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10/17/2006 RP2 $164.00

DECLARATION OF

COVENANTS AND RESTRICTIONS

FOR

ROSEDALE PLACE

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR ROSEDALE PLACE is made this 12th day of September, 2006, by PERRY HOMES, a Joint Venture ("Declarant").

RECITALS

A. Declarant is the owner of certain real property situated in the City of Houston, Harris County, Texas, as more particularly described as follows: Rosedale Place, an addition in the City of Houston, Harris County, Texas, according to a map or plat thereof, recorded under Film Code No. 597125 of the Map Records of Harris County, Texas, together with additions thereto as may be made subject to the terms of this Declaration by any Supplemental Declaration of Covenants executed and filed, from time to time, by Declarant in the Deed Records of Harris County, Texas (being collectively called the "Property"), and desires to create on the Property a residential community with residential Townhome Sites and common areas for the benefit of the Owners, as hereinafter defined.

B. Declarant desires to provide for the efficient preservation of the values and amenities within the Property and for the maintenance of Common Areas. To this end, Declarant desires to impose upon the Property the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration and has caused, or will cause, to be created Rosedale Community Association, Inc., ("Association"), a Texas non-profit corporation, to which is delegated and assigned the powers of maintaining and administering the Common Areas and enforcing the terms of this Declaration.

NOW, THEREFORE, Declarant, for and in consideration of, and expressly for the benefit of, and to bind, its successors-in-interest, does hereby agree and declare that the Property, including any additions thereto as may hereafter be made hereof, shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens sometimes referred to collectively as the (the "Covenants") hereinafter set forth which shall run with the land and shall be binding upon all parties having any right, title, or interest in or to the Property, or any

part thereof, and their heirs, successors, representatives and assigns. The covenants, conditions, restrictions, easements, charges and liens hereinafter set forth are covenants running with the Property at law as well as in equity.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration shall have the following meanings:

"Access Elements" shall mean any access gates or other access elements restricting access the Subdivision, or any portion thereof.

"Access Easement" shall mean an easement for the purposes of ingress and egress, including vehicular access, to the Townhome Sites, designated on the Plat as "Shared Driveway".

"Architectural Committee" shall mean the New Construction Committee or the Modifications Committee, whichever is applicable, as described in Article IX of this Declaration.

"Assessments" shall mean and refer to the regular annual assessments, the special assessments and the default assessments levied for the Association as determined by the Board of Directors.

"Association" shall mean and refer to the Rosedale Community Association, Inc., a Texas non-profit corporation, its successors and assigns.

"Board of Directors or Board" shall mean the governing body of the Association, the elections and procedures of which shall be as set forth in the Articles of Incorporation and the Bylaws of the Association.

"Common Area" shall mean any Access Elements, Access Easements, Landscape and Irrigation Easements, any Reserve designated on the Plat and any property, real or personal, owned, held or maintained by the Association for the benefit of the Members of the Association, including, but not limited to, any wrought iron fences, common sewer lines and common water lines, and any paved parking area that is utilized by the Owner or Resident of more than one Townhome Site.

"Declarant" shall mean and refer to Perry Homes, a Joint Venture and its successors and assigns, if: (a) such successor or assignee should acquire more than one (1) undeveloped Townhome Site from Perry Homes, a Joint Venture for the purpose of development; and (b) any such successor or assignee shall receive by assignment from Perry Homes, a Joint Venture of all or a portion of its rights hereunder

as such Declarant, by an instrument expressly assigning such rights as Declarant to such successor or assignee.

"Dwelling Unit" shall mean and refer to a townhouse unit situated upon the Property which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a permitted family size group of persons.

"Election Date" shall mean the earliest of the dates when (i) Declarant shall have sold all of its Townhome Sites; (ii) Five (5) years have lapsed from the date of recordation of the Declaration; or (iii) Declarant by written notice to the Board of Directors notifies the Association of the Declarant's election to cause the Election Date to occur.

"Institutional Mortgage" shall mean a mortgage or deed of trust creating a first lien on a Townhome Site which is held by a third party institutional lender.

"Landscape and Irrigation Easement" shall mean an easement granted to the Association for the purposes of installing, maintaining, removing, re-installing and/or re-planting landscaping and irrigation equipment, in, over, on, under and or across certain portions of the Townhome Sites described in a separate document, recorded or to be recorded in the Deed Records of Harris County, Texas, incorporated herein by reference. THE LANDSCAPE AND IRRIGATION EASEMENTS, IF ANY, CONSTITUTE EASEMENTS ONLY, AND IN NO WAY GRANT OR CONVEY OWNERSHIP OF ANY PART OF THE UNDERLYING FEE SIMPLE ESTATE.

"MC" shall refer to the Modifications Committee as described in Article IX of the Declaration.

"Member" shall mean and refer to each Owner as provided herein in Article II of this Declaration.

"NCC" shall mean and refer to the New Construction Committee as described in Article IX.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Townhome Site but, notwithstanding any applicable theory of mortgages or other security devices, shall not mean or refer to any mortgagee or trustee under a mortgage or deed of trust unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any conveyance in lieu of foreclosure. Declarant shall be deemed an Owner of each unplatted Townhome Site.

"Party Wall" shall mean and refer to the common wall which is built or exists as a part of the original construction between two Townhomes.

"Plat" shall mean those certain plats of the Property.

"Property" shall have the meaning given to it in Paragraph A of the Introductory Statement above.

"Resident" shall mean and refer to each person (not otherwise an Owner or Member) authorized by an Owner to reside within such Owner's Dwelling Unit.

"Shared Driveway" shall mean the same as Access Easement.

"Shared Improvement" shall mean and refer to each improvement on a Townhouse Site, other than a Shared Driveway, which is also an improvement shared by the adjacent Townhouse. By way of example, without limitation, the following items are Shared Improvements: entry ways serving more than one Townhouse, exterior lighting, roofs, decking beneath the roofs, foundations, walls on shared property lines which are party walls, exterior facia and brick on common walls of Townhouses.

"Subdivision" shall mean the same as the Property.

"Townhome Site" or "Townhome Sites" shall mean and refer to the portion of the Property on which a Dwelling Unit is situated.

"Townhome" shall mean the same as a Dwelling Unit.

"Two-Thirds Member Vote" shall mean the approval of two-thirds (2/3^{rds}) of all Members (regardless of class) entitled to vote who either (i) are voting in person or by proxy at a meeting duly called for this purpose and at which the necessary quorum exists, or (ii) execute a written consent in lieu of a meeting for such purpose.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; ADDITIONS TO THE PROPERTY; THE BOARD OF DIRECTORS

2.1 **Membership**. Each and every Owner shall automatically be and must remain a Member of the Association, subject to the terms of this Declaration, the Articles of Incorporation and the Bylaws of the Association and the Association's rules and regulations. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to a Townhome Site. Ownership of a Townhome Site shall be the sole qualification for being a Member; provided, however a Member's privileges in the Common Areas may be regulated or suspended as provided in this Declaration, the Bylaws of the Association and/or the Association's rules and regulations. Any person or entity that holds an interest in and to a Townhome Site merely as security for the performance of an obligation shall not be a Member until such time as the holder or its successor acquires title to the Townhome Site through foreclosure or conveyance in lieu thereof.

2.2 **Transfer**. Membership of an Owner in the Association may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale or assignment of said Owner's interest in a Townhome Site and then only to the purchaser or assignee as the new Owner thereof. Such membership shall not be severed by the encumbrance by an Owner of a Townhome Site. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void and of no further force or effect. Owners shall notify the Association of any transfer of the fee title to a Townhome Site. Such transfer shall automatically operate to transfer the membership to the new Owner thereof. In the event an Owner should fail or refuse to provide written evidence of transfer of the membership in the Association registered in such Owner's name to the transferee of such Owner's interest in a Townhome Site, the Association shall have the right to record the transfer upon the books and records of the Association.

