

COPY

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AUSTIN HILLS SUBDIVISION**

**VERNON McLEMORE, Declarant  
Nacogdoches, Texas**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
AUSTIN HILLS SUBDIVISION  
THE STATE OF TEXAS COUNTY OF NACOGDOCHES

§ KNOW ALL MEN BY THESE PRESENTS: §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AUSTIN HILLS SUBDIVISION is made by VERNON McLEMORE ("Declarant"), for the purposes herein set forth as follows:

PREAMBLE AND DECLARATION:

WHEREAS, Declarant is owner of the real property commonly known as Austin Hills Subdivision, Nacogdoches County, Texas, as more particularly described on plat thereof recorded in Volume 8, Page 124 of the Plat Records of Nacogdoches County, Texas, (hereinafter called "Subdivision"); and

WHEREAS, Declarant has created a residential community with designated "Lots" (as defined herein) for the benefit of the present and future owners of said Lots within the Subdivision, and desires to create and carry out a uniform plan for the improvement, development and sale of the Lots; and

WHEREAS, Declarant desires to ensure the preservation of the values and for the maintenance of Common Area, and to this end desires to further subject the Subdivision to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the Subdivision and the owners thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values of Lots in the Subdivision to subject and bind the Subdivision to the jurisdiction and assessment of AUSTIN HILLS HOMEOWNERS ASSOCIATION, INC. with the power and duty to maintain and administer the Common Area of the Subdivision and the power to administer and enforce the covenants and restrictions and to collect and disburse the assessments and charges hereinafter created; and

NOW, THEREFORE, Declarant declares that the Subdivision, and such phases or additions thereto as may hereinafter be made, is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the following covenants, restrictions, easements, charges, and liens hereinafter set forth and shall hereafter be subject to the jurisdiction and assessments of Austin Hills Homeowners Association, Inc.:

## ARTICLE I PURPOSE

Austin Hills Subdivision is encumbered by this Declaration of Covenants Conditions and Restrictions for the following reasons: to ensure the best and highest use and most appropriate development of the property; to protect lot owners against improper use of surrounding lots; to preserve so far as practicable the natural beauty of the property; to guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials; to encourage and secure the erection of attractive improvements on each lot with appropriate locations; to secure and maintain proper setbacks from streets and adequate free space; and, in general, to provide for development of the highest quality to enhance the value of investment made by Owners of Lots.

## ARTICLE II DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings.

(a) "Association" means AUSTIN HILLS HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation, its successors and assigns as provided for herein, which has the power, duty and responsibility of maintaining and administering the Common Area and administering and enforcing the restrictive covenants contained in this Declaration and any Amended or Supplemental Declaration. The Association is a "property owners association" as that term is defined in Texas Property Code §202.001(2).

(b) "Properties" means the properties collectively known as Austin Hills Subdivision, and additions thereto, as are subject to this Declaration or any Amended or Supplemental Declaration.

(c) "Lot" means any of the plots of land as shown on the Subdivision Plat.

(d) "Subdivision Plat" means the map or plat of AUSTIN HILLS SUBDIVISION, filed for record in the Plat Records of Nacogdoches County, Texas and any amendment thereof upon filing of same for record in the Plat Records of Nacogdoches County, Texas.

(e) "Living Unit" means a single family residence and its garage situated on a Lot.

(f) "Single Family" means a group related by blood, adoption, or marriage or a number of unrelated roommates equal to the number of bedrooms in a Living Unit.

(g) "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot, within the Properties, including contract sellers.

(h) "Declarant" means Vernon McLemore, his heirs, administrators, successors or assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign. No person or entity purchasing one or more Lots from Vernon McLemore in the ordinary course of business shall be considered a "Declarant."

(i) "Common Areas" means all real and personal property leased, owned, or maintained by the Association for the common use and benefit of the Members of the Association. The initial Common Area to be owned by the Association shall be conveyed to the Association. Common Areas also includes any entrance monuments, security gates, perimeter walls, drainage facilities and detention ponds, esplanade and right-of-way landscaping, any improvement areas lying within indicated public easements or rights-of-way as deemed appropriate by the Board of Directors of the Association for the preservation, protection and enhancement of the property values and the general health, safety or welfare of the Owners, safety lanes, and other areas not comprised of residential Lots as shown on the Subdivision Plat.

(j) "Resident" means each Owner who resides within the Properties, a bona fide lessee who has an enforceable lease agreement with an Owner and who resides on the Properties, and any individual who is otherwise lawfully domiciled in a Living Unit.

(k) "Member" means all those Owners who are members of the Association as provided herein.

(l) "Board of Directors" and "Board" means the Board of Directors of Austin Hills Homeowners Association, Inc., the election and procedures of which shall be as set forth in the Articles of Incorporation and By-Laws of the Association. The Board of Directors shall be the elected body having its normal meaning under the Texas non-profit corporate law.

(m) "ARC" and "Architectural Review Committee" means the Architectural Review Committee of Austin Hills Homeowners Association, Inc.

(n) "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Austin Hills Subdivision, and any amendments and supplements hereto made in accordance with the terms hereof.

### ARTICLE III PROPERTY RIGHTS

Every Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed or situated upon the

Common Areas and to impose reasonable limits on the number of guests who may use the facilities;

(b) the right of the Association to suspend an Owner's voting rights and the right to use any facility for any period during which any assessment of the Association against that Owner's Lot remains unpaid, and for infractions by an Owner of the restrictive covenants contained in this Declaration and/or the Association's rules and regulations for the duration of the infraction;

(c) the right of the Association to grant easements in and to the Common Areas to any public agency, authority or utility for such purposes as benefits the Properties or portions thereof and Owners or Lots contained therein.

