

Document Receipt Information

Reference Number: FLT-MUSTANG PARK-CON RESTR - Other

Instrument Number:	46826
No of Pages:	54
Recorded Date:	4/19/2013 11:49:30 AM
County:	Denton
Officer Name:	Jane Morris
Volume:	
Page:	0
Recording Fee:	\$228.00

original

THE ATTACHED DOCUMENT WAS ELECTRONICALLY
FILED FOR RECORD WITH THE COUNTY CLERK'S
OFFICE. THIS PAGE CONTAINS THE FILING
INFORMATION PROVIDED BY THE COUNTY CLERK'S
OFFICE AND MUST REMAIN WITH, AND BECOME
PART OF, THE ORIGINAL DOCUMENT.

FLJ/MUSTANG PARK/SW

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After recording, return to:
Lawrence J. Brannian, PC
8150 North Central Expressway
Suite 1800
Dallas, Texas 75206
Attn: Lawrence J. Brannian, Esq.

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MUSTANG PARK PHASE FIVE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MUSTANG PARK PHASE FIVE (this "**Declaration**") is made and entered by JBGL MUSTANG, LLC, a Texas limited liability company ("**Declarant**").

WHEREAS, Declarant is the owner of all that certain real property situated in the City of Carrollton, Denton County, Texas, as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference for all purposes; and

WHEREAS, Declarant intends that the Property (as hereinafter defined) be developed as a high quality residential Subdivision (as hereinafter defined) and community and that such Property be subject to the covenants, conditions and restrictions set forth in this Declaration in order to establish a plan for the development, improvement and use of the Property with architectural, landscaping and maintenance controls; and

WHEREAS, Declarant has or intends to create the Association (as hereinafter defined) to have, exercise and perform on behalf of, and as agent for, the Owners (as hereinafter defined), the rights, duties and functions set forth in this Declaration, including, but not limited to, (i) the maintenance of certain portions of the Property and improvements thereon, (ii) the assessing, collecting and disbursing of Assessments (as hereinafter defined) provided for herein, and (iii) the appointment of an Architectural Control Committee (as hereinafter defined) to enforce the protective covenants contained herein and to review and approve or disapprove Plans (as hereinafter defined) for improvements and modifications to improvements to be constructed on Lots (as hereinafter defined) within the Subdivision.

NOW, THEREFORE, Declarant adopts, establishes and imposes the following covenants, conditions, restrictions, easements, liens and charges upon the Property and declares that the Property and all portions thereof are and shall be held, transferred, assigned, sold,

conveyed and occupied subject to all such covenants, conditions, restrictions, easements, liens and charges.

ARTICLE I

DEFINITIONS

Unless otherwise defined in this Declaration, the following words when used in this Declaration (unless the context shall otherwise clearly indicate or prohibit) shall have the following meanings:

(a) **"Amenity Center"** shall mean any community amenity center or facility constructed on the Property for the use and benefit of the Owners, as more particularly described in **Section 2.03** hereof.

(b) **"Annexed Land"** shall have the meaning set forth in **Article VIII** hereof.

(c) **"Architectural Control Committee"** shall have the meaning set forth in **Section 7.01** hereof.

(d) **"Assessment"** or **"Assessments"** shall have the meaning set forth in **Section 5.01** hereof.

(e) **"Assessment Lien"** shall have the meaning set forth in **Section 5.08** hereof.

(f) **"Association"** shall mean the non-profit corporation created or to be created under the laws of the State of Texas under the name, **"Mustang Park Owners' Association, Inc."** or such other name as is selected by Declarant or Declarant's successors.

(g) **"Association Documents"** shall mean the Certificate of Formation (herein so called) and the Bylaws (herein so called) of the Association, as amended and modified from time to time, and the resolutions and certifications adopted by the Association from time to time.

(h) **"Board"** shall mean the board of directors of the Association as elected from time to time pursuant to the Association Documents.

(i) **"City"** shall mean the City of Carrollton, Texas.

(j) **"Class A Members"** shall have the meaning set forth in **Section 4.04(a)** hereof.

(k) **"Class B Member"** shall have the meaning set forth in **Section 4.04(b)** hereof.

(l) **"Common Amenities"** shall mean the following:

(i) Any Amenity Center;

(ii) The Retention Pond;

(iii) Any and all entry features, Subdivision signage and monuments, landscape areas and screening walls, and all landscape easements, other similar areas within the Subdivision whether or not shown on the Plat (as hereinafter defined), whether within or surrounding or along the boundaries of the Property, including, without limitation, the landscape features installed and screening walls constructed in the Entry Areas (as hereinafter defined);

(iv) Any other property or improvements within or immediately surrounding the Subdivision for which the Association is or may hereafter become obligated to maintain, improve or preserve;

(v) Any real and/or personal property, fixtures or improvements conveyed or dedicated to the Association for the common use and benefit of Owners within the Subdivision, and/or to be maintained by the Association; and

(vi) Any and all other fixtures, Structures or other improvements installed by Declarant or the Association within the Subdivision, and all equipment, accessories, utilities and machinery used in the operation or maintenance of any of the "Common Amenities," and which are not expressly made the responsibility of a Lot Owner pursuant to the provisions of this Declaration.

(m) "Common Area" shall mean (i) the real property designated on any Plat as common area and/or any real property and/or lot within the Subdivision comprising or on which the Common Amenities are located, together with (ii) the Retention Pond.

(m) "Common Expenses" shall have the meaning set forth in Section 5.02 hereof.

(n) "Common Service" or "Common Services" shall mean such services provided from time to time by Declarant or the Association, or obtained by the Association on behalf of, and for the common benefit of, the Owners which have been approved by the Board and/or by the Members (as hereinafter defined) at a meeting at which a Regular Quorum (as hereinafter defined) is present as provided herein.

(o) "Declarant" shall mean JBGL Mustang, LLC, a Texas limited liability company, and its successors, and any assignee of Declarant to whom Declarant, by instrument recorded in the Real Property Records of Denton County, Texas, expressly assigns all of Declarant's rights and obligations as Declarant under this Declaration. No Person (as hereinafter defined) purchasing one (1) or more Lots shall be considered "Declarant" hereunder, unless Declarant makes the express and specific assignment referenced in and in accordance with the terms of the immediately preceding sentence.

(p) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Mustang Park Phase Five, and all amendments and modifications hereto, including without limitation, any Supplemental Declaration (as hereinafter defined), filed of record in the Real Property Records of Denton County, Texas.

(q) **"Default Rate of Interest"** shall mean the lesser of (i) fifteen percent (15%) per annum, or (ii) the maximum allowable contract rate of interest under applicable law.

(r) **"Easement Areas"** shall mean all easements as shown on the Plat, or as granted, dedicated and/or conveyed pursuant to this Declaration and/or by a separate instrument, located within the Subdivision, or on adjacent property which may or hereafter benefit or burden the Property and the Subdivision, including, without limitation, all berm, wall and/or landscape maintenance easements, visibility, access and maintenance easements, utility easements, drainage easements and all other easements located within the Property and along, over and across various Lots as shown on the Plat, and/or any easements granted, dedicated and/or conveyed by this Declaration or by a separate instrument, together with all future and proposed easements for the benefit of or burdening the Property and the Subdivision, whether within or outside the Subdivision boundaries, and as may be shown on the Plat, granted, dedicated and/or conveyed by this Declaration or by a separate instrument, or as may be subsequently granted, dedicated and/or conveyed.

(s) **"Entry Area"** shall mean all areas as shown on the Plat along, near or adjacent to the Subdivision entrances, including any wall maintenance easements and visibility, access and maintenance easements and any Common Amenities which may be now or hereafter located in, on and adjacent to the Entry Areas.

(t) **"Lot"** or **"Lots"** shall mean those certain single-family residential lots as shown on any Plat including land within the Subdivision, as amended from time to time, and designated as a **"Lot"** thereon and as shown on such Plat(s), specifically excluding the lot or lots, if any, used for any Common Amenities or as Common Areas, and if, as, and when applicable, including all Lots within any Annexed Land which is annexed in accordance with **Article VIII** hereof.

(u) **"Member"** or **"Members"** shall mean each Owner of a Lot.

(v) **"Member in Good Standing"** or **"Members in Good Standing"** shall have the meaning set forth in **Section 4.03** hereof.

(w) **"Mortgagee"** shall mean any holder of a lien upon or a mortgage of any interest in a Lot.

(x) **"Notice of Unpaid Assessments"** shall have the meaning set forth in **Section 5.08**.

(y) **"Owner"** or **"Owners"** shall mean each and every Person who is a record owner of a fee or undivided fee interest in any Lot; provided, however, **"Owner"** shall not include Persons who hold an interest in a Lot as security for the performance of an obligation.

(z) **"Per-Lot Regular Assessment Amount"** shall have the meaning set forth in **Section 5.02** hereof.

(aa) "**Person**" or "**Persons**" shall mean any natural person, corporation, partnership, trust or other legal entity.

(bb) "**Plans**" shall have the meaning set forth in **Section 7.03(c)** hereof.

(cc) "**Plat**" shall mean the Final Plat of "**Mustang Park Phase Five**", an Addition to the City of Carrollton, Denton County, Texas, as recorded on March 8, 2013, in Cabinet 2013, Slide 74, of the Map or Plat Records of Denton County, Texas, and any and all amendments, modifications, revisions or replats to or of said plat, and any final plat of any Annexed Land expressly annexed and made subject to this Declaration in accordance with the terms of **Article VIII** hereof.

(dd) "**Property**" shall mean the real property situated in the City of Carrollton, Denton County, Texas, as more particularly described on **Exhibit A** attached hereto, together with any Annexed Land expressly annexed thereto and made subject to this Declaration in accordance with the terms of **Article VIII** hereof.

(ee) "**Property Subject to Annexation**" shall mean the real property situated in the City of Carrollton, Denton County, Texas as further described on **Exhibit B** attached hereto and incorporated herein by reference, which is subject to annexation into the Property subject to this Declaration in accordance with the terms of **Article VIII** hereof.

(ff) "**Regular Assessments**" shall have the meaning set forth in **Section 5.02** hereof.

(gg) "**Regular Quorum**" shall have the meaning set forth in **Section 4.05(c)** hereof.

(hh) "**Residence**" or "**Residences**" shall mean any portion of the single family residential detached home or dwelling constructed on any Lot in conformance with this Declaration.

(ii) "**Retention Pond**" shall mean the retention pond, drainage facilities, and other improvements in connection therewith now or hereafter located on the Retention Pond Land.

(jj) "**Retention Pond Land**" shall mean that certain tract of land designated as Tract II on **Exhibit A** attached hereto.

(kk) "**Special Member Assessments**" shall have the meaning set forth in **Section 5.04** hereof.

(jj) "**Special Purpose Assessments**" shall have the meaning set forth in **Section 5.03** hereof.

(kk) "**Special Quorum**" shall have the meaning set forth in **Section 4.05(b)** hereof.

(ll) "**Subdivision**" shall mean the Property as shown on the Plat and subject to this Declaration, as supplemented, to be commonly known as "**Mustang Park Phase Five.**"

(mm) "**Supplemental Declaration**" shall mean and refer to any Supplemental Declaration of covenants, conditions, restrictions and easements amending this Declaration and/or bringing Annexed Land within the scheme of the Declaration under the authority provided in this Declaration.

(nn) "**Structure**" shall mean and refer to any structure (other than a Residence), fence, driveway, sidewalk, planting, landscaping, irrigation system, wall, tennis court, swimming pool, outbuilding, playground equipment, or other improvement of any type or kind.

(nn) "**Transfer Fees**" shall have the meaning set forth in **Section 5.11** hereof.

(oo) "**Violation Fine**" shall have the meaning set forth in **Section 9.11** hereof.

ARTICLE II

USE OF THE PROPERTY - PROTECTIVE COVENANTS

2.01 General. No use shall be permitted on the Property which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments other agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL. All Lots shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided. The provisions of this **Article II** set forth certain requirements which, in

addition to the other provisions of this Declaration, shall apply with respect to the development and use of the Property

2.02 Residential Use. All Lots shall be used and occupied for single family residential purposes only, except that a builder with at least one (1) home under construction or available for sale may use a Residence on a temporary basis as a model home and/or business office. No Residence shall be erected, altered, placed or permitted to remain on any Lot other than a private single-family detached Residence unless approved in writing by the Architectural Control Committee. No Residence on any Lot shall exceed two (2) stories in height or the applicable governmental requirements pertaining to the height of Residences.

2.03 Common Amenities and Amenity Center; Common Properties.

(a) Declarant or an affiliate of Declarant presently owns or has contracted to purchase the Property Subject to Annexation located adjacent to the Property initially subject to this Declaration, and Declarant anticipates, but is not obligated to cause, the annexation hereunder of all or a portion of such Property Subject to Annexation, with all Property being initially or subsequently annexed into the Property subject to this Declaration to be developed as a subdivision commonly known as "Mustang Park Phase Five."

(b) Further, Declarant anticipates that the Property initially subject hereto and such other property subsequently annexed into the Property subject to this Declaration shall have the benefit and use of an Amenity Center and other Common Amenities on the Property and/or such Property Subject to Annexation; provided, however, that nothing contained herein shall constitute an obligation or binding agreement of Declarant to construct or provide any such Amenity Center and/or other Common Amenities. Such Amenity Center may include, among other things, a swimming pool, playground and cabana. Further, there are limited Common Amenities as described herein located on certain Common Areas and/or to be located within the Property Subject to Annexation and which are to be maintained by the Association as provided in this Declaration. Except for those provisions to the contrary contained herein with respect to said Common Amenities, each Owner shall be solely responsible for any and all improvements of any kind located on such Owner's Lot.