2.3 **Classes of Membership**. The Association shall have two classes of voting membership:

CLASS A. Class A Members shall be all Members with the exception of Declarant. Class A Members shall be entitled to one vote for each Townhome Site in which they hold the interest required for membership. When more than one person holds such interest or interests in any Townhome Site, all such persons shall be Members, and the vote for such Townhome Site shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Townhome Site.

CLASS B. The Class B Member(s) shall be the Declarant. The Class B Member(s) shall be entitled to three (3) votes for each Townhome Site owned by the Class B Member(s). However, at such times as the total number of Townhome Sites owned by the Class A Members equals or exceeds three (3) times the total number of Townhome Sites owned by the Class B Member(s), the Class B Member(s) shall, during the time such equality or excess continues, be entitled to only one (1) vote for every Townhome Site owned by it. Unless Additional Property is subjected to the terms of this Declaration in accordance with the provisions of Section 2.4, from and after January 1, 2009 (as subsequently amended, the "Voting Conversion Date"), the Class B Member(s) shall only be entitled to one (1) vote for each Townhome Site owned by it regardless of the number of Townhome Sites owned by the Class B Member(s) at such time. In the event Additional Property is subjected to this Declaration in accordance with Section 2.4, then the Supplemental Declaration, as hereinafter defined, annexing such Additional Property shall designate a new Voting Conversion Date.

2.4 **Additions to the Property**. Additional tracts of land, together with the improvements situated thereon, may become subject to this Declaration and added to the Property in any of the following manners.

(a) Declarant may, without the consent of any Owner and at its sole option, at any time and from time to time within five (5) years from the date of recordation of this Declaration, add to the Property and to the concept of this Declaration, all or any portion of any other real property (the "Additional Property"), by filing of record, one or more Supplemental Declarations of Covenants, Conditions and Restrictions, which shall extend the coverage and/or concept of the covenants, conditions and restrictions of this Declaration to such property. Any such Supplemental Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Property and as are not inconsistent with the concept of this Declaration. In no event, however, shall such Supplemental Declaration modify or add to the covenants established by this Declaration for the Property existing prior to the filing of any such Supplemental Declaration unless such modifications and additions are approved by a Two-Thirds Member Vote. Declarant may make any such addition even though at the time such addition is made Declarant is not the Owner of any portion of the Property. Each Supplemental Declaration shall designate the number of separate Townhome Sites or tracts comprising the Additional Property which are to constitute Townhome Sites, and each such separate Townhome Site or tract shall constitute a "Townhome Site" within the meaning of this Declaration. All or any part of the Additional Property and improvements located thereon owned by Declarant or any interest held by Declarant in the Property may be conveyed, transferred or assigned to the Association and designated as Common Areas by the Declarant at its sole discretion and without the approval, assent or vote of the Association or of its Members; provided that any property so conveyed shall be free and clear of any and all mechanic's and materialmen's liens and that all taxes and governmental assessments against any such property which are then due and payable shall have been paid prior to the date of such conveyance. Notwithstanding any other provision hereof, nothing contained herein shall be deemed to require Declarant to add any Additional Property to the Property. Moreover, Declarant reserves the right to subject any Additional Property or any part thereof to the plan or one or more separate declarations of covenants, conditions and restriction which subjects the real property to the functions, powers and jurisdiction of an association or other entity with powers and obligations similar to the Association and which may or may not be subject to the provisions of this Declaration.

(b) The annexations of Additional Property authorized by this Declaration shall be accomplished by executing and filing of record in the office of the County Clerk of Harris County, Texas, a Supplemental Declaration or similar instrument, with respect to any Additional Property which shall extend the plan of this Declaration to such real property. Any such Supplemental Declaration contemplated above may contain such additions, deletions and/or modifications of the covenants, conditions, restrictions, easements, liens and charges contained in this Declaration as may be necessary to reflect the different

character, if any, of such Additional Property and as are not substantially inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration, or any merger or consolidation revoke, modify or add to the covenants, conditions, restrictions, easements, liens or charges established by this Declaration, as same relate to and affect that portion of the Property previously subject to this Declaration. Further, the method of determining Assessments for the Additional Property shall not result in an Assessment substantially less than that affecting the Property unless such Additional Property and the Owners thereof do not enjoy substantially all of the benefits enjoyed by Owners of other Property previously subject to this Declaration. Any annexation, merger or consolidation made pursuant to this Declaration, when made, shall automatically extend the functions, powers and jurisdiction of the Association to the real property so added. Upon the filing of any Supplemental Declaration, each Owner of a Townhome Site within the portion of the Additional Property added to the Property (other than Declarant) shall become a Class A Member, as herein defined, and shall become liable for assessments as provided for herein. Declarant shall continue to be the Class B Member with the number of votes per Townhome Site (including any new Townhome Sites added pursuant to a Supplemental Declaration) as provided for in this Article II.

(c) Upon approval by a Two-Thirds Member Vote, the owner of any property who desires to add it to the concept of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplemental Declaration of Covenants, Conditions and Restrictions as described in paragraph (a) of this Article. Any additions made pursuant to paragraphs (a), (b) or (c) of this Section 2.3, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the Property added. Upon acceptance in writing by the Association following approval by a Two-Thirds Member Vote, any person may convey, transfer or assign real property, improvements located thereon or an interest therein to the Association and designate the same as Common Area.

(d) Declarant or the Association, upon the written approval or assent of 67% of the outstanding votes of Members, shall have the right and option to cause the Association to merge or consolidate with any similar association or associations. Upon a merger or consolidation of the Association with another association, the Property, rights and obligations of the Association, may, by operation of law or otherwise, be transferred to the surviving or consolidated association or, alternatively, the Property, rights and obligations of another association may, by operation of law or otherwise, be added to the Property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions, restrictions, easements, liens and charges established by this Association within the Property, together with the Covenants established upon any other real property as one plan.

2.5 **The Board of Directors**. The number, term and election of the Board of Directors shall be as determined in the Articles of Incorporation and Bylaws of the Association. The initial Board of Directors shall be appointed by the Declarant and shall serve until the first Board is elected by the Members after the Election Date. The Declarant may fill vacancies on the Board of Directors until the Election date. No Director need be a Member of the Association or a resident of the Property.

ARTICLE III

COMMON AREA

3.1 Declarant does hereby declare, grant and reserve the Common Area for itself, its successors and assigns and for the benefit of the Owners, their successors, representatives and assigns, their invitees, lessees, guests and agents for the purposes of maintaining and providing the Common Area. The Common Area shall be for the benefit of and appurtenant to the Property.

3.2 Each Owner shall have the right to use the Common Area in any manner that does not unreasonably interfere with, or prevent the use, of the Common Area by any other Owner or any other party which may have the right to use same, pursuant to the terms hereof.

3.3 No buildings shall be located over, upon, along or across, or so as to encroach into, the Common Area. In the event of any interference or threatened interference with the Common Area, the rights herein granted may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting such interference and commanding compliance with the provisions hereof, which restraining orders and injunctions shall be obtainable upon proof of the existence of such interference or threatened interference, and without the necessity of proof of inadequacy of legal remedies or irreparable harm, and shall be deemed to be an election of remedies or a waiver or any other rights available at law or in equity.

3.4 **Regulations Governing Common Area**. The Association may prescribe regulations governing the use, operation and maintenance of the Common Area.

