

ORDINANCE 09-066

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM R-1 (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO PUD (PLANNED UNIT DEVELOPMENT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, W & B Development, Ltd., a Texas limited partnership, has presented to the City of Killeen a request for amendment of the Zoning Ordinance of the City of Killeen by changing the classification of the hereinafter described property from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) to allow R-1 (Single-Family Residential District) uses and commercial uses to include B-3 (Local Business District) uses and also including lodges, fraternal organizations and trade or business schools, said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 24th day of August 2009, and due notice of the filing of said request and the date of hearing thereon was given as required by law, and hearing on said request was set for 6:00 P.M., on the 8th day of September 2009, at the City Hall, City of Killeen;

WHEREAS, the City Council at said hearing duly considered said request, the action of the Planning and Zoning Commission and the evidence in support thereof, and the City Council being of the opinion that the request should be approved;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:

SECTION I. That the zoning classification of the following described tract be changed from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) allowing R-1 (Single-Family Residential District) uses and commercial uses to include B-3 (Local Business District) uses and also including lodges, fraternal organizations and trade or business schools for approximately 214.11 acres, being part of the Simeon D. Carothers Survey, Abstract No. 177, part of the James Allcorn Survey, Abstract No. 25 and part of the William L. Shelbourn Survey, Abstract No. 774, for property located on the east right-of-way of Featherline Road, approximately 2,700 feet south of the intersection of Stagecoach Road and Featherline Road and north of Chaparral Road, Killeen, Texas.

SECTION II. That the Articles of Incorporation (“Articles”) and the Declaration of Covenants, Conditions and Restrictions (“Declaration”) of the Yowell Ranch Homeowners Association, Inc. as submitted to the City of Killeen by W & B Development, Ltd. are attached hereto and incorporated herein for all purposes and intents as provided and required by the City of Killeen Code of Ordinances. Said Articles and Declaration shall be recorded in the land records of Bell County, Texas and shall perpetually govern said Yowell Ranch Homeowners Association, Inc. in accordance with the City of Killeen Code of Ordinances. The City of Killeen hereby expressly disclaims and denies the creation of any duty or the acceptance of any responsibility to enforce any provision of said Articles or Declaration, but reserves the right to enforce any provision required by this ordinance or the City of Killeen Code of Ordinances.

SECTION III. That the Yowell Ranch Concept Plan (“Plan”) attached hereto is incorporated herein for all purposes including, without limitation, limiting any commercial use provided hereunder to the area depicted on the Plan. Further, any final plat or plats, whether original, amended or replats shall substantially conform to the Plan adopted hereby. Any conflicts that are not specifically addressed in this ordinance or the Plan that may exist between the Plan, the R-1 zoning district, the otherwise appropriate business district for a given commercial use, the Planned Unit Development zoning regulations or other provisions of the Code of the City of Killeen, the most stringent requirement shall control.

SECTION IV. That the granting of the PUD classification shall not relieve the developer from the responsibility to comply with all other applicable governmental regulations, instructions, codes, resolutions, the ordinances of the city, except to the extent expressly specified in this ordinance approving the planned unit development classification, and the following specifically modified regulations:

1. That all residential lots of the subdivision shall be a minimum of 5,000 square feet.
2. That the average residential lot size of the subdivision shall be at least 6,000 square feet, and the lot size calculation shall exclude non-buildable lots and portions thereof.
3. That each residential structure constructed shall contain a minimum of at least 1,325 square feet of enclosed living space.
4. That each residential lot must contain a private garage for not fewer than two (2) automobiles and no garage shall be permanently enclosed.

5. That all fences and sidewalks shall comply with City of Killeen ordinances, and fences that enclose a residential rear yard may not exceed six feet in height, and standard sidewalks shall be provided in front of every residential lot.
6. That the development shall contain approximately 20 acres of open space, to include two play grounds.
7. That all proposed hike and bike trails be clearly delineated on the concept plan and total approximately 3,700 linear feet.
8. That, except as provided below, the exterior walls of all single family dwellings shall be constructed of a combination of native stone, brick and/ or cementitious siding products which collectively comprise a 90% masonry veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors and trim work.
9. That the front exterior wall of all two-story single family dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products, which collectively, comprise a 90% masonry veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work. The side exterior walls of the first floor of all two-story single family dwellings shall be constructed of a combination of native stone, brick and/ or cementitious siding products, which, collectively, comprise a 90% masonry veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work.
10. That the commercial uses specified shall be limited to the area of property depicted on the Plan attached hereto and shall include those uses allowed within the B-3 zoning district, and also the following uses: lodges and fraternal organizations and trade or business schools.
11. That there shall be no repeat exterior elevation within any group of five homes. "Elevation" shall mean the architectural design, accents, and color of a structure.
12. That at least one tree and at least five bushes shall be planted in the front yard of each residential lot and prior to the issuance of a certificate of occupancy for the residential lot. Trees and shrubs shall be maintained and replaced by the landowner as necessary.

