

U093650

CHICAGO TITLE - TOMBALL
246324**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS**

529-29-2515

FOR

11/23/99 201120385 U093650

\$73.00

CHERRY MEADOWS**A RESIDENTIAL SUBDIVISION IN HARRIS COUNTY, TEXAS**

THE STATE OF TEXAS §

KNOWN ALL BY THESE PRESENTS THAT:

COUNTY OF HARRIS §

This Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") is made as of the date set forth below by **BILL RICHARDSON, KEVIN JAMES BROLAN, and RICHLAN JAMES DEVELOPMENT, L.L.C.**, (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of all that certain real property known as **CHERRY MEADOWS**, a subdivision located in Harris County, Texas, as more particularly described in Section 1.01; and

WHEREAS, it is the desire of Declarant to place certain restrictions, covenants, conditions, stipulations, reservations, easements, charges and liens upon and against the residential lots in **CHERRY MEADOWS** (herein the "covenants and restrictions") in order to establish a uniform plan for the development, improvement, sale and use of such property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of Lots in the Subdivision;

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon the residential lots in **CHERRY MEADOWS** as herein provided, and declares the following restrictions, covenants, conditions, stipulations, reservations, easements, charges and liens applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the land, which covenants and reservations shall run with the land and are binding upon all parties having or acquiring any right, title or interest therein or any part thereof, their heirs, predecessors, successors and assigns, and shall inure to the benefit of each owner thereof.

Article I**Property Subject to This Declaration**

SECTION 1.01 Property subject to Declaration. The real property which, by the recording of this Declaration, will be held, transferred, sold, conveyed, used,

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occupied, and mortgaged or otherwise encumbered subject to this Declaration is that certain real property located in Harris County, Texas, more particularly described as follows, to wit:

Lots One (1) through Sixty (60), inclusive, Block One (1), of the Amended Plat of CHERRY MEADOWS, an addition in Harris County, Texas, according to the map or plat thereof, recorded in Volume 423, Page 122, of the Map Records of Harris County, Texas.

SECTION 1.02 Annexation of other Property. Only the real property described in Section 1.01 is initially made subject to this Declaration. Additional real property may be annexed by Declarant during the Development Period as provided in Section 9.10. After the development period, other real property may be annexed only upon approval by Owners of a majority of all Lots then contained within the Subdivision obtained in the same manner as required for amendment of this Declaration.

Article II Definitions

Unless the context otherwise prohibits and in addition to other defined terms set forth herein, the following words and substantive provisions regarding same when used in this Declaration apply, mean and refer to the following:

SECTION 2.01 "Architectural Control Committee" or "ACC" means the committee established pursuant to Article VI of this Declaration.

SECTION 2.02 "Association" means CHERRY MEADOWS COMMUNITY ASSOCIATION, INC., a Texas non-profit corporation, to be incorporated for the purposes contemplated by this Declaration, and its successors (by merger, consolidation or otherwise) and assigns.

SECTION 2.03 "Board" or "Board of Directors" means the Board of Directors of the Association.

SECTION 2.04 "Bylaws" means the Bylaws of the Association, as from time to time amended in accordance with applicable provisions of the Bylaws.

SECTION 2.05 "Community Properties" means all properties, real or personal, conveyed to, dedicated to the use of, or otherwise acquired by the Association for the common use and enjoyment of the Members of the Association, together with all improvements thereon and appurtenances thereto.

SECTION 2.06 "Declarant" means BILL RICHARDSON, KEVIN JAMES BROLAN, and RICHLAN JAMES DEVELOPMENT, L.L.C., and their successors and assigns if such successors or assigns:

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2.06.1 acquire all the undeveloped or developed but previously unoccupied or unsold Lots within the Subdivision from Declarant for purposes of development and resale; or

2.06.2 are expressly designated in writings by Declarant as a successor or assign of Declarant hereunder, in whole or in part.

SECTION 2.07 "Development Period" means the period of time beginning on the date of filing of this Declaration in the Real Property Records of Harris County, Texas and ending on the earlier occurrence of either of the following events:

2.07.1 seven years after the date of filing of this Declaration in the Real Property Records of Harris County, Texas; or

2.07.2 upon recordation of Declarant's statement in the Real Property Records of Harris County, Texas, that the Development Period has ended or has been terminated by Declarant.

2.07.3 Under Section 2.07.2, Declarant may terminate the Development Period only as to certain rights or responsibilities of Declarant under this Declaration while retaining all others, or terminate the Development Period as to certain sections, Lots or other areas of the Subdivision only, or otherwise phase out, modify or terminate Declarant's rights or responsibilities under this Declaration.

SECTION 2.08 "Governing Documents" means all documents and applicable provisions thereof set forth in this Declaration, the Bylaws and Articles of Incorporation of the Association, Rules and Regulations, Architectural Guidelines, all written decisions and resolutions of the ACC and Board, and any lawful amendments to any of the foregoing.

SECTION 2.09 "Lot" means:

2.09.1 any of the numbered lots shown on the Plat covering the real property described in Section 1.01; and

2.09.2 a building site upon which one single family residence is or may be constructed as described by reference to any map or plat or by metes and bounds description, and which is contained within real property subjected to this Declaration pursuant to Section 1.02.

2.09.3 The term "Lot" does not include Community Properties, and does not include commercial reserves so designated by a Plat, if any.

SECTION 2.10 "Owner" means the Person who holds title to a lot according to the Real Property Records of Harris County, Texas, whether one or more Persons, including any mortgagee or lien holder who acquires such ownership through judicial or non-judicial foreclosure or proceedings in lieu thereof, but excluding any Person holding a lien or other encumbrance, easement, mineral interest or royalty interest burdening title or otherwise having an interest merely as security for the performance of an obligation.

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SECTION 2.11 "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other entity.

SECTION 2.12 "Plat" means:
2.12.1 the map or plat of the Subdivision described in Section 1.01; and
2.12.2 any other map, plat or other designation of real property subjected to this Declaration as provided in Section 1.02 which is filed in the Map or Plat (or other appropriate Real Property) Records of Harris County, Texas.

SECTION 2.13 "Regulated Modification" means the placement, construction reconstruction or erection of, or modification, alteration, or addition to, any building, structure, improvement, thing or device, and any usage thereof, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the Subdivision as of the date of establishment of the Regulated Modification, excluding any such matters or activities conducted by the Association as to Community Properties, but including by way of illustration and not of limitation:

2.13.1 any building, garage, porch, shed, greenhouse, bathhouse, coup or cage, covered or uncovered patio, swimming pool, clothes lines, radio or television antenna, fence, wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters (including any mobile home) or any other temporary or permanent modification or alteration;

2.13.2 an excavation, fill, ditch, diversion, dam, drainage system or other thing or device which affects or alters the flow of surface or subsurface waters to, from, upon or across any Lot or any other portion of the Subdivision, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel to, from, upon, under or across any Lot or other portion of the Subdivision;

2.13.3 any change in the grade of any Lot or other portion of the Subdivision, and any similar disturbance to the surface of the land within the Subdivision; and

2.13.4 any erosion control system or devices permitted or required as to any Lot or other portion of the Subdivision.

SECTION 2.14 "Subdivision" means CHERRY MEADOWS, a residential subdivision in Harris County, Texas as more particularly described in Section 1.01, and any other real property subjected to this Declaration as herein provided from time to time.

Article III

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

SECTION 3.01 Incorporation of Easements. The plat described in Section 1.01 dedicates (and subsequent plats, if any, may dedicate) for use as such, subject to the limitations set forth therein, the streets and easements shown thereon, and such Plat further establishes certain restrictions applicable to the Subdivision, including, without limitations, certain minimum setback lines. All dedications, limitations, restrictions and

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reservations shown on the Plat are incorporated herein and made a part hereof as if fully set forth herein, and are to be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Declarant, conveying any property located within the Subdivision, or any part thereof, whether specifically referred to therein or not.

SECTION 3.02 Reservation of Easements. Declarant hereby reserves the easements and right-of-way as shown on the Plat for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, water lines, sewer lines, drainage or any other utility Declarant sees fit to install on , in , across, or under the Subdivision.

SECTION 3.03 Utilities Access and Other Services.

3.03.1 Services. A blanket easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, to garbage and trash collection services, to water, sewage, electrical, gas and other utility services, to the United States Post Office, and to the Association, and to the officers, directors, agents and employees of all of the foregoing, to enter upon any portion of the Subdivision or any Lot for purposes of and in connection with the performance of all work or other activities incident to providing the service or as to rights or responsibilities of the Association as set forth in this Declaration or other Governing Documents. Except in the case of an emergency as determined in the sole opinion of Declarant or the Board, this blanket easement shall be exercised by or on behalf of the Association only during reasonable hours and only after giving of at least three days written notice.

3.03.2 Egress/Regress to Public Way Required. All single family residences shall be constructed, and thereafter same and related improvements shall be maintained, such that a continuous and unobstructed means of egress and regress to a common public way is maintained in accordance with applicable building codes and ordinances of the City of Tomball, State of Texas.

3.03.3 Changes and Additions. At the sole election of the Board, the Association shall have the right to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public, quasi-public or private utility purposes or other services, including, without limitation, to providers of gas, electricity, telephone, sanitary or storm, cable television and similar services and equipment, along, over, above, across and under the Subdivision and any Lot; provided, no such additional easement shall unreasonably interfere with any pre-existing building or other substantive and substantial rights of any Owner.

