

SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE RESERVE

ARTICLE I DEFINITIONS 5

1.1. "Area of Common Responsibility" 5

1.2. "Articles of Incorporation" or "Articles" 5

1.3. "Association" 5

1.4. "Base Assessment" 6

1.5. "Board of Directors" or "Board" 6

1.6. "Builder" 6

1.7. "Bylaws" 6

1.8. "Common Area" 6

1.9. "Common Expenses" 6

1.10. "Community-Wide Standard" 6

1.11. "Master Plat" 6

1.12. "Member" 6

1.13. "Mortgage" 6

1.14. "Mortgagee" 6

1.15. "Mortgagor" 6

1.16. "Owner" 6

1.17. "Person" 7

1.18. "Properties" 7

1.19. "Public Records " 7

1.20. "Special Assessment" 7

1.21. "Specific Assessment" 7

1.22. "Supplemental Declaration" 7

1.23. "Lot" 7

1.24. "Dwelling Unit" 7

ARTICLE II PROPERTY RIGHTS 7

2.1. Common Area 7

ARTICLE III MEMBERSHIP AND VOTING RIGHTS 8

3.1. Function of Association 8

3.2. Membership 9

3.3. Voting 9

(a) Class "A" 9

(b) Exercise of Voting Rights 9

ARTICLE IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION 9

4.1. Common Area 9

4.2. Personal Property and Real Property for Common Use 9

4.3. Enforcement 10

4.4. Implied Rights, Board Authority 10

4.5. Governmental Interests 10

4.6. Indemnification 10

4.7. Dedication of Common Areas 11

| | |
|--|----|
| 4.8. Monitoring Services. | 11 |
| 4.9. Relations with Adjacent Properties | 11 |
| ARTICLE V MAINTENANCE | 11 |
| 5.1. Association's Responsibility | 11 |
| 5.2. Owner's Responsibility | 12 |
| 5.3. Standard of Performance | 12 |
| 5.4. Party Walls and Similar Structures | 12 |
| ARTICLE VI INSURANCE AND CASUALTY LOSSES | 13 |
| 6.1. Association Insurance | 13 |
| 6.2. Owners' Insurance | 16 |
| ARTICLE VII NO PARTITION | 17 |
| ARTICLE VIII CONDEMNATION | 17 |
| ARTICLE IX ANNEXATION AND WITHDRAWAL OF PROPERTY | 17 |
| 9.1. Annexation | 17 |
| 9.2. Additional Covenants and Easements | 18 |
| ARTICLE X ASSESSMENTS | 18 |
| 10.1. Creation of Assessments | 18 |
| 10.2. Computation of Base Assessment | 19 |
| 10.3. Reserve Budget and Capital Contribution | 20 |
| 10.4. Special Assessments | 20 |
| 10.5. Specific Assessments | 20 |
| 10.6. Lien for Assessments | 20 |
| 10.7. Date of Commencement of Assessments | 21 |
| 10.8. Failure to Assess | 21 |
| 10.9. Capitalization of Association | 21 |
| 10.10. Exempt Property | 22 |
| ARTICLE XI ARCHITECTURAL STANDARDS | 22 |
| 11.1. General | 22 |
| 11.2. Architectural Review | 22 |
| 11.3. Guidelines and Procedures | 23 |
| 11.4. No Waiver of Future Approvals | 24 |
| 11.5. Variance | 24 |
| 11.6. Limitation of Liability | 24 |
| 11.7. Enforcement | 25 |
| ARTICLE XII USE RESTRICTIONS AND RULES | 25 |
| 12.1. Plan of Development: Applicability: Effect | 25 |
| 12.2. Authority to Promulgate Use Restrictions and Rules | 26 |
| 12.3. Owners' Acknowledgment. | 26 |
| 12.4. Rights of Owners | 26 |
| 12.5. Restrictions on Lots | 28 |
| 12.6. Building Types | 28 |
| 12.7. Re-subdivision | 29 |
| 12.8. Business | 29 |
| 12.9. Signs | 29 |

| | |
|---|-----------|
| 12.10. Oil and Mining Operations | 30 |
| 12.11. Livestock and Poultry | 30 |
| 12.12. Garbage and Refuse | 30 |
| 12.13. Clothesline | 31 |
| 12.14. Utility Services | 31 |
| 12.15. Parking | 31 |
| 12.16. Nuisance | 31 |
| 12.17. Driveways | 32 |
| 12.18. Mailboxes | 32 |
| 12.19. Additions | 32 |
| 12.20. Solar Devices | 32 |
| 12.21. Religious Displays | 32 |
| 12.22. Flags | 32 |
| 12.23. Water Conservation Devices | 33 |
| 12.24. Renting and Leasing | 33 |
| 12.25. Setbacks | 33 |
| 12.26. Fences, Walls, Sidewalks | 34 |
| 12.27. Building Materials | 34 |
| 12.28. Antennae | 34 |
| 12.29. Storage | 35 |
| 12.30. Diseases and Insects | 35 |
| 12.31. Machinery, Fixtures and Equipment | 35 |
| 12.32. Burning and Incinerators | 35 |
| 12.33. Repairs | 36 |
| 12.34. Septic Tanks and Sewage Disposal | 36 |
| 12.35. Water Wells | 36 |
| 12.36. Firearms and Weapons | 36 |
| 12.37. Motor Vehicles | 37 |
| 12.38. Change in Intended Use | 37 |
| 12.39. Misuse and Mismanagement | 37 |
| 12.40. Violation of Statutes, Ordinances, and Regulations | 37 |
| 12.41. Gas Operated Recreational Vehicles | 37 |
| 12.42. Grandfathering | 37 |
| 12.43. Water Conservation Devices | 37 |
| 12.44. Fire Pits/Fireplaces | 37 |
| 12.45. Rules and Regulations for Use of the Lake | 38 |
| 12.46. Gates | 38 |
| ARTICLE XIII EASEMENTS | 38 |
| 13.1. Easements of Encroachment | 38 |
| 13.2. Easements for Utilities, Etc | 38 |
| 13.3. Easements for Lake and Pond Maintenance and Flood Water | 39 |
| 13.4. Easements to Serve Additional Property | 40 |
| 13.5. Right of Entry | 40 |
| ARTICLE XIV MORTGAGEE PROVISIONS | 40 |

| | |
|--|----|
| 14.1. Notices of Action | 40 |
| 14.2. No Priority | 41 |
| 14.3. Notice to Association | 41 |
| 14.4. Failure of Mortgagee | 41 |
| ARTICLE XV DISPUTE RESOLUTION AND LIMITATION ON LITIGATION | 41 |
| 15.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes | 41 |
| 15.2. Exempt Claims | 41 |
| 15.3. Mandatory Procedures For All Other Claims | 42 |
| 15.4. Allocation of Costs of Resolving Claims | 44 |
| 15.5. Enforcement of Resolution | 44 |
| ARTICLE XVI GENERAL PROVISIONS | 45 |
| 16.1. Duration | 45 |
| 16.2. Amendment | 45 |
| 16.3. Severability | 45 |
| 16.4. Litigation | 46 |
| 16.5. Use of the Words "The Reserve" | 46 |
| 16.6. Compliance | 46 |
| 16.7. Notice of Sale or Transfer of Title | 46 |
| 16.8. Prohibition Against Discrimination | 46 |

SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS

FOR

THE RESERVE

THIS SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for The Reserve at Lake Tyler Home Owners Association, Inc., hereinafter "ASSOCIATION", is made this day ____ of February 2019, by the duly elected Board of Directors for Association, which is the owner of the real property described in Exhibit "A", hereby attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Properties.