3.5 **Access Elements**. Declarant shall retain full and complete control of the operations of any such Access Elements, if any, regulating access to the Subdivision or any portion thereof until the earlier of the following: (1) the Subdivision is completely built out, with all Townhomes having been conveyed to third parties and developed by completing construction of a residence thereon; or (2) Declarant specifically conveys control of the Access Elements over to the Association in writing. Declarant emphasizes that the Access Elements, if any, are not to be construed as a comprehensive security system. Declarant and the Association disclaim any representation that any Access

Elements constitute a comprehensive security system. There may be a better, or more complete method of restricting access. Any upgrade or variation of the Access Elements, if any, may be decided later by the Association, at the Association's expense

3.6 **Indemnification**. The Association shall at all times, from and after any turnovers of the management of the Association, INDEMNIFY and hold Declarant HARMLESS from any and all liability associated with any and all claims or damages of every kind arising out of the operations of the Property or the Association. Additionally, Declarant may not be held liable in any way in its role in enforcing or failing to enforce any of the conditions of these restrictions, in protecting its rights or in carrying out any of its duties or obligations. This indemnification shall include the Association's payment of any and all expenses including the payment of any and all legal expenses, court costs, any and all costs associated with the protection of the Declarant in any legal actions or proceedings or any other action of any kind.

3.7 **Assignment by Declarant.** Declarant shall have full right and authority to sell and assign its rights, duties and obligations under these restrictions upon any such action. Declarant shall have no further obligation or liability, implied or otherwise, hereunder.

3.8 **THE SANITARY SEWER LINES ARE PRIVATE SANITARY SEWER LINES WHICH SERVICE THE TOWNHOME SITES SITUATED ON THE PROPERTY. THE ASSOCIATION SHALL BE RESPONSIBLE FOR MAINTENANCE AND REPAIRS OF THE COMMON SANITARY SEWER LINE. THE ASSOCIATION SHALL ALSO BE RESPONSIBLE FOR MAINTENANCE AND REPAIRS OF: (A) THE WATER LINES AND STORM PIPING, IF ANY, LOCATED IN THE COMMON AREA; (B) THE SHARED DRIVEWAYS AND OTHER PAVING, IF ANY, LOCATED IN THE COMMON AREA; AND (C) ELECTRICAL SERVICE LINES, IF ANY, LOCATED IN THE COMMON AREA, BETWEEN THE CENTERPOINT ENERGY EASEMENT AND THE POINT OF CONNECTION TO THE DWELLING UNIT.**

3.09 **Capitalization Fee.** Each Owner, upon acquisition of record title to a Townhome Site, other than Declarant or a Builder, will be obligated to pay a fee to the Association in the amount of $100.00, for the purpose of capitalizing the Association. This amount shall be known as the Capitalization Fee. The Capitalization Fee shall be in addition to, not in lieu of, the Assessments and shall not be considered an advance payment of such Assessments. The Capitalization Fee shall be deposited into the purchase and sales escrow and disbursed there from to the Association. The Capitalization Fee shall initially be used by the Association to defray its initial operating costs and other expenses, and later to ensure the Association has adequate funds to meet its expenses and otherwise, including contributions to the Association's reserve fund, all as the Board of Directors in its sole discretion shall determine.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Townhome Site owned by it within the Property, hereby covenants and agrees, and each purchaser of a Townhome Site (by acceptance of a deed, whether or not it shall be so expressed in any such deed or other conveyance), for each Townhome Site owned by any such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association): (a) annual assessments or charges, to be paid in installments as the Board of Directors of the Association may elect, (b) special assessments for capital expenditures, such assessments to be fixed, established and collected from time to time as hereinafter provided, and (c) default assessments which may be assessed against an individual Owner to reimburse the Association for extra maintenance and repair costs incurred as a result of the willful or negligent acts or omissions of such Owner, or the Owner's family, agents, guests and invitees, such default assessments to be fixed, established and collected from time to time as hereinafter provided. The regular annual assessments, special assessments and default assessments, together with such interest thereon and costs of collection thereof as hereinafter provided (collectively "Assessments"), shall be a charge and continuing lien upon each Townhome Site against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Townhome Site at the time when the Assessment became due. The annual assessments shall be payable as provided in this Article IV.

4.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used: (i) for the purposes of promoting the recreation, health, safety and welfare of the residents of the Property, and in particular for the improvement and maintenance of Shared Driveways, Access Easements, private sewer lines, private storm sewer lines, wrought iron fences, Landscape and Irrigation Easements or other Property, services and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Area including, but not limited to, the payment of insurance premiums, if any, in connection with the Common Area and the repair, replacement and additions thereto; (ii) for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Area; (iii) for carrying out the duties of the Board of Directors of the Association as set forth in Article V hereafter, including, but not limited to, the payment by the Association of all assessments and charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting (if any) for the Common Area; (iv) for paying the cost of maintenance of any monument sign, for the Property; (v) for paying for landscaping, irrigation, electrical and other expenses associated with the maintenance of public right-of-way areas adjacent to or in the vicinity of the Property; and (vi) for carrying out the

purposes of the Association as stated in its Articles of Incorporation. The Board may at any time ratably increase or decrease the amount of the annual assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including maintenance of reasonable cash reserves. The Board is obligated to maintain assessments at a level sufficient to enable payment of all costs which are the Association's obligation.

4.3 **Basis and Amount of Assessments.**

(a) Until the year beginning January 1, 2008, the maximum annual assessment shall be One Thousand Nine Hundred and No/100 Dollars ($1,900) for each Townhome Site not owned by Declarant, and an amount equal to not more than Fifty percent (50%) of such annual amount for each Townhome Site owned by Declarant at the time of each such annual assessment. The Board of Directors may fix the annual assessment at any amount less than such maximum.

(b) Commencing with the year beginning January 1, 2009, and each year thereafter, the maximum annual assessment for the following year for each Townhome Site, shall automatically increase ten percent (10%) above the maximum annual assessment for the previous year without a vote of the membership or the Board of Directors. The maximum assessment for each Townhome Site owned by Declarant, at the time of annual assessment, shall be an amount equal to Fifty percent (50%) of the maximum amount assessed against each Townhome Site owned by Members other than Declarant.

(c) Provided that the Board has received approval by a Two-Thirds Member Vote, the maximum annual assessment for the following year for each Townhome Site may exceed the maximum amounts set forth in Section 4.3(a) or (b) above.

4.4 **Special Assessments for Improvements.** In addition to the annual Assessments authorized by Section 4.3 above, the Association may levy in any Assessment year a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of any improvement in the Common Area, including the necessary fixtures and personal property related thereto; provided that any such Assessment for the improvements shall have been approved by a Two-Thirds Member Vote.

4.5 **Uniform Rate of Assessment Within Classes of Members.** In recognition of the fact that while Declarant is the Owner of Townhome Sites, the benefits either Declarant or Builder receives from such Townhome Sites will be proportionately less than other Owners, and therefore, the regular annual and special Assessments for Townhome Sites owned by Declarant or Builder shall be fixed at Fifty percent (50%) of

the Assessments for all other Townhome Sites Except as provided in this Section 4.5 and Section 4.3, and until such time as Additional Property is subjected to this Declaration in accordance with Section 2.4, the regular annual and special Assessments shall be fixed at a uniform rate for all Townhome Sites. Since Additional Property subjected to this Declaration, like the Property originally covered by this Declaration, may involve Common Area that disproportionately benefit the Townhome Sites within the particular phase of the project in which they are located, the Board may create different classes of Owners for purposes of determining Assessments, based on the Board's determination of the benefits to be received by each such class from certain Common Area. Except as provided above with respect to the Declarant or Builder or any such class created by the Board, the Assessments shall be uniform.