3.03.4 Limitation of Liability. Except for intentional and willful misconduct, no Person (including Declarant) entitled to use or otherwise exercise any rights as to any easements herein referred to may be held liable for any damages or otherwise in connection with such usage or exercise of rights by them or their assigns, or their agents, employees or servants, including without limitation any damages to fences, trees, shrubbery, flowers, pavement, irrigation system, underground lines or any other part of

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any electrical, telephone, sanitary or storm, cable television and any other similar utility or other service lines or equipment, or other property of any Owner, the Association or any other Person situated within the Subdivision on all land covered by said easements.

SECTION 3.05 Title to Easements and Appurtenances Not Covered. Title to any Lot conveyed by contract, deed, or other conveyance may not be held or construed in any event to include any right, title or interest as to any easement established, covered, contemplated or reserved by this Declaration, including but not limited to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way or any pipes, lines, poles, or conduits on or in any utility facility, service equipment or appurtenances thereto; and no such contract, deed or other conveyance may be held or construed in any event to affect any right of Declarant or other easement owner to use, maintain or repair, or to sell or lease, any such easement or appurtenances thereto to any municipality or other governmental agency, or to any public or quasi-public service corporation, or to any other Person, and such right is hereby expressly reserved.

SECTION 3.06 Easements Perpetual. So long as reasonably necessary, all easements established, covered, referred to, contemplated by or reserved by this Declaration are perpetual in duration, and once established are not subject to amendments or termination otherwise applicable to this Declaration without the prior written consent of the owner(s) thereof.

Article IV **ARCHITECTURAL AND USE RESTRICTIONS**

SECTION 4.01 Land Use and Building Type. All Lots will be known and described as Lots for residential purposed only (hereinafter sometimes referred to as "residential Lots"). No residential structure may be erected, altered, placed or permitted to remain on any residential Lot other than one single family dwelling not to exceed two and one-half stories in height and a detached or an attached garage for not less than one or more than four cars. Garages may have front or side entry only. As used herein, the term "residential purposes" is to be construed to prohibit the use of any Lot for duplex houses, garage apartments, or apartment houses; and no Lot may be used for business or professional purposes of any kind, nor for any commercial or manufacturing purpose. Except as provided in Section 4.11, no building of any kind or character may ever be moved onto any Lot, it being the intention that only new construction may be placed and erected on any Lot.

SECTION 4.02 Architectural Control. No Regulated Modification may be erected, placed or maintained on any Lot except in accordance with Article VI.

SECTION 4.03 Dwelling Size. The residential structure, exclusive of open porches and garage, must not be less than 1150 square feet.

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SECTION 4.04 Type of Construction and Materials.

4.04.1 Driveways. On each Lot, the builder of the residence thereon must construct, during the construction of the main dwelling foundation, the driveway from the garage to the abutting street, including the portion of the driveway in the street right-of-way. The builder or Owner must repair at their own expense any damage occasioned by connecting the driveway to the street. All driveways must be reinforced aggregate concrete.

4.04.2 Roof Material. Roofs may take a variety of forms as approved by the ACC. Gabled and hipped roofs are preferable. Mansard roofs and other "exotic" roof forms may not be used without prior written approval of the ACC. Roof materials may be clay tile or dimensional or architectural grade composition fiberglass or asphalt shingles in color as approved by the ACC. Any fiberglass or asphalt shingle roofs must have a covered valley unless an uncovered valley is approved by the ACC. Roofs must have at least a 4 on 12 pitch.

4.04.3 Fences. No fence or wall may be erected, constructed or maintained without prior written approval of the ACC and unless erected, constructed and maintained in accordance with this Section. No fence or wall may be erected, constructed or maintained on any Lot extending past the front of the main residence, and all fences or walls facing any street must be placed uniformly from the street to provide for a consistent and uniform alignment. The erection of a chain link fence is strictly prohibited. All fences must be wood, brick, wrought iron, brick and wrought iron, or brick and wood. Wood fences must be treated pine, cedar, redwood or cypress. Maximum fence or wall height for all Lots is six feet; provided, brick columns in brick and wrought iron or brick and wood fences may extend to seven feet in height; and any entry, perimeter or other fencing constructed or maintained by Declarant or the Association may extend to a maximum height of eight feet (with columns, if applicable to nine feet). All hedgerows or shrubs serving the same purpose as fences must conform to height limitations for fences. The provisions of this Section do not apply to any Subdivision perimeter fences or walls erected by Declarant, or any fences or walls erected or maintained by the Association.

4.04.4 Time for Completion. All exterior construction of the primary residential structure, garage, porches, and any other appurtenances or appendages of every kind and character on any Lot and all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work completed, all interior wall, ceilings, and doors completed and covered by paint, wallpaper, paneling, or the like, and all floors covered by wood, carpet, tile or other similar floor covering) must be completed not later than one year following the commencement of construction. For the purposes hereof, the term "commencement of construction" means the date on which the foundation forms are set.

SECTION 4.05 Building Location. No building may be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. No building may be located nearer than five feet to any interior Lot line. For the purpose of this Section, eaves, steps, and open porches are not considered part of the building; provided, however, that this does not permit any portion of a building on any Lot to encroach upon another Lot. For the purposes of these

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covenants and restrictions, the front of each Lot coincides with and faces the property line having the smallest or shortest dimension abutting a street. Unless otherwise approved by the ACC, each main residence must face the front of the Lot.

SECTION 4.06 Lot Resubdivision or Combination.

4.06.1 Subdividing Prohibited. No Lot as originally conveyed and no Lot as shown on the Plat may be subdivided or its boundaries changed except in conjunction with the combination of Lots.

4.06.2 Lot Combinations. Any Owner of one or more adjoining Lots (or portions thereof) may, with the prior written approval of the ACC, consolidate same or portions thereof in to one building site for the purpose of constructing a single family residence and appurtenant improvements on the resulting composite site. Each such composite site will be regarded as one Lot for purposes of constructing one single family residence and appurtenant improvements thereon. Any approval by the ACC will be conditioned upon (whether or not stated therein) obtaining the abandonment or release of all affected utility and other easements applicable to the combined Lots prior to consolidation, and compliance with replatting requirements of applicable statutes and ordinances of the City of Tomball. Obligations for payment of assessments and voting rights will be determined, as to the composite site, based on the number of Lots per the Plat (or fractional parts thereof) combined. By way of illustration, if one and one-half (1 1/2) Lots as designated by the Plat are combined, then thereafter the Owner of such composite site is required to pay regular assessments at the rate of one and one-half times the rate otherwise applicable to single Lots designated by the Plat and is entitled to one and one-half (1 1/2) votes as the composite site.

SECTION 4.07 Maintenance Responsibilities: Annoyance or Nuisance.

4.07.1 General Duties of Owners. Each Owner shall maintain their Lot and improvements thereon in a manner consistent with the standards of use, conduct, appearance and maintenance generally prevailing in the Subdivision from time to time and as may be more specifically determined by this Declaration and other Governing Documents, including as determined from time to time by duly adopted Architectural Guidelines and Rules and Regulations. Without limitation of the foregoing, residences must be periodically painted; roofs, gutters, trim, brick, windows and doors of residences must be properly maintained; grass, flower beds, trees and all other vegetation must be mowed, edged, weeded, trimmed, pruned, irrigated, and otherwise maintained in accordance with the seasons; unsightly grease, oil or other stains must be removed from driveways and walkways; permitted Regulated Modifications such as swing sets, swimming pools, or other recreational equipment or devices must be properly maintained in appearance and in such manner as to avoid any unsightly, unsafe or unhealthy condition; and all Lot fencing must be properly maintained, including maintenance as to appearance and as to repair or replacement of damaged or broken pickets or other components.

4.07.2 Annoyance or Nuisances. No noxious or offensive trade or activity may be carried on upon any Lot nor anything be done thereon which may be or become an annoyance or nuisance to any Owner, to any residents of the Subdivision or to any Person using any property adjacent to the Lot. No spirituous, vinous, malt, medicated bitters, alcohol, drugs or other intoxicants may be sold or offered for sale on any part of any Lot

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or any other place within the Subdivision. No Lot or any part thereof may be used for any illegal purposes.

4.07.3 Animals and Livestock. No hogs, horses, livestock or poultry of any kind may be raised, bred, or kept on any Lot. If consistent with its use as a residence, dogs, cats or other usual household pets may be kept on a Lot. No more than a total of two (2) such pets may be kept on a Lot. All such household pets must be kept on a leash or otherwise maintained under the control of their owner when not maintained in a secure and enclosed yard area, and otherwise leashed and maintained in accordance with applicable ordinances of the City of Tomball. The Board may adopt Rules and Regulations otherwise defining or limiting animals to be included in or excluded from the meaning of "usual household pets" or otherwise regulating such pets, and including authority to prohibit any type of animal or pet which in general or in particular instances is determined to present a threat to health or safety or creates a continuous disturbance.

4.07.4 Unightly or Unkempt Conditions. It is the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No Lot may be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition, or that will be obnoxious to the eye. No hobbies or activities which will cause disorderly, unsightly, or unkempt conditions, including without limitation the assembly or disassembly of or repair work on motor vehicles or other mechanical devices, may be performed within the Subdivision. No substance, thing, or material may be kept upon any Lot 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. There may 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 residents of the Subdivision.

4.07.5 Disposal of Trash. No trash, rubbish, garbage, manure, debris or offensive material of any kind may be kept or allowed to remain on any Lot, nor may any Lot be used or maintained as a dumping ground for such materials. No incinerator may be maintained on any portion of the Subdivision. All trash and similar matter to be disposed of must be placed in paper or plastic bags tied or otherwise tightly secured, or as otherwise required by the City of Tomball. All trash and similar matter must be stored or placed in an area adequately screened by planting or fencing from public view or view from other Lots or Community Properties, or within a garage, except when placed for regular pickup as herein provided. Equipment used for the temporary storage and/or disposal of such material prior to removal must be kept in a clean and sanitary condition, and must comply with all applicable federal, state, county, municipal or other governmental laws, ordinances and regulations. All such prohibited matter must be removed from each Lot at regular intervals if not removed or removable by a regular garbage and sanitation service.

