, employee benefit plan or other enterprise, against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person, to such extent (or, in the case of officers of the Association, to such further extent), consistent with applicable law, as the Board may from time to time determine. The provisions of this Section 4.6 shall not be deemed exclusive of any other rights to which any such person may be entitled under any Bylaw, agreement, insurance policy, vote of Members or otherwise. All costs and expenses of the insurance and other arrangements described herein shall be covered by Assessments.

ARTICLE 5 ASSESSMENTS

5.1 Assessments.

(a) In order to assure funds for the payment of all costs incident to the performance and satisfaction of the obligations of the Association under this Declaration, and the carrying out and realization of the purposes for which Assessments may be levied, as set forth in Section 5.1 (f) below, the Association shall, as provided in this Article 5, levy Assessments against each Lot, whether or not such Lot is improved. The Association shall levy Assessments in an amount at least sufficient to provide for payment of all costs incident to the performance and satisfaction of the duties and obligations of the Association under this Declaration. The amount of Assessments shall be equal and uniform among all Lots. All Lots owned by Declarant shall be treated as one Lot and levied in the same amount as if owned by another Owner. Assessments levied against the Lots shall be uniform. The amount of any Assessment against each Lot shall be determined by the total number of acres in a Lot. Notwithstanding anything contained herein to the contrary, the Regular Assessment for 1997 shall be \$2.00 for each acre within a lot and shall be paid at the time of purchase of the Lot.

(b) Assessments for the purposes stated in Section 5.1^{1317 205} below and levied pursuant to the provisions of Section 5.2 below are referred to as "Regular Assessments." Any other Assessments assessed and levied by the Board are referred to as "Special Assessments." Special Assessments are composed of Special Group Assessments and Special Individual Assessments. Special Assessments levied for costs incurred by the Board or the Association which ordinarily would be covered by Regular Assessments but which were either not anticipated or not included in the Budget that formed the basis of Regular Assessments for a calendar year are referred to as "Special Group Assessments." Special Assessments for any of the costs that result from (i) requests of the Owner of a Lot for approval by the Architectural Committee of the plans and specifications for any Improvements to be placed on such Lot and the performance of the Architectural Committee's duties and obligations with respect to such approval, (ii) the negligence or willful misconduct of an Owner, or any costs or liabilities of the Association incurred as the result of the actions or omissions of an Owner, (iii) the failure or refusal of an Owner to comply with or satisfy any of the requirements and provisions of this Declaration, or (iv) any costs or expenses for which the Association or the Board under any provision of this Declaration is entitled to reimbursement by, the Owner of any Lot are referred to as "Special Individual Assessments."

(c) Where an Owner's obligation to pay Assessments first arises after the commencement of the year or other period for which an Assessment was levied, such Assessment shall be in a prorated amount proportionate to the fraction of the year or other period remaining after said date. Without limiting the application of this Section 5.1 (c), this Section 5.1 (c) shall apply to the Owners of Lots in the Subdivision which is added to the Property pursuant to the provisions of Section 8.2 below after the date on which the initial Regular Assessments are levied pursuant to the provisions of Section 5.2 below.

(d) Each purchaser of any Lot, by acceptance of a deed therefor, shall be deemed to covenant to pay to the Association each Assessment levied against such Lot, whether or not such covenant shall be expressed in any such deed or other conveyance. Each unpaid Assessment together with interest thereon and costs and expenses of collection thereof, including without limitation reasonable attorneys' fees, as hereinafter provided, shall be the personal obligation and debt of the Owner of the Lot against which the Assessment was levied.

(e) The obligation to pay Assessments levied by the Association hereunder is part of the purchase price of each Lot when sold to an Owner. An express vendor's lien is hereby retained to secure the payment of each and every Assessment levied hereunder, and each such vendor's lien is hereby transferred and assigned to the Association, each such vendor's lien to be superior and paramount to any homestead or other exemption provided by law. The Association may enforce the payment of Assessments in accordance with the provisions of this Article 5.