(d) the right of the Association to borrow money for the purpose of improving the Common Areas, or any portion thereof, for acquiring additional Common Areas, or for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Areas, provided two-thirds (%) of each Class of members present at a meeting called for such purpose shall approve; provided however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or Owner, or the holder of any mortgage irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Subdivision;

(e) the right of the Association to dedicate or transfer all or any portion of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least two-thirds (2/3) of the votes which those of the Class A members of the Association which are present or represented by proxy are entitled to cast at a meeting duly called for such purpose, and by all of the Class B members so long as the membership shall exist; and

(f) the right of the Association to prescribe rules and regulations as they may be expanded, amended or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of the Owner's Lot may be affected by this provision and that the rules and regulations may change from time to time. The Board shall have the authority to enforce the rules and regulations by all appropriate means, including but not limited to the imposition of fines, if notice and an opportunity to be heard are given, and a member found to have violated the rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees.

(g) no Owner may construct or maintain or allow to be constructed or maintained any improvement, building, planting, fence or other structure on any part of the Common Areas.

## ARTICLE IV ARCHITECTURAL REVIEW

In order to protect the overall integrity of the development of the Subdivision as well as the value of improvements of all Owners, a committee of representatives designated as the Architectural Review Committee is hereby established to carry out all duties as noted herein with full authority to approve and disapprove and control all construction, development and improvement activities of any kind (including, without limitation, structures, buildings, hardscape and landscape) within the Subdivision and to insure that all such activities are constructed in accordance with good workmanship-like manners and standard industry trade practices and to insure that all improvements are architecturally, aesthetically and ecologically designed to be compatible with Declarant's conceptual plan for the overall Subdivision and/or is decided by the Architectural Review Committee.

No building, structure, fence, residence, house, garage, accessory building, outbuilding or construction of any kind shall be erected, placed, constructed, maintained, or modified until a complete set of plans and specifications and the name of the builder shall have been formally submitted to the ARC and the ARC'S written approval received. Plans and specifications which are submitted shall contain and include, but not necessarily be limited to the following information: floor plans, including finished floor and ground elevations; exterior elevations for any buildings, fence or other structure; exterior lighting and location; and any other plans, specifications or information deemed pertinent by the Architectural Review Committee and/or Declarant.

The Architectural Review Committee shall review the qualifications of the builder and all plans, specifications and other information which are submitted for compliance with all the requirements of this covenant and for the compatibility of any improvements therein with the architectural, aesthetic and ecological goals of the Subdivision and Declarant, it being the intent that such goals require that all improvements be compatible with all other improvements in the Subdivision and that they be in harmony with their natural surroundings. The ARC shall have full right and authority to utilize its sole discretion in approving or disapproving the builder and/or any plans and specifications which are submitted. In the event the ARC fails to approve the builder and/or submitted plans, or to request additional information reasonably required within thirty (30) days after submission, the applicant shall give the ARC written notice of its failure to respond. Unless the ARC responds within ten (10) days of receipt of such notice, approval will be deemed granted.

The Architectural Review Committee may disapprove the construction or design of any improvement, on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or value of the Subdivision, or to preserve the serenity and natural beauty of any surroundings. Prior approvals and/or disapprovals of the ARC pertaining to any improvement activities or regarding matters of design or aesthetics shall not be deemed binding upon the ARC for later requests for approval if the ARC feels that the repetition of such matters will have an adverse effect on the Subdivision. The Architectural Review Committee shall have the express power to

construe and interpret any covenant herein that may be capable of more than one construction.

The ARC shall have the authority to employ professional consultants at the expense of the Association to assist it in performance of its duties. The decision of the Architectural Review Committee shall be final, conclusive and binding upon the applicant. The ARC members shall not be entitled to any compensation for any services rendered pursuant to this covenant.

Members of the ARC shall not be liable to any person (including Owners and builders) subject to or possessing or claiming any benefits of this Declaration and the covenants contained herein, for any damage or injury to property arising out of their acts hereunder.

The number and initial ARC members shall be decided by Declarant. So long as there is a Class B membership, in the event of the death or resignation of any member of the ARC, Declarant shall have full power and authority to appoint a successor committee member or members, chosen in its sole discretion, with like authority. Upon the expiration of the Class B membership, the Board of Directors shall appoint the members of the ARC, which shall consist of at least three (3) but no more than five (5) members.

#### ARTICLE V RESTRICTIVE COVENANTS FOR USE OF LOTS

A. Single Family Residential Purpose. All Lots in the Subdivision shall be used for single family residential purposes only. No business may be operated out of a residence, whether for profit or nonprofit which attracts vehicular or pedestrian traffic to the Lot. No building or structure intended for or adapted to business or commercial use shall be constructed or maintained on any Lot. No hobby may be conducted on any Lot which attracts vehicular or pedestrian traffic to the Lot. Except as set out in Article VIII, below, no Lot shall be further subdivided, and no portion, less than all of any Lot, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of the Declarant.

During the construction and sales period of the initial Living Units, Declarant or builder member may erect and maintain such structures as are customary in connection with such construction and sale of such property, including, but not limited to storage facilities, signs and construction trailer.

No building will be erected, placed or altered on any Lot until the builder and the construction plans showing the location of the structure have been approved by the ARC as to quality of workmanship and materials, harmony or external design with existing structures, and location with respect to topography and finish grade elevation

Construction of all Living Units or other structures must be commenced within six (6) months after the Owner has purchased the Lot. No Living Unit or other structure shall remain incomplete for more than six (6) months after construction has commenced.

Living Units may be leased for a period of no less than one (1) year, provided that the occupants under the lease satisfy the age requirements of Article VI of this Declaration, and any rule or regulation adopted by the Board with respect thereto. All leases must be in writing, and must contain a provision that such lease is subject to this Declaration and the By-Laws, and that any violation of the Declaration or the By-Laws of the Association shall be a default under the lease. The lease of a Living Unit shall not discharge the Owner from compliance with any of the obligations and duties as an Owner. Owners shall provide lessees with a copy of this Declaration, By-laws and the rules and regulations of the Association. All the provisions of this Declaration, Articles of Incorporation, By-laws, Design Guidelines and rules and regulations of the Association shall be applicable and enforceable against any Resident (as defined herein) to the same extent as against and Owner. Any lease or rental agreement shall be deemed to be subject to the documents of the Association by reference without the necessity of specific reference to them, and they shall bind the tenant to their terms and conditions.