4.07.6 Undeveloped Lots. The Owner of any Lot upon which a single family residence has not been constructed must maintain such Lot in a neat, sanitary and attractive condition, including without limitation, periodic removal of trash and debris therefrom and mowing of grass and other vegetation thereon as necessary to prevent growth to more than eight inches in height.

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4.07.7 Unoccupied Residences. Owners of unoccupied residences shall remain liable for full observance and performance of all provisions of this Declaration and other Governing Documents, including without limitation (i) proper maintenance of the Lot and all improvements thereon, and (ii) securing of the unoccupied residence, including fastening of windows and locking of all entry and garage doors, and maintenance of appropriate curtains or other permitted window covers in order to prevent unauthorized entry or use.

4.07.8 Maintenance of Utilities. All utility services intended to be provided to each single family residence as originally constructed, including without limitation water, sewage, electric and gas services, must be maintained by the Owner at all times when a residence is occupied.

4.07.9 Vehicles.

(a) No vehicle designed primarily for commercial use, no boat or other watercraft, mobile home, motor homes, travel campers, recreational vehicle, camper, trailer, boat rigging, tractor, truck larger than a one-ton pickup, bus, no unused vehicle, no inoperable vehicle of any kind (including any vehicle which does not have both a current and valid license plate and current and valid state inspection sticker), and no unsightly vehicle as determined in the sole good faith opinion of the Board, shall be parked or kept at anytime within the Subdivision, or on any driveway or upon any Lot, unless such vehicle is stored completely within an enclosed garage.

(b) No Person shall be permitted to perform work on any vehicle within the subdivision, or on any street in front or along the side or back of any Lot, or on any driveway or any other part of a Lot, at any time other than temporary emergency repairs or other work required in order to promptly remove an inoperable or disabled vehicle from the Subdivision or to and within a garage.

(c) No vehicle of any kind shall be parked, stored or otherwise permitted to remain overnight upon any street in the Subdivision or upon any Community Properties. No more than two permitted vehicles may be parked or stored simultaneously upon the driveway of each Lot. No Owner or resident is permitted to park or store any vehicle on the Lot of another Owner or resident. The foregoing does not apply to occasional and temporary parking by a guest in the street in front of or on the driveway of the Owner or resident the guest is visiting, subject however to all Rules and Regulations the Board may adopt regarding same.

(d) As used in this Section, an activity is conclusively deemed not to be "temporary" if it exceeds twenty-four hours in duration. Any vehicle is conclusively presumed to be "unused" or "inoperable" if the vehicle has not been operated outside the Subdivision for seven or more consecutive days or the vehicle has not been operated outside the Subdivision more than twice in any fourteen day period. The provisions hereof shall not prejudice the right of the Board to otherwise establish a violation. This Section does not apply to any vehicle completely stored within a garage. The Board may grant reasonable exceptions to this Section upon receipt of written request from an Owner or their tenant or through its duly adopted Rules and Regulations, and the Board may otherwise reasonably regulate all matters concerning vehicular traffic, and parking or storage of and any work on any vehicles.

4.07.10 Default. The Association at all times has the right (but not the obligation), upon notice and opportunity to be heard, to perform all maintenance, to abate

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or cure any condition, nuisance, annoyance, or to take all other actions deemed necessary as a result of any violation of this Section 4.07, and to assess all costs thereof (including attorney's fees) to the Owner responsible for same as a specific assessment. Such right includes without limitation towing of vehicles, performing necessary maintenance and repair, removal of prohibited trash or other matter or material, cure of any unsightly, unsafe or unhealthy condition, removal of any unauthorized pet or any permitted pet deemed in the sole opinion of the Board to be an annoyance or nuisance, and securing of unoccupied residences with notice to the Owner if locks are changed. The Association, and its officers, directors, agents and employees, and all Persons acting upon the directive of any of the foregoing, have a continuing right to access, enter and perform all activities upon each Lot and all improvements thereon to the fullest extent reasonably necessary to accomplishment of any of the foregoing without liability for trespass or otherwise. In the event of an emergency the right of access and entry will be immediate, but notice and opportunity to be heard must be given as soon as practical thereafter. The opinion of the Board or any officer or authorized agent of the Association that a violation has occurred, that an emergency exists and as to all actions taken in response thereto is final and conclusive so long as made in good faith. All rights of the Association under this Section are cumulative and non-exclusive.

SECTION 4.08 Antennas. No external television, radio or other electronic antenna, satellite dish system, microwave antenna or similar device may be placed or permitted to be maintained or remain on any Lot, or the residence, building or other improvement thereon, or upon any other portion of the Subdivision, unless and until the same has been approved by the ACC; provided, the foregoing items may be wholly concealed in the attic space of a residence.

SECTION 4.09 Leases.

4.09.1 Restrictions. No Lot may be leased other than for use as a single family residence as herein provided and defined. No Owner may lease a Lot and attendant use of the residence and improvements thereon for transient or hotel purposes. No Owner may lease less than an entire Lot and attendant use of the residence and improvements thereon. All leases:

(a) must be in writing; and
(b) shall be specifically subject in all respects to all provisions of this Declaration and all other Governing Documents (whether or not expressly stated in the lease), and any failure by lessee to comply with the terms and conditions of the Governing Documents will be a default under the lease and grounds for termination of the lease and eviction by the Owner or by the Association at the sole cost and expense of the Owner.

4.09.2 Joint and Several Liabilities. Lessor(s) and lessee(s) are jointly and severally liable for the observance and performance of all of the terms and provisions of this Declaration and all other Governing Documents, including without limitation joint and several liability for all damages, costs and expenses resulting from any violation thereof, and/or all fines and assessments imposed thereby.

4.09.3 Surrender of Use of Community Properties by Lessor(s). During all periods of time during which a Lot is occupied by lessee(s), the lessor(s) automatically surrenders all of lessors' rights as an Owner to the use of all of the Community Properties

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unto such lessee(s), including without limitation all rights of use of recreational facilities. The provisions of this Section do not impair the voting rights of the lessor(s), the right to inspect the leased premises or to exercise any other rights or remedies customarily reserved for the protection of lessor(s).

SECTION 4.10 Mineral Production. Except as otherwise expressly required by law, no drilling, development operations, refining, quarrying or mining operations of any kind are permitted upon any Lot, nor are oil well, tanks, tunnels, mineral excavation or shafts permitted upon any Lot; and no derrick or other structure designed for use in boring for oil or natural gas are permitted upon any Lot.

SECTION 4.11 Temporary Structures; Sales Office. Temporary buildings or structures are not permitted on any Lot; provided, the Board may permit (and may not unreasonably withhold or delay approval for) temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences at such locations as the Board may direct, and may authorize usage of garages as sales offices during the Development Period. At the time of the sale of a residence, any garage appurtenant to any residence used for sales purposes must have been reconverted to a garage.

SECTION 4.12 Signs.

(a) No signs, billboards, posters, advertising devices of any kind, including without limitation business, professional, promotional or institutional signs, are permitted on any Lot, or upon any residence, or within any residence if visible from the exterior of the residence, or within the subdivision without the prior written consent of the ACC except as otherwise provided in this Section.

(b) No sign is permitted which is vulgar, obscene or otherwise patently offensive or unsightly to persons of ordinary sensibilities. No sign is permitted to be larger than six square feet. No sign may be illuminated. No sign may be placed on any Lot closer than fifteen feet from any street or any side or back Lot line. No Owner (or their tenants, guests or invitees) is permitted to place any sign on another Owner's Lot or upon Community Properties.

(c) Each Owner is permitted to place upon (and only upon) such Owner's Lot (I) one sign advertising the particular Lot on which the sign is located for sale. All for sale signs must also comply with subsection (b) of this Section. The CC may (but is not obligated to) allow builders within the Subdivision to construct and maintain such signs, billboards and advertising devices as are customary in connection with the sale of newly constructed residential dwellings.

SECTION 4.13 Traffic Sight Line Areas. No fence, wall, hedge, tree, shrub planting or any other thing or device which obstructs sight lines at elevations between two and nine feet above a street are permitted on any corner Lot within the triangular area formed by the two boundary lines thereof abutting the street and a line connecting them at points twenty-five feet from their intersection, or within the triangular area formed by the boundary line abutting a street, the edge line of any driveway pavement and a line connecting them at points ten feet from their intersection.

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SECTION 4.14 Rules and Regulations. The Board is hereby specifically authorized to promulgate, modify and delete such reasonable Rules and Regulations applicable to the operation, use and occupancy of the Subdivision, including all Lots and Community Properties, as the Board may from time to time deem beneficial to the Subdivision. Rules and Regulations are of equal dignity with and are enforceable in the same manner as the provisions of this Declaration; provided: (i) Rules and Regulations may not be enacted retroactively (except that in any activity is subsequently covered by Rules and Regulations and such activity ceases after enactment of the Rules and Regulations covering same, then the Rules and Regulations will apply to the activity thereafter); (ii) Rules and Regulations may not be incompatible with the provisions of this Declaration; and (iii) Rules and Regulations will not become effective sooner than thirty days after true and correct copies thereof are delivered or mailed to all Owners.

Article V

Cherry Meadows Community Association, Inc.