Association hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration or any Supplemental Declaration (as defined in Article I below) shall be held, sold, used, and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of The Reserve At Lake Tyler Homeowners Association, Inc., as filed with the Secretary of State of the State of Texas.

1.3. "Association": The Reserve At Lake Tyler Homeowners Association, Inc., is a Texas non-profit corporation, its successors or assigns.

1.4. "Base Assessment": Assessments levied on the originally platted Lots subject to assessment under Article X to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 10.1 and 10.3.

1.5. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Texas corporate law.

1.6. "Builder": Any Person which purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers or purchases one (1) or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.7. "Bylaws": The Bylaws of The Reserve at Lake Tyler Home Owners Association, Inc.

1.8. "Common Area": All real and personal property which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.9. "Common Expenses": The actual and estimated expenses incurred or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation.

1.10. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors, through the Architectural Control Committee.

1.11. "Master Plat": The Plat plan for the development of The Reserve community, as it may be amended from time to time, which plat includes the property described on Exhibit "A" and recorded in Cabinet D, Page 2192 of the Smith County Land Records.

1.12. "Member": A Person entitled to membership in the Association.

1.13. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.14. "Mortgagee": A beneficiary or holder of a Mortgage.

1.15. "Mortgagor": Any Person who gives a Mortgage.

1.16. "Owner": One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.17. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.18. "Properties": The real property described on Exhibit "A" together with such additional property as is subjected to this Declaration in accordance with Article IX.

1.19. "Public Records": The Public Real Estate Records of Smith County, Texas.

1.20. "Special Assessment": Assessments levied in accordance with Section 10.4.

1.21. "Specific Assessment": Assessments levied in accordance with Section 10.5.

1.22. "Supplemental Declaration": An instrument filed in the public records pursuant to Article IX which subjects additional property to this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.23. "Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, or property dedicated to the public. Following the date that this document is recorded with the real property records of Smith County, any owner that acquires multiple lots shall be entitled to one (1) vote per lot acquired, along with one (1) assessment per lot acquired, regardless of any subsequent replatting. In the case of a parcel of vacant land or land on which improvements are "under construction," the parcel shall be deemed to contain the number of Lots designated for residential use for such parcel on the Master Plat. The phrase "under construction," when used in this context, shall refer to the time period prior to the issuance of a certificate of occupancy for the structure comprising the residential single-family dwelling.

1.24. "Dwelling Unit": A dwelling unit is defined for the purposes of this Declaration as a structure that is in compliance with the square footage requirements, and used and/or occupied as a detached residence for a single family.

ARTICLE II PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner to use future recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association after notice pursuant to the Bylaws. In the event any recreational facilities are included as a Common Area of Responsibility in the future, said rights listed in this article shall extend to those facilities without necessity of amendment;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7;

(f) The right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Area;

(g) The right of the Board to permit use of any recreational facilities, including but not limited to future facilities, situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board; and

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend their right of use and enjoyment to the members of their family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases their Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall be responsible for administering and enforcing the architectural standards and controls set forth in this

Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles, and the laws of the State of Texas.

3.2. Membership. Every Owner shall be a member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the Bylaws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership, or other legal entity may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have one (1) class of membership, commonly called Class "A".

(a) Class "A". Class "A" Members shall be all Owners. Class "A" Members shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 3.2 provided there shall be only one (1) vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 10.12.

(b) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote for each Lot owned by a Class "A" Member shall be exercised by the Owner of such Lot.

In any situation where a Member is entitled personally to exercise the vote for their Lot and there is more than one (1) Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it in a contradictory or unclear manner.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real

property.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, the Bylaws, or rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and use of any recreational facilities, including any facilities constructed and/or acquired in the future, within the Common Area. In addition, the Association, through the Board, in accordance with the Bylaws, may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration or the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including without limitation attorney's fees and court costs, reasonably incurred in such action from the violating Owner.

The Association, by contract or other agreement, may enforce state, county and city ordinances, if applicable, and permit the appropriate governmental entity to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4. Implied Rights, Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. The Association, through its Board of Directors, may designate sites within the Properties for fire, police, water, other utility facilities, parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he/she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association except to the extent that such officers or directors may also be Members of the Association. The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or

former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to Smith County, Texas, or to any other local, state, or federal governmental entity.

4.8. Monitoring Services. The Association may, but shall not be obligated to, maintain or support or contract for the provision of monitoring services within the Properties. The Association, or its Board of Directors, shall in any way be considered insurers or guarantors of safety within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate monitoring services or of ineffectiveness of any such measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system, or other monitoring system or measure cannot be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants, that the Association, its Board of Directors and committees, are not insurers of safety and that each Person using the Properties assumes all risks of personal injury, death, and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Relations with Adjacent Properties. Adjacent to or in the vicinity of the Properties are independent commercial and/or residential areas, each of which may or will share with the Association and its Members the use of Common Areas, real property and facilities. The Association may enter into agreements, contracts or covenants to share costs with all or any of the owners of such adjacent or nearby property which allocate access, maintenance responsibilities, expenses, and other matters between the Association and such property owners.

ARTICLE V MAINTENANCE

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) All landscaping and other flora, parks, the lake, and improvements, including any private streets, bike pathways/trails, situated upon the Common Area;
- (b) Landscaping within public rights-of-way within or abutting the Properties;
- (c) Such portions of any additional property, including, without limitation, property subsequently deeded, transferred, assigned, or gifted to the Association, -included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(d) All lakes, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, conduits, and similar equipment installed therein or used in connection therewith; and

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public (including any public easement, i.e. city easement), if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2. Owner's Responsibility. Each Owner shall maintain their Lot and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform their maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association and/or Owner shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its own maintenance responsibilities.

5.4. Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damages is not covered by insurance and repaired out of the proceeds of insurance, any Owner who is served by the structure may restore it. If other Owners thereafter are served by the structure, they shall contribute to the restoration cost in equal proportions. However, such contributions will not prejudice the right to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Disputes. Any dispute arising/concerning a party structure shall be handled in accordance with the provisions of Article XVII.

ARTICLE VI INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, has the ability and right, if it deems necessary, to obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis, or comparable coverage by whatever name denominated, for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall

have a limit of at least \$250,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employer's liability insurance if and to the extent required by law;

(iv) Directors and officer's liability coverage, provided; however, the Association shall not be required to purchase such coverage if the directors and officers are otherwise covered by or through policies procured by others;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6) of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and ordinance coverage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Smith County, Texas area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 10.7.