4.6 **Date of Commencement of Assessments; Due Date**. The annual assessments provided for herein shall commence as to all Townhome Sites on November 1, 2006. The first annual assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessments provided for in Section 4.3 as the remaining number of months in that year bear to twelve. The first annual assessment shall be due and payable November 1, 2006, and thereafter, the due date for annual assessments shall be January 31st of every year, subject to Section 4.1(a) hereof. The due date or dates, if it is to be paid in installments, of any special assessment under Section 4.4 or of any default assessment under Section 4.1, shall be fixed in the respective resolution authorizing such assessment. Notwithstanding anything contained to the contrary in this Section, it is hereby understood that the Board of Directors of the Association shall have the right to establish a payment date and payment period that is different from the monthly payment date provided herein.

4.7 **Duties of the Board with Respect to Assessments.**

(a) The Board shall fix the date of commencement and the amount of the Assessment against each Townhome Site for each Assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Townhome Sites and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

(b) Written notice of the Assessment shall thereupon be delivered or mailed to every Owner subject thereto.

(c) The Board shall, upon an Owner's written request and payment of any reasonable fee previously set by the Board, furnish to any Owner liable for each Assessment a certificate in writing signed by an officer of the Association, setting forth whether such Assessment has been paid. Each such certificate shall be conclusive evidence of payment of any Assessment therein stated to

have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

4.8 **Effect of Non-Payment of Assessment: The Personal Obligation of the Owner, the Lien, Remedies of Association.**

(a) If any Assessment or any part thereof is not paid on the date(s) when due (being the dates specified by the Board), then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and the costs of collection thereof as hereinafter provided, be a continuing lien (the "Lien") on the Townhome Site of the non-paying Owner which shall bind such Townhome Site in the hands of the then Owner, his heirs, executors, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Any assumption of the obligation to pay an Assessment by a successor in title shall not relieve the prior Owner of his personal obligation to pay such Assessment. The lien for unpaid Assessments shall be unaffected by any sale or assignment of a Townhome Site and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use of the Common Area or abandonment of his Townhome Site.

(b) In furtherance of the Lien provided in Section 4.8(a), and to secure the full and timely payment of all Assessments and other amounts payable by each Owner hereunder, each Owner, by his acceptance of a deed or other conveyance of the Townhome Site and regardless of whether or not such deed or other conveyance expressly contains such a provision, does hereby grant and convey unto the Board of Directors, in trust as Trustee (the "Trustee"), for the benefit of the Association, the Townhome Site owned by such Owner, subject to all easements and other encumbrances affecting such Townhome Site; provided, that each such grant shall be subordinated to the lien of any mortgage or deed of trust only to the extent provided in Section 4.9; and for these purposes the provisions of this Section 4.8(b) shall be deemed to have created a deed of trust (the "Deed of Trust") covering all of the Townhome Sites with a power of sale granted to the Trustee in accordance with the provisions of Chapter 51 of the Texas Property Code (the "Code") and as it may be amended from time to time. The Deed of Trust created hereby shall be upon the same terms and conditions, and shall provide to the Association all of the rights, benefits and privileges, of the Deed of Trust promulgated by the State Bar of Texas for use by lawyers designated as Form No. 2402, and all amendments, modifications and substitutions thereof, which form is hereby incorporated by reference for all purposes hereof. The Association, acting through its president, shall have the right in its sole discretion at any time, and from time to time, to appoint in writing a substitute or successor trustee who shall succeed to all rights and responsibilities of the then acting Trustee.

(c) Without limitation of the remedies available to the Association and to the other Owners upon the occurrence of a default by any Owner in the payment of any Assessment or other amount due and payable hereunder, the Association may, at its election and by and through the Trustee, sell or offer for sale the Townhome Site owned by the defaulting Owner to the highest bidder for cash at public auction in accordance with the provisions of the Code. The Association may, at its option, accomplish such foreclosure sale in such manner as permitted or required by the Code or by any other present or subsequent laws relating to the same. After the sale of any Townhome Site in accordance with the provisions of this Section 4.8(c), the Owner of such Townhome Site shall be divested of any and all interests and claims thereto, and the proceeds of any such sale shall be applied in the following order of priority: (i) to the payment of the costs and expenses of taking possession of the Townhome Site, (ii) to the payment of reasonable Trustee's fees, (iii) to the payment of costs of advertisement and sale, (iv) to the payment of all unpaid Assessments and other amounts payable by such Owner to the Association hereunder, and (v) to the defaulting Owner or to any other party entitled thereto. The Association shall have the right to become the purchaser at the sale of any Townhome Site pursuant to the Deed of Trust and shall have the right to be credited on the amount of its bid therefor all of the Assessments due and owing by the defaulting Owner to the Association as of the date of such sale.

(d) If any Assessment or part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the maximum legal rate of interest, then prevailing and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the property subject thereto. There shall be added to the amount of such Assessment the costs of preparing and filing the complaint (including reasonable attorneys' fees) in such action, and in the event a judgment is obtained such judgment shall include interest on the Assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

4.9 **Subordination of the Lien to Mortgages.** The lien securing the payment of the Assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Townhome Site whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

(a) Bona fide first mortgage or deed of trust liens for purchase money and/or home improvement purposes placed upon a Townhome Site, including without limitation Institutional Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien,

(b) Liens for ad valorem taxes or other public charges as are by applicable law made superior to the Association's lien; and

(c) Such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien; provided however, such subordination shall apply only to the Assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Townhome Site pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien. Such sale shall not relieve such Townhome Site from liability for the amount of any Assessment thereafter becoming due nor from the lien of any such subsequent Assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay Assessments and/or to hinder the Association in performing its functions hereunder.

4.10 **Omission of Assessments.** The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed by the Board.

ARTICLE V

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

5.1 Powers and Duties.

(a) The Board, for the benefit of the Property and the Owners, shall provide, and shall pay for out of Assessments, to the extent appropriate, the following:

(i) Care, preservation and maintenance of the Common Area, including without limitation, the maintenance of private sewer, storm sewer, streets, Access Elements, wrought iron fences, Landscape Easements, including care and replacement of trees, shrubs and grass, lighting systems and any installed sprinkler systems on the Common Area; the maintenance of all entry monuments, and payment of utility usage charges and other charges associated with the Common Area and public right-of-way areas adjacent to or in the vicinity of the Property; provided however, in the event the need for maintenance or repair is caused

through the willful or negligent act of any Owner, the Owner's family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment attributable to such Owner's Townhome Site.

(ii) The services of a person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(iii) Legal and accounting services.

(iv) If deemed appropriate by the Board, a policy or policies of insurance insuring the Association and the Board against any liability to the public or to the Owners (and/or invitees, guests or tenants), incident to the operation of the Association, in an amount not less than $250,000 to indemnify against the claim of one person, $500,000 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount not less than $100,000 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insured.

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

(vi) Such fidelity bonds as the Board may determine to be advisable.

(vii) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board 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 operation or protection of the Association or for the enforcement of this Declaration.

(b) The Board shall have the following additional rights, powers and duties:

(i) To execute all replats of the Property.

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

(iii) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks), and, generally, to have all the powers necessary or incidental to the operation and management of the Association.

(iv) To protect the Common Areas from loss or damage, and to determine adequate replacement reserves.

(v) To make reasonable rules and regulations for the maintenance and protection of the Common Area, and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Property, by the Members owning Townhome Sites in the portions affected.

(vi) To make available to each Owner upon written request within sixty days after the end of each year an annual report.

(vii) 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 Members in proportionate amounts to cover the deficiency.