SECTION 5.01 Organization. Cherry Meadows Community Association, Inc. (the "Association") will be organized and formed pursuant to this Declaration as a non-profit corporation under the laws of the State of Texas. The Association has full power, authority and standing to enforce all provisions of the Governing Documents. The principal purposes of the Association are the collection, expenditure and management of the funds and financial affairs of the Association, enforcement of all provisions of the Governing Documents, providing for maintenance, preservation and architectural control within the Subdivision, the maintenance of Community Properties as herein permitted or required, the general overall supervision of all of the affairs and well-being of the Subdivision, the promotion of health, safety and welfare of the residents and Owners of Lots within the Subdivision and all other acts and undertakings reasonably incident to any of the foregoing or in furtherance thereof as determined in the opinions of the Board of Directors or Members.

SECTION 5.02 Membership.

5.02.1 Owners as Members. Every person who is the owner of a fee simple title or undivided fee simple title interest in any Lot that is subject to this Declaration is deemed to be a member of the Association. The Association is entitled to rely on the Real Property Records of Harris County, Texas in determining the owner(s) of each Lot, or such other reasonable evidence of ownership (including but not limited to copies of deeds, contracts or tax records) as determined in the sole opinion of the Board. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate any Owner's membership. No Owner, whether one or more Persons, May have more than one membership per Lot. Memberships are appurtenant to and may not be separated from ownership of any Lot, and automatically pass with the title to the Lot.

5.02.2 When Member Required to Designate Representative: Effect. Each Member which is not a natural person is required to designate one natural person to act on such Member's behalf, such designation to be made in such manner as determined by the

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Board. A designation as aforesaid fully authorizes the designated representative to bind the designating party as to all matters. Any such representative may serve as a Director.

SECTION 5.03 Voting Rights of Members.

5.03.1 Development Period. During the Development Period there will be two classes of membership entitled to voting rights in the Association which shall be as follows:

(a) Class A All Members in the Association other than the Declarant, are Class A Members, and for each Lot owned Class A Members will be entitled to one vote on each matter coming before the Members (unless their voting rights have been suspended as herein provided).

(b) Class B Class B Members are those individuals or entities who are herein defined as "Declarant", and for each Lot owned they shall be entitled to five votes on each matter coming before the Members.

5.03.2 Post-Development Period. Upon termination of the Development Period, any remaining Class B membership will automatically convert to Class A membership. Thereafter there will be only one class of voting membership, and such Members will be entitled to one vote for each Lot owned on each matter coming before the Members.

5.03.3 Multiple Owners. When more than one Person holds an ownership interest in a Lot, all such Persons are Members, but in no event will they be entitled to more than one vote with respect to each particular Lot owned. The single vote of such joint Owners must be cast in accordance with the decision of a majority, or if such joint Owners cannot reach a majority decision, then none of the joint Owners will be permitted to vote as to any such matter upon which a majority decision cannot be reached. Any individual Owner from among such joint Owners will be conclusively presumed to be acting in accordance with the decision of the majority in voting either in person or by proxy unless another joint Owner is voting to the contrary in person or by proxy.

5.03.4 Cumulative Voting Prohibited. Cumulative voting is not permitted as to any matter placed before the membership for a vote, including election of Directors.

5.03.5 Suspension of Voting Rights. Voting rights of any Member may be suspended for breach of the Governing Documents as provided in such Governing Documents.

SECTION 5.04 Inspection by Members of Books and Records. Subject to exclusions, protection of privileged and confidential communication and rules for inspection as set forth in the Bylaws, every Member of the Association, on written demand stating the purpose of the demand, has the right to examine and copy, in person or by agent, accountant, or attorney, at any reasonable time, for any proper purpose, the books and records of the Association relevant to that purpose, at the expense of the Member.

SECTION 5.05 Limitation of Liability; Indemnification.

5.05.1 General. Except for intentional and willful misconduct, knowing violation of the law, or as otherwise required by the Texas Non-Profit Corporation Act (including Article 1396-2.22A thereof, as amended), no Director will be liable to the Association or its Members, and the Association is not liable to any Member, for monetary damages or otherwise for: (i) any act or omission of an officer or Director within their official

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capacity; or (ii) any act or omission of the Association within the scope of its purposes. The Association will indemnify and keep indemnified, and hold harmless, any current or former officer or Director to the fullest extent necessary to accomplishment of the foregoing and to the fullest extent otherwise allowed by law, and hold any such officer or Director harmless from and against all claims, demands, suits, judgments, court costs, attorney's fees attachments and all other legal action as contemplated thereby. All provisions of this Section also apply to all Association Control Committee, and to Declarant and its directors, officers, partners, agents and employees.

5.05.2 Security Services. The Association may from time to time provide Subdivision facilities, devices or services intended to or which may have the affect of limiting or controlling Subdivision access, or providing patrol services or otherwise monitoring activities within the Subdivision (including Community Properties), and may from time to time provide information through newsletters or otherwise regarding or relating thereto (all such matters and all activities, facilities, services or devices of a similar nature or incident thereto herein referred to as "*Security Services*"). Without limitation of Section 5.05.1, each Owner or Member and their tenants, family, guests and invitees, covenant and agree with respect to any and all Security Services provided directly or indirectly by the Association as follows:

(a) Security is the sole responsibility of local law enforcement agencies and individual Owners and Members, their tenants, and their respective guests and invitees. Security Services may be provided at the sole discretion of the Board of Directors. The providing of any Security Services at any time does in no way prevent the Board from thereafter discontinuing, or from temporarily or permanently modifying, terminating or removing, any Security Service, in whole or in part.

(b) Any third party providers of Security Services will be independent contractors, the acts or omissions of which may not be imputed to the Association or its officers, Directors, committee members, agents or employees.

(c) Providing of any Security Services may never be construed as an undertaking by the Association to provide personal security or as a guarantee or warranty that the presence of any Security Service will in any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause.

(d) The Association and its officers, Directors, Committee members, agents and employees will not be liable for, and each Owner or Member, their tenants, and their respective guests and invitees, indemnify, keep indemnified and hold the Association and its officers, Directors, Committee members, agents and employees harmless at all times from, any injury, loss or damages whatsoever, including without limitation any injury or damages caused by theft, burglary, trespass, assault, vandalism or any other crime, to any Person or property arising, directly or indirectly, from the providing or failure to provide any Security Services, or the discontinuation, modification, disruption, defect, malfunction, operation, repair, replacement or use of any Security Services.

5.05.3 Liability Arising From Conduct of Owners. Each Owner, and each Owner's tenants, shall indemnify and keep indemnified, and hold harmless, the Association, and its officers, Directors, servants, agents and employees from and against all claims, damages, suits, judgments, court costs, attorney's fees, attachments and all

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other legal actions caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or the family, guests, invitees, servants, agents or employees of either.

5.05.4 Subsequent Statutory Authority. If the Texas Non-Profit Corporation Act, Texas Miscellaneous Corporation Laws Act, Chapter 84 of the Texas Civil Practice and Remedies Code or any other applicable statute, state or federal, is construed or amended subsequently to the filing of this Declaration to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this Section 5.05, then liability shall be eliminated or limited and right to indemnification expanded to the fullest extent permitted by such construction or amendment.

5.05.5 No Impairment. No amendment, repeal or modification of this Declaration may adversely affect any rights or protection existing at the time of such amendment, repeal or modification afforded or contemplated by this Section 5.05.

Article VI Architectural Control Committee

SECTION 6.01 Organization. There is hereby established an Architectural Control Committee (herein sometimes referred to as the "ACC"). The ACC will be composed of either: (i) all members of the Board of Directors; or (ii) an executive committee of the Board of Directors formed and designated as the ACC by resolution adopted by the Board of Directors. The ACC may designate any one of its members to act in its stead.

SECTION 6.02 Function and Powers

6.02.1 Submission of Plans Required. No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Lot or any part of the subdivision unless and until complete plans and specifications have been submitted to and approved in writing by the ACC as to compliance with applicable Architectural Review Criteria as set forth in Section 6.03. Two complete sets of plans and specifications must be submitted with each request for approval. Any plans and specifications to be submitted must specify, in such detail and form as the ACC may reasonably require:

- (a) the location upon the Lot or within the Subdivision where the Regulated Modification will occur or be placed;
- (b) the dimensions, nature, kind, shape, height, and color scheme of and all materials to be used in connection with the Regulated Modification;
- (c) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking and landscaping details;
- (d) intended uses; and
- (e) such other information, plans or specifications as may be requested or required by the ACC which in the sole opinion of the ACC is reasonably necessary to fairly and fully evaluate all aspects of the proposed Regulated Modification.

6.02.2 Architectural Guidelines. The ACC may, from time to time, promulgate, modify and delete such reasonable Architectural Guidelines applicable to the Subdivision, including Lots and Community Properties, as it may deem appropriate to maintain the

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architectural, environmental or aesthetic standards of the Subdivision generally prevailing at the time of adoption. This authority includes, but is not limited to, the right to specify specific procedural guidelines for submission of requests for, and plans, specifications and other information necessary to obtain ACC approval to commence, erect, construct or maintain any Regulated Modification, and procedural requirements for the conducting of all activities necessary to accomplish same.

6.02.3 Variances. The Board, by vote of two-thirds (2/3rds) of all members of the Board, may grant specific variances to Architectural Guidelines and to the architectural and use restrictions set forth in of this Declaration upon specific findings of compliance with the grounds for granting of a variance as set forth hereafter. A variance may be granted only with respect to specific instances upon written request therefor, is not binding with respect to any other request for a variance whether or not similar in nature, and does not constitute a waiver, modification or repeal of any of the provisions of this Declaration or other Governing Documents except for the limited purpose and to the extent of the specific variance expressly granted. A variance may be granted only upon specific findings that:

(a) the variance is necessary due to unusual circumstances not occasioned by the conduct of the applicant for the variance, and which are reasonably beyond the control of the applicant and the Association to mitigate or rectify; and

(b) the applicant for a variance has acted in good faith in seeking a variance or in his failure to otherwise comply with the provisions of this Declaration or other Governing Documents; and

(c) the granting of a specific variance will not materially and adversely affect the architectural, aesthetic or environmental integrity of the Subdivision or the scheme of development therein.