B. Garages. Every Living Unit shall have and maintain a garage attached to the residence large enough to accommodate under roof a minimum of two (2) full-sized automobiles. Open car ports are not permitted, unless special design circumstances warrant their use, in which case permission must be obtained in writing from the ARC. All garage doors shall be closed when not in use. Each Owner, member or resident shall refrain from performing repairs or maintenance to any vehicle outside of the garage or visible from the street. Vehicles shall not be parked on any non-paved portion of any Lot.

C. Accessory Buildings. No storage buildings of any kind may be constructed upon any Lots in the subdivision. No accessory buildings of any kind may be constructed upon Lots in Sections 1, 2, 3 and North 4 of the Subdivision. Every accessory building and/or structure, inclusive of such structures as a gazebo, spa, greenhouse or children's playhouse, shall be compatible with the Living Unit to which it is appurtenant in terms of its design and material composition. All such accessory buildings shall be subject to approval of the ARC. In no instance shall an accessory building exceed on (1) story in height nor shall the total floor area of an accessory building exceed 144 square feet in size.

D. Building Materials. The exterior walls of all Living Units shall be constructed with 80% exterior masonry. The minimum masonry percentage shall apply to the aggregate area of all exterior walls including chimneys but excluding doors, windows and similar openings. Masonry includes brick, brick veneer, stone, stone veneer, stucco, rock, and cementitious boards or siding.

Roofing shall be either slate, tile, factory fire treated wood, or a minimum 30 year laminated composition shingle, or other materials as approved by the ARC.

All garages shall have a single door which is no less than sixteen feet (16') in width.

All fireplace flues and smoke stacks shall be enclosed and concealed from public view in finished chimneys or materials architecturally compatible with the finish material of the exterior walls of the dwelling or otherwise approved by the ARC.

E. Height Restriction. No building or structure erected, altered or placed on, within or in the Properties shall exceed two (2) standard stories in height.

F. Roof Pitch. All Living Units shall have a pitch roof, with not less than a 6/12 pitch on any portion of the roof visible from the street, unless otherwise approved by the ARC.

G. Minimum Floor Space. The main residence building of each residence constructed on a Lot shall contain a minimum of 1,750 contiguous square feet, exclusive of open or screened porches, terraces, patios, driveways, garages and living quarters for domestic servant separated or detached from the primary living area. Notwithstanding the foregoing, the ARC may permit a variance in the minimum square footage of any residence building in the subdivision, when in the opinion of said Committee, such variance is necessary in order to develop a particular lot, and will not have a detrimental effect on the subdivision.

H. Setbacks. No building or Living Unit shall be located on any Lot nearer than twenty feet (20') to, or further than thirty feet (30') from, the front curb line of each Lot.

Sideyard setbacks shall be a minimum of three feet (3') from the side property lines of each Lot.

Notwithstanding the foregoing, the ARC may permit a variance in the setback lines on any Lot in the Subdivision, when in the opinion of said Committee such variance is necessary in order to develop a particular Lot, and will not have a detrimental effect of the Subdivision. The ARC may establish additional setback lines for other structures.

I. Fences. No fence or wall shall be built or maintained forward of the front wall line, nor any hedge planted or maintained forward of the front setback line, of the main structure, but this will not include decorative walls or fences which are part of the architectural design of the main structure, and which are not to be built or maintained nearer than the building setback line of any Lot, unless otherwise approved in writing by the ARC. All fences or walls located on his respective Lots are to be maintained at owners expense. All fences, except those across the back of Lots which adjoin the Common Areas, shall be of the following composition: all masonry, brick, wood or other material approved by the ARC. All the fences across the back of Lots which adjoin any Common Area shall be constructed of black vinyl dipped chain link, or other wire material as may be approved by the ARC. All posts on wood constructed fences must be metal and concreted into the ground. All fences must be approved by the ARC.

All sideyards must be enclosed with privacy fence constructed in accordance with these Restrictions.

No wall or hedge in the front of a Lot shall exceed three feet (3') in height. Side or rear yard fences shall not exceed eight feet (8') in height, EXCEPT that fences or hedges located across the back of Lots which adjoin the Common Areas shall not exceed four feet (4') in height.

The Declarant will construct a fence along the boundary line of the Subdivision which adjoins West Austin Street. No fence or wall of any kind shall be built or maintained along said fence. A privacy hedge may be planted or maintained inside said fence line, but such hedge shall not be taller than said fence.

The ARC is empowered to grant variances to the aforesaid composition requirements for fences and the aforesaid height or setback limitation in connection with retaining walls.

J. Driveways. Driveways on each residential Lot must be constructed of concrete being a minimum of four inches (4") thick and having reinforcement of a minimum six inch (6") gauge welded wire. Each driveway must accommodate a minimum of two (2) vehicles in front of the garage for off-street parking requirements. Curbs that are being removed in order to form driveways must be cut or sawed. Driveways must be completed prior to residence being occupied.

K. Temporary structures. No structure of a temporary character (sales structure, trailer, tent, shack, garage, barn or other accessory buildings) shall be used on any Lot at any time for storage or as a residence, either temporarily or permanently. No trailer (except Builder sales and construction trailers), camper, recreational vehicles, or similar vehicles shall at any time be parked in view of any other Lot or Living Unit or connected to utilities situated within a Lot. No prefabricated dwelling or building previously constructed elsewhere may be placed or maintained on any Lot. No modular, manufactured, prefabricated or mobile home, whether or not the wheels have been removed, may be placed or maintained on any Lot. All structures of a temporary character must be approved by the Architectural Control Committee.

L. Signs. No signs, banners, or pennants of any kind shall be displayed to the public view on any Single-Family residential Lot except one (1) professional sign of not more than one (1) square foot, one (1) sign of not more than four (4) square feet advertising the property for rent or sale, or signs used by Declarant to advertise the property during the construction and sales period.