2.04 Resubdivision/Zoning Changes. No Lot shall be resubdivided; provided, however, that Declarant shall have, and reserves the right, at any time, and from time to time, upon the consent of the City, and with the joinder and consent of the directly affected Lot Owners, to replat the Property or amend the Plat to effect a resubdivision or reconfiguration of any Lots in the Property then owned by Declarant and the consenting Lot Owners, so long as such replat results in each resubdivided Lot containing not less than the minimum Lot size within the Subdivision prior to such replat. Owners of Lots directly affected by such replat shall not unreasonably withhold or delay their joinder in or consent to such replat or amendments to the Plat as may be required by the City. The right to replat set forth in this **Section 2.04** shall be exercisable only by Declarant. No Owner shall initiate or support any proposed replat of any portion of the Property except to join and consent to (a) any replat proposed by Declarant in accordance with this **Section 2.04**, or (b) any proposed zoning change affecting the Property or any portion thereof, without first obtaining the prior written consent of Declarant for as long as

Declarant or Declarant's affiliates own at least one (1) Lot within the Property or any portion of the Property Subject to Annexation, and thereafter, without a joint action by the Association and the Board; provided, however, this provision shall not prohibit an Owner from seeking a variance applicable only his to individual Lot.

2.05 Combining Lots. Any Person owning two (2) or more adjoining Lots, after first obtaining Declarant's prior written consent, may consolidate such Lots into a single building location for the purpose of constructing one (1) Residence thereon and such other Structures as are permitted herein; provided, however, any such consolidation must comply with the rules, ordinances and regulations of the City. In the event of any such consolidation, the consolidated building lot shall be treated as a single Lot for the sole purpose of assigning voting rights of the Owner of such Lot, but shall be treated as two (or more) separate Lots for purposes of establishing the Assessments for such Lots and/or applying any other provisions of this Declaration. Combining portions of Lots into a single building lot is prohibited.

2.06 Minimum Floor Space. Each Residence constructed on any Lot or any Lots combined pursuant to Section 2.05 hereof shall contain a minimum of one thousand eight hundred (1,800) square feet of air-conditioned floor area, exclusive of all porches, garages or breezeways.

2.07 Building Materials. The exterior walls (excluding doors and windows), below the top plate line on each elevation shall have a minimum of seventy percent (70%) brick, stucco, stone, LP siding, or glass block (the "Exterior Materials Requirement"). Any exterior insulation finishing system (E.I.F.S.) is prohibited from being included in any calculation of the Exterior Materials Requirement. The exterior portion of any fireplace chimney shall be one hundred percent (100%) brick, stone, LP siding, or stucco; provided, however, hardiplank (or engineered wood with comparable warranty) may be used for wall structure over the roof. No material on the exterior of any building or other improvement except wood, hardiboard (or engineered wood with comparable warranty), LP siding, or stucco, shall be stained or painted without the prior written approval of the Architectural Control Committee. No materials other than the following may be used in the exterior construction of a Residence and/or other Structures constructed on a Lot (excluding roofing materials, window frames and exterior fixtures): brick, stone, glass block and stucco or hardiplank (or engineered wood with comparable warranty) (with respect to wall structures over roof only).

2.08 Driveways/Sidewalks. Each Lot must be accessible to an adjoining street or alley by a concrete driveway unless other materials are approved in writing by the Architectural Control Committee. Concrete sidewalks must be installed on each Lot by the builder constructing the initial Residence on any Lot and in conformance with the requirements of the City; provided, however, such obligation shall not include any obligation to construct corners and ramps for such sidewalks, which corners and ramps shall be constructed and installed by Developer in conformance with the requirements of the City in connection the Declarant's development of Lots within the Subdivision. Each Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot to the extent required by the City or any other applicable governmental authority.

2.09 Garages. Each single-family Residence erected on any Lot shall provide garage space for a minimum of two (2) automobiles. All garages must comply with all applicable governmental requirements. Garages may be used as Declarant's or an approved homebuilder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by Declarant or an approved homebuilder as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot. The exterior portion of all garage doors shall be constructed of cedar wood with no exposed metal.

2.10 Drainage.

(a) All Lots shall be graded so that no storm water drainage shall flow onto other Lots except that storm water drainage may flow to a neutral swale at the side property line at the side of the adjacent Lot provided that the swale shall drain to the street or alley property line. Declarant prior to the establishment of the Association, and thereafter the Association, are hereby granted a perpetual non-exclusive easement over an area five feet (5') on both sides of the shared property line of each Lot within the Subdivision for the purpose of access, ingress, egress, as is reasonably necessary to maintain, repair and/or restore the grading and/or drainage improvements serving the Lots and/or the Subdivision; provided, however, in no event shall Declarant and/or the Association be liable to maintain, repair or restore any grading or drainage on or serving any Lot.

(b) Each Owner shall be liable and responsible for the maintenance, repair and/or restoration of grading and/or drainage improvements on such Owner's Lot. Neither Declarant nor Declarant's successors or assigns shall be liable for any loss of, or damage done to, any shrubbery, grass, flowers, improvements, fences, sidewalks, driveways or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters or drainage waters.

(c) Unless approved by the Architectural Control Committee, no Owner will: (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Residence; or (ii) install landscaping or other improvements that may interfere with, obstruct or divert drainage flows established by Declarant or any approved homebuilder. The foregoing shall not prevent or limit Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot.

2.11 Roofs. The use of various roofing materials within the Property shall be permitted including dimensional architectural shingles and tile roofs; provided, however, no roofing material shall be installed without first obtaining the Architectural Control Committee's prior written approval thereof. 3-tab composition roofs are not permitted. Roofs must be weather wood or oxford gray in color. The front elevation roof pitch of any Residence shall have a minimum 8:12 slope, the side or rear elevation roof pitch of any Residence shall have a minimum 8:12 slope, and the elevation of any shed roof over a porch shall have a minimum 8:12 slope, unless otherwise approved in writing by the Architectural Control Committee. Ditch outs for egress or shed roof over a porch that does not exceed 200 square feet may have a minimum of a 4:12

pitch. The roof pitches of any Structure(s) to be constructed and/or installed on any Lots shall be subject to the Architectural Control Committee's prior written approval.

2.12 Exterior Surfaces. All wood, hardboard or stucco used on the exterior of a Residence must be painted or stained in a color compatible with the exterior design and materials used in the exterior construction of such Residence, and as approved by the Architectural Control Committee.

2.13 Building Lines/Setbacks; Retaining Walls.

(a) All Residences erected on any Lot shall face the street adjacent to the Lot as shown on the Plat or the street for which the address of the Lot has been assigned, as shown on the address plat approved by the City, with respect to corner Lots. No portion of any such Residence shall be nearer to the front property line of said Lot than as designated on the Plat unless otherwise allowed by both the City and the Architectural Control Committee.

(b) No permanent Structure of any kind (except for fences as provided in **Section 2.14** hereof, and retaining walls as provided in **Section 2.22** hereof) shall be nearer to the side property line or the rear property line of any Lot than as specified by the City for side and rear yard setbacks applicable to the Property unless otherwise allowed by both the City and the Architectural Control Committee. No permanent Structure or improvements of any kind (other than permitted landscaping) whatsoever shall be located within any easement as shown on the Plat unless otherwise allowed by both the City and the Architectural Control Committee.

(c) Any retaining walls built by Declarant or its affiliates on Common Areas to be maintained by the Association shall be conveyed to and maintained by the Association as Common Areas and/or Common Amenities. To the extent Declarant has installed any retaining walls on any Lot or along any Lot line, the Owner of the Lot on the high side of such retaining wall shall be responsible for the maintenance and repair of the portion of any retaining wall (but not screening walls which are the responsibility of the Association as provided herein) adjacent to, or located on, such Owner's Lot. The Owner obligated to maintain any retaining wall(s) located on or adjacent to such Owner's Lot is hereby granted a perpetual non-exclusive easement over an area five feet (5') from the property line of the adjacent Lot sharing such retaining wall for the purpose of access ingress and egress as is reasonably necessary to maintain, repair and/or restore the applicable retaining wall(s). Each Owner shall reasonably cooperate with the Owners of adjacent Lots in good faith to provide for the maintenance, repair and/or restoration of any retaining walls in accordance with the terms of this Declaration.

(d) When a retaining wall is deemed necessary along a mutual property line, the high side Owner shall be solely responsible for the construction and maintenance for such retaining wall, unless the need for such retaining wall is attributable to the conduct of the low-side Owner, for instance, when the low-side Owner lowers the elevation of the Lot to install a rear driveway, in which event, the low-side Owner shall be solely responsible for the construction and maintenance for such retaining wall. All retaining walls shall be installed and maintained in accordance with the requirements of **Section 2.22** hereof.

2.14 Fences.

(a) Except with respect to the side property line facing the streets up to the front building setback line on corner Lots, no wall or hedge shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line indicated on the applicable Plat, and no fence shall be erected, placed or altered on any Lot nearer to any street than the front corner of the Residence located on such Lot, unless allowed by the City and approved in writing by the Architectural Control Committee.

(b) No fence, wall or hedge shall exceed:

(i) eight (8) feet in height (measured from the top of any applicable retaining wall on which such fence is constructed, if approved by the City) with respect to Lots being a minimum of eighty feet (80') in width measured at the front building line of such Lots (the "80' Lots"), and

(ii) six feet (6') in height (measured from the top of any applicable retaining wall on which such fence is constructed, if approved by the City) with respect to Lots being a maximum of less than eighty feet (80') in width measured at the front building line of such Lots (the "60' Lots"); provided, however, that any fence, wall or hedge which abuts an 80' Lot shall be eight (8) feet in height (measured from the top of any applicable retaining wall on which such fence is constructed, if approved by the City). Reference is hereby made to **Exhibit C** attached hereto and made a part hereof for all purposes which shows the location of each 80' Lot and 60' Lot in the Subdivision as of the date hereof.

unless otherwise specifically required by the City, expressly permitted by this Declaration or approved in writing by the Architectural Control Committee (subject to any restrictions and/or requirements of the City).

(c) No fence shall be constructed outside of the side-street building setback line on any Lot with a side building setback line that lines up with the front building setback line on an adjacent Lot.

(d) No chain link fences or other wire type fences shall be erected on any Lot so as to be visible from any street or the ground level on any adjoining Lot or Common Area.

(e) Unless otherwise provided in this Declaration or approved in writing by the Architectural Control Committee, all fencing shall: (i) be of wood material and present a solid, board to board, facing (i.e., picket type fencing or other staggered spacing type fencing is not permitted) with steel poles or posts; (ii) have a minimum height of six (6) feet; (iii) have slats measuring between three (3) inches and six (6) inches wide which are installed vertically only (not horizontally or diagonally); (iv) have an even flat top (1x4 trim at the top of the fence so any dog ear trim does not show); (v) be installed with the smooth surface side facing the street ("good-side-out") on the front side of all Lots, and on the side Lot lines of all corner Lots and Lots adjacent to Common Areas, such that no vertical fence posts or horizontal supports are visible from the street in the front, and for all corner Lots, from the side street, and for all Lots

adjacent to a Common Area, from the Common Area; and (vi) except for Ace Fence Medium Brown color stain which shall be uniformly used within the Subdivision, shall not have any paint, stain or finish applied on any surface which is visible from the ground level of any street or adjoining Lot or Common Area. Notwithstanding the above, tubular steel of a height, design and color approved in writing by the Architectural Control Committee may be allowed in lieu of the wood fencing required above.

(f) Where the fence or wall is an integral part of the architectural style or design of the Residence, and upon submission of a written request for same, the Architectural Control Committee may permit the construction of fences or walls which are in variance with the provisions of this Section 2.14 from time to time and at its sole and exclusive discretion, taking into account the impact of the view from any street, the adjacent Lot, any Common Area(s) or any other Lot directly affected thereby.

(g) Additional fence posts are required at the rear and side property lines of each Lot which also forms the rear and/or side property line of another Lot (such property lines being herein referred to as the "common property line(s)"). The first party constructing a fence on a common property line of a Lot shall install such fence centered on the common property line. Such fence posts are to be spaced a minimum of eight (8) feet on center with respect to fences six (6) feet high or less and six (6) feet on center with respect to fences greater than six (6) feet in height, and such fence posts are to be centered on the common property line of the Lots. The fence posts constructed centered on the common rear property line of the Lots shall be used to support the fence constructed for both Lots. The Owner of the Lot first to construct a fence on a common property lines shall not be required to install smooth surface siding on the side of any fence facing an adjacent Lot. The Owner of any adjacent Lot sharing such common property line may elect, but is in no way obligated, to construct a smooth side fence facing its Lot using the common fence posts on such common property line. If any fence is installed on top of a masonry retaining wall, metal posts are required.

(h) The elevation of the bottom of any fence installed on the rear property line of any Lot which also forms the rear property line of another Lot shall be no lower than eight inches (8") below the finished floor level of the Residence constructed on the highest Lot in an effort to maintain positive drainage on each Lot from rear to front. This elevation shall be maintained by the Owner of each Lot on either side of such fence.

(i) In lieu of any other type of fencing or walls, a five foot (5') tubular steel fence matching the tubular steel fence detail attached hereto as Exhibit D and incorporated herein by reference is required along the property line(s) of the Lots adjacent to certain Common Areas, as such Lots are described and/or depicted on Exhibit D-1 attached hereto. The objective of the installation of tubular steel fencing in lieu of other fencing and/or wall improvements along these boundary lines is to maintain a consistent appearance of the perimeter of rear yard fences backing to open space.

(j) Where any fence with a height of six (6) feet adjoins a fence with a height of eight feet (8'), the transition shall be carried over an even and continuous slope over a distance of ten feet (10'); provided, that, with respect to any fence constructed on a retaining wall, the six

(6) foot fence shall be constructed in such manner so it "dies" into the eight (8) foot fence constructed on a retaining wall. Where any tubular steel fence with a height of five feet (5') adjoins a fence with a height of six feet (6') or eight feet (8'), the transition shall be constructed of wood fencing materials and be carried over an even and continuous slope over a distance of ten feet. Where the property line of any 60' Lot is shared with an 80' Lot, the fence constructed and installed on such common property line shall be eight feet (8') in height and otherwise conform with fence requirements applicable to 80' Lots. No (i) wood fence of a height other than six feet (6') or eight feet (8'), except in transitions between fence heights, and (ii) tubular steel fencing inconsistent with the tubular steel detail attached hereto as Exhibit D or of a height other than five feet (5'), shall be installed or erected on any Lot unless such fence height is permitted by the City and the design therefor (including a detail and specifications for any required transitions) is previously approved in writing by the Architectural Control Committee.