All insurance coverage obtained by the Board shall:

(i) Be written with a company authorized to do business in the State of Texas which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association, and its Members;

(iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(iv) Contain an inflation guard endorsement; and

(v) Include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall be required to use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) A waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) An endorsement requiring at least thirty (30) days' prior written notice to the Association and their lenders, if any, of any cancellation, substantial modification, or non-renewal;

(vi) A cross liability provision; and

(vii) A provision vesting in the Board exclusive authority to adjust losses provided; however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. "Repair or reconstruction," as used in this

paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Owners representing at least 67% of the votes in attendance at a duly notice meeting of the Association decide within ninety (90) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 90-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, including, but not limited to, payment to any Mortgagee of the Common Area, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on their Unit, less a reasonable deductible, and liability insurance.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising their Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard.

ARTICLE VII
NO PARTITION

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

ARTICLE VIII
CONDEMNATION

If any part of the Common Area shall be taken, or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Owners representing at least 67% of the total votes in the Association by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking by the Association, so long as Owners representing at least 67% of the total vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine, including utilization for reserve fund, to defray other common expenses, management or professional fees, or payment of governmental dues, penalties, and payments.

ARTICLE IX
ANNEXATION OF PROPERTY

9.1. Annexation. The Association may annex real property located adjacent to and contiguous with the Properties, with the consent of the owner of such property, the affirmative vote of Owners representing at least 67% of the votes of the Association represented at a meeting duly called for such purpose.

Annexation shall be accomplished by filing a Supplemental Declaration describing the

property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.2. Additional Covenants and Easements. The Board of Directors, may subject any portion of the property submitted to this Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association, by the membership approval of Supplemental Declarations and/or Amended Declarations. Such additional covenants and easements shall be set forth in a Supplemental Declaration and/or Amended Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property. Any annexed property serving any residential purpose shall be subject to the entire set of governing documents for the Association on file with the real property records of the county where the property exists, including any amendments thereto. Any annexed property not of a residential purpose shall also be subject to the governing documents referenced in the foregoing, subject to any exception, variance, or modification of the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

ARTICLE X ASSESSMENTS

10.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units, (b) Special Assessments as described in Section 10.5, and (c) Specific Assessments as described in Section 10.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest, at a rate not to exceed the highest rate allowed by applicable law, computed from the date the delinquency first occurs, late charges, at the amount of ten percent (10%) per annum, costs, and reasonable attorney's costs, and fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 10.7. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, other than a transfer by Mortgage to a Mortgagee, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit pursuant to the power of sale or foreclosure rights contained in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Board shall, upon request, furnish to any contract purchaser of a Unit or any Owner liable for any type of assessment a certificate in writing signed by an authorized agent of the Association, including but not limited to an officer or management agent, setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first (1st) day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on their Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Board, on its own or through a management company and/or agent, shall prepare and record a Payment Plan Policy in compliance with state, county, and municipal statute with same being filed in the real property records office of any county where a portion of the Association exists.

10.2. Computation of Base Assessment. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.3. The Base Assessment shall be levied equally against all Units.

The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment on the first (1st) day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to be delivered to each Owner prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners representing at least 67% of the total votes. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year with an increase of 5% from the previous years' budget.

10.3. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget with respect to amount and timing by annual Base Assessments over the budget period.

10.4. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment shall be levied against the entire membership, and upon all units shown on the recorded agreed plat of the Association. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least 51% of the total votes allocated to Units which will be subject to such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board.

10.5. Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within the Properties that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit, (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests, or (c) that are expressly permitted by the terms of the Declaration. The Association may also levy a Specific Assessment against any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, other covenants, the Articles, the Bylaws, and rules, provided the Board gives prior notice to the Unit Owner and an opportunity for a hearing.

10.6. Lien for Assessments. The Association does hereby establish, reserve, create and subject each Unit to a perfected contractual lien in favor of the Association to secure payment of delinquent assessments, as well as interest, late charges, subject to the limitations of Texas law, and costs of collection, including attorneys fees and costs. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record, meaning any recorded Mortgage with first priority over other Mortgages, made in good faith and for value. The lien shall be self-operative, and shall continue in inchoate form without being reserved or referenced in any deed or other documents and without any other action required. Such lien, when delinquent, may be enforced by suit, judgment, and judicial foreclosure in accordance with Texas law. The Association may assign such lien rights as to any or all Units to a lender as security for any loan made to the Association.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or

priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended or any other applicable law, in like manner of any deed of trust on real property.

Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended or any other applicable law.

At any foreclosure proceeding, any Person, including but not limited to the Association, and any Owner shall have the right to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it, and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 10.8, including such acquirer, its successors and assigns.

10.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit owned by Persons other than Builders on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

10.8. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.9. Capitalization of Association. Upon acquisition of record title to a Unit by the first

Owner, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid at closing and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

10.10. Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.
- (c) Non-platted lots.

ARTICLE XI

ARCHITECTURAL STANDARDS

11.1. General. No structure, including, but not limited to, buildings, signs, walls, and mailboxes, shall be placed, erected, or installed upon any Unit, and no improvements, including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials, shall take place except in compliance with this Article, and approval of the appropriate committee under Section 11.2. Notwithstanding this, the Board of Directors may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Any Owner may remodel, paint or redecorate the interior of structure(s) of a Unit without approval provided such improvements are not visible from outside such structure(s). Modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

This Article shall not apply to improvements to the Common Area by or on behalf of the Association.

11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications construction and modifications under this Article shall be handled by the committees as described in subsections (a) and (b) below. The members of committees need not be Members of the Association or representatives of Members, and may, but

need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board of Directors or the Architectural Control Committee, acting with authority to approve and enforce the Design Guidelines, may establish and charge a reasonable fee for review of applications hereunder and may require such fees to be paid in full prior to review.

(a) Architectural Control Committee. The Architectural Control Committee ("ACC") shall consist of at least three (3), but not more than five (5), persons and shall have jurisdiction over all original construction on any portion of the Properties, subject to the Board of Directors. The ACC shall be the province of the Association and the Board may, at its option, appoint the members of the ACC, who shall thereafter serve and may be removed in the Board's discretion. The ACC, if established, shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space.

11.3. Guidelines and Procedures.

(a) The Board of Directors and/or ACC, shall adopt initial design development guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Properties. The Board of Directors, and/or ACC shall be responsible for reviewing plans in accordance with the Design Guidelines. The Board of Directors shall be the deciding authority for resolving any questions the ACC may have as to the interpretation or application of the Design Guidelines.

Each Owner acknowledges that the Design Guidelines may be amended and that, the Board of Directors, and/or ACC shall have amendment authority for the Design Guidelines including the right to develop modification guidelines for existing structure exterior improvements. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The Design Guidelines shall be made available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines. (The Design Guidelines shall be recorded in the Public Records, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.) Design Guidelines are not required to be recorded, but may be at any time. Any modifications of the Design Guidelines shall be approved by a majority of the Board of Directors, at a properly noticed board meeting.