(f) The Assessments shall be used exclusively for the purposes of (i) promoting the comfort, health, safety and welfare of the Owners, (ii) providing for the maintenance, repair, and improvement of the Common Area and Facilities (including, without limitation, the Private Roads), (iii) carrying out the purposes of the Board and the Association as stated in this Declaration or as otherwise provided in the Articles and Bylaws of the Association, (iv) performing and/or satisfying the duties and obligations of the Association and the Board, (v) exercising, enjoying and/or realizing upon the rights, powers and benefits of the Association and the Board as provided in this Declaration and the other Restrictions, and (vi) any other purposes for which Assessments may be used under any other express provisions of this Declaration or any other Restrictions. In particular and without limiting the purposes for which Assessments may be assessed and levied, Regular Assessments levied by the Association shall be used for the payment of the costs of (a) maintenance, repair and replacement as necessary of the Common Area and Facilities and any Association Property; (b) hazard insurance in connection with the Common Area and Facilities and any Association Property and public liability insurance for the Association with respect to liabilities arising from damages or injuries sustained or occurring on the Common Area and Facilities and any Association Property; (c) labor, equipment (including the expense of leasing any equipment) and material required for, and management and supervision of, the Common Area and Facilities and any Association Property; (d) carrying out the duties of the Association and the Board, as set forth in this Declaration, the Bylaws or any other Restrictions, and of the Architectural Committee, as set forth in this Declaration; (e) carrying out the purposes of the Association as stated in this Declaration, the Articles and the other Restrictions; (f) carrying out the various matters set forth or envisioned in this Declaration and the other Restrictions; (g) reimbursing the reasonable expenses of, and paying reasonable compensation to (in such amounts, if any, established by the Board), the members of the Architectural Committee for the performance of their duties under this Declaration; (h) taxes, if any, on any portion of the Common Area and Facilities and any Association Property; (i) any and all accounting, processing, bookkeeping and auditing expenses incurred in the operation of the Association, including but not limited to expenses relating to the collection and disbursement of Assessments, expenses incurred in the preparation of financial reports and any other accounting activities usually incurred by non-profit incorporated owner's association in Hays County, Texas; (j) any and all expenses associated with the management and operation of the Association, including but not limited to salaries and fees of any Manager, management personnel and security personnel (including any employees of Declarant who provide management or security services to the Association, the use of such employees and the payment of reasonable salaries to such employees by the Association being expressly authorized hereby), office supplies and equipment, rent for office space, utilities, and tenant finish-out expenses; (k) any and all bank or other financial institution fees relating to the Association's accounts and interest on short term loans to the Association; (l) any and all expenses relating to the maintenance, cleaning, repair and/or replacement, or the employment of any person to maintain, clean, repair and/or replace the Common Area and Facilities and any Association Property, the right-of-

ways adjacent to the and any Improvements thereon or thereto, including, without limitation, the following: streets, curbs and gutters, open and closed storm sewers, pavement, crosswalks, painted street directional, street and pedestrian signage, street embankments, retaining walls, medians and median landscaping, pedestrian foot paths, pedestrian tunnels under roadways, light posts and lighting in streets right-of-ways, drainage and repair of lakes, park benches, picnic areas, special events areas, lighting on the Common Area and Facilities and Association Property, sidewalks, sprinkler systems, irrigation, fertilization, and removal of trash and debris on the Common Area and Facilities and any Association Property; (m) the general operating and administrative expenses of the Association and the Architectural Committee; and (n) any other purposes required by this Declaration, the Articles, the Bylaws or any other Restrictions.