M. Environmental Maintenance. All improved yards and lawns shall be kept neat and well maintained and all grass, weeds, and vegetation on each Lot shall be kept mowed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from each Lot and replacements of equal quality or value promptly installed. Lawns must be properly maintained (not to exceed six inches [6"] in height) and fences must be repaired and maintained and no objectionable or unsightly usage of Lots will be permitted which is visible to public view. Building materials shall not be stored in public view on any Lot, and

any excess materials not needed for construction and any building refuse shall promptly be removed from each Lot.

Until a Living Unit is built on a Lot, Declarant or the Association may, at its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed therefrom. Declarant or the Association may also, at its option, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The Owner of any Lot shall be obligated to reimburse Declarant or the Association for the cost of such maintenance or removal upon demand.

Front and street side yards shall be fully sodded within ninety (90) days of occupancy of a Living Unit upon completion of construction. All front yards and side yards on all Lots must be planted with grass or other ground cover exclusive of any landscape areas. Decorative ground cover rock in the front and side yards may not exceed ten percent (10%) of the total area of the front and side yards. Cuts into natural grade visible from the street are to be faced with masonry, sodding or landscaping. Allowances may be made for areas left in their natural state depending upon their appearance, and subject to the express approval of the ARC.

N. Vehicles. No trailer, motor home, tent, boat, marine craft, hovercraft, aircraft, recreational vehicle, motor home, camper body, travel trailer, truck larger than a one (1) ton pick-up (except those used by a builder during the construction of improvements), or wrecked, junked, or inoperable vehicle shall be kept, parked, stored or maintained on any portion of the front yard area of a Lot nor shall be kept, parked, stored or maintained on other portions of the Lot, unless in an enclosed structure or in a screened area which prevents the view thereof from any Lots or dwelling and streets. No stripped down, wrecked, junked or inoperable trailers, boats, recreational vehicles or motor vehicles shall be kept, parked, stored or maintained on any Lot. No dismantling or assembling of a motor vehicle, boat, trailer, any truck or any other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. The ARC shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by the ARC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph.

No vehicles, trailers, implements or apparatus may be driven or parked on any easement. No commercial vehicle bearing commercial insignia or names shall be parked on any Lot except within an enclosed structure or a screened area which prevents such view thereof from adjacent Lots and streets, unless such vehicle is temporarily parked for the purpose of serving such Lot. On street parking is restricted to approved deliveries, pick-up or short-time guests and invitees. Residents shall not park on any street. No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Subdivision at any time.

O. Offensive Activities. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Owners, Properties or the Subdivision.

No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to other Owners or Lots (reasonable security or landscape lighting is permitted with the approval of the ARC).

P. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary containers. No trash, ashes or other refuse may be thrown or dumped on any vacant Lot, park, street, Right of Way, or drainage area in the Properties. No trash or debris may be scattered on an Lot, street or neighboring Lot during construction. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but shall be removed from view before the following day.

Q. Pets. No animals, livestock, poultry, exotic or dangerous pets of any type (i.e. pit bulls, boa constrictors, ferrets, etc.) that may pose a safety or health threat to the community shall be raised, bred or kept on any Lot except for cats, dogs, or other generally recognized household pets of a reasonable number provided that they are not kept, or maintained for any commercial purposes. Any pet which endangers the health of any owner or occupant of a Lot or which creates a nuisance or an unreasonable disturbance or is not a common household pet, as may be determined by the Board, must be permanently removed from the Subdivision upon seven (7) days' written notice by the Board of Directors. No pets shall be permitted in the Common Areas.

All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws), and in accordance with all rules established by the Association. It shall be the responsibility of the owners of such household pets to prevent the animals from running loose or becoming a nuisance to the other residents.

R. Microwave, radio, TV Antenna and Solar Collectors. No microwave dishes, radio (citizen band or otherwise) or television aerial wires or antennas shall be maintained on any portion of any Lot, or in the Common Area, except direct broadcast satellite (DBS) antennae less than one meter in diameter, multichannel multipoint distribution system (MMDS) antennae less than one meter in diameter, or television broadcast antennae, which Owners shall screen from view. Solar apparatus, if erected, must be maintained in such a way that it is screened from public view.

S. Air Conditioning Equipment. No window, roof or wall type air-conditioner that is visible from any street shall be used, placed or maintained on or in any Living Unit. No air-conditioning apparatus shall be installed on the ground in front of a Living Unit.

T. Athletic Facilities. Basketball goals, or backboards, or any other similar sporting equipment of either a permanent or temporary nature may not be placed on the front of any Lot or the side lot lines of corner lots in the Subdivision without the prior written consent of the ARC.

U. Utility and Service Lines. No gas, electric, power, telephone, water, sewer, cable television, or other utility line or structure may be placed, allowed, or maintained upon or above the ground on any Lot, except to the extent, if any, underground placement thereof is prohibited by law or would prevent such utility line or structure from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.

V. Mailboxes. All Living Units must have a mailbox at the street which is enclosed with the same masonry material as the Living Unit. No wood, metal or material other than masonry is permitted for a mailbox, unless approved by the ARC.

## ARTICLE VI AGE RESTRICTIONS

A. Housing for Older Persons. The Subdivision is intended to be operated for occupancy by persons fifty (50) years of age or older in accordance with The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 et. seq.), and Texas law regarding fair housing (Tex. Civ. Stat. § 301.043 et. seq.) (collectively, the "Fair Housing Acts"), which exempt "housing for older persons" from the prohibitions against discrimination based on familial status. Except as provided in Paragraph B. below, each Living Unit, if occupied, must be occupied by at least one (1) person fifty (50) years of age or older. Except as provided in Paragraph B. below, no person under eighteen (18) years of age shall occupy or reside in a Living Unit. The Board, in its sole and absolute discretion, shall have the right and power to determine when a person "occupies or resides" in a Unit.