With regard to modifications, the Board of Directors or ACC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the

Design Guidelines.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed modifications and improvements shall be submitted to the Board of Directors or ACC for review and approval, or disapproval. In addition, information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the Board of Directors or ACC may consider the Design Guidelines, quality of design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

In the event that the Board of Directors or ACC fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved as submitted. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Board of Directors or ACC pursuant to Section 11.5. Any approved application for new construction must be completed within one (1) year of the approval date. Any application for modification of an existing structure must be completed within six (6) months of the approval date.

11.4. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, are site specific unless otherwise noted, and shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.5. Variance. The Board of Directors or ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) estop the Board or ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

11.6. Limitation of Liability. Neither the Board of Directors or ACC shall be liable to anyone submitting plans for approval in accordance herewith or to any other Person for damages, whether direct, indirect, consequential, or otherwise, arising out of or in connection with: (a) the approval or disapproval or failure to approve or disapprove any such plans, (b) enforcement or failure to enforce any site maintenance or other requirements hereof, (c) the approval or disapproval of, or failure to approve or disapprove, any architectural, landscaping, development or other plans for improvements to any property adjacent to, or situated on or in the proximity of the Properties, (d) the development or construction of, or the failure to develop or construct, any improvements, including landscaping, on lands adjacent to or in the proximity of the Properties, or (e) defects, whether latent or otherwise, in such plans. Anyone submitting plans for approval agrees not to seek

any such damages against the Board of Directors or ACC. In addition, each Owner shall release and hold harmless the Board of Directors or ACC and the members thereof from any and all liability, including attorneys' fees and court costs actually incurred, regardless of whether suit is brought or any appeal is taken therefrom, arising out of any approval given or denied by the Board of Directors or ACC under this Article.

Review and approval of any application pursuant to this Article is made on the basis of the Design Guidelines and aesthetic considerations and neither the Board of Directors or ACC shall bear any responsibility for ensuring the value of a Unit, or the structural integrity, workmanship, quality or soundness of approved construction or modifications, nor for ensuring compliance with building codes, engineering and architectural standards, and other governmental requirements. Each Owner acknowledges that the approval of any application pursuant to this Article does not constitute an assurance or guarantee that the approved improvements are safe or fit for habitation. Neither the Association, the Board of Directors or ACC, nor any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit.

11.7. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board of Directors or its designees, shall have the right to 1) enter the property, remove the violation, and restore the property to substantially the same condition as previously existed, and/or 2) file with a court of competent jurisdiction for injunctive relief, and all other rights in law or equity to which the Association may be entitled pursuant to Texas law. All costs, which may include monetary fines imposed by the Board of Directors or ACC together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines, in addition to the fees, costs, and fines provided in the preceding paragraph, may be excluded by the Board of Directors from the Properties. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this paragraph.

ARTICLE XII

USE RESTRICTIONS AND RULES

12.1. Plan of Development: Applicability: Effect. The Properties are subject to the land development, architectural, and design provisions set forth in Article XI, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this

Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

12.2. Authority to Promulgate Use Restrictions and Rules. Initial use restrictions applicable to all of the Properties are listed here in Article XII to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions. The Board shall send notice to all Owners concerning any such proposed action at least ten (10) and no more than sixty (60) business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Owners representing at least 67% of the total Class "A" votes.

(b) Alternatively, the Owners, at a meeting duly called for such purpose as provided in the ByLaws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Owners representing at least 67% of the total Class "A" votes.

(c) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee.

12.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of their Unit can be affected and that the Use Restrictions and Rules may change from time to time.

12.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside or outside of structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions on displays visible from the outdoors for the purpose of minimizing damage and disturbance to other Owners and occupants. In accordance with same, the no Unit Owner shall display or affix a religious item on the entry to the dwelling that (1) threatens the public health or safety; (2) violates any federal, state, county, municipal, or other governing law; (3) contains language, graphics, or any display that is patently offensive to a passerby; (4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or (5) individually or in combination with each other religious items displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, such as utilizing the dwelling as a business, daycare, hospice center, and/or consignment shop, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create an unreasonable source of annoyance, or that is a private and/or public nuisance as such terms are defined by a Texas court.

Subject to the following, short term leasing of a dwelling unit, including but not limited to Air BnB, VRBO, or similar forms of renting for a period are prohibited without written approval of the Board of Directors.

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the

Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit, provided the Association or the Board may require a minimum lease term of up to twelve (12) months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.

The limitations in this Section 12.4 shall apply to rules only, they shall not apply to amendments to this Declaration adopted in accordance with Section 16.2.

12.5. Restrictions on Lots. All lots in the subdivision shall be used for residential purposes.

12.6: Building Types. No building shall be erected, altered, placed or permitted to remain on any lot other than as follows, with the living area, exclusive of open or screened porches (covered or uncovered), garages, storage rooms, stoops, open terraces and/or servant's quarters being the following:

- (a) The living area of such residence (exclusive of porches, patios, garage, terraces, or driveways) on each forested lot shall not be less than 2,200 square ft (HVAC) for a single-story residence, or 2,600 square ft (HVAC) for a two-story residence. Lots on the private lakes in The Reserve shall not be less than 2,600 square ft (HVAC) for a single-story residence, or 3,200 square ft (HVAC) for a two-story residence. On all two-story residences, the first floor must have a minimum of 60% of all HVAC square footage up to a maximum of 75% of all HVAC square footage.
- (b) No building shall be erected, altered or permitted to remain on any lot other than one (1) detached single family residential dwelling not to exceed three (3) stories in height, or a maximum height of thirty-six (36') according to the Design Guidelines, without a variance from the Board of Directors. Each such dwelling shall have a garage sufficient to hold a minimum of two full-sized automobiles, and be equipped with automatic door closures. Garages may be detached or be attached to the main residential structure but any detached garage must be fully enclosed, covered and maintain the architectural integrity of the single family residence located on the same Lot.

- (c) Under no circumstances will outbuildings, (i.e., storage buildings) or other structures be allowed to be moved onto or built upon a Lot unless: (a) the square footage of said outbuilding or other structure shall be less than fifty percent (50%) of the gross square footage of the main residence on said Lot; (2) the design of the outbuilding or other structure shall be compatible with the design of the main residence on said Lot; and (3) the Architectural Control Committee shall have given its prior written consent to said outbuilding or other structure.
- (d) No permanent improvement, or any part thereof, including roof overhang (but excluding walls, fences, planters, hedges or other screening material), shall be nearer than twenty-five (25) feet to any side street.

12.7. Re-subdivision. No lot shall be further subdivided, and no portion less than all of such lot or any easement or other interest therein shall be conveyed by any owner without the prior written authorization of the Board. In the event that two or more lots are combined (i.e. re-subdivided) in such a way that the number of lots are reduced, the Assessments, both annual and special Assessments, against these lots are not reduced from the original platted valuation.