5.2 Regular Assessments. Regular Assessments shall be levied on each Owner of each Lot, and shall be imposed by the Board regularly and at least annually, in accordance with the provisions of this Section 5.2. The date on which the Common Area and Facilities, streets, utilities and drainage facilities for the Subdivision are completed by Declarant shall be referred to as the "Assessment Commencement Date" for the Subdivision. Within one hundred twenty (120) days after the later of the Assessment Commencement Date or the date on which any Lot is sold and conveyed by Declarant to any other Person and prior to the beginning of each calendar year for the Association thereafter, the Board shall approve and adopt a budget (a "Budget") based upon: (i) anticipated expenses to be incurred by the Association during the forthcoming calendar year (or, with respect to the initial Budget approved and adopted by the Board, for the remainder of the current calendar year), which said expenses shall include only expenditures for the approved purposes set forth in Section 5. 1 (f) above; plus (ii) a reasonable provision for contingencies and appropriate replacement reserves; less (iii) any expected surplus or income anticipated to be received from any other source(s). The Board will send written notice of the proposed Budget to each Owner at least ten (10) but not more than fifty (50) days prior to the date the Board will vote on the proposed Budget. Owners will not have the right to vote for or against the proposed Budget, but any Owner may attend the meeting in which the Board will approve or disapprove the proposed Budget. When the Board has approved a Budget for a calendar year (or portion of a calendar year), Regular Assessments sufficient to pay the estimated net expenses of the Association for such calendar year (or partial calendar year), as projected in the Budget for the subject calendar year (or partial calendar year), shall then be levied by the Association on each Owner of each Lot, and the amount of such Regular Assessments as determined by the Board shall be final and binding so long as such determination is made in good faith. The Board may increase or decrease the Regular Assessments each year from the prior year as the Association deems necessary. The Board shall set the Regular Assessments annually for each calendar year (or partial calendar year) based on the Budget approved and adopted as provided above for such calendar year (or partial calendar year). At the end of any given calendar year, any surplus sums held by the Association (whether from Assessments collected from Owners or from other sources of income, revenue or monies) will be applied by the Association to reduce the Assessments needed to be levied for the projected costs and expenses of the Association shown in the Budget for the following year. In the event that prior to the commencement of any calendar year after the initial

Budget has been approved and adopted by the Board, a Budget has not been approved for that particular year, then Regular Assessments will be levied by the Association on each Owner of each Lot based upon the Budget for the prior year until such time as a Budget for the current year has been approved, at which time Regular Assessments will be adjusted and revised to the extent necessary for the amount of the Regular Assessments for the subject calendar year to comply with the provisions of this Section 5.2 regarding levying. Regular Assessments based on each calendar year's approved Budget. All Regular Assessments shall be due and payable to the Association, with respect to Regular Assessments for the calendar year in which the Assessment Commencement Date occurs, within thirty (30) days after being levied by the Association, and, with respect to all subsequent Regular Assessments, at the beginning of the calendar year for which such Regular Assessments are payable; provided, however, that the Board, at its election, may permit all or any portion of the Regular Assessments levied for any full or partial calendar year to be payable in equal monthly installments on or before the first day of each month of the subject calendar year, or in such other manner as the Board may designate in its sole and absolute discretion.

5.3 Special Assessments. In addition to the Regular Assessments provided for above, the Association may levy Special Assessments for the purposes provided in Sections 5.1(b) and 5.1(f) above. The Board may set, assess and levy Special Group Assessments at any time after the incurrence by the Association of costs of the nature intended to be covered by the Regular Assessments but which either were not anticipated or not included in the Budget that formed the basis of Regular Assessments for the year in which such unanticipated or not included costs were incurred or arose. Special Group Assessments shall be allocated and assessed against the Lots in the same manner as are Regular Assessments. The Board may set, assess and levy Special Individual Assessments from time to time as the Association or the Board incurs costs for any purposes for which Special Individual Assessments may be set, assessed and levied, as set forth in Sections 5.1(b) and 5.1(f) above. The Special Individual Assessments shall be assessed only against (i) the Owner or Owner from whom the Board is entitled to payment or reimbursement in accordance with the provisions of Section 5.1(b) above, and (ii) the Lot owned by the Owner or Owners with respect to whom the subject Special Individual Assessments may be assessed and levied.

5.4 Owner's Personal Obligation for Payment of Assessments. Each Regular and Special Assessment provided for herein shall be the personal and individual debt of the Owner of the Lot against which such Assessment was levied. No Owner may exempt himself from personal liability for such Assessments. In the event of default in the payment of any Assessment, the Owner of the Lot against which such Assessment was levied shall be obligated to pay interest at the highest contract rate of interest allowed by applicable usury laws then in effect (or if there is no such highest contract rate, then at the rate of fifteen percent (15%) per annum) on the amount of the Assessment from the due date thereof together with all costs and expenses of collection, including without limitation reasonable attorneys' fees.