B. Waivers. In accordance with the Fair Housing Acts, at least eighty percent (80%) of the occupied Living Units must be occupied by at least one person who is fifty (50) years of age or older. Accordingly, the Board, upon application, shall have the right and option, but without obligation, at the Board's sole and absolute discretion, to permit a Living Unit to be occupied by persons all of whom are under the age of fifty (50), unless the granting of permission would result in fewer than eighty percent (80%) of the occupied Living Units being occupied by one person fifty (50) years of age or older, or considering other factors deemed appropriate by the Board, may jeopardize (whether at the time of the request or in the future) the Subdivisions status as "housing for older person" under the Fair Housing Acts. The Board shall exercise its sole and absolute discretion based upon criteria that the Board shall determine as appropriate, including, without limitation, information then known to the Board concerning potential or pending changes in occupancy of other Living Units within the Subdivision, the ages of the persons requesting such permission, the proximity to age fifty (50) of those occupants of other Living Units within the Project then under such age, and any other information known to and deemed relevant by the Board in its sole discretion. Any request submitted to the Board pursuant to this subsection shall be a

written request setting forth the names and ages of all proposed Residents of the Living Unit and such other information as the Board reasonably may require.

The Board, upon application by a person, because of undue hardship on such person or other Residents of the Living Unit or extraordinary circumstances, in its sole and absolute discretion (unless the granting of permission would jeopardize the Subdivision's status as "housing for older persons" under the Fair Housing Acts), shall have the right and option, but not the obligation, to permit a Living Unit to be occupied by a person under eighteen (18) years of age. Any person requesting permission to have a Living Unit pursuant to the provisions of this subsection shall submit a written request to the Board setting forth the reason for the request and such other information as the Board reasonably may require. A person under eighteen (18) years of age may visit a Living Unit as a guest of the Residents of the Living Unit for a period of not more than three (3) consecutive weeks, and in no event for more than thirty (30) days in any twelve (12) month period.

C. Verification of Occupancy. Each Resident, as and when requested to do so by the Board, shall furnish the Board with the names and ages of all occupants of the Living Unit and such affidavits and other documents as the Board may request to verify the age of such occupants. In the event there is a change in the occupancy of a Living Unit, the Owner immediately shall notify the Board in writing of such change and comply with all rules and regulation adopted by the Board for verification of occupancy.

D. Publication of Policies. The Board shall publish and adhere to policies and procedures to demonstrate the intent that the subdivision is intended and operated for occupancy by persons fifty (50) years of age or older. Furthermore, the Board shall comply with any rules issued by the Secretary of Housing and Urban Development for verification of occupancy. The policies and procedures shall provide for verification of Residents by reliable surveys and affidavits or other means as permitted by the Fair Housing Acts.

E. Monitoring Compliance: Appointment of Attornev-in-Fact.

(i) The Association shall have the power and authority to enforce this Article VI in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the occupants of the Lots, requiring copies of birth certificates, or other proof of age for each occupant of the lot to be provided to the Board on a periodic basis, and taking action to evict the occupants of any Lot which is not in compliance with the requirements and restrictions of this section. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT, OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS ARTICLE VI. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Lot that, in the judgment of the Board, are reasonably necessary to monitor compliance with this Article VI.

(ii) Each Owner shall be responsible for ensuring compliance of its Lot with the requirements and restrictions of this Article VI and the rules of the Association adopted hereunder by itself and by its tenants and other occupants of its Lot. EACH OWNER, BY ACCEPTANCE OF TITLE TO A LOT, AGREES TO INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION THAT MAY ARISE FROM FAILURE OF SUCH OWNER'S LOT TO SO COMPLY

F. No Liability. The requirements contained in this Article VI are intended to comply with the exemption requirements under the Fair Housing Acts and any regulations now or hereafter issued therefor. Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that although it is the intent of the Declarant that the Subdivision is intended to be and that it be operated for occupancy by persons fifty (50) years of age or older in compliance with the Fair Housing Acts which exempt "housing for older persons" from the prohibitions against discrimination based on familial status, no representation or warranty is made that the subdivision complies or will comply with the Fair Housing Acts, and if for any reason the subdivision is deemed not in compliance with the Fair Housing Acts and therefore not exempt from the prohibitions against discrimination based on familial status, neither the Declarant nor the Association (or the affiliates of any of the foregoing) shall have any liability in connection therewith. Anything herein contained to the contrary notwithstanding, the Declarant, so long as the Declarant owns any Living Unit or Property, and thereafter, the Board, may amend the provisions of this Article VI to the extent that it deems it necessary or appropriate, without the approval of the Owners and/or Members in order to comply with the exemption requirements under the Fair Housing Acts or any regulations now or hereafter issued therefor, as they may be amended from time to time, with respect to "housing for older persons."

## ARTICLE VII EASEMENTS AND ACCESS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, if any, no structure, planting, fence or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or in the case of drainage easements, which may change or impede the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all improvements in such area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Neither the Association, Declarant nor any utility company using the easements herein or referred to shall be liable for any damages done by them or their assigns, agents, employees or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

There is hereby created a right of ingress and egress across, over, and under the Properties in favor of Declarant and the Association, for the sole purpose of installing,

replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, cable TV, electricity, gas, and appurtenances thereto.

An easement is hereby extended and acknowledged to all police, fire protection, ambulance, garbage and trash collector pickup vehicles and all similar persons to enter upon the Properties in performance of their duties.

Each Lot is conveyed subject to all easements, conditions and reservations shown on the Subdivision Plat and each Owner shall take notice of all such easements, conditions, and reservations. No Owner shall maintain any condition or improvements in any platted easement which will significantly interfere with the intended use of the easement.