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

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

5.3 **Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Common Area, including but not limited to parking rules and regulations, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violations of this Declaration, the By-Laws, or such rules and regulations may include reasonable monetary fines, suspension of the right to vote, the right to use the Common Areas and the right to hold any office or appointed position in

the Association or committee. In addition, the Association shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Unit in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall also have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

ARTICLE VI

EASEMENTS

6.1 **Easement Reserved for the Association.** Full rights of ingress and egress shall be had by the Association at all times over and upon each Townhome Site, the Access Easements, Landscape and Irrigation Easements or any other easements for the carrying out by the Association of its rights, functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Townhome Site or easement shall be made with as minimum inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association.

6.2 **Members' Easements.** Every Member and every Resident shall have a right and easement of use and enjoyment in and to the Shared Driveways and any Reserve shown on the Plat, and such easements shall be appurtenant to and shall pass with the title to every Townhome Site.

6.3 **Easements and Rights Reserved by Declarant.** Declarant hereby reserves for itself, its successors and assigns, the right to: (i) dedicate Shared Driveways and walks throughout the Property, and (ii) reserve or grant easements of ingress and egress and for the installation, construction, maintenance, repair and replacement of utilities and related facilities, which shall include, but not be limited to, sewer (sanitary and storm), gas, electric, telephone, cable television and water lines, upon, over, under, and across the Property, as it in its sole discretion deems proper or appropriate. Further, Declarant hereby reserves temporary construction easements for the construction, repair, removal, maintenance and reconstruction of improvements within the Property, including the right to remove, on a temporary basis, fences, Shared Driveways, Irrigation equipment, landscaping and other improvements as shall be reasonably necessary to enable Declarant to complete the development and improvement of the Property; provided, that any such improvements removed by Declarant shall be replaced and/or restored, upon completion of the construction activities, to substantially their former condition. All claims for damages, if any, arising out of any such construction or other activities by Declarant are hereby waived by each Owner and the Association.

6.4 **Rights Reserved to Governmental Authorities and Utility Companies.** Full rights of ingress and egress shall be had by Declarant, any governmental authority

having jurisdiction over the Property, and any utility company which provides utilities to the Property, at all times over any Shared Driveway and other dedicated easement for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. All claims for damages, if any, arising out of the construction, maintenance and repair of utilities or on account of temporary or other inconvenience caused thereby against the Declarant, or any utility company or governmental authority, or any of their agents or servants are hereby waived by each Owner and the Association. Declarant further reserves the right to alter, redesign or discontinue any Shared Driveway shown on the Plat not necessary for ingress or egress to and from an Owner's Townhome Site, subject to the approval of the applicable government authority, if required.

6.5 **Universal Easement.** Each Townhome Site and its Owner is hereby declared to have an easement, and the same is hereby granted to Declarant, over all adjoining Townhome Sites and Common Area for the purpose of accommodating any encroachment due to engineering error, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of any encroachment, settling or shifting. In the event a structure on any Townhome Site is partially or totally destroyed and then repaired or rebuilt, the Owners of each Townhome Site agree that minor encroachments over adjoining Townhome Sites shall be permitted and there shall be easements for the maintenance of any encroachments so long as they shall exist. Each of the easements referred to in this Section shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Townhome Site being serviced and shall pass with each conveyance of said Townhome Site. Notwithstanding the foregoing, in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

6.6 **Utility Easements**. Wherever (i) sanitary sewer or water service connections, (ii) natural gas, electricity, telephone or cable televisions lines, or (iii) drainage facilities are installed within the Property, which connections, lines or facilities or any portion thereof lie in or upon a Townhouse Site owned by any other party other than the Owner of the Townhouse Site served by the connections, lines or facilities, such Owner of the Townhouse Site served and the applicable public utilities shall have the right and are hereby granted an easement to the full extent necessary therefore, to enter upon the Townhouse Sites within or upon which said connections, lines or facilities or any portion thereof lie to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary.

6.7 **Mutual Cross-Easements For Air Conditioning Equipment And Concrete Pads**. Air conditioning equipment and concrete pads ("A/C Equipment and Pads") may be located along lot lines of certain adjacent Townhome Sites. Although Declarant does not believe that A/C Equipment and Pads constitute encroachments, to the extent they might be considered as such by others, Declarant, on its own behalf,

and on behalf its successors, assigns or grantees, hereby consents to the encroachments, if any, by the A/C Equipment and Pads, and Declarant hereby GRANTS and CONVEYS mutual cross-easements to the Owners of Adjacent Townhome Sites on the Property to accommodate the location and servicing of the A/C Equipment and Pads.

6.8 **Shared Improvements Access Easement**. Declarant grants to the Owners of the Property, their heirs, executors, administrators, successors and assigns, an easement over adjacent Townhome Sites for the purpose of accessing and maintaining Shared Improvements.

ARTICLE VII

PROTECTIVE COVENANTS

7.1 **Residential Purpose Only.** Each Townhome Site and Dwelling Unit shall be used exclusively for single-family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, lodging house, rooming house, hospital, sanitarium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on any Townhome Site, or on any part thereof. No improvement or structure whatever, other than a private Dwelling Unit or attached garage may be erected, placed or maintained on any Townhome Site.

7.2 **Rubbish, Etc.** No Townhome Site shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Townhome Site to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Townhome Site that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of the surrounding property. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon the Townhome Site, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

7.3 **Animals.** No animals, reptiles, livestock, poultry or birds of any kind shall be raised, bred or kept on any Townhome Site, except that dogs, cats or other household pets may be kept, not to exceed a total of four such animals, provided that they are not kept, bred or maintained for any commercial purpose. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. Horses, reptiles, ponies, goats, sheep, hogs, pigs, monkeys, chickens, ducks, peacocks, pigeons, and Guinea fowl shall not be deemed as household pets and are expressly prohibited. Notwithstanding the foregoing, however, no individual dogs or other animals deemed by the Board in its sole discretion to be dangerous to persons or other animals shall be raised, bred or kept on any Townhome Site.

7.4 **Development Activity.** Notwithstanding any other provision herein, Declarant and its successors and assigns shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of Townhome Sites within the Property.

7.5 **Signs and Picketing.** No sign or emblem of any kind may be kept or placed upon any Townhome Site or mounted, painted or attached to any Dwelling Unit, fence or other improvement upon such Townhome Site so as to be visible from public view except the following:

(a) **For Sale Signs.** An Owner may erect one (1) sign on his Townhome Site, not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of such Townhome Site advertising the property for sale. The Board of Directors may, but shall not be obligated to, authorize similar size signs in an area outside of the wrought iron fence. No "for lease" or "for rent" signs will be permitted until two (2) years following the date Declarant sells the last Townhome Site on the Property.

(b) **Declarant's Signs.** Declarant may erect and maintain a sign or signs deemed reasonable and necessary for the construction, development, operation, promotion, leasing and sale of the Townhome Sites.

(c) **Builders' Signs.** Any Dwelling Unit **builder** may utilize one professional sign (of not more than five (5) square feet in size) per Townhome Site for advertising and sales promotion of such Dwelling Unit.

(d) **Political Signs.** Political signs may be erected upon a Townhome Site by the Owner of such Townhome Site advocating the election of one or more political candidates or the sponsorship or a political party, issue or proposal, provided that such signs shall not be erected more than sixty (60) days in advance of the election to which they pertain and shall be removed within ten (10) days after such election.

(e) **Address Signs.** Declarant or the Association may erect signs containing the subdivision name and addresses as required by the city in which the Property is located.

(f) **Common Areas Signs.** The Association may erect signs as it may deem necessary for the efficient use of the Common Areas or beneficial to the Members. Only signs approved by the Association may be placed in the Common Areas.