5.5 Assessment Lien and Foreclosure.

(a) To the extent permitted by applicable Governmental Requirements, the payment of the Assessments levied in accordance with this Declaration against each Lot, together with interest thereon as provided in Section 5.4 above and the costs and expenses of collection, including reasonable attorneys' fees, as provided below, is secured by, and there is hereby reserved, created and granted, a continuing lien and charge on and against each Lot to secure payment of the Assessments levied against the subject Lot in accordance with this Declaration, and any interest thereon as provided in Section 5.4 above and the costs and expenses of collection, including reasonable attorneys' fees, as provided below. The lien reserved, granted and created by this Declaration against a Lot for payment of Assessments shall bind and attach to the Lot and shall be valid and subsisting against the Lot, the Owner of such Lot and such Owner's heirs, devisees, personal representatives, successors or assigns, and shall be superior to all other liens and charges against such Lot, except only for (i) tax liens, (ii) all sums unpaid on any obligations evidencing sums owing or borrowed for the purchase of such Lot and secured by a valid and enforceable Mortgage covering the subject Lot, provided that the lien of any such Mortgage shall be superior to the lien created above only with respect to Assessments becoming due after the date the subject Mortgage was recorded in the Official Public Records of Hays County, Texas, and (iii) all sums unpaid on any obligations incurred or borrowed for the improvement of such Lot and secured by a valid and enforceable Mortgage covering the subject Lot, provided that the lien of any such Mortgage shall be superior to the lien created above only with respect to Assessments becoming due after the date the subject Mortgage was recorded in the Official Public Records of Hays County, Texas. The Association shall have the power, in the Board's sole and absolute discretion, to subordinate the lien created by this Section 5.5 (a) against any Lot to any other lien. Any such subordination shall be signed by an officer of the Association and recorded in the Official Records of Hays County, Texas. Upon the written request of any Beneficiary holding a lien on any Lot that is superior to the lien for payment of Assessments as provided herein, the Association shall report to said Beneficiary the amount of any Assessments levied against such Lot remaining unpaid for a period of more than thirty (30) days after the same are due.

(b) To evidence the aforesaid lien for payment of Assessments, the Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, a description of the Lot encumbered by the lien and the name of the Owner of such Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Official Public Records of Hays County, Texas. The aforesaid lien for payment of Assessments shall attach with the priority set forth above from the date the payment of such Assessments becomes due. The Association may enforce such lien by the foreclosure sale of the defaulting Owner's Lot in like manner as a foreclosure of a mortgage or contractual lien on real property as provided in Section 51.002 of the Texas Property Code, as the same may be amended or modified, or the Association may institute

suit against the Owner personally obligated to pay the Assessment for monetary damages and/or for the judicial foreclosure of the aforesaid lien. The Owner of the affected Lot shall be required to pay all costs and expenses, including without limitation reasonable attorneys' fees, incurred by the Association in connection with any foreclosure proceeding, whether judicial or non-judicial, and in connection with any collection proceeding. The Association shall have the power to bid on any Lot at any foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

(c) The liens for payment of Assessments provided for herein shall not be affected or extinguished by the sale or transfer of any Lot, whether by judicial or non-judicial foreclosure sale or otherwise; provided, however, that in the event of foreclosure of lien of any Mortgage superior to the lien for the delinquent Assessment, the lien for the delinquent Assessment will be extinguished, and the delinquent Assessment shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the first lien Mortgage. The extinguishing of any lien for payment of Assessments as herein provided will not relieve any Owner from the obligation to pay Assessments subsequently becoming due and payable or affect or impair the lien created and reserved under this Declaration to secure payment of any such Assessments.

ARTICLE 6 COMMON AREAS AND EASEMENTS

6.1 Common Areas.

(a) Upon substantial completion of the Common Areas and Facilities and the public streets, utilities, drainage facilities, and other improvements required to be constructed by Declarant in the Subdivision in accordance with the Plat and any Governmental Requirement imposed in connection with the platting and subdivision by Declarant of the Subdivision, Declarant dedicates to the Association for the benefit and use of all Owners, without warranty or representation, all right, title and interest of Declarant in and to the Common Area and Facilities (including, without limitation, the Private Roads), subject to the conditions, covenants, restrictions, easements, terms and conditions of this Declaration and the requirements of any applicable Governmental Requirements and to any and all easements, restrictions, and other encumbrances of record in the Official Public Records of Hays County, Texas, to the extent in force and effect and binding on the Common Area and Facilities. Thereafter, any and all Common Area and Facilities which are not maintained and repaired by a Governmental Authority shall be maintained and repaired by the Association and Declarant shall have no further obligations, responsibilities or liabilities to the Association or the Owners with respect to the Common Areas and Facilities except in Declarant's capacity as an Owner.