SECTION 6.03 Architectural Review Criteria. The ACC shall evaluate all submitted applications for ACC approval on the individual merits of the particular application. Judgments and decisions of the ACC will be based on the following criteria applied in accordance with the aesthetics, environment or architectural appearance or standards generally prevailing in the Subdivision as of the date of submission of an application:

6.03.1 Compliance With Governing Documents and Governmental Laws. The proposed Regulated Modification must substantially comply with applicable provisions of the Governing Documents (including applicable Architectural Guidelines and Rules and Regulations), and governmental laws, ordinances and regulations.

6.03.2 Harmony and Compatibility. The regulated Modification must relate favorably to its surroundings and the Subdivision in terms of harmony, compatibility and conformity with surrounding buildings, structures, grades, topography, location, color, workmanship, materials, usage and design.

6.03.3 Precedence for Approval or Disapproval. The ACC shall use all reasonable efforts to achieve consistency in the approval or disapproval of specific types of Regulated Modifications. To this end, consideration will be given to similar applications for architectural approval, and the decisions and actions of the ACC with regard thereto.

SECTION 6.04 Failure to Respond. If any applicant has not received written notice from the ACC approving, conditionally approving or disapproving a request

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for approval or a request for a variance within thirty days after the application was originally received by the ACC, the applicant may notify the ACC in writing of that fact. If notice of failure to respond as aforesaid is not received from the applicant by the ACC within forty-five days after submission of an application or request for variance, approval thereof will be deemed denied. If notice of failure to respond is given by the applicant to the ACC as aforesaid, the request for approval or for a variance to which such notice relates will be deemed approved by the ACC unless the ACC responds to the contrary not later than fifteen days after the date such notice is received by the ACC.

SECTION 6.05 Records of Architectural Control Committee. The ACC is not required to maintain records of any of its meetings. The ACC must keep and maintain records evidencing the final decision(s) of the ACC regarding all requests for approval and requests for variance for not less than four years after the dates of such records. The ACC must maintain a record of all current Architectural Guidelines, and must provide copies to Owners upon written request and at the Owner's expense.

SECTION 6.06 Liability of Architectural Control Committee. Except as provided in Section 5.05, neither the Association nor the ACC, nor any officer, Director, member, subcommittee, employee or agent of either, is liable to any Owner, Member or any other Person for any actions or failure to act or in connection with any approval, conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication or Architectural Guidelines may ever be construed as representing or implying that, or as a warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship or suitability for any purpose of the Regulated Modification. The provisions hereof are cumulative of the provisions of Section 5.05.

Article VII **Maintenance Fund**

SECTION 7.01 Obligation for Payments to Maintenance Fund.

7.01.1 Establishment of Maintenance Fund. There is hereby established a Maintenance Fund in to which will be paid all assessments as provided for herein. The Board is responsible for the collection, management, control and expenditure of the Maintenance Fund which must be deposited in accounts specifically designated for the Association as from time to time designated by the Board.

7.01.2 Types and Obligation for Payment of Assessments. Each Owner of a Lot, by acquisition of any rights, title or interest therein or acceptance of a contract for purchase, therein, covenants and agrees to pay to the Association regular or annual assessments, special assessments and specific assessments, all as herein set forth.

7.01.3 Purpose of Maintenance Fund. The Maintenance Fund will be used exclusively for the purpose of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Subdivision, including the maintenance of all Community Properties, the discharge of all obligations of the

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Association pursuant to this Declaration and other Governing Documents, and the doing of any other thing necessary or desirable in the opinion of the Board for accomplishment of any of the foregoing, including the establishment and maintenance of reserves for repairs, maintenance, taxes, insurance, and other charges, and the expenditure of funds for the benefit of other properties within the vicinity of the Subdivision if in the judgment of the Board the Subdivision will benefit thereby. The judgment of the Board in establishing any assessments and in the collection, management and expenditure of the Maintenance Fund is final and conclusive so long as exercised in good faith.

7.01.4 Personal Obligation; Transferees. In addition to the assessment lien herein established, all assessments are and remain the personal obligation of all Owners of each Lot at the time liability for the assessment accrued notwithstanding any subsequent transfer of the Lot. Except as provided in Sections 7.01.5 and 7.06.3, each Owner's transferee, whether by purchase, gift, devise or otherwise, and whether voluntary or by operation of law, is jointly and severally liable for all costs of collection (including attorney's fees), whether incurred prior to or after the transfer.

7.01.5 Statement of Assessments. Upon written request any transferee (or prospective transferee upon presentment of an earnest money contract or other writing satisfactory to the Board) shall be entitled to a statement from the Association setting forth all assessments due as of the date of the written request. The Board may set a reasonable charge for providing a statement of indebtedness, the payment of which is a condition precedent to the Association's obligation to provide same. The Association must respond to a proper written request for a statement of indebtedness within ten business days after receipt of the request by the Association. Except for fraud, misrepresentation or a bona fide error, the Association is bound by its written response.

SECTION 7.02 Administration of Maintenance Fund.

7.02.1 Assessment and Payment. Regular annual assessments are deemed to be assessed on a monthly basis regardless of when same are due and payable. Except as otherwise determined by the Board, regular annual assessments are due and payable annually, in advance, on or before the first (1st) day of January of each calendar year. The Board may elect to collect regular annual assessments on a semi-annual, quarterly or monthly basis in which case such assessments are due and payable, in advance, on or before the first (1st) day of the applicable period.

7.02.2 Effect of Foreclosure or Bankruptcy. In the event of foreclosure of a first mortgage or first deed of trust or in the event of a discharge in bankruptcy, the purchaser at foreclosure or the owner discharged in bankruptcy is liable for unpaid regular annual assessments assessed on a monthly basis from and after the first (1st) day of the month following the month in which foreclosure occurred or the bankruptcy was filed, and all assessments and any installments for assessments (regular, special or specific) over a period of time which become due and payable after said date. The foregoing applies regardless of whether assessments are payable annually, semi-annually, quarterly or monthly.

7.02.3 Uniform Rate. Except as provided in Section 7.02.4, regular and special assessments on all Lots must be fixed at a uniform rate, and must be determined on a per Lot basis.

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7.02.4 Declarant and Builder Rates.

(a) Declarant is obligated to pay assessments (regular, special or specific) only as provided in Section 9.8.

(b) Until the "Conversion Date" the Owner of any unimproved Lot shall pay one-half of the full rate of regular assessments (the "Builder Rate"), but such Owner must otherwise pay special or specific assessments at the full applicable rate. The builder rate will apply from the first (1st) day of the month after transfer or conveyance of a Lot by Declarant and until occurrence of the "Conversion Date" which will be the first (1st) day of the month following the occurrence of the earlier of (i) one year after the date of transfer or conveyance by Declarant or (ii) substantial completion of the construction of the initial residence upon the Lot as determined in the sole opinion of the ACC.

7.02.5 Application of Payments. All payments made by or on behalf of an Owner for assessments (regular, special or specific) will be deemed made upon the date of receipt of the payment by the Association or its designated representative. All payments received, including payments received in consequence of judicial or non-judicial foreclosure, will be applied (i) first to payment of all specific assessments owed to the Association with application to be made in inverse order to the specific assessments listed in Section 7.05.1, (ii) then to payment of all special assessments; and (iii) finally to payment of all regular assessments. Application within each category will be on a first in, first out basis.

SECTION 7.03 Base Rate and Subsequent Computation of Regular Assessments.

7.03.1 Initial Base Rate. The initial base rate of the regular assessment per Lot, effective from the date of filing of this Declaration in the Real Property Records of Harris County, Texas and from month to month thereafter unless modified as herein provided, shall be ONE HUNDRED EIGHTY AND NO/100 DOLLARS (\$180.00) per Lot per year.

7.03.2 Subsequent Computation. The annual rate of regular assessment per Lot as specified by Section 7.03.1 may be adjusted from time to time as follows:

(a) The Board shall adopt a budget at least annually to determine sums necessary and adequate to provide for the expenses of the Association for at least the succeeding twelve month period (including funding of capital, contingency and other reserves). The Board shall set the annual rate of regular assessments based on the budget, and determine whether regular annual assessments will be payable annually, semi-annually, quarterly or monthly. If any change is made in the amount of the annual rate of regular assessment or the due date(s) for payment of same, a written and dated "notice of change" setting forth such determinations must be sent to all Owners. All changes in the amount of the annual rate of regular assessment or the due date(s) for payment are effective on the first (1st) day of the month following the end of the last period for which regular annual assessments were due and payable.

(b) Any change in the amount of the annual rate of regular assessment may be disapproved at a special meeting of the Members to be called upon the written and signed petition of the Owners of not less than ten percent (10%) of the Lots the contained in the Subdivision and the vote to disapprove of the Owners of at least a majority of the Lots the contained in the Subdivision voting in person or by proxy at the special meeting. All petitions to disapprove must be submitted to the Association within thirty days after the date of the notice of change given in accordance with Section 7.03.2(a). If a petition to

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disapprove is properly submitted, the Board shall call the conduct the special meeting within ninety days after giving of the notice of change. The Board is required to call and conduct only one special meeting to consider disapproval. The disapproval fails if at that meeting either a quorum is not present, in person or by proxy, or Owners of a majority of Lots do not vote to disapprove.