Easements for drainage throughout the subdivision are reserved as shown on the Subdivision Plat. No Owner of any Lot in the subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such easements. More specifically and without limitation, no Owner or resident of a Living Unit may:

(a) alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements;

(b) alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without the prior written approval of the ARC and the Nacogdoches City Engineer;

(c) construct, erect or install a fence or other structure of any type or nature within or upon such drainage easements;

(d) permit storage, either temporary or permanent, of any type upon or within such drainage easements; or

(e) place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

The failure of any Owner to comply with the provisions of this Article shall in no event be deemed or construed to impose liability of any nature on the Association, ARC and/or Declarant, and such Committee and/or Declarant shall not be charged with any affirmative duty to police, control or enforce such provisions.

## ARTICLE VIII

### LOT CONSOLIDATION AND RE-SUBDIVIDING

Any Owner owning two (2) or more adjoining Lots or portions of two or more such Lots may, with the prior approval of the ARC or the Declarant, consolidate such Lots or

portions thereof into a single building site for the purpose of constructing one (1) residence and such other improvements as are permitted herein, provided, however, that the Lot resulting from such consolidation shall bear, and the Owner thereof shall be responsible for, all assessments theretofore applicable to the Lots which are consolidated, and each such building site shall meet all lawful requirements of any applicable statute, ordinance or regulation. Lot Nos. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31, in Section 4 may, with the prior approval of the ARC or the Declarant, be consolidated and re-subdivided, provided, however, that the Lot or Lots resulting from such consolidation shall bear, and the Owner thereof shall be responsible for, all assessments theretofore applicable to the Lots which are consolidated, and each such building site shall meet all lawful requirements of any applicable statute, ordinance or regulation. If two new Lots are created from such consolidation and re-subdivision, each of said Lots must contain at least 2,250 sq. ft. of area. If more than two new lots are created from such consolidation and re-subdivision, each of said Lots must contain at least 2,000 sq. ft. of area.

#### ARTICLE IX ENFORCEMENT

If the Owner of any Lot, or his or her heirs, executors, administrators, successors, assigns or tenants, shall violate or attempt to violate any of the restrictions and covenants set forth in this Declaration, it shall be lawful for the Association, Declarant, or any Owner subject to this Declaration, to prosecute any proceedings against the person or persons violating or attempting to violate any such restrictions and covenants. The failure of any Owner or tenant to comply with any restriction or covenant will result in irreparable damage to Declarant and other Owners of Lots in the Subdivision; thus the breach of any provision of this Declaration may not only give rise to an action for damages at law, but also may be enjoined or may be subject to an action for specific performance in equity in any court of competent jurisdiction. In the event an action is instituted to enforce the terms hereof or prohibit violations hereof, and the party bringing such action prevails, then in addition to any other remedy herein provided or provided by law, such party shall be entitled to recover court costs and reasonable attorney's fees. Neither the Architectural Review Committee, Association, nor Declarant shall be charged with any affirmative duty to police, control or enforce the terms of this Declaration and these duties shall be born by and be the responsibility of Lot Owners.

#### ARTICLE X MEMBERSHIP IN THE ASSOCIATION, VOTING RIGHTS AND REGISTRATION

Every person or entity who is a record Owner of a fee or undivided interest in any Lot which is subject to the jurisdiction of and to assessment by the Association shall be a Member of the Association.

A. Classes of Membership. The Association has two classes of membership:

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Class A: Class A members shall be all Owners with the exception of Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be - members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

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Class B: The Class B member shall be Declarant who shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the happening of either of the ; following events, whichever occurs earlier: (i) at such time as the Declarant has conveyed and/or dedicated eighty-five percent (85%) or more of the land area of the Subdivision, or (ii) on January 1, 2010.

B. Suspension of Voting Rights. All voting rights of an Owner may be suspended by the Board of Directors during any period in which such Owner is delinquent in the payment of any duly established assessment or is otherwise in default and/or violation thereunder or under the By-laws or rules and regulations of the Association.

## ARTICLE XI COVENANTS FOR MAINTENANCE ASSESSMENTS

Declarant, for each Lot owned by it within the Properties, hereby covenants, and every Owner of a Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided; and (3) Member Charges levied against individual Owners to reimburse the Association for extra or unusual costs incurred by the Association for curing the Owner's violation of a restrictive covenant contained in this Declaration. The annual and special assessments, together with such interest thereon, reasonable attorney's fees and costs of collection thereof, as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon, reasonable attorney's fees and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the obligation accrued.

The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members, and in particular, for the improvement, maintenance and operation of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Properties by the Members.

A. Annual Assessments. The annual assessments for both improved and unimproved Lots shall be determined by the Board of Directors in the manner provided for herein, after determination of current maintenance costs and anticipated needs of the

Association during the year for which the assessment is being made. The maximum annual assessment may be adjusted by a majority vote of the Board of Directors, without membership vote, but shall not be increased to more than one hundred and ten percent (110%) above the prior year's annual assessment. The Association may increase the maximum annual assessment rate by more than the amount specified in the preceding sentence only upon receipt of a two-thirds (2/3) approving vote of the Owners at a meeting called for vote on such a proposed increase.

B. Special Assessments. In addition to the annual assessments provided for above, the Association may levy, in any assessment year, a Special Assessment, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Areas, respond to the unusual emergency needs of the Association as may be expected to appear from time to time, or for such other lawful purpose related to the use of the Properties as the Board of Directors or the Owners may determine, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Lot owners and shall set forth the purpose of the meeting.

C. Member Charge. In addition to the annual assessment and any special assessment, the Association, by vote of the Board, may impose a charge (Member Charge) upon any Owner for the purposes of reimbursing the Association for all direct and indirect costs incurred by the Association with regard to the maintenance, repair or replacement of landscaping or site improvements on any particular Lot when the Board has determined the maintenance, repair or replacement of improvements associated with such Owner's Lot has been neglected to the point where conditions existing on such Lot are not in conformance with the maintenance obligations set forth in Article V, Section M. of this Declaration, or an Owner places anything in the Common Area. The Owners of such Lot shall be notified in writing of said determination and the specific deficiencies found to exist and shall be afforded a reasonable period of time to respond to said notice by correcting the deficiencies. The Owner shall be assessed the cost of reimbursing the Association for any and all costs, including attorney's fees, to secure compliance.