12.8. Business. No commercial, business or professional purposes, including but not limited to daycares, respite, nursing homes, or any gainful occupation, trade, or other non-residential use shall be conducted on any lot zoned as residential.

12.9. Signs. No exterior signs or advertisements of any kind may be placed, allowed or maintained on any lot or easement without prior approval and authorization of the Board, except that residential name plates, real estate "For Sale" signs, signs designating the contractor of the dwelling unit, and signs indicating the Dwelling Unit has a security system/contractor, are specifically authorized upon such lot and may be placed and maintained in conformity with such common specifications.

No signage under this section shall be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object. Furthermore, such signage is prohibited if it:

- includes the painting of architectural surfaces;
- threatens the public health or safety;
- is larger than four feet by six feet;
- violates a law;
- contains language, graphics, or any display that would be offensive to the ordinary person; or

- is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

A. Political Signs. With regard to political signs, each Property owner may display one or more signs advertising a political candidate or ballot item for an election on or after the 90th day before the date of the election to which the sign relates; or before the 10th day after that election date. Any sign must be ground-mounted. Owners may have one (1) sign per candidate and one (1) sign for a ballot item. No signage under this section is allowed if it contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component.

12.10. Oil and Mining Operation. No oil or gas exploration, drilling, development or refining operations, and no quarrying or mining operation of any kind, including oil wells, surface tanks, tunnels or mineral excavations or shafts shall be permitted or pursued by any Owner upon or under any lot, and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

12.11. Livestock and Poultry. No animals, including pigs, poultry, fowl, wild animals, horses, cattle, sheep, goats, reptiles, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for within the Community Area, and such animal and/or animals are allowed only if confined to the Owner's lot. No animal shall be allowed to make an unreasonable amount of noise, to become a nuisance or threat, or to cause any damage to a Lot not owned by the animal's owner, or to cause significant inconvenience or danger to the occupant of another Lot. No domestic pets will be allowed within the Community Area other than on the Lot on which its owner resides or is a visitor unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration in the Community Area and no kennels or breeding operation will be allowed. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed three (3) in numbers except for newborn offspring of such household pets, which are under nine (9) months of age. All dogs and cats must be vaccinated for rabies and revaccinated as required by law or as necessary to maintain current and adequate protection from rabies. All dogs and cats shall be tagged for identification. All applicable federal, state and local laws shall apply.

The Board may adopt Rules and Regulations concerning animals, which are more restrictive than the provisions of this Deed Restriction, including rules that prohibit the ownership of certain pets, except that such rule shall not apply to animals residing in the Community Area at the time such rule is adopted.

12.12. Garbage and Refuse. No lot shall be used or maintained as a dumping ground for refuse. All trash, garbage and other waste shall be kept in sanitary containers that are sixty (60) to eighty (80) gallon containers meeting the specifications of the ACC and/or Board of Directors. All containers for the storage or disposal of refuse shall be constructed

and maintained and the contents thereof disposed of as required by the Association, and shall be kept out of the view of the public except on designated garbage collection dates. The Association may elect to contract with a common garbage firm for the benefit of the members, and if such collective agreement is approved by a majority of the votes of the members present at a duly notice meeting, all owners will be obligated to contract with the approved firm.

12.13. Clotheslines. No clotheslines shall be constructed, placed or erected on any lot in such a way as to be visible from outside that lot.

12.14. Utility Services. Each and every Dwelling unit shall be required to be connected to THE RESERVE water distribution system furnished to the subdivision. Individual underground electrical must be installed to service each Dwelling Unit. Each Owner shall comply with the requirements of the applicable utility company regarding such underground service installation, including without limitation the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in the applicable utility company rules, regulations and terms and conditions of service, as same may be amended from time to time without notice. Each Lot shall be impressed with a ten (10) foot utility easement for the installation of a water meter and for the installation of other utilities.

12.15. Parking. No motor home, recreational, mobile home, boat, or trailer vehicles, trucks larger than pick-up size (one-ton capacity) or inoperative motor vehicles shall be or remain parked or in any way situated on any lot, street or other portion of the subdivision for a period over 36 hours, unless specifically authorized by the Architectural Control Committee. On street parking is further restricted to approved delivery, pick up or short time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the ACC, Design Guidelines, or Board of Directors. At no time shall any vehicle, including motor home, recreational, mobile home, boat, trailer vehicles, or automobile be allowed to park in an area not designed as a roadway and/or drive way. Parking on yard, lawn, turf, garden or natural areas on lots or common areas is restricted to vehicles, trailers, or pieces of equipment which are actively being utilized for delivery, pickup, construction, or maintenance functions or for short-term parking for guests and invitees. In addition, guests shall not park on yard areas overnight without written permission of the Board and shall be subject to such reasonable rules and regulations as shall be adopted by the Association. Other than the exceptions listed above, all long-term parking shall be restricted to driveways approved by the Architectural Control Committee and is limited to street-legal vehicles.

12.16. Nuisance. No lot shall be maintained or utilized in such manner as to present an unsightly appearance (including but not limited to clothes drying within public view) or constitute a nuisance or unreasonable annoyance or to endanger the health of other owners or residents of the property; and no obnoxious or otherwise offensive condition or activity shall be allowed to exist or be conducted thereon.

12.17. Driveways. All driveways shall be entirely of concrete, asphaltic paving or a paving material approved by the ACC and/or Board of Directors and shall be paved before any Dwelling unit may be occupied. No driveway or other roadway may be constructed on any Lot in such a manner as to furnish access to any adjoining Lots or other property without prior written consent of the ACC and/or Board of Directors. All driveways shall be constructed in such a manner that all run-off will not cause erosion problems to adjacent Lots or create dusting upon entry and exit.

12.18. Mailboxes. If curbside mailboxes are required for mail delivery by the U. S. Postal Service, attractive individual designs for mailbox holders shall be required by the Architectural Control Committee. Within the scope of postal service requirements, the mailbox holders shall be designed and constructed of pleasing natural materials which harmonize architecturally with the residences, and the standard rural mailbox installation on a single post is not permitted. Designs must be submitted to Architectural Control Committee for approval.

12.19. Additions: The Association may bring within the scheme of this Declaration additional properties through the execution and filing of a supplementary Declaration of Restrictions, which shall extend the scheme of the covenants and restrictions of this Declaration to such property, the supplementary Declaration may contain such modifications as are necessary to reflect the different character of the added properties.

12.20. Solar Devices. Solar energy devices may not be installed on any dwelling, or in the yard of a dwelling, unless the solar device meets an exception as listed in Texas Property Code 202.010. Regardless, such installation is prohibited until the proposed installation is approved in writing by the Association or the ACC, and upon showing by the owner that the installation will not constitute a substantial interference with the use and enjoyment of land by causing discomfort and/or annoyance to persons of ordinary sensibility.