(b) The Common Area and Facilities may only be used for activities and purposes permitted under this Declaration and the Plat and, to the extent not in conflict with this Declaration or the Plat, those activities and purposes permitted by the Association.

(c) If all or any part of the Common Area and Facilities is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall be entitled to participate in proceedings incident thereto. The expense of participation in such proceedings by the Association shall be a common expense to be paid out of Assessments. The Association is specifically authorized to obtain and to pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association, in its discretion, deems necessary or advisable to aid it in any matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association. The Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to contest or defend any such proceedings, to make any settlement with respect thereto or to convey such property to the condemning authority in lieu of condemnation.

6.2 Reserved Rights and Easements. All dedications, limitations, restrictions and reservations shown on the Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to any portion of the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to (i) grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of ten (10) feet on each side of such Lot line, and ten (10') feet inside the sixty (60') foot right-of-way adjoining the property, and (ii) locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on any areas owned by Declarant sewer and other pipelines, conduits, wires and any Improvements relating to a public utility function, with the right of access to the same at any time for the purposes of repair and maintenance.

6.3 Installation and Maintenance of Public Utilities. Declarant reserves creates, grants and dedicates (without warranty) for Declarant and any and all public utility companies providing any public utilities to all or any portion of the Subdivision a perpetual, non-exclusive easement upon, across, over and under all portions of the Property designated on the Plat as public utility easements (the "PUE Tracts") for ingress and egress and for constructing, installing, replacing, repairing, operating, and maintaining all utility and service lines and service systems, public and private which are necessary to provide public utilities to the Subdivision, including, but not

limited to, telephone, cable television, natural gas, electric power, water distribution and wastewater collection, together with all lines, pipes, cables, conduits and other equipment, facilities, improvements and appurtenances installed in, under, along and across the PUE Tracts. By virtue of this easement, it shall be expressly permissible for Declarant and the public utility providers and companies supplying or providing public utility services to the Subdivision to install and maintain pipes, wires, conduits, service lines or other utility equipment, facilities, improvements or appurtenances thereto, on, above, across and under the PUE Tracts. Notwithstanding any provision contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Committee. Subject to compliance with applicable Governmental Requirements, the public utility providers and companies furnishing public utility services to the Subdivision shall have the right to remove all trees situated within the PUE Tracts, and to trim overhanging trees and shrubs located on portions of the Property abutting the PUE Tracts. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. Neither the Declarant nor any supplier of any utility service using any easement area, however, shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

6.4 Drainage Easements and Patterns. Except for (i) alterations, changes, and/or interference in connection with or resulting from Development by Declarant and (ii) alterations, changes and/or interference by an Owner on the Owner's Lot which do not affect drainage patterns on, or the flow of surface water over, any other Lot or any other portion of the Property, there shall be no alteration of, change in, or interference with the established drainage patterns over any Lot or other portion of the Property unless adequate provision is made for proper drainage in a manner approved by the Owner of each Lot affected by the subject alteration, change or interference and by the Association. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and/or shown on the Plat without the prior written approval of the Association. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the Association. Easements for installation and maintenance of utilities and/or drainage easements are reserved and dedicated as are shown on the Plat. Within these easement areas, no Improvements, Landscaping, or other materials shall be placed or permitted to remain which may damage or interfere with the installation, maintenance and/or operation of these utilities and/or drainage easements and/or which may hinder or change the direction or flow of surface water within the Property and/or along the existing drainage patterns, channels or slopes within the Property.

6.5 Entry Easement. Declarant reserves, creates, grants and dedicates (without warranty) for the Association and Declarant a non-exclusive easement upon, over and across each Lot for ingress and egress for any and all of the purposes stated in Section 4.5(b) above and to exercise, enjoy and carry out any and all of the rights and powers provided in Section 4.5(b)

above, on and subject to the terms and conditions of Section 4.5(b) above. Entry upon any Lot as provided in this Section 6.5 shall not be deemed to trespass, and the Association and Declarant shall not be liable for any damage so created unless damage is caused by the willful misconduct or negligence of the party against whom damages are sought to be collected.