(k) In no event shall any Owner construct, erect or install any fencing adjacent to a screening wall, or along the boundary line of a Lot on or adjacent to which a screening wall is located. The transition of a fence which is perpendicular to a screening wall shall be carried over an even and continuous slope over a distance of ten feet (10').

(l) Each Owner shall maintain the portion of fencing on such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto (as deemed necessary by the Board, in its sole and absolute discretion), except that Owners adjoining a common fence shall share equally in the cost for the maintenance of such common fence.

2.15 Signs. No sign or signs of any kind or character shall be displayed to the streets or otherwise to the public view on any Lot, except that:

(a) Any builder, during the applicable initial construction and sales period, may utilize (i) one (1) professionally fabricated sign (of not more than nine (9) square feet in size) per Lot for advertising and sales purposes, (ii) one (1) "take one box" or "open" sign for spec homes, and (iii) two (2) professionally fabricated signs (each being not more than thirty-two (32) square feet in size) in the Subdivision advertising a model home, provided that such signs shall first have been approved in writing by the Architectural Control Committee;

(b) A professionally fabricated "for sale" or "for rent" sign (of not more than twelve (12) square feet in size) may be utilized by the Owner of a Lot for the applicable sale or rent situation, provided that such sign first shall have been approved in writing by the Architectural Control Committee;

(c) Development related signs owned or erected by Declarant (or any builder with Declarant's prior written consent) shall be permitted;

(d) Signs displaying the name of a security company shall be permitted, provided that such signs are (i) ground mounted, (ii) limited to two (2) in number per Lot (one (1) in the front yard and one (1) in the back yard), and (iii) of a size not in excess of two (2) square feet in size;

(e) Each Owner may display up to two (2) flags on or at a Residence, which flags may include the United States flag(s), Texas state flag(s) or other state flag(s), seasonal flags (displayed no more than three (3) months during the then applicable season), flags in support of college or other athletic teams, or any other banners or flags otherwise consistent with the covenants, conditions and restrictions contained in this Declaration, which flags may be displayed by ground mounted (garden) or wall mounted flag poles; provided that, to the extent permitted under applicable law, no permanent flag poles shall be constructed or installed on any Lot;

(f) Each Residence may display up to two (2) spirit signs or other signs in support of athletic events and/or teams during the applicable sport season which are not otherwise consistent with the covenants, conditions and restrictions contained in this Declaration; and

(g) Each Residence may display seasonal decorations (including lights, lawn ornamentation, flags and banners) for a duration of no longer than three (3) months during the applicable season and provided that such decoration is in any event consistent with the covenants, conditions and restrictions contained in this Declaration; and

(h) One (1) sign for each candidate and/or ballot item on advertising such political candidate(s) or ballot item(s) for an election shall be permitted in accordance with Section 202.009 of the Texas Property Code, provided that such signs:

(i) may not be displayed (A) prior to the date which is ninety (90) days before the date of the election to which the sign relates, and (B) after the date which is ten (10) days after that election date;

(ii) must be ground-mounted; and

(iii) shall in no event (A) contain roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component, (B) 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, (C) include the painting of architectural surfaces, (D) threaten the public health or safety, (E) be larger than four feet (4') by six feet (6'), (F) violate a law, (G) contain language, graphics, or any display that would be offensive to the ordinary person, or (H) be accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

Declarant, the Association, and/or any homebuilder, or their respective agents, shall have the right, without notice, to remove any sign, billboard or other advertising Structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal.

2.16 Utilities. Each Residence situated on a Lot shall be connected to the public water and sanitary sewer lines. No privy, trailer sewage, cesspool or septic tank shall be placed or maintained upon or in any Lot. However, portable toilets will be allowed during building

construction. The use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except as reasonably required [not to exceed fifteen pounds] to operate portable gas grills or a permanent gas grills which may be installed or used by an Owner to serve a Residence) is prohibited. Except as to street lighting (if any) all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground (except meters, transformers, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities). Electric utility transformers may be installed only in locations designated on the Plat for such purpose or otherwise approved in writing by the Architectural Control Committee, and all improvements on a Lot on which an electric transformer pad easement is located as shown on the Plat must be installed in compliance with all electric company guidelines for separations from pad-mounted transformers.

2.17 Temporary Structures. Subject to Sections 2.29 and 2.30 hereof, no temporary Structures of any kind shall be erected or placed upon any Lot without the prior written consent of the Architectural Control Committee.

2.18 Vehicles. All trucks one (1) ton and larger, motorcycles, boats, boat trailers, mobile homes, motor homes, camp mobiles, campers, motorized vehicles (other than passenger cars or automobiles) or trailers shall be stored or placed in such a manner that the vehicle is not visible from any street or any adjoining Lot and/or Common Area. No commercial vehicles or vehicles displaying company logos may be stored or placed overnight on the street adjacent to a Lot or on any driveway within such Lot visible from any street or any adjoining Lot and/or Common Area; provided, however, the company automobiles and/or company trucks (less than one [1] ton) of persons residing in or Owners of any Residence constructed on a Lot may at any time and from time to time park, place and/or store such company automobiles and/or company trucks on the street immediately adjacent to and/or driveway serving the Residence of the Lot owned or within which such Owner or person resides. Boats on trailers may be stored behind a fence provided that they cannot be viewed from the street or the ground level of any adjacent Lot or Common Area, and such fence is no closer than twenty-five feet (25') from the front building setback line.

2.19 Garbage and Garbage Containers. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All garbage shall be kept in City-approved containers. All rubbish, trash and garbage shall regularly be removed from the Lot and shall not be allowed to accumulate. Garbage containers may be placed at the curbside or other location designated by the City for pickup, not more than twenty- four (24) hours prior to the pickup time and garbage containers must be removed within twelve (12) hours after pickup. All garbage containers shall be kept in a location screened so as to be concealed from view of adjacent Lots, streets and common properties. Notwithstanding the foregoing, materials incident to construction of improvements may be stored on Lots during construction by Declarant or any approved homebuilder in accordance with applicable laws, ordinances, regulations or other requirements.

2.20 Offensive Activities; Pets. No noxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance within the Property or any portion thereof. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets are permitted, provided that they are not kept, bred or maintained for commercial purposes. All animals will be

kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Areas shall be responsible for immediately removing any solid waste of said animal.

2.21 Antennas, Aerials and Satellite Dishes.

(a) Any antenna or satellite dish less than one (1) meter in diameter shall be installed so as to not be visible from any street or the ground level of any adjacent Lot or Common Area, and shall be integrated with the Residence and surrounding landscape.

(b) Any broadcast television antennas and any other antennas and aerials shall be located inside the attic of the Residence constructed on the Lot.

(c) One (1) satellite dish over one meter in diameter shall be permitted per Residence only if it is not visible from any street or the ground level of an adjoining Lot or Common Area, and does not extend above the height of the fence surrounding the Lot on which such satellite dish is located.

(d) With respect to any antenna or satellite dish covered by Section 47 C.F.R. Part I, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time, the provisions of **Section 2.21(a)** and **2.21(b)** shall be applicable only to the extent that the requirements hereof do not (i) preclude reception of an acceptable quality signal, (ii) unreasonably delay or prevent installation, maintenance and use of the antenna or satellite dish, or (iii) unreasonably increase the cost of installation, maintenance and use of the antenna or satellite dish.

(e) Except with the written permission of the Architectural Control Committee or as expressly provided in this **Section 2.21**, no other exterior antennae, aerials, satellite dishes or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Residence or on any portion of the Lot outside the Residence.

2.22 Landscaping and Retaining Walls.

(a) Weather permitting, landscaping of a Lot must be completed within sixty (60) days after (i) the date on which any Residence on a Lot is ninety-five percent (95%) complete, with respect to the initial construction of a Residence on a Lot, or (ii) the date on which an Owner commenced installation and/or construction of such landscaping improvements with respect to landscaping improvements and work on Lots with existing Residences. Each Lot shall include at least (A) two (2) trees with a caliper of three inches (3") or greater within the front yard of each Lot, and (B) at least one (1) additional tree with a caliper of three inches (3") or greater within the side yard adjacent to and visible from a public right-of-way with respect to each corner Lot, and at least one tree of this caliper shall be maintained within such side yard of each corner Lot at all times thereafter (collectively, the "**Minimum Landscaping Requirements**"). With respect to each and every fence installed at or near the side Lot line of any corner Lot running parallel to a street, the Lot Owner shall be obligated to maintain all grass

areas between the fence and the street (and if any Owner fails to do so, the Association shall have the right, but not the obligation to maintain same at the Owner's cost, and shall have all other rights and remedies as are provided for in this Declaration).

(b) Retaining walls may be installed to achieve even grades for pools, driveways or Residence foundations or to prevent storm water drainage to flow onto other Lots as required by **Section 2.10(a)** hereof. Such retaining walls must be constructed of such materials and height, and in a manner and location, approved in writing by the Architectural Control Committee and the City, if applicable. All retaining walls visible from any street in front of a Lot, and, for corner Lots, from the adjacent side street, shall be finished with landscape quality rock or stone.

2.23 Exterior Lighting. Lighting and/or decorations on a Lot may not be used or placed in a manner which, in the Architectural Control Committee's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Residence that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six (6) weeks in advance of that specific holiday and must be removed within thirty (30) days after the holiday has ended. Upon being given notice by the Architectural Control Committee that any exterior lighting is objectionable, as determined by the Architectural Control Committee in its sole and exclusive discretion, the Owner of the Lot on which same is located shall immediately remove any such lighting or shield the same in such a way that it is no longer objectionable to the Architectural Control Committee.

2.24 Tennis Courts. Tennis courts shall not be permitted upon any Lot without the prior written approval of the Architectural Control Committee.

2.25 Gazebos, Greenhouses and Storage Sheds. No gazebo, pool pavilion, cabana, trellises, greenhouse, playhouse (other than a children's swing-set with fortress), treehouse, storage shed or other similar Structure may be erected or placed on a Lot without the prior written approval of the Architectural Control Committee. No such Structure shall (a) be taller than the height of the fence surrounding the yard upon which such Structure is to be situated, (b) exceed one hundred (100) square feet in floor area, or (c) be visible from any public street or any of the Common Areas or the ground level of any adjacent Lots; provided, however, any addition to add to an existing, or installation and/or construction of a new, porch addition attached to a Residence and located in the rear yard of any Lot will not be subject to the aforementioned restrictions, but the Plans therefore shall in any event be subject to approval of the Architectural Control Committee in accordance with **Section 7.03** hereof. Any Owner desiring to construct any such Structure (including a new or an addition to any existing porch attached to any Residence) shall submit Plans (including without limitation, the color and construction materials) to the Architectural Control Committee for approval in accordance with **Section 7.03** hereof, and the approval or disapproval of the Architectural Control Committee shall be based on considerations set forth in **Section 7.03** hereof, including without limitation, the merit of the Structure, compatibility with the Residence and adjoining Lots, and conformity and harmony with existing Structures and landscaping within the Subdivision.

2.26 Pools and Pool Equipment. No above-ground pools are permitted. All pool service equipment shall be either screened with shrubbery or fenced and located in either (a) a side yard between the front and rear boundaries of the Residence, or (b) in the rear yard, or (c) otherwise concealed in a location not visible from any Street, Common Area or adjacent Lot.

2.27 Mail Boxes. Curb-side mail boxes are required and shall be of a design as set forth on Exhibit E attached hereto and incorporated herein by reference or other design approved in writing by the approved by the Architectural Control Committee or Declarant and be designed and constructed in accordance with any guidelines and/or requirements of the City and/or United States Postal Service.

2.28 Exterior Maintenance; Weeds. Each Owner shall maintain the exterior appearance of the Residence and Structures on such Owner's Lot, shall keep all landscaping and sprinkler systems on such Owner's Lot in a neat, orderly and well-maintained condition and shall keep the sidewalk on such Owner's Lot in good condition and repair. If, at any time, and from time to time, an Owner shall fail to control weeds, grass or unsightly growth exceeding eight inches (8") in height, Declarant shall have the authority and right, and after Declarant no longer owns a Lot, the Association shall have the right, to go onto such Lot, or direct a third party service to go onto such Lot, for the purpose of mowing and cleaning such Lot, and shall have the authority and right to assess and collect from the Owner of such Lot the reasonable costs incurred in connection with such mowing or cleaning. Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in this Declaration for assessments and may be collected by any means provided in this Declaration for the collection of assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s).

2.29 Certain Declarant Uses. Notwithstanding anything herein to the contrary, Declarant and any homebuilder(s) authorized by Declarant may conduct their sales and marketing programs for the Property from any permanent or temporary sales buildings or trailers, and may conduct improvement work and activities on portions of the Property owned by them and do all things reasonably necessary or convenient as required to expeditiously commence, continue and complete such improvement work, including, but not limited to, the provision of temporary buildings (including, without limitation, trailers), temporary storage of construction materials and equipment and the installation of temporary signage of such types, in such sizes and at such locations on portions of the Property owned by them as they deem appropriate and in accordance with any applicable governmental requirements.

2.30 Construction Standards. Any builder constructing improvements on any Lot (or other portion of the Property designated in writing by Declarant for such use) may conduct such builder's construction operations and activities and do all things reasonably necessary as required to expeditiously commence, continue and diligently complete construction of any such improvements. All construction activities, temporary Structures, storage of materials and equipment, construction-related parking and temporary security fences shall be confined entirely on such Lot or, if applicable, such other portion of the Property designated by Declarant for such use. If a builder owns multiple Lots in the Property, the builder may designate one of the Lots to store construction materials and equipment and use the Lot for washout purposes. Each Owner is responsible for, and shall cause, through appropriate contractual provisions, all costs of

cleaning up any debris or waste improperly disposed of anywhere on the Property. Each Owner and such Owner's contractors shall use reasonable diligence to maintain an attractive, clean, nuisance-free environment during the period of construction. Each Owner of a Lot on which improvements are being constructed shall keep all streets reasonably cleared of mud and dirt left by construction vehicles for each Lot. Once commenced, all construction on a Lot of any Residence (including the initial Residence thereon) (a) shall be continued with due diligence and good faith until completion, and (b) shall be completed (i) with respect to the construction of the initial Residence on a Lot, within twelve (12) months after commencement thereof, and (ii) with respect to any construction of Structures or a Residence (other than the initial Residence) or renovations of existing Structures and/or an existing Residence on a Lot, within one hundred eighty (180) days after commencement thereof. In addition to the foregoing, in the event that following the commencement thereof, the construction of Structures or a Residence (including the initial Residence) on any Lot ceases for a period of sixty (60) or more consecutive days, upon delivery of written notice by Declarant or the Association delivered to the Owner of such Lot, the Association may assess, as a Special Member Assessment against the Lot and the Owner thereof, construction delay damages in the amount of Fifty and No/100 Dollars (\$50.00) per day until the construction work related to such Structures and/or Residence recommences.