The Association is specifically the right to enter the Common Areas or any Lot to remove signs not permitted by these restrictions.

7.6 **Prohibited Vehicles.** Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current licenses shall not be permitted on the Property except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the Property must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property during the daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Dwelling Unit or the Common Area. Any vehicle parked in violation of this section or parking rules promulgated by the Board may be towed.

7.7 **Commercial or Institutional Use.** No Townhome Site, and no building erected or maintained on any Townhome Site, shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes.

7.8 **Mailboxes.** Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community. This provision with respect to mailboxes shall not apply when cluster box units are required by the United States Postal Service.

7.9 **Detached Buildings.** No detached accessory buildings shall be erected, placed or constructed upon any Townhome Site.

7.10 **Fences.**

(a) No fence, wall or hedge shall be erected, placed or altered on any Townhome Site without the approval of the Architectural Committee.

(b) The Architectural Committee shall promulgate specific Design Guidelines governing the composition and location of fences and hedges to be located upon Townhome Sites.

(c) No chain link or wire fencing shall be erected on a Townhome Site.

(d) The foregoing restrictions shall not be applicable to the construction or erection of any fence, wall or hedge on any Townhome Site or the Common Areas by Declarant.

7.11 **Antennas, Satellite Dishes and Solar Collectors.**

(a) Architectural Committee approval of a "dish antenna" or an antenna designed to receive local broadcast signals is not required, except where the antenna will be located on a mast higher than 12 feet above the roofline. As used herein, a "dish antenna" means an antenna that is one meter (39.37") or less in diameter, designed to: (a) receive direct broadcast satellite service, including direct-to-home satellite service; (b) receive or transmit fixed wireless signals via satellite; (c) to receive video programming services via wireless cable, or (d) to transmit fixed wireless signals other than via satellite.

(b) All antennas other than those described in 7.11(a) above must be approved by the Architectural Committee, as set forth in Article IX, and must not be located upon any portion of a Townhome Site visible from the street abutting the front of the Townhome.

7.12 **Chimneys.** All fireplace flues, smoke stacks and spark arrestors shall be completely enclosed and concealed from public view in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the Dwelling Unit or as otherwise approved in writing by the Architectural Committee.

7.13 **Clotheslines.** No clotheslines shall be erected or installed and no clothesline, linens or other material shall be aired or dried so as to be visible from the street.

7.14 **Window Treatment.** No aluminum foil, reflective film, signs or similar treatment shall be placed on windows or glass doors.

7.15 **Temporary Structures.** No temporary structure of any kind shall be erected or placed upon any Townhome Site. No trailer, mobile, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residential structure to be built thereon, shall be placed on any Townhome Site, either temporarily or permanently, and no residence house, garage or other structure appurtenant thereto, shall be moved upon any Townhome Site from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit builders and Owners to erect, place and maintain such facilities in and upon the Property as in its sole discretion may be deemed necessary or convenient during the period of and in connection with the sales of Townhome Sites, construction and selling of residential structures and constructing other improvements on the Property. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office. Declarant and builders of residential structures on Townhome Sites shall also have the temporary right to use a residence situated on a Townhome Site as a temporary office or model home during the period of and in connection with construction and sales or leasing operations on the Property, but in no event shall a builder have such right for a

period in excess of one (1) year from the date of substantial completion (as defined by the American Institute of Architects) of his last residential structure on the Property.

7.16 **Trash Receptacles and Collection.** All trash receptacles shall be stored so as not to be generally visible by the public, unless otherwise approved by the Architectural Committee in writing. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the applicable governmental authority, and/or the Association, in connection with the storage and removal of trash receptacles and garbage. All Townhome Sites shall at all times be kept in a healthful, sanitary and attractive condition. No Townhome Site shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly-fitting lids, and which shall be maintained in a clean and sanitary condition. No Townhome Site shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Townhome Site may be placed upon such Townhome Site at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Townhome Site, or stored in a suitable enclosure on the Townhome Site. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Townhome Site. All woodpiles, yard equipment and other similar items shall be concealed from view of neighboring Dwelling Units, Shared Driveways, and property located adjacent to the Townhome Site. All rubbish, trash, and garbage shall be stored in appropriate containers and shall regularly be removed from the Property and shall not be allowed to accumulate thereon.

7.17 **Swimming Pools.** No above-ground swimming pools shall be permitted.

7.18 **Truck Weight Limit.** Trucks with tonnage in excess of one ton shall not be permitted to park overnight on Shared Driveways or on any Townhome Site.

7.19 **Utilities.** All telephone, electric, cable or other service lines shall be installed underground and shall meet all requirements of the applicable governmental authority.

7.20 **Paint.** All painted improvements and other painted structures on each Townhome Site shall be repainted by the Owner thereof at the Owner's sole cost and expense as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Townhome Site or Dwelling Unit. The approval of the Architectural Committee otherwise required for improvements under Article VIII, shall not be required for such repainting so long as neither the color scheme nor the arrangement of the colors of any improvements, nor the color of any paint thereon is altered.

7.21 **Basketball Goals or Backboards.** No basketball goals, backboards, or any other similar sporting equipment of either a permanent or temporary nature shall be placed on any Townhome Site.

7.22 **Quiet Enjoyment.** No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. The use and discharge of firecrackers and other fireworks is prohibited within the Property.

7.23 **Lighting.** Except for traditional holiday decorative lights, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved by the Architectural Committee.

7.24 **Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any portion of the Property. No exterior sculpture, fountains, flags and birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted unless approved by the Architectural Committee.

7.25 **Business Use.** No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Townhome Site, except that an Owner or occupant residing in a Unit may conduct business activities within the Townhome Site so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Townhome Site; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Dwelling Unit shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or conducted by a builder with approval of the Declarant, with respect to its development and sale of the Property or its use of any Dwelling Units which it owns within the Property, including the operation of a timeshare or similar program.

7.26 **Traffic Sight Areas.** All Townhomes located at street intersections shall be landscaped so as to permit safe sight across street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

7.27 **Mineral Production.** No oil drilling, oil development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Townhome Site, nor shall oil wells tanks, tunnels, mineral excavations or shafts be permitted upon any Townhome Site. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Townhome Site.

7.28 **Exterior Noise.** No horns, whistles or bells (except security devices used exclusively to protect the Townhome Site and improvements situated thereon) shall be placed or used upon any Townhome Site. Exterior speakers and patio intercoms shall be permitted. The audio volume for exterior speakers and patio speakers shall be set at a low level such that it will not disturb other Owners.

7.29 **Party Walls and Shared Improvements.** The cost of maintenance of the Party Wall or any Shared Improvement shall be shared equally by the Owners of the applicable Party Wall, or the Owners who benefit from the Shared Improvement. In the event that a Townhouse is destroyed or removed for any reason and not reconstructed, the cost of the restoration shall be borne by the Owner of the Townhouse which was destroyed or removed. No Owner shall alter or change the Party Wall in any manner (interior decoration excepted) and the Party Wall shall always remain in the same location as when erected. Notwithstanding any other provision herein, an Owner who by such Owner's negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The rights of any Owner to contribution from any other Owner under this agreement shall be appurtenant to the land and shall pass to such Owner's successors in title. Each Owner shall have the right to enforce by any proceeding at law or in equity the provisions contained in this paragraph. Failure by any Owner to enforce any provision, however, shall in no event be deemed a waiver of the right of any other Owner to do so thereafter.