(c) If a proposed change in the annual rate of regular assessment is disapproved under Section 7.03.2(b), notice of that fact must be given to Owners within thirty days after the meeting is conducted. If as a result of the disapproval Owners are entitled to a refund, the refund must be sent with the notice (without interest, and subject to the Association's right in lieu of payment of the refund to off-set the amount of the refund against any amounts then due as to particular Owners). If as a result of the disapproval additional amounts are due, Owners must be advised in the notice of the amount and their obligation for payment of same within thirty days of the date of the notice. *The obligation for payment of assessments in accordance with a notice of change given under Section 7.03.2(a) is not suspended by any action under Section 7.03.2(b).* If, for example, regular annual assessments are increased by notice of change dated December 15, effective January 1, such assessments in the amount set forth in the notice of change are due and payable on January 1 (subject to refund, off-set or notice of additional amounts due as provided in this subsection).

7.03.3 No Waiver or Release. Notwithstanding anything to the contrary herein, the omission or failure for any reason of the Board to determine an annual rate of regular assessment or to mail or deliver any notice of an annual rate of regular assessment or due date or dates for payment thereof will not be deemed a waiver, modification or release of an Owner's obligation to pay assessments as otherwise herein provided. Once established, an annual rate of regular assessment and the due date or dates for payment thereof will continue in effect, and the Owner's of each Lot shall be obligated to pay such regular assessments accordingly unless and until a new annual rate of regular assessment is established as herein provided.

SECTION 7.04 Special Assessments. In addition to the other assessments authorized herein, the Board may levy special assessments at any time during each fiscal year for purposes of defraying, in whole or in part, costs of capital improvements, and expenses not anticipated by the budget then in effect, or to replace part of all or any contingency, capital or other reserve fund. So long as the total amount of special assessments allocable to each Lot in any one fiscal year does not exceed the greater of (i) Fifty Dollars (\$50.00) or (ii) twenty percent (20%) of the then applicable annual rate of regular assessments per Lot, the Board may impose the special assessment without vote or approval of any Owner. Special assessments allocable to each Lot exceeding the foregoing limitation will be effective only if approved by the Owners of a majority of the Lots then contained within the Subdivision. Special assessments are payable as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

SECTION 7.05 Specific Assessments.

7.05.1 Types. Specific assessments will be assessed against individual Lots and the Owner(s) thereafter at the time liability for same accrues as follows:

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(a) Interest. Interest from the due date at the rate of the lesser of eighteen percent (18%) per annum or the maximum legal rate is hereby imposed on all delinquent assessments, regular, special or specific, which are not paid in full within thirty days after the due date.

(b) Late Charges. A late charge in the amount of **TWENTY-FIVE DOLLARS** (\$25.00), or such other reasonable amount as from time to time determined by the Board, is hereby imposed as to any regular, special or specific assessment which is not paid in full within thirty days after payment of same is due.

(c) Compliance Costs. All expenses incurred by reason of a breach or violation of or to obtain compliance with any provisions of this Declaration or other Governing Documents may be assessed against the owner of the Lot who occasioned the incurrence of such expenses, including reasonable attorney's fees whether incurred prior to, during the pendency of or after successful completion of any actions in a court of competent Jurisdiction.

(d) Foreclosure of Assessment Lien. In the event of foreclosure of the Association's assessment lien as herein provided, the Owner is required to pay to the Association a reasonable rental as determined by the Board for the use of the Lot and improvements thereon during the period of foreclosure, and the Board shall be entitled to a receiver to collect same. The "period of foreclosure" commences on the date of posting of the Lot for foreclosure in the event of non-judicial foreclosure, or on the date of entry of judgment granting foreclosure in the event of judicial foreclosure. The "period of foreclosure" continues through the first (1st) day of the month following the date of acquisition of actual possession of the Lot by the purchaser at the foreclosure sale.

(e) Other Obligations. All other monetary obligations established by or pursuant to this Declaration or other Governing Documents which are intended to apply to one (1) or several, but not all Lots, will be assessed against the Owner(s) of the Lot(s) to which same applies. Such charges may include, without limitation, reasonable charges as the Board may by resolution from time to time determine for; (i) providing a statement of assessments or indebtedness; (ii) transfer fees to reflect changes of ownership, tenancy or occupancy on the records of the Association; (iii) fines for any violation of any provisions of the Governing Documents as may from time to time be set forth in applicable Rules and Regulations; (iv) charges for processing of applications for architectural approval; (v) admission or usage fees applicable to Community Properties or Subdivision Facilities; and (vi) maintenance, repair or replacement costs or expenses incurred by the Association as set forth in Section 6.02.

7.05.2 Payment; Waiver. Specific assessments are due and payable immediately upon the occurrence of the event giving rise to liability for payment of same. Failure of the Association to impose or collect any specific assessment may not be grounds for any action against the Association, or any Director, officer, agent or employee thereof, and do not constitute a waiver of the Association's right to exercise its authority to collect any specific assessments in the future. For good cause shown as determined in the sole discretion of the Board, the Board may waive, wholly or partially, imposition of any specific assessment; provided, any such waiver is conditioned upon payment in full of all remaining monetary obligations then owed to the Association or receipt of written commitment that same will be paid within a specified period of time.

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SECTION 7.06 Lien for Assessments.

7.06.1 Establishment of Lien. All sums assessed against any Lot pursuant to this Declaration, whether by regular, special or specific assessment as provided herein, are secured by a continuing lien on such Lot in favor of the Association.

7.06.2 Perfection of Lien. The recordation of this Declaration constitutes record notice and perfection of the Association's continuing lien, effective from the date of recordation of this Declaration. No further recordation of a claim of lien or other notice of any type or kind whatsoever is required to establish or perfect such lien. To further evidence such lien, the Association may, but is not required to, prepare and file in the Real Property Records of Harris County, Texas, written notice of default in payment of assessments in such form as the Association may direct.

7.06.3 Priority of Lien. The Association's continuing lien is superior to all other liens or encumbrances on each Lot except:

(a) a first mortgage or deed of trust covering a Lot and any other lien covering a Lot for work and materials used in constructing improvements thereon, but only as to assessments (regular, special or specific) the obligation for payment of which accrues from or after the date any such first lien or improvement lien is duly recorded in the Real Property records of Harris County, Texas and only to the extent of unpaid sums secured by such first lien or improvement lien; and

(b) liens for real estate taxes and other governmental assessments or charges; and

(c) such other mortgages, deeds of trust, liens or other encumbrances to which the Board may from time to time by written agreement specifically agree.

7.06.4 Effect of Foreclosure or Bankruptcy. Sale or transfer of a Lot does not affect the Association's lien; provided, in the event of sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a superior lien to the extent provided in Section 7.06.3 or discharge of an Owner in bankruptcy, the Association's lien will be extinguished only to the extent same secures payment of unpaid regular annual assessments assessed on a monthly basis up to the last day of the month in which the foreclosure occurred or the bankruptcy was filed, and any installments for assessments (regular, special or specific) over a period of time which were due and payable prior to the first day of the month following the month in which the foreclosure occurred or the bankruptcy was filed. Foreclosure of a superior lien or discharge in bankruptcy will not relieve the affected Lot or any Owner thereof subsequent to the date of foreclosure or filing of bankruptcy from liability for payment of assessments except as provided in Section 7.02.2.

7.06.5 Other Liens. Except as provided in Sections 7.06.3 and 7.06.4, all other Persons acquiring liens or encumbrances on any Lot are deemed to consent that such liens or encumbrances will be inferior to the Association's lien for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

SECTION 7.07 Effect of Nonpayment of Assessments.

7.07.1 General. Any assessments (regular, special or specific) which are not paid when due are delinquent. Except to the extent otherwise expressly agreed in writing by the Board, if any assessments are not paid within thirty days after the due date, then:

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(a) late charges, interest from the due date, and all cost of collection (including reasonable attorney's fees), all as set forth in Section 7.05, will be added to and included in the amount of such assessment;

(b) all voting rights of the Owner will be automatically suspended until all assessments are paid in full; and

(c) upon not less than ten days written notice, the Association may suspend until all assessments are paid in full all rights of the delinquent Owner, and the Owner's tenants, and the guests and invitees of either, to the usage of Community Properties (including all recreational facilities) and/or any and all services provided by the Association.

7.07.2 Action for Debt: Foreclosure. Each Owner, by acquisition of any Lot within the Subdivision or any right, title or interest therein, expressly grants to and vests in the Association or its agents or representatives: (i) the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt; (ii) the right and power to foreclose the Association's continuing lien securing payment of assessments by all methods available for the enforcement of a mortgage, deed of trust or any other contractual lien, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale; and (iii) a continuing power of sale in connection with the non-judicial foreclosure of the Association's continuing lien securing payment of assessments as herein provided. The Board may appoint, from time to time, an officer, agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of the Association, and may from time to time remove any such Trustee and appoint a successor or substitute Trustee without further formality than an appointment and designation in writing. Except as otherwise provided by this Declaration, the Association will exercise its power of sale pursuant to Section 51.002 of the Texas Property Code (as amended). The Association has the right and power to bid on any Lot at any foreclosure sale, and to acquire, hold, lease, mortgage, or convey the same. The filing of suit to collect any sums due hereunder or to foreclose the Association's continuing lien securing payment of assessments may never be considered an election so as to preclude exercise of any other rights or remedies, including without limitation foreclosure under power of sale before or after a final judgment. After foreclosure, the prior Owner(s) will be mere tenants at sufferance of the purchaser(s), and the purchaser(s) may obtain immediate possession either pursuant to a judgment for foreclosure or by forcible detainer or eviction to be maintainable by the purchaser(s).