2.31 Repairs, Replacements and Modifications. The provisions of this Article II shall apply to any and all repairs, replacements or modifications of any improvements placed upon any Lot and shall not be deemed or construed as being limited to initial or new construction.

2.32 Structures; Generally. Except to the extent expressly permitted by this Declaration, (a) no Structure shall be erected, altered, placed or permitted to remain on any Lot unless approved in writing by the Architectural Control Committee, and (b) any Structure(s) located on any Lot shall not exceed the maximum height permitted by the applicable governmental requirements pertaining to the height of such Structure(s).

ARTICLE III

COMMON AMENITIES AND EASEMENTS

3.01 Obligation of Declarant. Declarant has installed and constructed, or caused to be installed and constructed, or will install and construct, various improvements and infrastructure to be dedicated and/or conveyed to the City or the Association as determined by Declarant in such condition as required by the City in order to obtain approval of the Plat. Upon completion of all Common Amenities and Common Areas and dedication or conveyance of the same to the City or the Association, Declarant shall have no further obligation whatsoever to construct any improvements on the Property or maintain any of same, or otherwise fund or be liable for any matters concerning such improvements or otherwise related to the Subdivision.

3.02 Responsibilities of the Association for Maintenance of the Common Amenities and Easement Areas; Maintenance Reserve Fund. Upon dedication or conveyance by Declarant to the Association, the Association shall, and has the sole responsibility to, maintain (a) the Common Amenities (including any Amenity Center and the Retention Pond), Common Areas and any Easement Areas and associated improvements and Common Amenities thereon,

and (b) any of the off-site Easement Areas outside the limits of the Subdivision which are or may become necessary or desirable in the future on any Easement Areas for the benefit of any present or future improvements and Common Amenities for the benefit of the Subdivision. The Association's costs of maintaining the Common Amenities and such Easement Areas will be collected from the Owners through Assessments as provided in Article V hereof. The Association shall not seek, by either act or omission, to abandon the Association's obligations as established by this Declaration to maintain the Common Amenities and/or any Easement Areas. In order to provide for extraordinary and unanticipated items regarding the maintenance obligations contained herein, prior to the transfer of control of the Board by Declarant to non-Declarant Owners, the Association shall establish a maintenance reserve fund for the maintenance of the Common Amenities and Easement Areas in an amount the Board shall, in its sole and absolute discretion, determine to be sufficient, but which shall in no case be less than the equivalent of one-sixth (1/6) of the then current Regular Assessment multiplied by all Lots within the Plat.

3.03 Association's Easement for Maintenance. Declarant prior to the establishment of the Association, and thereafter the Association, shall have a maintenance easement on all Lots to the extent reasonably necessary for the purpose of maintaining the Common Amenities and for the removal of any obstruction that may be placed on any Easement Areas that would constitute interference with the Association's use of any such easement, including, without limitation, the Easement Areas established pursuant to Sections 2.10(a) and 3.06 hereof.

3.04 Utility Easements. Declarant, the Association (by an action of the Board), the City and providers of utility services to the Subdivision shall have, and are hereby granted easements for installation, maintenance, repair, removal and operation of utilities and drainage facilities on, under and across the Easement Areas and for the removal of any obstruction that may be placed in such Easement Areas that would constitute interference with the use of any such easement, or with the use, maintenance, operation or installation of any such utility. Declarant, the Association, the City or the utility company exercising such easement rights shall promptly repair any damage to landscaping, sprinkler systems or other improvements resulting therefrom; provided, however, Declarant, the Association, the City and/or any utility company shall not have any obligation to repair any improvements installed in any Easement Areas.

3.05 Berm, Wall and Landscape Maintenance Easements. Declarant and the Association shall have a landscaping and screening wall maintenance easement along Lots 1-4 and 16 of Block D, and Lots 1-2 of Block G as shown on the Plat for the maintenance of the landscaping and screening wall thereupon.

3.06 Other Easements. Declarant and the Association shall have an easement and full right of ingress and egress at all times over and upon the Property and any Lot thereon for the exercise of any and all rights and functions set out in this Declaration. Any such entry by Declarant and the Association upon a Lot shall be made with as minimum inconvenience to the affected Owner as practical.

3.07 Universal Elements. In addition to the easements expressly granted to certain Owners pursuant to this Declaration, including, without limitation, those easements granted

pursuant to Section 2.13(c) and 2.14(f) hereof, the Owner of each Lot (including Declarant so long as Declarant is the Owner of any Lot) is hereby granted an easement not to exceed two (2) feet in width over all adjoining Lots and Common Areas (if any) for the purpose of accommodating any encroachment or protrusion due to engineering errors, errors in original construction, surveying, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments, protrusions, settling or shifting; provided, however, that in no event shall an easement for encroachment or protrusion be created in favor of an Owner or Owners of said encroachment or protrusion occurred due to willful misconduct of said Owner or Owners. In addition, the Owner of each Lot is hereby granted an easement for minor encroachments, not to exceed three (3) feet in width by overhanging roofs and eaves as originally constructed over each adjoining Lot and/or common areas (if any) and for the maintenance thereof. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to each affected Lot and shall pass with each conveyance of said Lot.

ARTICLE IV

PURPOSE, MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

4.01 Purpose of the Association. The Association shall have and exercise the rights, and shall perform the functions of, the Association for the benefit of, and as agent for, the Owners as set forth in this Declaration.

4.02 Membership. Every Owner (including Declarant) shall automatically be and must remain a Member of the Association so long as such Person is an Owner. Membership will be appurtenant to and will not be separated from ownership of any Lot or land (as applicable). The membership of a Person in the Association shall terminate automatically whenever such Person ceases to be an Owner, except that such termination shall not release or relieve such Person from any liability or obligation arising under this Declaration during such Person's period of ownership. Any transfer of title to a Lot shall operate automatically to transfer membership in the Association appurtenant to such Lot to the new Owner of such Lot.

4.03 Member in Good Standing. A Member shall be considered to be a "Member in Good Standing" (herein so called) and eligible to use the Common Amenities and Common Areas if such Member:

(a) Has, at least ten (10) days prior to the taking of any vote by the Association, fully paid all Assessments or other charges levied by the Association, as such Assessments or charges are provided for hereunder;

(b) Does not have a Notice of Unpaid Assessments filed by the Association against the Lot owned by such Owner;

(c) Has not received any notice of a violation of this Declaration or any notice of violation of any design guidelines promulgated by the Architectural Control Committee, which violation is continuing and has not been cured by such Member in violation; and

(d) Has discharged all other obligations to the Association as may be required of Members hereunder or under the Association Documents.

The Board shall have the right and authority, in the Board's sole and absolute discretion, to waive the ten (10) day prior payment requirement in **Section 4.03(a)** hereof and require only that such payment be made at any time before such vote is taken if the Board shall determine, in the Board's sole and exclusive judgment, that extenuating circumstances exist which have prevented prior payment. Any Member not conforming with the provisions of this **Section 4.03** shall be declared by the Board not to be a Member in Good Standing and, to the extent permitted by applicable law, any such Member shall not be entitled to vote on matters before the Association until such time as Member in Good Standing status is attained and so declared by the Board. Notwithstanding the foregoing or anything to the contrary contained herein or in any Association Documents, each Member (whether or not such Member is a Member in Good Standing) shall have the right, as and to the extent required by law, to vote in elections of the members of the Board of Directors of the Association and/or on any matter concerning the rights or responsibilities of such Member as an Owner under this Declaration or other Association Documents.

4.04 Voting Rights. The Association shall have the following two (2) classes of voting membership:

(a) **CLASS A:** "Class A Members" (herein so called) shall be all Members other than Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. If any Lot is owned by more than one (1) Owner, the number of votes attributable to such Lot still shall be one (1), and such one (1) vote may be cast only if all of the Owners owning such Lot, prior to or at the time of the vote in question, have delivered to the Association a written agreement as to how such vote is to be cast or a written designation of one (1) of such Owners to cast the vote attributable to such Lot. Any Owner who is not an individual must designate, upon request of the Board, a representative to act for such Owner in Association matters and to cast the vote of such Owner, such designation to be made in writing to the Board. The Association shall have no affirmative obligation to take any action to determine which Member is the person designated to cast the Lot's vote. If the Members fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.

(b) **CLASS B:** Declarant (and Declarant's successors and assigns, in accordance with the terms hereof), shall be the sole "Class B Member" (herein so called) so long as Declarant, or any such successor or assign, owns a single Lot or any portion of the Property. The Class B Member shall be entitled to (i) five (5) votes for each Lot, and (ii) two (2) votes for each acre of land that is within a Common Area or not part of a Lot, which it owns within the Property. The Class B Member shall cease to be a Class B Member upon the closing of the sale of the last Lot or portion of land within the Property owned by the Class B Member, and Class B shall cease to exist at such time; provided, however, upon inclusion of any Annexed Land by Declarant in the Property that is subject to this Declaration, the Class B voting rights of the Class B Member shall

be reinstated until the last Lot or portion of land within the Property, inclusive of the Annexed Land, is sold by Declarant.

4.05 Quorum, Notice and Voting Requirements.

(a) Except as otherwise specifically provided in this Declaration, any action requiring the vote or approval of the Members or the Owners shall require the majority vote of the Members (both classes voting together), represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, at which a "Regular Quorum" or a "Special Quorum" is present. Written notice of a meeting must be given to all Members not less than ten (10) days nor more than thirty (30) days in advance of any such meeting and shall set forth the purpose(s) of such meeting. No action may be taken at a meeting on any matter that is not described in the applicable meeting notice as being on the agenda for such meeting. Notwithstanding anything herein to the contrary, to the extent permitted by applicable law and in the Association Documents from time to time, any action may be taken by written consent of the Members in lieu of formal meetings.

(b) The quorum (a "Special Quorum") required for any action referred to in Section 5.05(b) (maximum increase in Regular Assessments) hereof or Section 5.05(d) (Special Purpose Assessments) hereof or for the approval of any Common Services shall be as follows:

Members represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, entitled to cast thirty percent (30%) of all of the votes of Members (both classes of Members taken together) shall constitute a Special Quorum. If the required Special Quorum is not present at such meeting, that meeting may be adjourned, and an additional meeting may be called, subject to the notice requirement set forth herein, with the required Special Quorum at such second (2nd) meeting being reduced to one-half (1/2) of the required Special Quorum at the preceding meeting; provided, however, that such second (2nd) meeting must be held not later than thirty (30) days after the first (1st) meeting. Further, if the reduced required Special Quorum is not present at such second (2nd) called meeting, the adjournment of the meeting shall be continued, and one (1) additional meeting may be called, subject to the notice requirement set forth herein, with Declarant alone constituting the required Special Quorum at such third (3rd) meeting; provided that such third (3rd) meeting must be held not later than forty-five (45) days after the first (1st) meeting.

(c) The quorum (a "Regular Quorum") required for any action other than the action referred to in Section 4.05(b) hereof shall be as follows:

Members represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, entitled to cast ten percent (10%) of all of the votes of Members (both classes of Members taken together) shall constitute a Regular Quorum. If the required Regular Quorum is not present at such meeting, that meeting may be adjourned, and an additional meeting may be called, subject to the notice requirement set forth herein, with the required Regular Quorum at such second (2nd) meeting being reduced to one-half (1/2) of the required Regular Quorum at the preceding

meeting; provided, however, that such second (2nd) meeting must be held not later than thirty (30) days after the first (1st) meeting.

(d) As an alternative to the procedure set forth in this Section 4.05, any action may be taken without a meeting upon obtaining the assent given in writing and signed by Members (both classes of Members taken together) who hold more than (i) thirty percent (30%) of the outstanding votes eligible to be cast by Members (both classes of Members taken together) for actions referred to and requiring a Special Quorum as provided in Section 4.05(b) hereof, or (ii) ten percent (10%) of the outstanding votes eligible to be cast by Members (both classes of Members taken together) for actions referred to and requiring a Regular Quorum as provided in Section 4.05(c) hereof.

(e) Except as set forth in this Section 4.05, the notice, voting and quorum requirements for all action to be taken by the Association shall be as set forth in the Association Documents.

ARTICLE V

ASSESSMENTS

5.01 Covenants for Assessments.

(a) Each Owner, by acceptance of a deed or other conveyance or transfer of legal title to a Lot, whether or not it shall be so expressed in any such deed or other conveyance or transfer, shall be deemed to have covenanted and agreed to pay to the Association, or to an independent entity or agency which may be designated by the Association to receive such monies, the following assessments (collectively, the "Assessments");

(i) Regular Assessments as provided in Section 5.02 hereof;

(ii) Special Purpose Assessments as provided in Section 5.03 hereof;

and

(iii) Special Member Assessments as provided in Section 5.04 hereof.

(b) All Assessments shall remain the property of the Owner making payment of such Assessments but shall be controlled and expended by the Association and/or Declarant on behalf of the Association, on behalf of the Owners only for the specified purposes provided or approved pursuant to this Declaration. No profit, gain or other benefit is to be derived by the Association and/or Declarant on behalf of the Association, from the Assessments, but, instead, such funds shall be expended only as agent for the Owners. All services contemplated to be paid from Assessments shall be obtained by the Association on behalf of the Owners. Upon termination of the Association (and not before), all Assessments held at that time by the Association shall be allocated and returned to the Owners that paid such Assessments on a prorata basis based upon the number of Lots owned by each Owner and the total number of Lots within the Subdivision. No Assessments shall be levied against the Common Amenities, the Lots

or any other land owned by Declarant; provided, however that Declarant shall pay the amounts, if any, Declarant expressly agrees to pay pursuant to Section 5.02 hereof.