6.6 Temporary Completion Easement. Declarant reserves, creates, grants and dedicates (without warranty) for the benefit of Declarant and any Person building or constructing any Improvements on any Lot, and their respective employees, subcontractors, successors and assigns, a non-exclusive easement of ingress and egress over, along, within and upon the front side and rear yards of each Lot, any and all Common Area and Facilities and any and all easements located within the Development as may be expediently necessary for the construction, servicing, and completion of Improvements and Landscaping upon any Lot, any and all Common Area and Facilities and any and all easements located within the Subdivision.

6.7 Owners' Easements of Enjoyment. Each and every Owner shall have a non-exclusive right and easement in and to the Common Area and Facilities and a non-exclusive right and easement of ingress and egress to, from and through the Common Areas and Facilities, which non-exclusive rights and easements shall be appurtenant to and shall pass with title to each and every Lot, subject to the following provisions:

(a) the right of the Association to establish and publish rules and regulations governing the use of the Common Area and Facilities affecting the health, safety and welfare of Members;

(b) the right of the Association to suspend the right of use of the Common Area and Facilities and the voting rights of any Owner for any period during which any Assessment against the subject Owner's Lot remains unpaid beyond the period in which such Assessment is due;

(c) the right of the Association, subject to the provisions of this Declaration or any of the Restrictions, to dedicate or transfer all or any part of the Common Area and Facilities, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by seventy-five percent or more of the Owners; provided, that no such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast seventy-five percent (75%) or more of the votes of the Members at any vote of the Members has been recorded according to such dedication or transfer; and

(d) all of the rights of the easements granted and provided under this Section 6.7 are easements appurtenant to and running with each Lot; and any such easement shall at all times inure to the benefit of and be binding upon Declarant, each Owner and all their respective grantees, heirs, successors, personal representatives or assigns, perpetually and in full force.

6.8 The Private Roads. Declarant reserves for itself, the Association, each Owner, and the respective employees, agents, representatives, guests, contractors, and other invitees of the Association and the Owners (hereinafter collectively called the "Private Roads Users" and individually called a "Private Roads User") the right of access to the Private Roads, and a non-exclusive easement on, over, across and with respect to the Private Roads for the use and enjoyment of the Private Roads for vehicular and pedestrian access to the Lots, the other Common Areas, and the remainder of the Property. Notwithstanding anything in this Declaration to the contrary, in no event shall any Private Roads User be permitted to use or enjoy the Private Roads in any manner which is prohibited by or which would violate a Governmental Requirement or any Rules. Additionally, no Private Roads User may in any way or manner remove, alter, damage or destroy any portion of the Private Roads. The Association shall have the power and authority to promulgate Rules regarding the use and enjoyment of the Private Roads by the Private Roads Users and shall have the power and authority to enforce such Rules regarding the use and enjoyment of the Private Roads. Subject to the terms and provisions of this Declaration and to the Rules promulgated by the Association with respect to the use and enjoyment of the Private Roads, all Private Road Users shall have access to the Private Roads and shall have ingress and egress to the Private Roads for the purposes provided above. Declarant reserves for itself and the Association (and the respective employees, agents contractors, and representatives of Declarant and the Association) an easement on, over, across and under the Private Roads for the purpose of constructing, installing, maintaining, repairing, and replacing any Private Roads and maintaining, policing and protecting the Private Roads. No Owner or other Private Roads User shall be permitted to place any Improvements on any portion of the Private Roads. Neither Declarant nor the Association shall be liable for any damage done by either them or their assigns, agents, employees, contractors or servants to any Landscaping, Improvements or other property of any Owner or Person in connection with the construction, installation, repair, maintenance, replacement, policing and protecting of the Private Road. As provided in Section 6. 1 (a), Declarant will convey, the Private Roads to the Association as part of the Common Areas and Facilities, subject to the conditions, covenants, restrictions, easements, terms and conditions of this Declaration and to any and all easements, restrictions, and other encumbrances of record in the Official Public Records of Hays County, Texas, to the extent in force and effect and binding on the Private Roads.