SECTION 7.08 Assessments as Independent Covenant. No Owner may become exempt or otherwise escape liability for the payment of assessments as provided for herein by waiver or for any other reason, including, by way of illustration but not limitation, by nonuse of any Community Properties, or abandonment of the Lot; and no diminution or abatement of assessments may be claimed or allowed by reason of any alleged actions or failure to act by the Association, or its officers, Directors, agents or employees, the obligation to pay assessments being, and it is hereby expressly declared to be, a separate and independent covenant and contractual obligation on the part of each Owner.

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Article VIII **Enforcement**

SECTION 8.01 **Strict Compliance Required.** Each Owner and each Owner's tenants, by acquisition of any right, title or interest in any Lot, covenant and agree to be jointly and severally bound by and to strictly comply with this Declaration and all other Governing Documents as same may from time to time or at any time be hereafter amended. To the extent applicable this Declaration and all other Governing Documents also apply to all occupants, guests and invitees of any Lot, and all Servants, agents and employees of Owners or their tenants or any of the foregoing.

SECTION 8.02 **Enforcement - General.** The Association, its successors and assigns, and any Owner has the right to enforce observance and performance of all restrictions, covenants, conditions and easements set forth in this Declaration and in other Governing Documents, and in order to prevent a breach thereof or to enforce the observance or performance thereof has the right, in addition to all legal remedies, to an injunction either prohibitive or mandatory.

SECTION 8.03 **Obligation for Payment of Costs and Expenses Resulting from Violations.** Each Owner and tenant of an Owner found to have committed, or who is responsible for, a violation or violations of any of the provisions of this Declaration or any other Governing Documents, is jointly and severally liable for payment to the Association for, and to indemnify the Association and to hold and save it harmless from, any and all claims, liabilities, damages, loss, costs and expenses of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, incurred due to or attributable to any such violation(s), and must pay over to the Association all sums of money which the Association or its representatives may pay or become liable to pay as a consequence, directly or indirectly, of such violation(s). All such sums will be assessed as a specific assessment, and are secured by the continuing lien established in Article VII. All such sums are due and payable upon demand by the Association or its representative upon presentment of a written statement setting forth the Association's payment or liability to pay such sums without the necessity of any other or further notice of any act, fact or information concerning the Association's rights or such Owner's or tenant's liabilities under this Section.

SECTION 8.04 **Notice and Opportunity to be Heard.** Whenever this Declaration or other Governing Documents require notice and opportunity to be heard, the procedures set forth in this Section must be observed.

8.04.1 Procedure. The authorized party proposing to take the action (such as the Board, a committee, an officer, the Managing Agent, etc.) must give written notice of the proposed action to all Lot Owners and/or their tenants whose interest would be significantly affected by the proposed action as determined in the sole opinion of the Board. The notice must include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected Person has the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the

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notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. The affected Person will be notified of the decision in the same manner in which notice of the hearing was given.

8.04.2 Appeal. Any decision made pursuant to Section 8.04.1 by a party other than the Board may be appealed to the Board by filing a written notice of appeal with the Board within ten days after the affected party is given notice of the decision. The Board must then conduct a hearing within forty-five days after the Board receives the notice of appeal, giving the same notice and observing the same procedures as were required for the initial hearing.

SECTION 8.05 Filing of Notices of Non-Compliance. After not less than ten days written notice, if the Board determines noncompliance with any provisions of this Declaration continues to exist, the Board may at its option file a Notice of noncompliance in the real Property Records of Harris County, Texas covering the affected Lot or Lots and the Owner(s) thereof at the sole cost and expense of such Owner(s). The provisions of this Section are in addition to the notice of default permitted by Section 7.06.2.

SECTION 8.06 Cumulative Rights and Remedies. Each right and remedy set forth herein is separate, distinct and non-exclusive, and all are cumulative. The pursuit of any right or remedy provided for herein or by law or the failure to exercise that particular right or remedy may not be construed as a waiver of such right or remedy or any other right or remedy.

ARTICLE IX

Development Period

SECTION 9.01 Application. Notwithstanding any other provisions of this Declaration to the contrary, the provisions of this Article apply until termination of the "Development Period" as defined in Section 2.07.

SECTION 9.02 Appointment of Board and ACC; Authority of Association. During the Development Period, Declarant is entitled to appoint all members of the Board of Directors and ACC and is entitled to remove and replace any of same, and in all other respects may exercise all rights and authority of the Association as set forth in this Declaration and all other Governing Documents.

SECTION 9.03 ACC Approval Not Required. Declarant is not required to obtain ACC approval regarding any of its developmental activities during the Development Period.

SECTION 9.04 Community Properties.

9.04.1 Designation or change as to Community Properties. Regardless of designation by the Plat, during the Development Period Declarant may designate Community Properties and at any time during the Development Period modify, discontinue, redesignate or in any other manner change the Community Properties.

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9.04.2 Conveyance of Community Properties. Declarant may convey, transfer or assign any or all Community Properties to the Association during the Development Period, and shall do so within a reasonable time after termination of the Development Period. From and after the date of conveyance, transfer or assignment as aforesaid and in all events from and after the date of termination of the Development Period and thereafter, the Association will be solely liable and responsible for payment (by reimbursement to Declarant or direct payment) of all costs pertaining thereto, will be solely liable for damages or otherwise regarding the Community Properties and any usage thereof by any Person and must indemnify and hold Declarant harmless regarding same to the fullest extent provided herein as to the Association (including as provided in Section 5.05).

SECTION 9.05 Easements. Declarant and its agents or employees (including any builder, contractor or subcontractor subject to such limitations as Declarant may impose) are entitled during the Development Period to exercise all rights as to and to the usage of all easements referenced in this Declaration, to make changes in or additions to any such easements, and to grant or exercise such additional easements for ingress, egress and usage as is reasonably necessary to construction of single family residences, providing and development of utilities and/or Community Properties, and conducting of any other developmental activities.

SECTION 9.06 Sales Activities. During the Development Period Declarant has the right to transact any business reasonably necessary to consummate the sale or rental of Lots and single family residences to be constructed thereon, and in connection therewith to maintain models, have signs and to use without charge any community Properties.

SECTION 9.07 Plat Amendments. During the Development Period Declarant may prepare, amend or otherwise modify any Plat covering or to cover the Subdivision without the joinder or consent of any Owner or any other Person, subject however to requirements of applicable statutes and ordinances of the City of Tomball.

SECTION 9.08 Payment of Assessments by Declarant During Development Period. Notwithstanding anything to the contrary contained herein, all Lots owned by Declarant will be exempt from payment of all assessments (regular, special or specific) until the first (1st) day of the month following expiration or termination of the Development Period at which time the provision of Section 7.02.4(b) will become applicable to Declarant with respect to any Lots then owned by Declarant. In lieu of payment of assessments as aforesaid, Declarant shall contribute to the Maintenance Fund during the Development Period an amount equal to the Actual Operating Expenses of the Association less all assessments received from all the Owners or builders up to a maximum contribution equal to the full annualized rate of regular assessments which would otherwise be applicable to Declarant's Lots. Said contribution may be paid from time to time as Declarant shall determine, but not less frequently than annually within sixty days after the end of Declarant's fiscal year. "Actual Operating Expenses" means those expenses reasonably necessary for the discharge of the Association's functions and duties under this Declaration, but does not include capital expenditures (determined in

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accordance with generally accepted accounting principals), any amounts paid or to be paid to capital, contingency or other reserves, or prepaid items, inventory or similar expenses attributable to periods after expiration to termination of the Development Period. The determination of Actual Operating Expenses by Declarant is final and conclusive so long as made in good faith.

SECTION 9.09 Notices to Declarant. All notices or other communications to Declarant, as required or permitted by this Declaration, any other Governing Documents or otherwise, must be given to Declarant's registered agent at its registered office by certified mail, return receipt requested, or as otherwise directed by written notice of Declarant filed in the Real Property Records of Harris County, Texas. Notices or other communications to Declarant are deemed given only upon actual receipt.

SECTION 9.10 Amendment of Governing Documents; Annexation. Subject to applicable ordinances of the City of Tomball, during the Development Period Declarant reserves the sole and exclusive right from time to time and at any time (i) to amend this Declaration or any other Governing Documents, and (ii) to annex and subject any other property to the scheme of this Declaration without prior notice to, or the joinder or consent of, any Owner, mortgagee or any other Person. Declarant shall give notice of filing of the amending instrument or other notice to Owners subject to and as provided in Section 10.03.03. Any such amendment or annexation will be accomplished by Declarant's execution of an amending instrument or other notice of the amendment or annexation and filing of same in the Real Property Records of Harris County, Texas, and will be effective as provided in Section 10.03.4. Declarant's execution will constitute certification as to substantial compliance as provided in, and such certification may not be challenged except as provided in, Section 10.03.6.

SECTION 9.11 Limitation of Liability. Without limitation of Section 5.05, the decisions of Declarant regarding all developmental activities, management and operation of the Association and all other activities undertaken by Declarant pursuant hereto are final and conclusive so long as made in good faith.

Article X General Provisions

SECTION 10.01 Notices to Association, ACC and Owners. Unless otherwise expressly provided herein, all notices or other communications permitted or required under this Declaration must be in writing and will be deemed properly given if but only if given in accordance with the following:

10.01.1 Notices to Association or ACC. All notices or other communications to the Association or ACC during the Development Period must be given to Declarant as provided in Section 9.09. Thereafter, such notices or other communications must be given by (i) personal delivery acknowledged in writing, or (ii) certified or registered mail, return receipt requested, and by deposit in the United States mail, postage prepaid and properly addresses. Notices must be addressed to any member of the Board or ACC, to the Association's registered agent, or to the Association's Managing Agent as from time to

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time designated by the Board. Such notices or other communications will be deemed given only upon actual receipt. In the event Declarant, the Association or ACC disputes receipt of any notice or other communication, the original or a copy of the delivery acknowledgment or return receipt must be provided to the party disputing receipt failing which the notice or other communication will be conclusively deemed not to have been received.