ARTICLE VIII

ARCHITECTURAL AND CONSTRUCTION RESTRICTIONS

8.1 **Type of Residence.** Only one Dwelling Unit, not more than three stories shall be built or permitted on each Townhome Site. No structure shall be moved from another location onto any Townhome Site. All Townhome Sites and all improvements thereon including, but not limited to Dwelling Units, fences, mail boxes, Shared Driveways and sidewalks must be kept in good repair and must be painted when necessary to preserve their attractiveness. Any change in the color of the paint on a Dwelling Unit or elsewhere on a Townhome Site must be approved by the Architectural Committee.

8.2 **Location of Dwelling Unit on Townhome Site.** The location of each Dwelling Unit on a Townhome Site will be approved by the Architectural Committee with its approval of the site plan and the final working plans and specifications. No building shall be located on any Townhome Site nearer to a street than the minimum building setback lines shown on the Subdivision Plat and no Dwelling Unit shall be located on any utility easement. For the purposes of this section, eaves, steps and open porches or driveways shall not be considered as a part of a Dwelling Unit.

8.3 **Wall Materials.** Wall materials used on all Townhome Sites shall be restricted to those types and colors approved by the Architectural Committee.

8.4 **Shared Driveways.** The Association will maintain Shared Driveways.

8.5 **Roof Material.** Unless otherwise approved by the Committee, All Townhomes will be roofed with composition shingles. Any roof replacement shall require MC approval.

8.6 **Maximum Height.** No building or structure erected, altered or placed on, within or in the Properties shall exceed Three (3) stories in height, provided however, that all applicable ordinances, regulations, and statutes with respect to the maximum height of buildings and structures shall, at all times, be complied with.

8.7 **Garages/Carports.** No garage shall be permanently enclosed for living space or any other use. Carports are not permitted.

8.8 **Landscaping.** The Association shall maintain the ground cover, bedding and/or sod on any designated Landscaping and Irrigation Easement in a neat and well mown condition, free of unsightly weeds and overgrowth. The Association may elect to increase or decrease the Association's landscape maintenance responsibilities by a majority vote of the Members of the Association.

ARTICLE IX

ARCHITECTURAL STANDARDS

9.1 **Approval Required; Procedures.**

(a) No structure shall be placed, erected or installed upon any Townhome Site, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to Sections 9.2 and 9.3 below nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the appropriate Architectural Committee as to the compliance of such plans and specifications with the Design Guidelines as may be published by the Architectural Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the appropriate Architectural Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved." Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally-approved color scheme, or to rebuild in accordance with the originally-approved plans and specifications. The Architectural Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

(b) Following approval of any plans and specifications by the appropriate Architectural Committee, representatives of the appropriate Architectural Committee shall have the right, but not the obligation during reasonable hours to enter upon and inspect any Townhome Site with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the appropriate Architectural Committee shall determine that such plans and specifications have not been approved or are not being complied with, the appropriate Architectural Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the appropriate Architectural Committee fails to approve or disapprove in writing any proposed plans and specifications within forty-five (45) days after such plans and

specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with this Declaration. Upon approval of plans and specifications, no further approval under this Article shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Disapproval of plans and specifications by the Architectural Committee may be based upon any ground which is consistent with the objectives and purposes of this Declaration as defined in Design Guidelines which shall be promulgated by the Architectural Committees from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

(c) The Board of Directors or the Architectural Committee may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application. All Dwelling Units constructed on any portion of the Property shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer. This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Areas by or on behalf of the Association. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Committee. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration. Because architectural trends, design trends, neighborhood character and general standards of taste change with the times, the New Construction Committee and the Modifications Committee shall not be bound by prior decisions of the Committees. The granting of approval on prior occasions is no assurance that the same or similar plans will be approved on future requests.

9.2 **New Construction Committee.** The New Construction Committee (NCC) shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Property. Until one hundred (100%) of the Property has been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the NCC, who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors may merge the NCC with the MC (defined below) or shall appoint the members of the NCC, who shall serve and may be removed at the discretion of the Board of Directors. The members of the NCC may include architects, engineers and other persons who are not Members of the Association.

The NCC shall prepare and, on behalf of the Board of Directors, shall promulgate design and develop guidelines governing construction within the Property, which shall include application and review procedures to be followed in submitting an application for approval ("Design Guidelines"). The Design Guidelines shall be those of the Association, and the NCC shall have sole and full authority to modify and to amend them from time to time without the consent of any Owner. The NCC shall make the Design Guidelines available to Owners who seek to engage in development of, or construction upon, all or any portion of the Property and Owners shall conduct their operations strictly in accordance therewith. In the event that the NCC fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within forty-five (45) days after submission thereof, the plans shall be deemed disapproved.

9.3 **Modifications Committee.** The Board of Directors shall also establish a Modifications Committee (MC) to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. As long as the Declarant has the power hereunder to appoint the members of the Board of Directors, a minimum of one (1) member of the MC shall be, at the discretion of Declarant, an individual designated by the Declarant. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC shall have exclusive jurisdiction after the initial sale from a builder to an Owner over modifications, additions, or alterations made on any Townhome Site or to any Dwelling Unit and the open space, if any, appurtenant thereto; provided, however, the MC may delegate this authority to the Board or other committee of the Association. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. Notwithstanding the above, the NCC shall have the right to veto any action taken by the MC which the NCC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the NCC.

The Modifications Committee shall promulgate detailed standards and procedures governing its areas of responsibility and practice consistent with those of the NCC. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a Dwelling Unit, or to paint the interior of a Dwelling Unit any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Dwelling Unit visible from outside the Dwelling Unit shall be subject to approval hereunder. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

9.4 **No Waiver of Future Approvals.** The approval of either the NCC or MC of any proposals or plans and specifications or drawings for any work done or proposed,

or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute approval for similar proposals, plans and specifications, drawings, or matters, whenever subsequently or additionally submitted for approval or consent.

9.5 **Variance.** The Architectural Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. No request for a variance shall be considered if it affects the rights of adjoining Owner, unless affected Owner has granted written consent to the requested variance. Additionally, the Architectural Committee shall not be obligated to grant a similar variance as a result of granting the same or similar variance in the past.

9.6 **Design Guidelines.** The Architectural Committee is authorized and empowered to consider all aspects of dwelling construction, construction of other improvements and the location, quality and quantity of landscaping on the Townhome Sites, and may disapprove aspects thereof which may, in the reasonable opinion of the Architectural Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Properties. Also, the Architectural Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Architectural Committee. The Architectural Committee may, from time to time, publish and promulgate Design Guidelines which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. The Design Guidelines shall supplement this Declaration and are incorporated herein by reference. The Architectural Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of this Declaration. It is the intent of Declarant that this Declaration and any Design Guidelines issued by the Architectural Committee promote harmonious design throughout the Properties. However, approval of the plans and specifications by the Architectural Committee and compliance with the Design Guidelines does not insure compliance with the building code and other restrictions imposed by applicable governmental authorities.

9.7 **Landscaping Approval.** To preserve the aesthetic appearance of the Property, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed on a Townhome Site by any Owner unless and until the plans therefor have been submitted to and approved in writing by the appropriate Architectural Committee. The provisions of the Article regarding time for approval of

plans, right to inspect, right to enjoin and/or require removal, and so forth shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling.

9.8 **NO LIABILITY.** NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF DESIGN GUIDELINES SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS, OR DESIGN GUIDELINES WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED IMPROVEMENTS. SUCH APPROVALS AND DESIGN GUIDELINES SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY DWELLING UNIT OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS ARTICLE IS MADE ON THE BASIS OF AESTHETIC CONSIDERATIONS ONLY AND NEITHER THE NCC NOR THE MC SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR MEMBER OF ANY OF THE FOREGOING, SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE APPROVAL OR DISAPPROVAL OF OR NON-COMPLIANCE WITH ANY PLANS OR SPECIFICATION, THE MANNER OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY DWELLING UNIT.