6.9 Maintenance, Operation and Repairs of Private Roads. Following substantial completion and conveyance to the Association by Declarant of the Private Roads, the utilities and improvements required to be constructed in connection with the approval of the Plat by Governmental Authority, and the other Common Area and Facilities, the Association (a) shall be solely and exclusively responsible for the maintenance, repair, replacement, management, operation and condition of the Private Roads, (b) shall at all times maintain, repair and replace the Private Roads in good repair and order, (c) shall manage, operate and oversee the Private Roads in a manner complying with the provisions of this Declaration, all applicable Rules, and Governmental Requirements which may be imposed at any time, from time to time, by any Governmental Authority, and (d) is and shall be authorized to promulgate and adopt Rules concerning the use, enjoyment, operation, management, maintenance, repair, replacement and

improvement of the Private Roads, subject to the terms and conditions of this Declaration.

6.10 Protective Buffer. There is hereby created along all perimeter lot lines within the platted subdivision a one foot buffer to serve as a barrier to prevent the use of any roads or common areas within Panther Creek by any adjoining property owners. This paragraph may be waived by Declarant provided such waiver is done in writing and prior to the expiration of the Declarant Control Period.

ARTICLE 7 MISCELLANEOUS

7.1 Powers of Declarant. Notwithstanding anything in this Declaration to the contrary, so long as Declarant owns any Lot each Owner, by acceptance of record title conveying a Lot to such Owner, does hereby irrevocably constitute and appoint Declarant, its true and lawful attorney-in-fact and agent to execute, acknowledge, verify, swear to, deliver, record and file in that Owner's name, Place and stead all instruments, documents and certificates which may from time to time be required in order to affect any amendment, correction, vacating, replatting or other modification of the Plat, provided that (i) the boundaries and contours of such Owner's Lot are not in any way changed, altered or modified; (ii) access to such Owner's Lot and from a public street or from Private Roads is not changed or altered in any material respect; (iii) the public utility services to such Owner's Lot are not materially and adversely altered; and (iv) no costs or expenses are imposed on such Owner. In furtherance of this appointment, each Owner agrees to join in the execution, upon request of Declarant, of any instrument required to acknowledge such authorization and/or affect any such amendment, vacating, replatting or other modification of the Plat.

7.2 Terms. This Declaration, including, all of the covenants, conditions and restrictions hereof, shall continue in force and effect until February 14, 2016, unless amended as herein provided. After February 14, 2016, this Declaration, including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless extinguished by a written instrument executed by Owners entitled to cast at least eighty percent (80%) of the number of votes entitled to be cast pursuant to Section 4.3 of this Declaration.

7.3 Amendment.

(a) This Declaration may be amended by Declarant without the approval or joinder of any other Owner as long as Declarant (i) holds a majority of the votes of the Association, and (ii) provides all other Owners with a copy of the instrument executed by Declarant amending this Declaration. No amendment by Declarant shall be effective until there has been recorded in the Official Public Records of Hays County, Texas, an instrument executed and acknowledged by Declarant and setting forth the subject

amendment to this Declaration.

(b) In addition to the methods described in Section 7.3(a) above, this Declaration may be amended by the recording in the Real Property Records of Hays County, Texas, of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least eighty percent (80%) of the number of votes entitled to be cast pursuant to Section 4.3 of this Declaration.

7.4 No Warranty of Enforceability. While Declarant has no reason to believe that any of the covenants, conditions, restrictions, or other terms and provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such covenants, conditions, restrictions, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of the covenants, conditions, restrictions, terms or provisions set forth in this Declaration shall assume all risks of the validity and enforceability thereof and agrees that Declarant shall not be liable to such Owner in any way or manner due to the invalidity or unenforceability of any covenant, condition, restriction, term or provision set forth in this Declaration.

7.5 Notice. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address given by such person to the Association for the purposes of service of notices, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such person to the Association.