10.01.2 Notice to Owners. All notices or other communications to any Owner will be deemed given upon personal delivery to or when deposited in the United States mail, postage prepaid and addressed to the street address of the Owner's Lot located within the Subdivision, or to the most current street address given by an Owner for purposes of notice as provided in Section 10.01.3. Where more than one Person is the Owner of a single Lot, the mailing of any notices or other communications as aforesaid to any single Owner constitutes notice given to all such Owners.

10.01.3 Owner's Notice of Address Other Than Lot Address Required. Any Owner may request any notices required or permitted hereby be mailed to an address other than such Owner's Lot address by giving written and dated notice of the alternate address to the Association in the manner provided in Section 10.01.1; provided, after the Development Period such notice must be given to the Board and, if applicable, to the Association's Managing Agent. Any such request will be conclusively deemed not to have been received unless the Owner produces the original or copy of the properly signed and dated return receipt requests or delivery receipt acknowledgments. In the event of conflict in such requests by a single Owner or multiple Owners, the request as received will control.

10.01.4 Other Governing Documents. The foregoing provisions of this Section 10.01 also apply to notices or other communications permitted or required by Governing Documents other than this Declaration except as otherwise expressly provided in such other Governing Documents, and provided that notice given in accordance herewith will be sufficient regardless of contrary provisions in other Governing Documents.

SECTION 10.02 Term. Subject to the provisions of Section 10.03, these covenants, conditions, restrictions, reservations, easements, liens and charges run with the land and are binding upon and inure to the benefit of Declarant, the Association, all Owners, their respective legal representatives, heirs, executors and administrators, predecessors, successors and assigns, and all Persons claiming under them for a period of twenty years from the date this Declaration is filed in the Real Property Records of Harris County, Texas, after which time said covenants, conditions, restrictions, reservations, easements, liens and charges will be automatically extended for successive periods of ten years each.

SECTION 10.03.1 By Owners. Subject to applicable ordinances of the City of Tomball and except as otherwise expressly herein provided, Owners of two-thirds of the total number of Lots then contained within the Subdivision shall always have the power and authority to amend this Declaration, in whole or in part, at any time and from time to time. Whenever used in this Declaration or any other Governing Documents, the terms "amend", "Amendment" or substantial equivalent mean and refer to any change,

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modification, revision or termination of any of all provisions of this Declaration or other Governing Documents.

10.03.2 By Association. Subject to applicable ordinances of the city of Tomball, the Board of Directors, by amending instrument signed by the President or Secretary and filed in the Real Property Records of Harris County, Texas, has the right in its sole judgment, from time to time and at any time, to amend this Declaration without joinder of any Owner or any other person for the following purposes:

(a) to resolve or clarify any ambiguity or conflicts herein, or to correct any inadvertent misstatements, errors or omissions herein; or

(b) to conform this Declaration to the requirements of any lending institution or any reputable title insurance company to issue title insurance; provided, the Board has no obligation whatsoever to amend this Declaration in accordance with any such requirements, and the Board may not so amend this Declaration if in the sole opinion of the Board any substantive and substantial rights of Owners would be adversely affected thereby; or

(c) to conform this Declaration to the requirements of any governmental agency, including the Federal Home Loan Mortgage Corporation, Federal National Mortgage Agency, Veterans Administration or Federal Housing Administration, the requirements of any governmental statute, rule or regulation, or the requirements of or to otherwise address the results of any judicial determination, and in this respect the Board shall so amend this Declaration to the extent required by law upon receipt of written notice and confirmation of such requirements and request for compliance.

10.03.3 Method for Approval of Amendment by Owners. The Owner's approval of any amendment of this Declaration as provided in Section 10.03.1 may be obtained either (i) by execution of the amending instrument or a written consent thereto by any Owner of each Lot so approving, or (ii) by affirmative vote, in person or by proxy, at any annual or special meeting called (in whole or in part) for consideration of any such amendment, or (iii) any combination of the foregoing. Written notice of any proposed amendment must be mailed or delivered to the Owners of each Lot not less than forty-five days prior to filing of the amending instrument in the Real Property Records of Harris County, Texas, and if approved within a reasonable time after filing of the amending instrument. The notice must contain a verbatim statement of the proposed (and approved) amendment or a summary thereof. Absent proof of fraudulent intent, no such notice may be held ineffective due to the contents of the summary or on the basis the notice was mailed to an incorrect address. The provisions of Section 5.03.3 regarding joint Owners applies to approval of any amendment; provided, any joint Owner may object to the approval of another joint Owner only by giving written notice of the objection to the Association within thirty days after giving of notice to Owners as aforesaid.

10.03.4 Effective Date. Any amendment if this Declaration will be effective from and after the date of filing of the amending instrument in the Real Property Records of Harris County, Texas, or such later date as may be expressly stated in the filed amending instrument.

10.3.5 No Impairment of Declarant's Rights. No amendment of this Declaration may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant.

10.3.6 Certification: Maximum Period to challenge Validity. The certification of the Association's President or Secretary as to substantial compliance with all prerequisites

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for amendment set forth in any instrument filed in the Real Property Records of Harris County, Texas evidencing any such amendment is final and conclusive unless the contrary is proved by clear and convincing evidence in a suit filed in a court of competent jurisdiction within two years after filing of the applicable amending instrument.

SECTION 10.04 Managing Agent. The Board has the authority, from time to time and at any time, to retain, hire, employ or contract with any one or more Persons to provide management services to the Association, including discharge of such duties of the Board and/or any officers or committees of the Association, as the Board may specify (any such Person herein referred to as a "Managing Agent"). Any Managing Agent may be retained, hired, employed or contracted for on such terms and conditions as the Board in its sole judgment may determine; provided, the Board must retain the right in all cases as to any Managing Agent, with or without cause, on not more than sixty days notice.

SECTION 10.05 Conflicts in Governing Documents. In the event of any conflict in the Governing Documents which cannot be reasonably reconciled after application of rules of interpretation as provided herein or by law, this Declaration will control over any other Governing Documents, and all other governing Documents will control in the following order of priority: (i) Architectural Guidelines; (ii) Rules and Regulations; (iii) Articles of Incorporation; (iv) Bylaws; (v) Board and Member resolutions; and (vi) all others.

SECTION 10.06 Interpretation. The provisions hereof are to be liberally construed to give full effect to their intent and purposes. If this Declaration or any word, clause, sentence, paragraph, or other part thereof is susceptible to more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration and the scheme of development thereunder will govern. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience, and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. Whenever used, the singular number includes the plural, the plural the singular, and the use of any gender is applicable to all genders.

SECTION 10.07 Severability. Wherever possible, each provision of this Declaration is to be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person, particular circumstance or property is prohibited or held invalid, such prohibition or invalidity does not extend beyond such Person, particular circumstance or property and will not affect any other provision or the application, and, to this end, the provisions of this Declaration are declared to be severable.

SECTION 10.08 Effective Date. This Declaration is effective from the date of filing of same in the Real Property Records of Harris County, Texas.

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In WITNESS WHEREOF, the undersigned, being the sole Owners of all Lots initially subject to this Declaration, has executed this Declaration on the 22nd day of November, 1999.

DECLARANT(S):

Bill Richardson
BILL RICHARDSON

Kevin James Brolan
KEVIN JAMES BROLAN

RICHLAN JAMES DEVELOPMENT, L.L.C.

BY: Bill Richardson
BILL RICHARDSON, President

After Recording Return to:

CHICAGO TITLE - TOMBALL
14011 PARK DRIVE, STE. 114
TOMBALL, TEXAS 77375

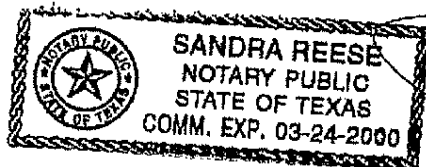
529-29-2547

DECLARANTS' ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 22 day of
November, 1999, by **BILL RICHARDSON**.

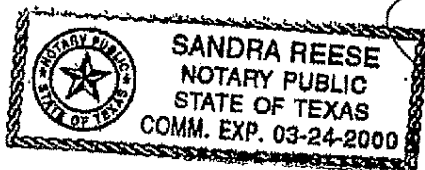


Sandra Reese
NOTARY PUBLIC in and for the
STATE OF TEXAS

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 23 day of
November, 1999, by **KEVIN JAMES BROLAN**.

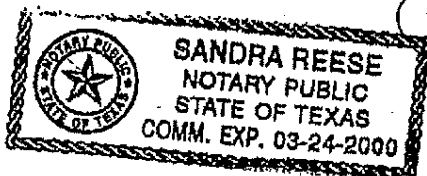


Sandra Reese
NOTARY PUBLIC in and for the
STATE OF TEXAS

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 22 day of
November, 1999, by **BILL RICHARDSON, President of RICHLAN JAMES
DEVELOPMENT, L.L.C., a Texas limited liability company, on behalf of said
company.**



Sandra Reese
NOTARY PUBLIC in and for the
STATE OF TEXAS

192.168.23.4 HA U093650.034

Title Data, Inc. CH

529-29-2548

FILED

NOV 23 PM 3:03

Beverly B. Kaufman

COUNTY CLERK
HARRIS COUNTY 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.

NOV 23 1999



Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY TEXAS