ARTICLE X

MAINTENANCE OF TOWNHOME SITES AND DWELLING UNITS BY OWNERS

10.1 **Duty of Maintenance.** The Owner of each Townhome Site shall, at the Owner's sole cost and expense, keep the Owner's Townhome Site and Dwelling Unit in a well-maintained, safe, neat, clean, attractive and first-class condition at all times, except to the extent it is not reasonably possible to do so during the period of construction of Dwelling Units, and then only during the period reasonably necessary for the construction thereof. Such maintenance includes, but is not limited to, the following:

(a) Prompt removal of all litter, trash, refuse and waste;

(b) Keeping exterior lighting and maintenance facilities in working order;

(c) Complying with all government health and police requirements;

(d) Exterior painting and repair of exterior damages to improvements; and

(e) Maintain all flowers, shrubs and organic materials (other than the ground cover, bedding and sod in any designated Landscaping and Irrigation Easement), subject to a vote of the Members pursuant to Article VIII, paragraph 8.8.

(f) Clean landscaped areas lying between right-of-way lines the Townhome Site, unless such areas are expressly designated to be maintained by the Association, applicable governmental authorities or others.

10.2 **Enforcement.** If, in the opinion of the Association, any Owner has failed in any of the foregoing duties or responsibilities, then the Association may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice, perform the care or make arrangements with the Association for making the repairs and maintenance required. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner of any Townhome Site on which such work is performed shall be liable for the cost of such work (such costs constituting a default assessment as specified in Section 4.1 hereof) and shall promptly reimburse the Association for such cost. If such Owner shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, the said indebtedness shall be a debt of said Owner, and shall constitute a lien against the Townhome Site on which said work was performed. Such lien shall have the same attributes as the lien for Assessments as set forth in this Declaration, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

ARTICLE XI

GENERAL PROVISIONS

11.1 **Power of Attorney.** Each and every Owner and Member hereby makes, constitutes and appoints Declarant as his/her true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her and in his/her name, place and stead and for his/her use and benefit, to do the following; provided, however, to the extent this Declaration requires the assent of a certain number of the Members as a condition to such action, such assent has been obtained:

(a) To exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Property;

(b) To sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s),

covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) To sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Property, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Harris County Clerk's Office and shall remain in full force and effect thereafter until all Townhome Sites owned by Declarant have been sold and conveyed by Declarant to Class A Members.

11.2 **Duration.** This Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for an original fifty (50) year term expiring on the fiftieth (50th) anniversary of the date of recordation of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of at least fifty-one percent (51%) of all Townhome Sites within the Property and recorded in the Deed Records of Harris County, Texas, which contains and sets forth an agreement to abolish this Declaration; provided, however, no such agreement where approved by less than seventy-five percent (75%) of the Owners of all Townhome Sites within the Property to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

11.3 **Amendments.** This Declaration is expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as provided herein. This Declaration may be amended and/or changed in part as follows:

(a) Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration, and shall not impair or affect the vested property or other rights of any Owner or such Owner's mortgagee.

(b) In response to any governmental or quasi-governmental suggestion, guideline, checklist, requisite or requirement, particularly with respect

to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance, Declarant shall have the complete and unrestricted right and privilege to amend, change, revise, modify or delete portions of this Declaration, and each and every Owner and Member specifically and affirmatively authorizes and empowers Declarant, utilizing the attorney-in-fact status set forth above, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions as Declarant (in their sole and absolute discretion) shall deem reasonable and appropriate.

(c) With the assent of a Two-Thirds Members Vote.

Any and all amendments shall be recorded in the Office of the County Clerk of Harris County, Texas.

11.4 **Enforcement.** Each Owner of each Townhome Site shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Townhome Site, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s), guests and invitees. The lien created hereby on each Townhome Site shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Property to the same extent as if the parent was directly responsible for the action of their child. Enforcement of this Declaration may be initiated by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by this Declaration, but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association, each Owner and the applicable governmental authority are each specifically authorized (but not obligated) to enforce this Declaration. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, from the non-prevailing party.

11.5 **Validity.** Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Townhome Site. Invalidation of any one or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of this Declaration conflicts with mandatory provisions of any ordinance or regulation promulgated by the applicable governmental authority (including, without limitation, any comprehensive zoning ordinance), then such governmental requirement shall control.

11.6 **No Warranty of Enforceability.** While Declarant has no reason to believe that any of the terms and provisions of this Declaration are in any respect invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such terms or provisions. Any Owner acquiring a Townhome Site assumes all risks of the validity and enforceability of the terms and provisions of this Declaration.

11.7 **Headings.** The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

11.8 **Registration with the Association.** Each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, the following information: (a) the full name and address of each Owner, Member and Resident, (b) the business address, occupation and telephone numbers of each Resident; (c) the description and license plate number of each automobile owned or used by a Resident and brought within the Property; and (d) such other information as may be reasonably requested from time to time by the Association. In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and Resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

11.9 **Notices to Resident/Member/Owner.** Any notice required to be given to any Resident, Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing, or when (ii) delivered by hand or by messenger to the last known address of such person within the Property; or when (iii) posted on the Association's bulletin board for at least thirty (30) consecutive calendar days.

11.10 **Attorneys' Fees.** All attorneys' fees incurred by the Association or the Declarant in the enforcement of this Declaration, and all future amendments shall be the obligation of the Owner; and Owner agrees to pay all such attorneys' fees incurred by the Association and/or Declarant.

11.11 **ARBITRATION.** ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS DECLARATION, UPON THE WRITTEN REQUEST OF ANY OWNERS OR THE ASSOCIATION, SHALL BE SUBMITTED TO ARBITRATION. ANY SUCH ARBITRATION SHALL BE ADMINISTERED BY EITHER THE AMERICAN ARBITRATION ASSOCIATION OR THE JUDICIAL ARBITRATION AND MEDIATION SERVICES. IF THE PARTIES CANNOT AGREE ON WHICH ARBITRATION SERVICE SHALL APPLY, THEN THE PARTY WHO DOES NOT REQUEST THE ARBITRATION SHALL SELECT ARBITRATION SERVICE. JUDGMENT MAY BE RENDERED UPON ANY AWARD MADE BY THE ARBITRATOR(S) IN ANY COURT WITH COMPETENT JURISDICTION.

Witness the hand of an authorized representative of Declarant on the acknowledgment date noted below.

DECLARANT:

Perry Homes, a Joint Venture

By: Perry-Houston Interests, Ltd.,
a Texas limited partnership,
as the Managing Joint Venturer

By: PH Financial L.L.C.,
a Texas limited liability company,
as the General Partner

By: Gerald W. Noteboom
Gerald W. Noteboom
Senior Executive Vice President

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 12th day of September, 2006 by Gerald W. Noteboom, Senior Executive Vice President of PH Financial L.L.C., a Texas limited liability company, as the General Partner of PERRY-HOUSTON INTERESTS, Ltd., a Texas limited partnership, the Managing Joint Venturer of PERRY HOMES, A Joint Venture.

MERRILEE J. ZEDAN
MY COMMISSION EXPIRES
March 31, 2009

Seal Showing Name and Commission Expiration

Merrilee J. Zedan
Notary Public in and for the State of Texas

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

OCT 17 2006

COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2006 OCT 17 AM 10: 07
COUNTY CLERK
HARRIS COUNTY, TEXAS

AFTER RECORDING RETURN TO:

S. Bradley Todes
Perry Homes, a Joint Venture
P.O. Box 34306
Houston, Texas 77234

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RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts additions and changes were present at the time the instrument was filed and recorded.