D. Due Dates. Budget and Late Charges. The annual assessments provided for herein shall become due and payable and shall be collected as the Board of Directors of the Association shall determine. The amount of the annual assessment shall be an amount which bears the same relationship to the annual assessment provided for above as the remaining number of months in that year bear to twelve. The Board shall use reasonable efforts to provide each Owner with an invoice statement as of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation. The due date of any special assessment under the provisions hereof shall be fixed in the resolution authorizing such assessment. The special assessments are due and payable on the dated fixed in the resolution authorizing the special assessment. Member charges are due and payable within thirty (30) days after the Owner is served with notice by the Association of the amount of such Member Charge.

Each year, the Board of Directors of the Association shall adopt an annual budget and set the amount of the annual assessment, taking into consideration the Association's operating costs for the then current year, expected increases or decreases in such costs over the next year, and future needs of the Association. The annual budget shall be adopted by the Board at least thirty (30) days prior to the commencement of each fiscal year.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate to be determined, from time to time, by the Board, not to exceed the maximum permitted by law. If the Board shall refuse or fail to determine a rate of interest, the rate of interest shall be eighteen percent (18%) per annum. If applicable state law provides or requires an alternate ceiling under Vernon's Annotated Texas Civil Statutes Article 5069-1.04, then that ceiling shall be the indicated rate ceiling.

E. Remedies and Lien for Assessments. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, and grants to the Association the power of sale in connection with said lien. The President of the Board of Directors shall have the right to appoint Agents, to mail and file the notices required by Texas Property Code § 51.002, to conduct the sale, and to otherwise comply with the statute. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

In addition to the foregoing charges for delinquent accounts, each Owner shall be obligated to pay to the Association all actual costs of collection incurred by the Association, including attorney's fees and such reasonable late charges and collection charges as the Board of Directors may establish, all of which shall also be subject to the liens of the Association.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

Notice of the lien may be given, but is not required, by the recordation in the Real Property Records of Nacogdoches County, Texas of an Affidavit of Delinquency And Notice Of Claim of Assessment Lien, duly executed by an officer, managing agent, attorney or officer of the Association, setting forth the amount owed, the name of the last known Lot Owner or Owners of record, and the legal description of the Lot.

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure the occupants of such Lot shall be required to pay a reasonable rent for the use of such Living Unit and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to appoint a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such apartment by forcible detainer or by Writ of Possession.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, non-judicial foreclosure, or conveyance in lieu of foreclosure or in satisfaction of mortgage debt. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

ARTICLE XII  
MAINTENANCE FUND AND GENERAL POWERS AND DUTIES OF  
THE BOARD OF DIRECTORS OF THE ASSOCIATION

Maintenance Fund. The Board, for the benefit of the Owners, shall establish and maintain a maintenance fund into which shall be deposited the annual assessments collected from Owners and which maintenance fund shall be used, without limitation, for the payment of the following:

(a) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.

(b) Care and preservation of the Common Area.

(c) The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board of Directors, (provided that any contract for management of the Association shall be terminable by the Association, with no penalty upon ninety (90) days prior written notice to the managing party) and the services of such other personnel as the Board of Directors or by the manager.

(d) Legal and accounting services.

(e) A policy or policies of insurance insuring the Common Area, the Association, its Directors, and Officers against any liability to the public or to the Owners (and/or invites or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors.

(f) Workers compensation insurance to the extent necessary to comply with any applicable laws.

(g) Such fidelity bonds as may be required by the By-Laws or as the Board of Directors may determine to be advisable.

(h) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board of Directors is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

(i) Perpetual maintenance and enhancement of all Common Areas including walls, gates, grounds, landscaping, lights, irrigation and electric for right-of-way and all entry monuments, walls, and signs owned or maintained by the Association.

Powers and Duties of Board. The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association:

(a) To execute all declarations of Ownership for tax assessment purposes and with regard to the Common Areas, if any, on behalf of all Owners.

(b) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board see fit.

(c) To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

(d) To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

(e) To make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Common Areas, by the Owners in the portions affected.

(f) To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

(g) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or

replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

(h) To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

(i) To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

(j) To establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses.

The Board shall have the exclusive right to contract for all goods, services and insurance payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

### ARTICLE XIII TITLE TO COMMON AREAS

All Common Areas within the Properties shall be conveyed to the Association free of lien prior to the conveyance of the first Lot by the Declarant. The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Areas which may be hereafter established. Nothing contained herein shall create an obligation on the part of Declarant to establish any Common Area.

There shall be no physical partition of the Common Area or any part thereof. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

### ARTICLE XIV INSURANCE AND CONDEMNATION

A. Fire, Hazard and Casualty Insurance. Owners of Lots hereby covenant and agree with all other Owners and the Association to carry all-risk casualty insurance on their Lot. Each Owner of a Lot further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original Living Unit. In the event the Living Unit is totally destroyed and the Owner

determines not to rebuild or reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of the construction.

Each Owner shall be responsible, at his own cost and expense, for personal liability insurance to the extent not covered by the Association and public liability insurance acquired by the Association on behalf of all Owners with respect to the Common Area. Before a Living Unit is erected on any Lot, each Owners shall carry, at Owners expense, homeowners and lot owners insurance. Once a Living Unit has been erected on a Lot and is Owner occupied, each Owners shall, at Owners expense, obtain homeowners insurance. If a Living Unit is leased to a third party, the Owner or Resident shall obtain liability and hazards insurance.

B. Property and Public Liability Insurance With Respect to Common Area. Errors and Omissions and Indemnification.

(1) The Board of Directors of the Association shall obtain and continue in effect property insurance, to insure the buildings and structures in the Common Area, naming the Association as beneficiary with an endorsement to the mortgagee, if any, against risks of loss or damage by fire and other hazards as are covered under standard fire and extended coverage provisions, and said insurance to included coverage against vandalism.