5.02 Regular Assessments.

(a) **"Regular Assessments"** (herein so called) shall be determined, assessed and expended on a calendar year basis, which shall be the fiscal year of the Association. Regular Assessments shall be used exclusively for the following purposes (collectively, the **"Common Expenses"**):

(i) maintaining, improving and/or operating the Common Amenities (including any Amenity Center), subject to the limitations set forth in Section 6.01 hereof;

(ii) the payment of taxes and insurance (if any) in connection with the Common Amenities and the Common Services;

(iii) developing and maintaining replacement and working capital reserves for the Association (including, without limitation, the maintenance reserve fund as provided for in Section 3.02 hereof);

(iv) providing the Common Services;

(v) the payment of insurance premiums and costs as provided in Section 6.02 hereof, including, without limitation, the premiums for officers', directors' and Architectural Control Committee Members' liability insurance, and the payment of any indemnity costs or costs of other functions of the Board or the Association pursuant to this Declaration;

(vi) meeting and carrying out all contractual obligations of the Association, including, without limitation, the Common Services obligation; and

(vii) carrying out the duties of the Board and the Association as set forth in this Declaration.

(b) Each year while this Declaration is in force, the Board shall set the amount of the Regular Assessments to be levied for the next calendar year, taking into consideration (i) the Common Expenses for the then current year, and anticipated increases in such expenses during such next calendar year, (ii) a contingency amount [not exceeding ten percent (10%) of the anticipated expenditures for such next year], (iii) amounts needed for any reserve fund as determined by the Board, (iv) the number of Lots subject to Assessments.

(c) The Regular Assessments for each calendar year shall be set by the Board on or about the 1st day of December of the preceding year or as soon thereafter as such determination reasonably can be made by the Board, and (v) should any excess surplus (exclusive of amounts in any reserve fund) exist at the end of any calendar year, the Board may, but shall not be obligated to, reduce the amount required for the next year's Regular Assessments by an amount equal to such surplus.

(d) The "Per-Lot Regular Assessment Amount" (herein so called) shall then be determined by the Board such that the sum of the Per-Lot Regular Assessment Amounts payable for each Lot subject to Assessments equals the aggregate Regular Assessments required as set by the Board. The Per-Lot Regular Assessment Amount shall be payable for each Lot which has been conveyed by Declarant to any third party, including, but not limited to, any Owner other than Declarant or a builder constructing the initial Residence on a Lot.

(e) Regular Assessments shall commence, and the Per-Lot Regular Assessment (pro-rated for the remaining portion of the fiscal year of the Association) shall become payable immediately upon the conveyance of any Lot by Declarant or builder constructing the initial Residence on a Lot (or reconveyance in the case of any Lot which is reacquired by Declarant) to an Owner that is an end-use homebuyer. Notwithstanding anything herein to the contrary, no Regular Assessments shall be payable for Lots owned by Declarant (whether now owned or hereafter acquired or reacquired) or any builder constructing the initial Residence on a Lot.

(f) Declarant shall, during the period prior to the date in which the number of available votes for the Class A Members exceed the number of votes available to the Class B Member subsidize the Association from time to time to the extent the Regular Assessments are insufficient to pay Common Expenses. Thereafter, Declarant may, but shall have no obligation to, subsidize the Association from time to time. In no event shall any amounts payable by Declarant be required to exceed the Per-Lot Regular Assessment Amount for each Lot which Declarant owns at the time of any such shortfall. In the event Declarant decides to subsidize the Association and any shortfall in the operating budget of the Association is due in part to the failure of the Association to collect delinquent Assessments, then the Association shall immediately and vigorously pursue collection of such delinquent Assessments, through foreclosure if necessary, and shall reimburse Declarant the amounts, if any, so collected.

5.03 Special Purpose Assessments. Subject to the provisions of **Section 5.05(d)** hereof, the Board may, from time to time, levy "Special Purpose Assessments" (herein so called) for the purpose of paying any capital improvements and other unanticipated expenses that normally would have been paid out of Regular Assessments but which were not included in that year's budget for Regular Assessments. Such Special Purpose Assessments shall be assessed on a per Lot basis in the same manner as the Regular Assessments are assessed as set forth in **Section 5.02** hereof.

5.04 Special Member Assessments. The Board may levy a "**Special Member Assessment**" (herein so called) on any Member, to the extent any directly related insurance proceeds (if any) paid to the Association are not sufficient to pay all such costs, for the purpose of:

(a) Paying the cost of any damage or loss requiring maintenance, repairs or replacement of Common Amenities, which damage or loss has been determined by the Board to have been caused, either directly or indirectly, by the act(s) of such Member, or such Member's agent, employee, occupant or visitor; and/or

(b) Paying the maintenance costs, construction delay damages and Violation Fines or other amounts chargeable to any Owner as otherwise set forth herein.

5.05 Special Provisions Regarding Assessments.

(a) Until and unless otherwise determined by the Board, the annual Per-Lot Regular Assessment Amount shall be Five Hundred and NO/100 DOLLARS (\$500.00) per Lot per year; provided, however, that notwithstanding anything herein to the contrary (including Section 5.05(b)), upon the completion of the Amenity Center, the annual Per-Lot Regular Assessment Amount shall be increased, if necessary, to cover the operating expenses for the Amenity Center.

(b) The Board may establish the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount for each Lot, provided that the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount may not be increased more than twenty percent (20%) above the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount for the previous year unless approved by a Special Quorum of the Members of the Association as provided in Section 4.05(b) hereof. Notwithstanding the foregoing, in the event that the Board determines that due to unusual circumstances the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount even as increased by twenty percent (20%) will be insufficient to enable the Association to pay the Common Expenses, then in such event, the Board shall have the right to increase the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount by the amount necessary to provide sufficient funds to cover the Common Expenses without the approval of the Members as provided herein; provided, however, the Board shall only be allowed to make one (1) such increase per calendar year without obtaining approval of a Special Quorum of the Members as provided in Section 4.05(b) hereof.

(c) If any Assessment remains unpaid at the expiration of fifteen (15) calendar days from and after the due date established by the Board, a late charge, in an amount of Twenty-Five and No/100 Dollars (\$25.00) or as otherwise determined by the Board to offset administrative costs of the Association resulting from such delinquency, shall be assessed against the non-paying Owner for each month, or portion thereof, that any portion of an Assessment remains unpaid. A service charge of Twenty-five and No/100 Dollars (\$25.00) or such other amount established by the Board (but in no event exceeding the maximum lawful amount) shall be charged for each check that is returned because of insufficient funds. The amounts of late charges and service charges may be adjusted, from time to time, by the Board, and shall in no event exceed the amounts permitted by applicable law.

(d) Any Special Purpose Assessments for the purpose of paying the cost of the construction of a capital improvement or for the provision of Common Services shall require the affirmative approval of a Special Quorum of the Members as provided in Section 4.05(b) hereof.

5.06 Due Date of Assessments. The Regular Assessments provided for herein shall be payable annually within thirty (30) days after an invoice is delivered by the Association to an Owner (and for purposes hereof, delivery shall be deemed to have been made when deposited in the United States mail, postage prepaid, in the ordinary course by the Association or an agent,

such as a management company, on behalf of the Association, addressed to the Owner at the address of the Owner shown on the records of the Association); provided, however, the Board shall have the right to require payment of Regular Assessments at other intervals if the Board deems appropriate in the Board's sole and exclusive discretion (but with payment thereof not required any earlier than thirty (30) days after delivery of any such invoice therefor). The due date of any Special Purpose Assessment or Special Member Assessment shall be fixed in the notice to the Owner or Owners providing for any such Assessment, but will not be sooner than thirty (30) days after such notice is delivered to the Owner or the Owners thereof. The initial Per-Lot Regular Assessment Amount as established by the Board shall be payable, in whole or in part (as applicable), simultaneously with the sale and conveyance of each Lot by Declarant to a third party Owner other than a builder, or simultaneously with the sale and conveyance of a Lot by a builder to a third party Owner, and such applicable amount shall be prorated over the remainder of the calendar year from the date of such conveyance.

5.07 Personal Obligation for Payment of Assessments.

(a) The Assessments provided for herein shall be the personal obligation of the Owner or Owners of the Lot with respect to which such Assessment is made. The covenants for the payment of Assessments as provided in this Declaration touch and concern each Lot, are covenants running with the land and specifically bind the Owners and their heirs, successors, devisees, personal representatives and assigns. Except for Declarant and builders as expressly provided herein, no Owner, for any reason, may exempt itself from liability for Assessments.

(b) In the event that any Assessment (or any part thereof) is not paid when due, the Owner or Owners of such Lot shall be obligated to pay interest on any such unpaid Assessment from such date at the Default Rate of Interest together with the charges made as authorized in Section 5.05(c) hereof and all costs and expenses of collection thereof, including, but not limited to, reasonable attorneys' fees. The Board shall have the right to reject any partial payment of any Assessment and demand full payment thereof, or the Board may, in the Board's sole and exclusive discretion, elect to accept any such partial payment on account only, without in so doing waiving any rights established hereunder with respect to any remaining balance due.

(c) The obligation of any Owner to pay an Assessment with respect to a Lot made for any period of time that an Owner owns the Lot shall remain such Owner's personal obligation (notwithstanding any future sale or conveyance of such Owner's Lot) and shall also pass to the purchaser(s) of such Lot. However, any lien against a Lot for any unpaid Assessments shall be unaffected by any sale of such Lot and shall continue in full force and effect.

(d) In the event of a sale of a Lot, it shall be the obligation of the then Owner of such Lot to disclose to any buyer, assignee, title company designated to handle such transaction, financing entity or any other party to such sale any unpaid Assessments, such notice to be given in writing to all parties to the intended transaction at least fifteen (15) days before the date at which such transaction is to be consummated. A copy of any such notice shall be sent to the Association at the same time. A former Owner shall not be liable for Assessments due with respect to a Lot which accrue for periods after such Person no longer is the Owner of such Lot and the notice required herein has been given.

5.08 Assessment Lien and Foreclosure. THE OBLIGATION TO PAY ASSESSMENTS IN THE MANNER PROVIDED FOR IN THIS **ARTICLE V**, TOGETHER WITH INTEREST FROM SUCH DUE DATE AT THE DEFAULT RATE OF INTEREST, THE CHARGES MADE AS AUTHORIZED IN **SECTION 5.05(c)** HEREOF, ALL VIOLATION FINES AND THE COSTS OF COLLECTION, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, IS SECURED BY A CONTINUING CONTRACTUAL LIEN (THE "ASSESSMENT LIEN") AND CHARGE ON THE LOT COVERED BY SUCH ASSESSMENT, WHICH SHALL BIND SUCH LOT AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES. The aforesaid continuing contractual Assessment Lien shall attach to the Lots as of the date of the recording of this Declaration in the Real Property Records of Denton County, Texas, and such Assessment Lien shall be superior to all other liens except as provided in **Section 5.10** hereof. Such Assessment Lien shall not encumber or attach to the Common Amenities. The Association shall have the right to subordinate the aforesaid Assessment Lien to any other lien. The exercise of such right shall be entirely discretionary with the Board. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment Lien is subordinate as provided herein or in **Section 5.10** hereof, all Lots are conveyed to, and accepted and held by, the Owner thereof subject to the Assessment Lien provided for in this **Section 5.08**. To evidence any unpaid Assessments, the Association may prepare a written notice of unpaid Assessments (the "Notice of Unpaid Assessments") setting forth the amount of the unpaid indebtedness, the name of the Owner of and describing the affected Lot. Such notice shall be signed by one (1) of the officers of the Association or an agent of the Association and may, at the Board's sole and exclusive discretion, be recorded in the Real Property Records of Denton County, Texas. The Association shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced therein have been paid. THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER'S LOT BY THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY THE PROCEDURES SET OUT IN TEXAS PROPERTY CODE 209.0092, AS MAY BE AMENDED, REVISED, OR SUPPLEMENTED FROM TIME TO TIME. . Each Owner subject to this Declaration grants the Association a Power of Sale to Foreclose on their respective Lot in accordance with the terms of this Declaration. In addition, the Association may institute suit against the Owner personally to obtain a judgment for unpaid Assessments. Furthermore, the Association shall have such other rights and remedies as permitted or allowed by applicable law. In any foreclosure proceeding, whether judicial or nonjudicial, or in any suit or other action against, or pertaining to, the Owner, the Owner shall be required to pay all costs, expenses and reasonable attorneys' fees incurred by the Association. The Association shall have the right and power to buy the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same, subject to any statutory right of redemption.

5.09 Certificate. Upon request by an Owner, the Association shall furnish a certificate setting forth the unpaid Assessments owed by an Owner. Upon the written request of any Mortgagee holding a first lien or lien securing a purchase money or home improvement

mortgage loan on a Lot, the Association shall report to any said Mortgagee any Assessments which are delinquent and unpaid at the time of the report.

5.10 Subordination of the Assessment Lien. The Assessment Lien provided for herein on a Lot shall be subordinate and inferior to the lien or liens granted by the Owner of such Lot to secure the repayment of a loan made for the purpose of providing purchase money funds for such Lot, funds used at any time to install or construct improvements on such Lot, funds used to pay ad valorem taxes on such Lot, and/or any other liens having priority under any applicable federal, state or local laws; provided, however, that such subordination shall apply only to Assessment Liens which have become due and payable prior to the foreclosure sale, whether public or private, of such Lot pursuant to the terms and conditions of any such mortgage or deed of trust lien. Such foreclosure sale shall not relieve such Lots from any Assessment Lien for Assessments thereafter becoming due.

5.11 Transfer Fees and Fees for Issuance of Resale Certificates. The Board may, at its sole discretion, enter into contracts with third parties to oversee the operation and management of the Association. The Association and/or these third parties may, and likely will, have fees ("**Transfer Fees**") that will be charged to an Owner for costs in connection with the transfer of a significant estate or fee simple title to a Lot and the issuance of any "Resale Certificate" (herein so called), which may include (without limitation) certificates issued pursuant to **Section 5.09** hereof. The Association or its agent shall not be required to issue a Resale Certificate until payment of the Transfer Fees has been received by the Association and/or its agent, as applicable. Transfer Fees are not refundable and may not be regarded as a prepayment or credit against any Assessments. This **Section 5.11** does not obligate the Board or any third party to levy such Transfer Fees. Notwithstanding the foregoing, approved homebuilders approved by the Declarant shall not be obligated to pay any Transfer Fees in connection with such approved homebuilder's sale of a Lot to a homebuyer.