12.21. Religious Displays. No Unit Owner shall display or affix a religious item on the entry to the dwelling that (1) threatens the public health or safety; (2) violates any federal, state, county, municipal, or other governing law; (3) contains language, graphics, or any display that is patently offensive to a passerby; (4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or (5) individually or in combination with each other religious items displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

12.22. Flags. Pursuant to Sec. 202.011 of the Texas Property Code, Installation of any free standing flagpole shall have prior written approval of the Architectural Control Committee and be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with

the dwelling. Flagpoles shall be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole shall be repaired, replaced, or removed. Additionally, if noise from the flagpole becomes a nuisance, the condition must be corrected or the flagpole removed. Each dwelling unit is limited to the installation of one freestanding flagpole that shall not exceed the height of the dwelling unit or twenty feet (20'), whichever is less. Additional requirements are detailed in the Design Guidelines.

12.23. Water Conservation Devices. An owner may install rain barrels, rainwater harvesting devices, efficient irrigation systems, or use of landscaping designs such as gravel, rock or cacti so long as the size, type, shielding and materials are approved by the Association or ACC upon written request by the owner.

12.24. Renting and Leasing. Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of these Deed Restrictions, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of these Deed Restrictions, the Bylaws, and the Rules and Regulations.

A. In the event an Owner shall rent or lease his unit such Owner shall immediately give to the Association in writing:

1. the name of the tenant and the Lot rented or leased;
2. the current address of such Owner;
3. a copy of a memorandum signed by the owner and tenant identifying the parties involved and term of the lease; and
4. the certification of the Owner that the tenant has been given a copy of these Deed Restrictions, any applicable amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

B. In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

12.25. Setbacks. No permanent improvement, or any part thereof, including roof overhand (but excluding walls, fences, planters, hedges, or other screening material) shall be nearer than twenty-five (25) feet to any side street or rear property line, nor nearer than twenty (20) feet to any adjacent property line. All lakefront lots will have a minimum setback of fifty (50) feet from the water. Front line setbacks do vary from fifty (50) feet to seventy-five (75) feet, with such setbacks being shown on the individual Lot plat. In the event setback lines in the Plat are more restrictive than foregoing, such setback lines

established on the Plat are controlling.

Eaves, steps, terraces, patios, swimming pools, walls and fences shall not be considered as part of a building for purposes of this subparagraph, provided, however, no part of a structure may encroach on another lot or obstruct any easement, except that fences may be constructed on easements at the owner's risk with the written approval of the ACC and/or Board of Directors. No obstruction to visibility at street intersections shall be permitted.

If an Owner owns more two (2) or more adjacent Lots, setback lines between the adjacent Lots may be waived by the ACC so long as the Owner records a covenant acceptable to the Committee and/or Board of Directors, and its successors or assigns, providing that only one residence may be built on the Lots then under common ownership.

12.26 Fences, Walls, Sidewalks. Fences and walls shall be considered buildings and may only be erected or maintained within the minimum building setback requirements from any lot line adjacent to a street per section 12.25. No wall, fence, planter, hedge or other screening material shall be placed, installed or constructed on a Lot without the approval of the ACC or Board of Directors, and all fences in the front yard of any Lot is expressly prohibited by this document. Privacy screens are allowed subject to ACC approval. Any fence erected on a platted lot must be black or nature earth tone in color, and be approved prior to placement by the ACC.

12.27 Building Materials. All materials used in the construction of the exterior of any Dwelling unit or other structure shall be as prescribed in the Design Guidelines and must be approved by the ACC and/or Board of Directors. Solar collectors and panels must be incorporated into the design of the Dwelling unit and will not be allowed to be visible from the street, and must be specific approval from the ACC and/or Board of Directors prior to commencement of construction. Only new construction material shall be used (except brick, if and as approved by the ACC and/or Board of Directors, on a case by case basis). In no event shall any used or new building be moved onto any Lot. Any construction building, or temporary building used for the sole purpose of facilitating the construction of a new home must be approved by the ACC and/or Board of Directors as to location on the site and the Owner must agree that the structure (temporary structure) will be removed prior to occupancy of the completed home or removed within twelve months of commencement of the construction of a new home.

12.28 Antennae. In accordance with FCC Regulations, ACC approval is not required for the installation of an antenna or satellite dish that does not exceed one meter (39') in size. However, antennas and satellite dishes must conform to all FCC requirements under the Telecommunications Act of 1996 and the homeowner is responsible for doing so. The homeowner is required to submit an ACC application showing the proposed location of the satellite dish or antenna. It is recommended that dishes be located at a rear area of a dwelling unit and a wall-mounted dish is preferred to a remote placement on a lot. All applicable federal, state and local laws shall apply.

12.29. Storage. No exterior storage shall be permitted, except with prior written approval and authorization of the ACC and/or board of directors. Any such storage as is approved and authorized shall be in areas attractively screened or concealed (subject to all required approvals by the ACC and/or board of directors) from view from neighboring properties, Dwelling units and streets. This provision shall apply without limitation to wood piles, camping trailers boat trailers, travel trailers, boats, mobile homes and unmounted pickup camper units. No automobile, truck or other vehicle, regardless of type, ownership, age, condition or appearance shall remain on any Lot outside of an enclosed garage or approved storage building if such vehicle could be construed as being stored, neglected, abandoned or otherwise not in frequent use except pursuant to written approval and authorization of the ACC and/or board of directors. All of these exceptions under this clause shall be subject to all required setback provisions in Article III, 3.04.

12.30. Diseases and Insects. No owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor plant disease or noxious insects.

12.31. Machinery, Fixtures and Equipment. No machinery, fixtures or equipment of any type, including without limitation, air conditioning or refrigeration equipment, generators, and clothes lines, shall be placed, allowed or maintained outside of an enclosed structure on any Lot except with prior written approval and authorization of the Association or Declarant. Approval will be granted only for placement in areas attractively screened or concealed from view of neighboring property, Dwelling units or streets.

12.32. Burning and incinerators. Proposed Revision: (No burning allowed unless following conditions are met)

1. No Smith County "Burn Ban is in Effect". A Smith County "Burn Ban" must not be the determining factor in allowing burning to take place. Local conditions regarding fire safety and weather conditions must be taken into consideration.
2. Leaf pile burning is prohibited due to excessive smoke generation.
3. All tree and limb burning must be attended 100% of the time the fire is flaming, smoking or smoldering.
4. The person attending the fire must have adequate running water and hose(s) at burn site to maintain control of the fire.
5. The fire attendant must have a cell phone on their person in which to contact the fire department and ambulance services.
6. Burn piles must be arranged to prevent damage to surrounding trees,

grasses, structures and utilities.

7. Heat and smoke from the fire must not be a nuisance to adjacent property owners.
8. A minimum of two property owners may collectively determine the fire is a safety or health nuisance* and may request the fire to be extinguished in a timely manner.
9. The fire must be extinguished upon notification by a Reserve HOA property owner in a safe and timely manner by the fire attendant.
10. Failure to extinguish the fire in a safe and timely manner by the fire attendant will allow any property owner in "The Reserve HOA" to contact the fire department for this purpose.
11. All applicable Federal, State and Smith County Texas fire safety and environmental regulations must be complied with.
12. The Board may adopt Rules and Regulations concerning burning which are more restrictive than the provisions of this Deed Restriction, including rules that prohibit burning during times that the Board deems in the best interest of the community.