(2) The Board of Directors of the Association shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its agents and employees, and each Owner, from and against liability in connection with the Common Area.

(3) The Board of Directors of the Association shall obtain liability insurance covering errors and omissions of directors, officers, managers, employees and representatives of the Association, and fidelity bonds for all officers and employees which have control over the receipt or disbursement of funds.

(4) The Association may indemnify directors, officers, employees and agents and may purchase indemnity insurance in accordance with the provisions of Article 2.22A of the Texas Non-profit Corporations Act.

C. Insurance Premiums with Respect to Common Area. All costs, charges and premiums for all insurance with respect to the Common Area that the Board of Directors authorizes as provided herein shall be a common expense of all Owners and shall be part of the annual assessment.

D. Other Insurance. None of the above prevents the Board of Directors from obtaining other insurance as may be required by law (e.g. workers compensation) or other insurances which may become the norm for properties of this nature.

E. Condemnation. If part or all of the Common Area shall be taken or condemned by any authority having the power of eminent domain, any compensation and damages shall be paid to the Association. The Board of Directors shall have the exclusive right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation issues affecting such Common Area. The Owners may, by vote of seventy-five per cent (75%) or more of the total voting power hereunder, agree to distribute the proceeds of any condemnation or taking by eminent domain, to each Owner and his mortgagee, if any, as their interest may appear. In event that the Owners shall not so agree, such proceeds shall be added to the funds of the Association, and the Association shall decide on whether or not to replace or restore, as far as possible, the Common Area so taken or damaged.

The Association shall give timely notice of the existence of such proceedings to all Owners and their mortgagees, if any. The expense of participation in such proceedings shall be common expenses chargeable to the Owners.

F. Insufficient Proceeds. If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in Article XI, Section B. of this Declaration.

#### ARTICLE XV AMENDMENT AND ANNEXATION

This Declaration shall remain in force and effect for a period of thirty (30) years after this Declaration is recorded, at which time, and each tenth anniversary thereafter, this Declaration shall be renewed for a period of ten years unless amended as provided herein. This Declaration may be amended by written instrument approved by the affirmative vote of the Members of the Association holding at least seventy-five percent (75%) of the total votes. The amendment shall be effective when it is certified by the President of the Association as to the requisite number of votes and recorded in the Official Public Records of Real Property of Nacogdoches County, Texas. Any amendment so certified and recorded shall be conclusively presumed to have been duly adopted. Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by any other Owner of Lots, or any interest therein, for a period of one (1) year from the date of recordation of this Declaration in the Official Public Records of Real Property of Nacogdoches County, Texas for any reason. Notwithstanding the foregoing, after the expiration of one (1) year from the date of recordation of this Declaration in the Official Public Records of Real Property of Nacogdoches County, Texas, Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by any other Owner of Lots, or any interest therein, for the limited purposes of correcting a clerical error, clarifying an ambiguity, removing any contradiction in the terms hereof, or for the purpose of making such additions or amendments hereto as may be required by FHA, HUD or VA to qualify the Properties for mortgage guaranties issued by FHA and/or VA.

ARTICLE XVI  
GOVERNMENTAL REQUIREMENTS

By acceptance of a deed to a Lot, or initiating construction of a residence or improvements to a Lot, each builder and contractor assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable governmental rules, regulations, and permits, including, but not limited to those promulgated or issued by the Environmental Protection Agency and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 et seq.), and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Water Development Board and Texas Water Commission, related to each Lot, including, without limitation, the provisions of chapters 325 and 331, Texas Administrative Code, and any specific rulings made pursuant to the terms thereof. The foregoing references are made for the benefit of builders and contractors and do not in any way limit the terms and requirements of this covenant and the requirement that all builders and contractors comply with all governmental regulations, and any plan required by such regulations such as Storm Water Pollution Plan, affecting each Lot and construction site with which they are associated, including delivery to Declarant of a certification of understanding relating to any applicable NPDES permit prior to the start of construction. Each builder and contractor, by acceptance of a deed to a Lot or undertaking the making of improvements to a Lot, holds harmless and indemnifies Declarant cost, loss, or damage occasioned by the failure to abide by any applicable governmental statute, rule, regulation or permit related to the Properties.

By acceptance of a deed to a Lot, each builder and Owner agrees that Declarant and the Association shall have the right to enter upon any Lot on which one or more conditions or activities prohibited by appropriate governmental authority is maintained, or on which there has been a failure to perform any act required by appropriate governmental authority, for the purpose of curing any such violation, provided that the Owner or builder has been given five days prior written notice and has failed to remedy the complained of violation within such time, and each such Owner and builder indemnifies and holds harmless Declarant and the Association from all cost and expense of such curative action and any cost or expense of penalty or fine levied by any governmental authority as a result of the act or failure to act of the Owner or builder with respect to his Lot or the Properties. The foregoing remedy shall be cumulative of all other remedies for violations of provisions of these covenants.

ARTICLE XVII  
GENERAL PROVISIONS

A. Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible to more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern. Whenever in the application of the provisions of this Declaration, or any amendment hereto, conflict with the application of any provision

of the By-Laws of the Association, the provisions or application of this Declaration shall prevail.

If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions here apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

B. Notices. Any notice required to be given to any Owners, Member or Resident shall be complete when the notice is deposited in the United States Mail, postage prepaid, and addressed to the Owner, Member or Resident at the last known address as shown by the records of the Association.

C. Headings. The headings contained in this Declaration are for reference purpose only and shall not in any way affect the meaning or interpretation of this Declaration.  
EXECUTED effective the 16<sup>th</sup> day of September, 2004.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of the day and year above written.

DECLARANT:

Vernon McLemore

STATE OF TEXAS §

COUNTY OF NACOGDOCHES §

This instrument was acknowledged before me the 16<sup>th</sup> day of September, 2004 by Vernon McLemore.

KIMBERLY BOYD

Notary Public

State of Texas

My Comm. Exp. 03/20/2005