ARTICLE VI

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS

6.01 Powers and Duties.

(a) The affairs of the Association shall be conducted by the Board. The Board shall be selected in accordance with the Association Documents. The Board, for the benefit of the Owners, shall provide, and shall pay for (if applicable), from Assessments, the following if and to the extent such have been or are hereafter provided by or contracted for by the Association or the Board as the Board determines in the Board's sole and exclusive discretion:

(i) Operation, care, maintenance, repair and preservation of the Common Areas, Common Amenities, Easement Areas, and the furnishing and upkeep of any desired personal property for use in the Common Areas, Common Amenities, and Easement Areas;

- (ii) The Common Services;
 - (iii) Any private trash and garbage collection service and security arrangements;
 - (iv) Taxes, insurance and utilities, if any, which pertain to the Common Areas, Common Amenities or are otherwise provided for herein which the Board may obtain in its sole discretion;
 - (v) The services of a Person or Persons to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Association or by a manager designated by the Board;
 - (vi) Legal, accounting and other professional services on behalf of the Association;
 - (vii) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alteration, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in the Board's sole and exclusive opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration; and
 - (viii) The collection (as a part of the Regular Assessments) and payment of any assessments owed by an Owner or the Association under any other recorded deed restrictions, if any.
- (b) The Board shall have the following additional exclusive rights, powers and duties:
- (i) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Amenities owned by the Association;
 - (ii) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;
 - (iii) To perform any of the Board's duties under this Declaration by contracting with third parties, to enter into other contracts, to maintain one (1) or more bank accounts and, generally, to have all the powers necessary or incidental to the operation, functions and management of the Association;
 - (iv) To protect or defend the Common Areas and Common Amenities from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for maintenance, repairs and replacements;

(v) To make reasonable rules and regulations for the operation and use of the Common Areas and Common Amenities (including the Amenity Center) and the Common Services and to amend them from time to time;

(vi) To own fee simple title, or an easement interest, in the Common Areas and Common Amenities;

(vii) To make available to each Owner within ninety (90) days after the end of each year after the first sale of a Lot to an Owner other than Declarant, an annual report of the Association;

(viii) To adjust the amount, collection and use of any insurance proceeds;

(ix) To enforce the provisions of this Declaration and any rules and regulations made hereunder and, in the sole and exclusive discretion of the Board, to enjoin and seek damages from any Owner for violation of any such provisions or rules and regulations;

(x) To appoint members of the Architectural Control Committee as described in, and subject to the provisions of, Article VII hereof; and

(xi) To perform such other duties and functions as are necessary to carry out the rights and obligations of the Board and the Association under this Declaration.

6.02 Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Areas, Common Amenities, Easement Areas, any improvements thereon or appurtenances thereto and the Common Services for the interest of the Association and of all Members thereof, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use to the Common Areas, Common Amenities and Easement Areas and for services similar to the Common Services. Such insurance may include, but need not be limited to, the following:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier;

(b) Public liability and property damage insurance on a broad form basis;

(c) Fidelity bond for all officers and employees of the Association having control over the receipt and disbursement of funds; and

(d) Officers', directors' and Architectural Control Committee members' liability insurance.

The Association and the Members shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association remaining (after satisfactory completion of repair and replacement) shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Areas and/or Common Amenities. If the insurance proceeds are insufficient to repair or replace any such loss or damage, the Association may levy Special Purpose Assessment(s) or Special Member Assessment(s) (if applicable) to cover any such deficiency.

6.03 Affiliated Contracts. The Board, acting on behalf of the Association, shall have the full power and authority to contract with any Owner, including, without limitation, Declarant, for the performance of services which the Association is obligated or authorized to obtain, such contracts to be at competitive rates then prevailing for such services and upon such other terms and conditions, and for such consideration as the Board may deem advisable in the Board's sole and exclusive discretion and in the best interest of the Association provided that the level of service received is consistent with that available from third parties.

6.04 Liability Limitations.

(a) Neither Declarant, nor any Member, director, officer or representative of the Association, nor the Board or the Architectural Control Committee shall be personally liable for the debts, obligations or liabilities of the Association.

(b) The directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or as otherwise expressly provided in the Association Documents. Declarant and such directors, officers and Architectural Control Committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association.

(c) THE ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, SHALL INDEMNIFY AND HOLD DECLARANT, SUCH DIRECTORS, OFFICERS AND MEMBERS OF THE ARCHITECTURAL CONTROL COMMITTEE HARMLESS FROM ANY AND ALL EXPENSES, LOSS OR LIABILITY TO OTHERS ON ACCOUNT OF ANY SUCH CONTRACT OR COMMITMENT (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS). IN ADDITION, EACH DIRECTOR AND EACH OFFICER OF THE ASSOCIATION AND EACH MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE SHALL BE INDEMNIFIED AND HELD HARMLESS BY THE ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, FROM ANY EXPENSE, LOSS OR LIABILITY TO OTHERS (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS) BY REASONS OF HAVING SERVED AS SUCH DIRECTOR, OFFICER OR ARCHITECTURAL CONTROL COMMITTEE MEMBER AND AGAINST ALL EXPENSES, LOSSES AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE ATTORNEYS' FEES, INCURRED BY OR IMPOSED UPON SUCH DIRECTOR, OFFICER OR ARCHITECTURAL CONTROL COMMITTEE MEMBER

IN CONNECTION WITH ANY PROCEEDING TO WHICH SUCH PERSON MAY BE A PARTY OR HAVE BECOME INVOLVED BY REASON OF BEING SUCH DIRECTOR, OFFICER OR ARCHITECTURAL CONTROL COMMITTEE MEMBER AT THE TIME ANY SUCH EXPENSES, LOSSES OR LIABILITIES ARE INCURRED SUBJECT TO ANY PROVISIONS REGARDING INDEMNITY CONTAINED IN THE ASSOCIATION DOCUMENTS, EXCEPT IN CASES WHEREIN THE EXPENSES, LOSSES AND LIABILITIES ARISE FROM A PROCEEDING IN WHICH SUCH DIRECTOR, OFFICER OR ARCHITECTURAL CONTROL COMMITTEE MEMBER IS ADJUDICATED GUILTY OF WILLFUL MISFEASANCE OR MALFEASANCE, MISCONDUCT OR BAD FAITH IN THE PERFORMANCE OF SUCH PERSON'S DUTIES OR INTENTIONAL WRONGFUL ACTS OR ANY ACT EXPRESSLY SPECIFIED IN THE ASSOCIATION DOCUMENTS AS AN ACT FOR WHICH ANY LIMITATION OF LIABILITY SET FORTH IN THE ASSOCIATION DOCUMENTS IS NOT APPLICABLE; PROVIDED, HOWEVER, THIS INDEMNITY DOES COVER LIABILITIES RESULTING FROM SUCH DIRECTOR'S, OFFICER'S OR ARCHITECTURAL CONTROL COMMITTEE MEMBER'S NEGLIGENCE.

(d) Any right to indemnification provided herein shall not be exclusive of any other rights to which a director, officer or Architectural Control Committee member, or former director, officer or Architectural Control Committee member, may be entitled. The Association shall have the right to purchase and maintain, as a Common Expense, directors', officers', and Architectural Control Committee members', insurance on behalf of any Person who is or was a director or officer of the Association or an Architectural Control Committee member against any liability asserted against any such Person and incurred by any such Person in such capacity, or arising out of such Person's status as such.

ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

7.01 Architectural Control Committee.

(a) Declarant shall appoint an initial Architectural Control Committee (herein so called) to consist of not fewer than three (3) natural persons. Declarant shall have the sole and exclusive right to appoint, remove and replace members of the Architectural Control Committee for so long as Declarant owns at least one (1) Lot or any portion of the Property Subject to Annexation. Upon Declarant's sale of its last Lot and all of the Property Subject to Annexation, the rights to appoint, remove and replace Members of the Architectural Control Committee shall vest in the Board; provided, however, that Declarant shall continue to retain the sole right to perform the functions of the Architectural Control Committee set forth in this Declaration as they pertain to the review and approval of Plans (and any modifications thereto) for construction of the initial Residences on Lots within the Subdivision as long as Declarant owns at least one (1) Lot or any portion of the Property Subject to Annexation. Members of the Architectural Control Committee shall hold their positions until death or resignation, or until removed or their successors are appointed by Declarant so long as Declarant or Declarant's affiliates own at least

one (1) Lot or any portion of the Property Subject to Annexation, and thereafter, by the Board at a duly called meeting for such purpose.

(b) In the event that the Architectural Control Committee is not established by Declarant and/or the Board pursuant to this Declaration, the rights, powers and duties of the Architectural Control Committee may be exercised by Declarant until Declarant no longer owns a Lot or any portion of the Property Subject to Annexation, or such earlier time when Declarant expressly waives such right in writing, and thereafter, by the Board.

7.02 Purpose of the Architectural Control Committee. (a) A function of the Architectural Control Committee is to review and approve or disapprove Plans for improvements proposed to be constructed or modified on Lots and otherwise perform the duties set forth in this Declaration. NO PERMANENT IMPROVEMENTS SHALL BE ERECTED, CONSTRUCTED, PLACED, ALTERED, REMODELED, DEMOLISHED OR PERMITTED TO REMAIN ON A LOT UNTIL PLANS, IN SUCH FORM AND DETAIL AS THE ARCHITECTURAL CONTROL COMMITTEE MAY DEEM NECESSARY, SHALL HAVE BEEN SUBMITTED TO THE ARCHITECTURAL CONTROL COMMITTEE AND APPROVED BY IT IN WRITING. The vote of a majority of the members of the Architectural Control Committee shall be considered as the act of the Architectural Control Committee. The process of reviewing and approving Plans and specifications is one which of necessity requires that the Architectural Control Committee is called upon from time to time to make subjective judgments on items for which specific standards or guidelines are not expressly set forth in this Declaration. The Architectural Control Committee is given full power and authority to make any such subjective judgments and to interpret the intent and provisions of this Declaration in such manner and with such results as the Architectural Control Committee, in its sole and exclusive discretion, may deem appropriate, and in the absence of final adjudication by a court of competent jurisdiction that the Architectural Control Committee has abused its discretion, such action by the Architectural Control Committee shall be final and conclusive. Unless expressly stated otherwise herein, the Architectural Control Committee shall have the right to grant variances from the requirements of this Declaration as it, in its sole and exclusive judgment, deems appropriate. The Architectural Control Committee shall have the sole and exclusive discretion to determine whether Plans submitted to it for approval are acceptable, and the Architectural Control Committee or Declarant shall be entitled and empowered to enjoin or remove any construction undertaken pursuant plans that have not been approved in writing by the Architectural Control Committee.

(b) Notwithstanding the foregoing or anything to the contrary contained herein, at any time and from time to time, the Architectural Control Committee may, but is under no obligation to, establish specific design guidelines and building standards to assist Persons in determining the type of Structures, Residences and/or other improvements, including, without limitation, landscaping improvements, which may be constructed and/or installed on the Property. Pursuant to **Sections 8.01** and **8.02** hereof, Declarant may annex additional property to be included within the Property subject to this Declaration. Declarant and/or the Architectural Control Committee may establish differing restrictions, guidelines and building standards for each such portion of Annexed Land, which may impose more restrictive or less onerous building standards with respect to such Annexed Land; provided, however, in no event shall any restrictions, guidelines

and building standards established for any portion of the Property Subject to Annexation be less restrictive than those set forth in this Declaration. The Architectural Control Committee or Declarant may amend or modify such guidelines or standards from time to time in its sole discretion. Such guidelines or standards shall supplement this Declaration with respect to the applicable portion of the Property to which such guidelines and/or standards apply, and be general guides to permitted construction within the Property, but shall not diminish the Architectural Control Committee's or Declarant's authority to approve plans as otherwise provided herein.

7.03 Plans.

(a) The Architectural Control Committee shall have the right to disapprove any submitted Plans that are not in compliance with this Declaration, if they are incomplete or if the Architectural Control Committee determines that such Plans are not consistent with this Declaration. The Architectural Control Committee may base its approval or disapproval on, among other things:

- (i) harmony of external design with improvements on other Lots;
- (ii) relation of topography, grade and finish ground elevations to that of adjoining Lots and drainage functions;
- (iii) screening of mechanical and other installations;
- (iv) extent and quality of landscaped areas; and
- (v) compliance with the purpose and general plan, intent and provisions of this Declaration.

(b) The Architectural Control Committee shall be available on a reasonable basis to meet with an Owner or such Owner's representatives to discuss and answer questions concerning proposed improvements and their compliance with this Declaration.

(c) An Owner desiring to construct or install any improvements on such Owner's Lot must submit Plans (herein so called) to the Architectural Control Committee, in duplicate (two original sets), for such improvements that contain sufficient detail and information to show the following:

- (i) the general plan for the Residence showing exterior shape, elevations, height, exterior materials, window locations and roofing of all exterior surfaces.
- (ii) cover matters specifically requiring Architectural Control Committee approval as provided in this Declaration; and
- (iii) such other information as may be required by the Architectural Control Committee.

Provided, however, that notwithstanding anything contained herein to the apparent contrary, once a specific floor plan or elevation has been submitted and approved by the Architectural Control Committee, an Owner may use the identical floor plan or elevation again without again submitting same for approval by the Architectural Control Committee.

(d) Approval of the Plans shall be based upon a determination by the Architectural Control Committee as to whether or not in its judgment, such Plans adequately meet the requirements created by this Declaration. Approval of any Plans with regard to certain improvements shall not be deemed a waiver of the Architectural Control Committee's right, in its sole and exclusive discretion, to disapprove similar Plans, or any of the features or elements included therein, for any other improvements or to refrain from granting similar variances.