12.33. Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles shall be made upon any portion of any Lot within the view of neighboring property, Dwelling units or streets.

12.34. Septic Tanks and Sewage Disposal. No outside toilets of any kind are permitted except during the period of construction of a Dwelling Unit during which time chemically treated outside toilets may be maintained in a manner subject to Board of Directors and/or ACC's approval. No installation of any type of device for disposal of sewage shall be allowed which would result in raw or unsanitary sewage being carried into any body of water or water source. Aerobic septic systems must be maintained to ensure that they do not constitute an obnoxious or nuisance condition (i.e. smell emanating from same) with the Board of Directors having the sole determination if such condition constitutes an obnoxious or nuisance condition.

12.35. Water Wells. At no time shall the drilling, usage or operation of any water well be permitted on any Lot without authorization of Board of Directors.

12.36. Firearms and Weapons. No Lot or any other portion of the Property shall be used or permitted for hunting or for the discharge of any pistol, rifle, shotgun or any other firearm, or any bow and arrow, or any other device capable of killing or injuring,

except as justifiable for the protection of life and/or property.

12.37. Motor Vehicles. The operation of any and all motorized vehicles within the Property shall be subject to such rules and regulations as shall from time to time be established by the Association.

12.38. Change in Intended Use. No portion of the Property shall be developed or redeveloped otherwise than in accordance with its original intended use, without the prior written authorization of the Association.

12.39. Misuse and Mismanagement. No Lot shall be maintained or utilized in such manner as to present an unsightly appearance (including but not limited to clothes drying within public view) or constitute a nuisance or unreasonable annoyance or to endanger the health of other Owners or residents of the Property; and no obnoxious or otherwise offensive condition or activity shall be allowed to exist or to be conducted thereon.

12.40. Violation of Statutes, Ordinances and Regulations. No Lot shall be maintained or utilized in such manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Texas, the County of Smith, or any other governmental agency or subdivision having jurisdiction over the Property.

12.41. Gas Operated Recreational Vehicles. All unlicensed, gas operated recreational vehicles such as 4 wheelers, 3 wheelers, motorcycles, etc. are strictly regulated on the roads and right-of-ways in The Reserve, as well as anywhere in the greenbelt area, and shall be subject to such rules and regulations as shall from time to time be established by the Board of Directors.

12.42. Grandfathering. Any permanent Improvement that was constructed in compliance with or was approved pursuant to a superseded Deed Restriction or Design Guidelines shall not be rendered out of compliance or subject to an enforcement action or fine as a result of being out of compliance with any of the Deed Restrictions or Design Guidelines adopted or enacted after the construction or installation of such Improvement. The Owner shall be responsible to maintain and provide to the Association on request, evidence of the date of an approval or of construction of such an Improvement to establish any rights.

12.43. Water Conservation Devices. Pursuant to Sec. 202.007 of the Texas Property Code, members are generally permitted to utilize rain barrels, rainwater harvesting devices and efficient irrigation systems provided the installations meet requirements detailed in the Design Guidelines. Additionally, xeriscaping (water efficient landscaping) is permitted provided it meets the requirements in the Design Guidelines and is properly maintained.

12.44. Fire Pits/Fireplaces. The construction of permanent fire pits/fireplaces

requires the approval of the ACC. Fire pits/fireplaces may be installed on grade or in the ground and shall be constructed of heat resistant materials such as stone, brick, concrete, or metal. Portable fire pits/fireplaces made by commercial fabricators subject to federal and state consumer laws do not require ACC approval but are subject to set back requirements. Permanent or portable fire pits/fireplaces shall be located within seventy-five (75) feet of a pressurized water faucet. Construction of fire pits with a burning compartment area larger than twenty-five (25) square feet and/or a depth greater than two (2) feet shall require approval by the Board.

12.45. Rules and Regulations for Use of the Lake. The Board may adopt and amend from time to time, rules and regulations governing use and operation of the lake to the Subdivision.

12.46. Gates. The Board may adopt and amend from time to time, rules and regulations governing use and operation of the gates to the Subdivision.

ARTICLE XIII EASEMENTS

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon, in accordance with the terms of these restrictions, to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

13.2. Easements for Utilities, Etc. There are hereby reserved unto the Association, and the designees of each, which may include, without limitation, Smith County, Texas and any utility, access, and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar monitoring systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded agreed plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

The Association specifically grants to the local water supplier, sanitary sewer provider, and electric company ingress and egress easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, storage tanks, pumps, meters and boxes. However, the exercise of this easement shall not extend to permitting the removal, damage, or destruction of any improvements not located on utilities easements, or entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board of Directors.

13.3. Easements for Lake and Pond Maintenance and Flood Water. The Association reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility, (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water, and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of the Association, and their designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units, but not the dwellings thereon, adjacent to or within fifty (50) feet of lake beds, ponds, and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties, (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility, (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands, and (d) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make The Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Any lakes or wetlands on the Properties are designed as water management areas and are not designed as aesthetic features. Due to fluctuations in water elevations within the immediate area, the water level of lakes, creeks, and streams will rise and fall. Association has no control over such elevations. Therefore, each Owner releases the Association, the local city and municipality, and their affiliates, successors and assigns from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including attorneys' fees and costs and appellate fees and costs, related to or arising out of the storm drain system and water elevations, including the absence of any water in the lakes, creeks or streams. No Owner shall alter, modify, expand or fill any lakes or wetlands located on or in the vicinity of the Properties, without the prior written approval of the Association, and such local, state and federal authorities as may have relevant jurisdiction over such matters.

13.4. Easements to Serve Additional Property. The Association hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property annexed pursuant to Article IX, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

13.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE XIV **MORTGAGEE PROVISIONS**

14.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association, such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder", will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

14.2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.4. Failure of Mortgagee. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XV DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

15.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article, collectively, "Bound Parties", agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances, or disputes between such Bound Party and any other Bound Party involving, arising out of or relating to (a) the use, sale, purchase, construction, improvement, maintenance, operation or marketing of the Properties, (b) the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles, (c) the administration, operation, management, use or maintenance of the Association and its assets, or (d) the alleged negligent design, maintenance, development, improvement, construction or operation by the Association of any portion of the Properties (collectively, "Claims"), except for those Exempt Claims described in Section 15.2, shall be resolved using the procedures set forth in Section 15.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

15.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 15.3:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article X (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order, or equivalent emergency equitable relief, and such other ancillary relief as the court may deem necessary

in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI (Architectural Standards) and Article XII (Use Restrictions);

(c) Any suit between Owners that does not include Association as a party thereto, if such suit asserts a Claim which would constitute a cause of action under the laws of the State of Texas or the United States but does not or would not include or involve any claim, right, privilege, membership, or defense based on or arising from the Declaration, Bylaws, Articles or rules of the Association;

(d) Any suit in which all indispensable parties are not Bound Parties;

(e) Any suit which all the parties thereto agree to consider as an Exempt Claim;

(f) A construction defects claim which involves damages in excess of \$50,000.00 per Unit; and

(g) The submission to a court of any settlement as a settlement affecting a class if such a class settlement is reasonably necessary to resolve a dispute which would otherwise not be an Exempt Claim.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 15.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 15.3 shall require the approval of the Association.