7.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the improvement and operation of the Subdivision and of promoting and effectuating the fundamental concepts of the Subdivision set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

7.7 Assignment by Declarant: Termination of Declarant's Privileges Exemptions, Rights and Duties.

(a) Notwithstanding anything in this Declaration to the contrary, Declarant by written instrument recorded in the Official Public Records of Hays County, Texas, an assign, in whole or in part, any of its privileges, exemptions, rights, powers and duties under this Declaration to any other Person, including the Board, and may permit the participation, in whole or in part, by any other Person, including the Board, in the

exercise, enforcement and/or enjoyment of any of Declarant's privileges, exemptions, rights, powers and duties under this Declaration; provided, however, that, except as, and only to the extent, expressly otherwise provided in the written instrument executed by Declarant conveying a Lot or other portion of the Property to another Person, the conveyance by Declarant of a Lot or any other portion of the Property to any other Person shall not assign to such Person any of the privileges, exemptions, rights, powers and duties of Declarant under this Declaration. Any assignment of all or any of Declarant's privileges, exemptions, rights, powers and duties under this Declaration shall be evidenced by a written instrument, executed by Declarant and the assignee and recorded in the Official Public Records of Hays County, Texas. Any assignee of Declarant shall be Declarant under this Declaration with respect to all privileges, exemptions, rights, powers and duties assigned to such assignee in accordance with the provisions of this Section 7.7(a).

(b) Notwithstanding anything in this Declaration to the contrary, at such time as Declarant does not own any Lot or any other portion of the Property, all privileges, exemptions, rights, powers and duties of Declarant under this Declaration which have not previously been assigned by Declarant to another Person in accordance with the provisions of Section 7.7(a) above terminate as to Declarant and shall automatically be transferred to, and held and performed by, the Board. No instrument or document shall be required in order to evidence a termination as to Declarant pursuant to the preceding sentence of Declarant's privileges, exemptions, rights, powers and duties under this Declaration; provided, however, Declarant, at Declarant's option, at any time may execute and record in the Official Public Records of Hays County, Texas, a written notice of termination of Declarant's privileges, exemptions, rights, powers and duties under this Declaration. Effective upon the execution and recording of a written notice of termination pursuant to the preceding sentence or the termination of Declarant's privileges, exemptions, rights, powers and duties under this Declaration pursuant to the provisions of the first sentence of this Section 7.7(b), all privileges, exemptions, rights, powers and duties of Declarant under this Declaration which have not previously been assigned by Declarant to another Person in accordance with the provisions of Section 7.8(a) above shall be transferred to, and held and performed by, the Board.

7.8 Enforcement and Nonwaiver.

(a) Except as otherwise provided herein, any Owner at his own expense, Declarant or the Board shall have the right to enforce the provisions of this Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach or threatened breach of any such provision.

(b) Every act or omission whereby any provision of this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined by any Owner (at his own expense), Declarant or the Board.

(c) Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any portion of the Property is hereby declared to be a violation of this Declaration.

(d) The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

(e) The Association shall have the right, when appropriate in its judgment, to claim and impose a lien upon any Lot or Development constructed thereon in order to enforce any right under, or effect compliance with, this Declaration.

7.9 Waivers and Variances by Association. Notwithstanding anything in this Declaration to the contrary and in addition to any waiver or variance granted by the Architectural Committee under the provisions of Section 3.8 above, Declarant, during the period in which Declarant controls the majority of votes of members of the Association, and at all times thereafter, the Association, acting by and through the Board, may grant or make variances from and waivers of the provisions of this Declaration upon determining, in its sole discretion, that the subject waiver or variance shall not be materially adverse to the overall quality of the Property and the preservation of the values and amenities of the Property established and maintained under this Declaration.

7.10 Construction.

(a) The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof not affect the validity or enforceability of any other provision or portion thereof.

(b) Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(c) All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this the 30th day and year first above written.

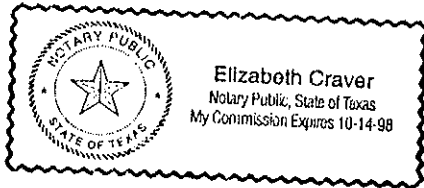
James S. Ernst
JAMES S. ERNST

THE STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on the 30th day of May 1997, by JAMES S. ERNST.

Elizabeth Craver
NOTARY PUBLIC, State of Texas



Elizabeth Craver
Name-Typed or Printed

My Commission Expires: 10-14-98

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Margie T Villalpando

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KLEEN \$79.00
MARGIE T VILLALPANDO, County Clerk
HAYS COUNTY