(e) The Architectural Control Committee shall, within thirty (30) days after receipt of each required submission of Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of the approval or disapproval of the submitted Plans as hereinafter provided. In the event the Architectural Control Committee fails to advise the submitting party by written notice within thirty (30) days of either the approval or disapproval of the Plans, the applicant may give the Architectural Control Committee written notice of such failure to respond, stating that, unless the Architectural Control Committee responds within fifteen (15) days of receipt of such notice, approval shall be deemed granted. However, no Plans, whether expressly approved or deemed approved pursuant to the foregoing, shall be inconsistent with this Declaration unless a variance has been granted in writing pursuant to **Section 7.03(g)** hereof. If any submission of Plans is not complete or does not include all data required by this Declaration, the Architectural Control Committee, within a reasonable period of time, shall notify the Owner of such deficiencies, and such Plans shall not be considered to have been submitted until such deficiencies have been corrected. If, and at such time as the Plans meet the approval of the Architectural Control Committee, one (1) set of Plans will be retained by the Architectural Control Committee and the other set of Plans will be marked "Approved" and returned to the Owner or such Owner's designated representative, accompanied by a statement of complete approval or approval based on certain conditions. If the Plans are found not to be in compliance with this Declaration, one (1) set of such Plans shall be returned marked "Disapproved", accompanied by a statement of the items found not to comply with this Declaration or not to be acceptable to the Architectural Control Committee. Any modification or change to the approved Plans must again be submitted to the Architectural Control Committee for its inspection, review and approval or disapproval.

(f) An Owner may prepare detailed plans and specifications that do not vary from or modify the Plans that have been approved by the Architectural Control Committee. Improvements may be constructed or installed on a Lot only in conformance with such approved Plans. If work is not commenced within six (6) months from the date of Architectural Control Committee approval of the Plans, then the approval given by the Architectural Control Committee pursuant to this **Article VII** shall be deemed revoked by the Architectural Control Committee, unless the Architectural Control Committee extends in writing the time for commencing such work.

(g) Upon submission of a written narrative request for same, the Architectural Control Committee may, from time to time, in its sole and exclusive discretion, permit Owners to construct, erect or install improvements which are in variance from this Declaration. In any case, however, such variances shall be in basic conformity with and shall blend effectively with, the general architectural style and design of the Subdivision. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests. The grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce this Declaration against any other Owner or against the same Owner for any other matter. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Architectural Control Committee must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted. The failure of the Architectural Control Committee to act on a variance request within any particular period of time shall not constitute the granting or approval of any such variance request.

(h) The Architectural Control Committee may charge a reasonable fee (no more than \$250.00) to cover its costs in reviewing any plans and inspecting a Lot and/or improvements constructed thereon, which fee shall be paid by an Owner at the time of submission and/or resubmission of plans to the Architectural Control Committee for review and approval. Notwithstanding the foregoing or anything to the contrary contained herein, builders of any initial Residence to be constructed on a Lot shall not be liable for any charges of the Architectural Control Committee under this Section 7.03(h) with respect to the review and approval of the Architectural Control Committee of plans for the initial construction of a home on a Lot by such builder.

(i) No construction, installation, repair, replacement or placement of any Residence, Structure or other improvements requiring Architectural Control Committee approval pursuant to this Declaration shall commence until the Owner constructing, installing, repairing, replacing or placing any Residence, Structure or other improvements on a Lot has obtained a written permit and approval for same from the Architectural Control Committee, Board and/or Declarant, as applicable.

7.04 Inspections. The Architectural Control Committee, or its designees, shall have the right during reasonable business hours to enter upon and inspect any Lot or improvements then under construction to determine whether or not the Plans therefor have been approved by the Architectural Control Committee. If the Architectural Control Committee shall determine that such Plans have not been approved or that the Plans which have been so approved are not being substantially complied with, the Architectural Control Committee may, in its sole and exclusive discretion, give the Owner of such Lot written notice to such effect, and, thereafter, Declarant or the Architectural Control Committee, on behalf of the Association, shall be entitled to enjoin further construction and to require the removal or correction of any work in place that does not comply with the approved Plans. If any improvements shall be altered or replaced on any Lot otherwise than in substantial conformity with the approved Plans therefor, such action shall be deemed to have been undertaken without requisite approval of the Architectural Control Committee and to be in violation of this Declaration; and Declarant or the Architectural Control

Committee, on behalf of the Association, shall be entitled to take action as permitted under this Declaration with respect thereto.

7.05 Interior Alterations. An Owner may make improvements and alterations within the interior of such Owner's Residence without first obtaining Architectural Control Committee approval, provided such interior improvements and interior alterations do not change the exterior appearance of any improvements, including, without limitation, changes in window locations, window design or window materials.

7.06 Changes. No construction or installation of improvements on a lot that is inconsistent with, in addition to, or materially different from, any previously approved Plans shall be commenced or permitted until the Plans reflecting any and all such changes or additions have been submitted to, and approved by, the Architectural Control Committee in accordance with this **Article VII**; provided, however, no such approval is required for changes within the interior of any building that do not in any way change the exterior appearance.

7.07 Failure to Obtain Architectural Control Committee Approval.

(a) The construction, repair, replacement, installation or placement of any Residence, Structure or improvement of any type on a Lot without prior written approval from the Architectural Control Committee shall constitute a violation of the terms of this Declaration and grounds for the imposition by the Architectural Control Committee or Association of an automatic fine against the Owner of said Lot in an amount not to exceed Fifty and No/100 Dollars (\$50.00) per day commencing upon the date on which the unapproved construction, repair, replacement, installation or placement commenced and continuing until such Owner has obtained Architectural Control Committee approval of same. Any fine charged against an Owner and/or Lot pursuant to this **Section 7.07** shall be Special Member Assessments and be a personal obligation of the Owner in violation pursuant to **Section 5.07** and secured by a lien against the violating Owner's Lot in accordance with **Section 5.08** hereof. The right to impose fines under this **Section 7.07** shall be cumulative and not restrictive of any other remedies at law or in equity, and the exercise by Declarant, the Board, the Architectural Control Committee and or the Association of any particular right, power or remedy shall not be deemed an election of remedies or to preclude Declarant's, the Board's, the Architectural Control Committee's and/or the Association's resort to other rights, powers or remedies available to Declarant, the Board, the Architectural Control Committee and/or the Association under this Declaration or otherwise.

(b) Notwithstanding and in addition to the remedies set forth in **Section 7.07(a)** above, Declarant, the Board, the Architectural Control Committee and/or the Association shall be entitled to relief by way of injunction in the event of any Owner's failure to obtain approval of the Architectural Control Committee as required under this **Article VII**.

7.08 Limitation on Liability. Declarant, the Association, the Board (or any of its members) and the Architectural Control Committee (or any of its members), shall not, individually or in combination, be liable in damages (or otherwise) to any Owner for any act or occurrence, or any failure to act, relating to this Declaration, including any claims by any Owner regarding or arising out of any subjective decisions, mistakes in judgment, negligence or

nonfeasance arising out of, or in connection with, the approval or disapproval or failure to approve or to disapprove any Plans submitted, or for otherwise acting in good faith in such capacities. Declarant and the Architectural Control Committee (or any of its members) shall not, individually or in combination, be liable in damages (or otherwise) in connection with any construction, design, engineering or defect associated with any improvement (or otherwise) constructed on the Property. APPROVAL OF PLANS BY THE ARCHITECTURAL CONTROL COMMITTEE DOES NOT CONSTITUTE ANY WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER THAT SUCH PLANS COMPLY WITH GOVERNMENTAL REQUIREMENTS OR GOOD AND PRUDENT DESIGN, ENGINEERING AND CONSTRUCTION PRACTICES. IT IS THE SOLE AND EXCLUSIVE RESPONSIBILITY OF THE OWNER TO DETERMINE AND SEE THAT SUCH OWNER'S PLANS AND SPECIFICATIONS COMPLY WITH ALL SUCH REQUIREMENTS AND PRACTICES. The Architectural Control Committee shall have the right, but never the obligation, to perform the functions set forth in this Declaration.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTY

8.01 Declarant's Right to Annex Adjacent Property. Declarant hereby reserves for itself and its affiliates and/or any of their respective successors and assigns the right to annex any portion or all of the Property Subject to Annexation into the scheme of this Declaration as provided in this Article VIII. Notwithstanding anything herein or otherwise to the contrary, Declarant an/or such affiliates, successors and/or assigns shall have the exclusive unilateral right, privilege and option (but never an obligation), from time to time and at any time during the period expiring twenty (20) years from the date this Declaration is recorded in the Real Property Records of Denton County, Texas, to annex (a) all or any portion of the Property Subject to Annexation, and (b) subject to the provisions of this Declaration and the jurisdiction of the Association, any additional property located adjacent to or in the immediate vicinity of the Subdivision (collectively, the "Annexed Land"), by filing in the Real Property Records of Denton County, Texas, a Supplemental Declaration expressly annexing any such Annexed Land. Such Supplemental Declaration shall not require the vote of the Owners, the Members of the Association, or approval by the Board or other action of the Association or any other Person. Any such annexation shall be effective upon the filing of such Supplemental Declaration in the Real Property Records of Denton County, Texas. Declarant shall also have the unilateral right to transfer to any other Person Declarant's right, privilege and option to annex Annexed Land, provided that such transferee or assignee shall be the developer of at least a portion of the Annexed Land and shall be expressly designated by Declarant in writing to be the successor or assignee to all or any part of Declarant's rights hereunder.

8.02 Procedure for Annexation. Any such annexation shall be accomplished by the execution and filing for record by Declarant (or the other owner of the property being added or annexed, to the extent such other owner has received a written assignment from Declarant of the right to annex hereunder) of a Supplemental Declaration which must set out and provide for the following:

(a) A legally sufficient description of the Annexed Land being added or annexed;

(b) That the Annexed Land is being annexed in accordance with and subject to the provisions of this Declaration, that all of the provisions of this Declaration, as amended, shall apply to the Annexed Land being added or annexed with the same force and effect as if said Annexed Land were originally included in this Declaration as part of the Initial Property, with the total number of Lots increased accordingly, and that the Annexed Land being annexed shall be developed, held, used, sold and conveyed in accordance with, and subject to, the provisions of this Declaration as theretofore and thereafter amended; provided, however, that if any Lots or portions thereof being so annexed are to be treated differently than any of the other Lots (whether such difference is applicable to other Lots included therein or to the Lots now subject to this Declaration), the Supplemental Declaration should specify the details of such differential treatment and a general statement of the rationale and reasons for the difference in treatment, and if applicable, any other special or unique covenants, conditions, restrictions, easements or other requirements as may be applicable to all or any of the Lots or other portions of Annexed Land being annexed;

(c) That an Assessment Lien is therein created and reserved in favor of the Association to secure collection of the Assessments as provided in this Declaration, and as provided for, authorized or contemplated in the Supplemental Declaration, and setting forth the first year Per-Lot Regular Assessment and the amount of any other then applicable Assessments (if any) for the Lots within the Annexed Land being made subject to this Declaration; and

(d) Such other provisions as Declarant therein shall deem appropriate.

8.03 Amendment. The provisions of this Article VIII may not be amended without the express written consent of Declarant (and Declarant's successors and assigns in accordance with the terms hereof).

ARTICLE IX

GENERAL PROVISIONS

9.01 Binding Effect and Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, shall be binding on all Owners and shall inure to the benefit of and be enforceable by Declarant, the Association, the legal representatives thereof, and their successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date of the recording of this Declaration, after which time this Declaration shall automatically be extended for three (3) successive periods of ten (10) years each, unless after such fifty (50) years an instrument executed and duly acknowledged by Owners owning, in the aggregate, at least ninety percent (90%) of the Lots has been recorded in the Real Property Records of Denton County, Texas, abolishing this Declaration.

9.02 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the

sole and exclusive opinion of the Board, will best effect the general plan of development as reflected in this Declaration. The Board shall have the right, power and authority to determine all questions arising under or in connection with this Declaration and to construe and interpret the provisions thereof, and any determination, construction or interpretation made by the Board, in the absence of an adjudication by a court of competent jurisdiction that any such action was an abuse of discretion, shall be binding on the Owners. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the office of the County Clerk of Denton County, Texas. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. The singular wherever used herein shall be construed to mean the plural when applicable and vice versa, and the use herein of any gender shall mean any other gender when applicable. Any and all exhibits referred to herein and attached hereto are made a part hereof by reference. This Declaration shall be construed under, and in accordance with, the laws of the State of Texas.

9.03 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms or provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants. Any Owner acquiring a Lot in the Development in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity or enforceability thereof and, by acquiring the Lot, agrees to hold Declarant, the Association and their legal counsel and other professional advisors harmless therefrom. Declarant shall not be responsible for the acts or omissions of any individual, entity or other Owners.

9.04 Amendments.

(a) For so long as Declarant owns any Lot within the Property or the Property Subject to Annexation for development and sale, Declarant may unilaterally amend this Declaration without the joinder or vote of any other party if such amendment is necessary (i) to bring any provisions of this Declaration into compliance with any applicable governmental statute, rule, regulation or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to purchase, insure, or guarantee mortgage loans on the Lots; (iv) to satisfy the requirements of any local, state or federal governmental agency, (v) to modify the use and covenant restrictions in **Article II** hereof (subject to any affected Owner's consent), or (vi) for any other purpose. For so long as Declarant owns any Lot within the Property or Property Subject to Annexation for development and sale, Declarant may unilaterally amend this Declaration, without the joinder or vote of any other party, as may be necessary or desirable from time to time in Declarant's sole judgment, to correct or clarify errors, omissions, mistakes or ambiguities contained herein. No amendment pursuant to this paragraph, however, shall adversely affect the title to any Lot unless the Owner(s) of such affected Lot(s) shall consent in writing.

(b) 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 Members (both classes taken together) representing seventy percent (70%) of the total Class A votes and Class B votes in the Association, and the consent of Declarant so long as Declarant owns at least one (1) Lot or any portion of the Property Subject to Annexation.

(c) Any and all amendments to or terminations of this Declaration shall be recorded in the Real Property Records of Denton County, Texas. And no such termination or amendment shall be effective until a document setting forth the amendment or termination has been duly executed and acknowledged Declarant, as applicable, and by Owners holding the required votes, or by the Secretary (herein so called) of the Association certifying the required affirmative vote of the Members as required hereinabove, and such document has been recorded in the Real Property Records of Denton County, Texas.