15.3. Mandatory Procedures For All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. The nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

2. The basis of the Claim (i.e., the laws, regulations, contract, provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

3. What Claimant wants Respondent to do or not do to resolve the Claim; and

4. That Claimant will meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice, or within such other period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent dispute resolution center, or such other independent agency providing similar services upon which the Parties may mutually agree.

2. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

3. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within fifteen (15) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within thirty (30) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "B" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from

any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings. Each Party shall bear its own costs incurred prior to and during the

2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Texas. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Texas.

15.4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 15.3(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 15.3(c).

(b) Each Party shall bear its own costs, including the fees of its attorney or other representative, incurred after the Termination of Mediation under Section 15.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs") except as otherwise provided in subsection 15.4(c).

(c) Claimant shall prepay to the arbitration panel the sum of \$1,000.00 to be applied toward payment of any Post-Mediation Costs of the Parties, and, in addition, shall advance all arbitration costs until an Award is made. If a Respondent brings a Claim (i.e., a counterclaim) against a Claimant, the arbitration panel may, upon request, order such Respondent to advance a portion of the arbitration costs. If an Award is equal to or more favorable to a Claimant than such Claimant's Settlement Demand, the arbitration panel may, in its discretion, add all or a portion of such Claimant's Post-Mediation Costs to the Award, and allocate such Costs to the Respondents in such proportions as the arbitration panel deems appropriate. If an Award against a Respondent is equal to or less favorable to Claimant than such Respondent's Settlement Offer to that Claimant, the arbitration panel may, in its discretion, also award to such Respondent its Post-Mediation Costs, and allocate such Post-Mediation Costs to the Claimants in such proportions as the arbitration panel deems appropriate.

15.5. Enforcement of Resolution. After resolution of any Claim through negotiation, mediation or arbitration, in accordance with Section 15.3, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party, or if more than one non-complying Party, from all such Parties pro rata, all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

ARTICLE XVI
GENERAL PROVISIONS

16.1. Duration.

(a) Unless terminated as provided in Section 16.1(b), this Declaration shall have perpetual duration. If Texas law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Texas law, in which case such law shall control, this Declaration may not be terminated within twenty (20) years of the date of recording without the consent of all Unit Owners and unanimous approval of the Board of Directors. Thereafter, it may be terminated only by an instrument signed by Owners of at least 67% of the total Units within the Properties and by the Board of Directors, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

16.2. Amendment.

(a) Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing 67% of the votes in attendance at a properly noticed meeting called for the purpose of amendment. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(b) Effective Date and Validity. To be effective, any amendment must be recorded in the Public Records.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

16.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect

other provisions or applications.

16.4. Litigation. No judicial, arbitration or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a majority of the Board of Directors. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

16.5. Use of the Words "The Reserve". No Person shall use the words "The Reserve" or any derivative in any printed or promotional material without the Association's prior written consent. However, Owners or Builders may use the terms "The Reserve" in printed or promotional matter where such term is used solely to specify that particular property is located within The Reserve. The Association also shall be entitled to use the words "The Reserve" in its name.

16.6. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit Owner(s).

16.7. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to their Unit shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

16.8. Prohibition Against Discrimination. Discrimination by race, color, religion, age, sex or national origin in the administration, interpretation, application, and enforcement of this the Bylaws, the Association rules or the Articles shall be prohibited.

IN WITNESS WHEREOF, the undersigned President of The Reserve at Lake Tyler Home Owners Association, Inc., has executed this Declaration this 18 day of March 2019.

March 18, 2019
Date

Harold R. Bennett
President of The Reserve at Lake Tyler Home Owners Association,
Inc.

STATE OF TEXAS §
 §
COUNTY OF SMITH §

BEFORE ME, the undersigned authority, on the 18 day of March, 2019, personally appeared, Harrell Barnett, to me known to be the President of The Reserve at Lake Tyler Home Owners Association, Inc., and he/she acknowledged before me the he/she executed the same for the purposes therein expressed.

Carey Cottrell
Notary Public, State of Texas
My Commission Expires: June 27, 2021

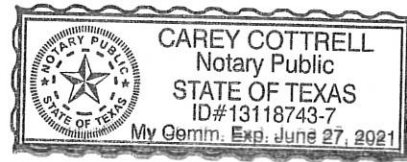
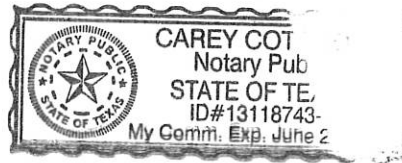


Exhibit "B"

Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").
2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all of the Claimants shall agree upon one (1) Party Appointed Arbitrator, and all of the Respondents shall agree upon one (1) Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one (1) neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three (3) arbitrators.
3. If the arbitration panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the chapter of The American Arbitration Association whose offices are closest to the Properties, or such other independent body providing arbitration services, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator, and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.
5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator"), shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Appointed Neutral or Neutral shall take into consideration the appropriate amount of time which should pass in order to determine the Claimant's damages accurately.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine whether all indispensable parties are Bound Parties.
8. There shall be no stenographic record of the proceedings.
9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.
10. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.
11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.
12. There will be no posthearing briefs.
13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.
14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.
15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to *the* Arbitrator at the hearing.
16. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent licensed professional who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall

be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator. The following is a nonexclusive list of the types of professionals that the Arbitrator may consider retaining for specific purposes:

- (a) an engineer or architect for issues concerning the design, improvement, development, placement, maintenance, operation, siting, construction, furnishing or equipping of the Properties;
- (b) an attorney for issues concerning the legal effect or validity of any of the Claims (including without limitation, questions about the legal standards to be applied as to standing, privity of contract, statute of limitations or laches, indispensability of parties, failure to maintain, failure to mitigate damages, existence or non-existence of duty, foreseeability, comparative or contributory negligence, the effect of disclaimers or the interpretation of the Declaration as it applies to the Claims, and the reasonableness of attorney's fees);
- (c) a certified public accountant who is a member of the Community Associations Institute for issues concerning Association finances including, without limitation, the Declarant's payment of assessments, any deficit funding obligations, the handling of reserves and the keeping of accounting records.

The Parties hereby instruct the Arbitrator to render such temporary decisions or order such temporary relief as may be necessary to prevent material lapses in the progress of development of any part of the Properties.

Smith County



DO NOT REMOVE

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Filed for Record in
Smith County, Texas
3/21/2019 3:31:05 PM
Fee: \$222.00
20190100008949

RESTRICTION
Deputy -Suni Whittaker

I hereby certify that this
instrument was filed and duly
recorded in the Official Public
Records of Smith County, Texas


Karen Phillips
County Clerk