9.05 Enforcement. Declarant, the Association and the Owners shall have the right, but not the obligation, to enforce the covenants and restrictions set out in this Declaration. Enforcement may be made by any proceedings at law or in equity against any Person violating or attempting to violate any part of this Declaration, as such may be amended or modified, to restrain or enjoin violations thereof, to recover damages or to seek such other relief available pursuant to applicable law. Damages shall not be deemed adequate compensation for any breach or violation of any provision of this Declaration, and Declarant, the Association and each Owner shall be entitled to relief by way of injunction, as well as any other remedy either at law or in equity. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party. The rights, powers and remedies provided in this Declaration shall be cumulative and not restrictive of any other remedies at law or in equity, and the exercise by a Person of any particular right, power or remedy shall not be deemed an election of remedies or to preclude such Person's resort to other rights, powers or remedies available to any such Person.

9.06 No Waiver or Obligation to Enforce. No delay or failure on the part of Declarant, the Association or any Owner to invoke any available right, power or remedy with respect to a breach of this Declaration shall be held to be a waiver by that party (or estop that party from asserting) any right, power or remedy available to such party upon the recurrence or continuance of said breach or the occurrence of a different breach. Neither Declarant, the Association nor the Owners, shall be under any obligation to take any action to enforce the terms of this Declaration. The failure by Declarant, the Association or any Owner to enforce any provision of this Declaration shall in no event subject Declarant, the Association or any Owner to any claims, liability, cost or expense; it being the express intent of this Declaration to provide Declarant, the Association or any Owner with the right (such right to be exercised at its sole and absolute discretion), but not the obligation to enforce the terms of this Declaration for the benefit of any Owner(s) of any Lot(s) in the Development.

9.07 Liens/Validity and Severability. Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, lien or other similar security instrument

which may then be existing on any Lot. Invalidation of any one (1) or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which such other provisions and covenants shall remain in full force and effect.

9.08 Notices. Any notice required to be given to Declarant, the Association or any Owner under the provisions of this Declaration shall be deemed to have been properly delivered when actually delivered by hand-delivery or three (3) days after any such notice has been deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed (a) for notice to an Owner to the address of the Owner as shown on the records of the Association at the time of such mailing, and (b) for notice to Declarant or the Association to 3131 Harvard Avenue, Suite 103, Dallas, Texas 75205, Attn: Mr. James R. Brickman, or at such other address specified by Declarant or the Association from time to time. The bylaws of the Association may provide additional methods of notice to Owners, including but not limited to, notice by electronic mail as permitted by the Texas Property Code.

9.09 Mortgages. No default by an Owner of a Lot under any provision of this Declaration shall affect any existing lien or mortgage on that Lot. A Mortgagee shall not be liable for Assessments made with respect to a Lot during any period in which its only interest in the Lot is that of a Mortgagee.

9.10 Approvals. No approval by Declarant, the Association or the Architectural Control Committee pursuant to the provisions hereof shall be effective unless in writing, except as otherwise expressly provided herein.

9.11 Imposition of Violation Fines. In the event that any Person fails to cure (or fails to commence and proceed with diligence to complete the work necessary to cure) any violation of this Declaration within ten (10) days after receipt of written notice from the Board designating the particular violation, the Board shall have the power and authority to impose upon that Person a fine for any such violation (herein referred to as a "Violation Fine") not to exceed Fifty and No/100 Dollars (\$50.00) per day from the expiration of aforementioned ten (10) day period and until such violation has been cured or the applicable Person commences such curing as long as such Person continues to proceed with diligence to complete such cure. There shall be no limit to the number or the aggregate amount of Violation Fines which may be levied against a Person for the same violation. The Violation Fines, together with interest at the Default Rate of Interest and any costs of collection, including, but not limited to, reasonable attorneys' fees, shall be part of any such Violation Fine. Violation Fines shall be Special Member Assessments and be a personal obligation of the Owner in violation pursuant to Section 5.07 and secured by a lien against the violating Owner's Lot in accordance with Section 5.08 hereof. The right to impose a Violation Fine shall be cumulative and not restrictive of any other remedies at law or in equity, and the exercise by Declarant and/or the Association of any particular right, power or remedy shall not be deemed an election of remedies or to preclude Declarant's and/or the Association' resort to other rights, powers or remedies available to Declarant and/or the Association under this Declaration or otherwise.

9.12 Notice and Hearing. (a) Prior to the imposition of any Violation Fine or the levying of any Special Member Assessment on an Owner, the Association will give notice to the Owner in compliance with Section 209.006 of the Texas Property Code (the "Property Code"), as the same may be hereafter amended. Such notice shall be as follows:

- (i) Notice will be delivered by certified mail return receipt requested.
- (ii) The notice must describe the violation or property damage that is the basis for the Violation Fine, and state any amount due the Association from the Owner.
- (iii) The notice must inform the Owner that the Owner is entitled to a reasonable time to cure the violation and avoid the Violation Fine and that the Owner may request a hearing under this Section 9.12 and Section 209.007 of the Property Code on or before the thirtieth (30th) day after the Owner receives the notice.

(b) In compliance with Section 209.007 of the Property Code, if the Owner submits a written request for a hearing, the Association shall hold a hearing not later than the 30th day after the date the Board receives the Owner's request, and shall notify the Owner of the date, time and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. If the hearing is to be held before a committee appointed by the Board, the notice described in Section 9.12(a) hereof shall state that the Owner has the right to appeal the committee's decision to the Board by written notice to the Board.

9.13 Management of the Association. In the event that the Board elects to contract with a management company to perform certain duties of the Board in accordance with Section 6.01(k) hereof, the Board shall record or cause to be recorded in each county in which the Subdivision is located a management certificate, signed and acknowledged by an officer or the management company of the Association in accordance with the requirements of Section 209.004 of the Texas Property Code. An amended management certificate shall be recorded no later than the thirtieth (30th) day after the date on which the Association has notice of a change in any information pertaining to the management company applicable to the Association. Notwithstanding the foregoing or anything to the contrary contained herein, in no event shall Declarant, the Association and/or their respective officers, directors, employees, and/or agents, or the Board be subject to liability to any Person for a delay in recording or failure to record a management certificate except as otherwise provided by law.


REMAINDER OF PAGE LEFT BLANK - SIGNATURE PAGE FOLLOWS

EXECUTED as of April 18, 2013.

DECLARANT:

JBGL MUSTANG, LLC,
a Texas limited liability company

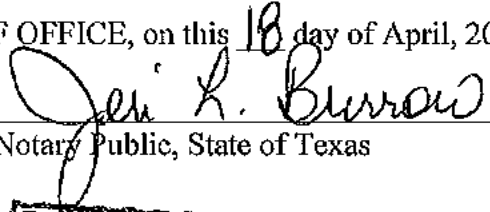
By:


James R. Brickman
Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared James R. Brickman, Manager of JBGL Mustang, LLC, a Texas limited liability company, known to me to be the person and agent whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said limited liability company, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this 18 day of April, 2013.


Notary Public, State of Texas

[SEAL]

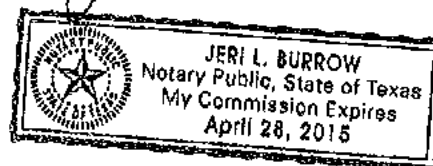


EXHIBIT A

Being all of the following one hundred eighteen (118) single-family residential Lots as shown on the final plat of "Mustang Park", an Addition to the City of Carrollton, Denton County, Texas, as recorded on March 8, 2013, under Document No. 2013-74, in the Real Property Records of Denton County, Texas, and/or in Cabinet 2013, Slide 74, of the Map or Plat Records of Denton County, Texas (the "Plat"):

LOTS:

BLOCKS:

And the following lot(s) as shown on the Plat as **[Open Space/Common Area]** to be owned and maintained by the Association as part of the Common Areas:

- Lot G, Block 1x, as described on the Record Plat of Mustang Park Phase Five (47.413 acres), an addition to the City of Carrollton, Texas, recorded on March 8, 2013 as Document No. 2013-74, map/plat records of Denton County, Texas.
- Lot F, Block 1x, as described on the Record Plat of Mustang Park Phase Five (47.413 acres), an addition to the City of Carrollton, Texas, recorded on March 8, 2013 as Document No. 2013-74, map/plat records of Denton County, Texas.
- Lot D, Block 1x, as described on the Record Plat of Mustang Park Phase Five (47.413 acres), an addition to the City of Carrollton, Texas, recorded on March 8, 2013 as Document No. 2013-74, map/plat records of Denton County, Texas.
- Lot C, Block 1x, as described on the Record Plat of Mustang Park Phase Five (47.413 acres), an addition to the City of Carrollton, Texas, recorded on March 8, 2013 as Document No. 2013-74, map/plat records of Denton County, Texas.
- Lot C, Block 2x, as described on the Record Plat of Mustang Park Phase Five (47.413 acres), an addition to the City of Carrollton, Texas, recorded on March 8, 2013 as Document No. 2013-74, map/plat records of Denton County, Texas.
- Lot A, Block 1x, as described on the Record Plat of Mustang Park Phase Five (47.413 acres), an addition to the City of Carrollton, Texas, recorded on March 8, 2013 as Document No. 2013-74, map/plat records of Denton County, Texas.
- Lot A, Block 2x, as described on the Record Plat of Mustang Park Phase Five (47.413 acres), an addition to the City of Carrollton, Texas, recorded on March 8, 2013 as Document No. 2013-74, map/plat records of Denton County, Texas.
- Lot A, Block 3x, as described on the Record Plat of Mustang Park Phase Five (47.413 acres), an addition to the City of Carrollton, Texas, recorded on March 8, 2013 as Document No. 2013-74, map/plat records of Denton County, Texas.

LEGAL DESCRIPTION AND/OR DEPICTION OF THE PROPERTY SUBJECT TO ANNEXATION



EXHIBIT C

LOCATION OF 60' LOTS AND 80' LOTS

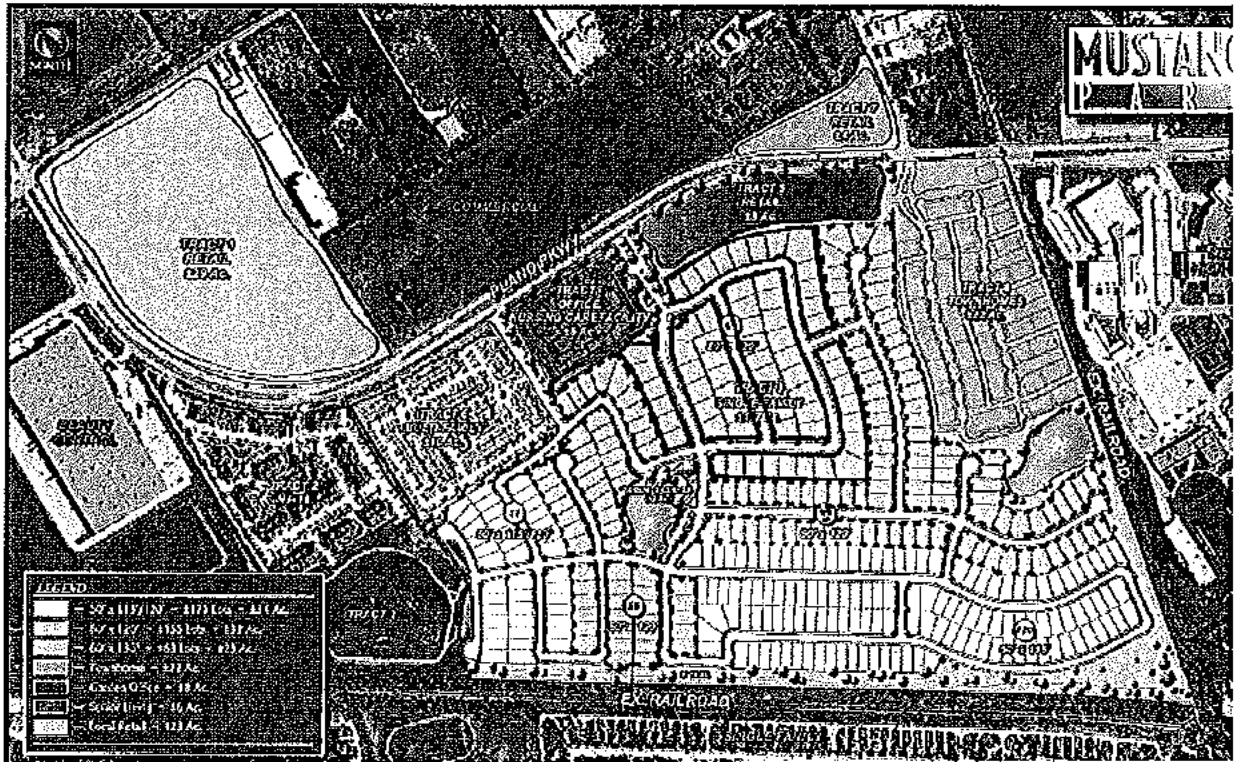


EXHIBIT D

TUBULAR STEEL FENCE DETAIL



EXHIBIT D-1

**DESCRIPTION AND/OR DEPICTION OF LOTS
AFFECTED BY TUBULAR STEEL FENCE REQUIREMENT**

Lots affected:

- Lot 14, Blk A – side fence
- Lot 27, Blk A – side fence
- Lot 28, Blk A – side fence
- Lot 20, Blk A – rear fence
- Lot 21, Blk A – rear fence
- Lot 22, Blk A – rear fence
- Lot 23, Blk A – side fence
- Lot 41, Blk A – side fence
- Lot 42, Blk A – rear fence
- Lot 43, Blk A – rear fence
- Lot 44, Blk A – rear fence
- Lot 45, Blk A – rear fence
- Lot 46, Blk A – rear fence
- Lot 47, Blk A – rear fence
- Lot 48, Blk A – rear fence
- Lot 49, Blk A – rear fence
- Lot 50, Blk A – rear fence
- Lot 51, Blk A – rear fence
- Lot 52, Blk A – rear fence
- Lot 53, Blk A – rear fence
- Lot 54, Blk A – rear fence
- Lot 55, Blk A – rear fence
- Lot 56, Blk A – rear fence
- Lot 57, Blk A – rear fence

EXHIBIT E

MAILBOX DESIGN