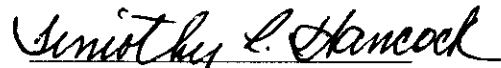
SECTION V. That should any section or part of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the validity, force, or effect of any other section or parts of this ordinance.

SECTION VI. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION VII. That this ordinance shall take effect immediately upon passage of the ordinance.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 22nd day of September 2009, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:


Timothy L. Hancock, MAYOR

ATTEST:


Paula A. Miller, CITY SECRETARY



APPROVED AS TO FORM


Kathryn H. Davis, City Attorney

Case #Z09-16

Ord #09-_____.

CITY COUNCIL MEMORANDUM FOR ORDINANCE

AGENDA ITEM

**ZONING CASE #Z09-16
R-1 TO PUD**

ORIGINATING DEPARTMENT TM PLANNING & DEVELOPMENT SERVICES

Nature of the Request

This request is to rezone approximately 214.11 acres from R-1 (Single Family Residential) to PUD (Planned Unit Development) and to permit single family residential uses and commercial uses as articulated in the Declaration of Covenants, Conditions and Restrictions of the Yowell Ranch Homeowners Association and the Yowell Ranch Concept Plan.

District Descriptions:

The PUD allows for single family residences of at least 1,200 square feet of enclosed living space, a public elementary school, and all commercial uses currently permitted in the B-3 (Local Business District) zoning district, to include the following:

- florist, garden shop, greenhouse or nursery
- lodges and fraternal organizations
- trade or business schools, and
- sale of beer and/ or wine sales for off-premises consumption

The development will have an average lot size of 6,000 square feet and residential lots must be a minimum of 45 feet in width, with 20' front and rear setbacks. There shall be a side yard on each side of the lot having a width of not less than five (5) feet. A side yard adjacent to a side street shall not be less than fifteen (15) feet. In those instances where there are no minimum standards, development will be in accordance with the underlying R-1 zoning.

Property Specifics

Applicant/Property Owner: WBW Land Investment

Property Location: The property is located north of Chaparral Road along the east right-of-way of Featherline Road, Killeen, Texas.

Legal Description: The 214.11 acres are part of the Simeon D. Carothers Survey, Abstract No. 177, part of the James Allcorn Survey, Abstract No. 25 and part of the William L. Shelbourn Survey, Abstract No. 774.

Zoning/ Plat Case History:

- Rezoned from "A" Agricultural to R-1 (ordinance #08-93) on November 18, 2008.

Character of the Area:

This area that lies along Featherline Road consists of single family residential development and undeveloped acreage tracts. It is anticipated that the Killeen Independent School District (KISD) will develop a high school site immediately south of the subject property.

Existing Land Use(s) on the Property: Undeveloped

Table 1. Surrounding Land Uses (Zoning)

Direction	Zoning
North	PUD zoning
West	B-2 zoning/ Agricultural zoning
East	Agricultural zoning
South	Agricultural zoning

Figure 1. Aerial Map



Historic Properties: None

Infrastructure and Community Facilities

Emergency Response:

Fire Protection District: City of Killeen

Miles from Fire Station: Currently, the nearest fire station is Fire Station #8, which is located less than 4 miles away at 7252 E. Trimmier Road.

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: Water infrastructure is available and adequate. Sanitary sewer and storm sewer infrastructure is available with adequate capacity.

Transportation:

Existing conditions: Featherline Road is classified as a 90' minor arterial on the City's current Thoroughfare Plan. It is of substandard composition.

Proposed Improvements: Improvement of Featherline and Chaparral Roads are subject to unfunded future transportation capital improvement project bond program.

Projected Traffic Generation: There will be significant traffic generation. However, at this time, the City does not have a mechanism to require a traffic impact analysis (TIA) or impact fees for new development. Therefore the applicant is not required to perform an assessment of the traffic generation impacts of their development proposal.

Environmental Assessment

Topography: The property is vacant, with vegetative ground cover and sparse trees.

Regulated Floodplain/Floodway/Creek: The proposed development encroaches into a FEMA special flood hazard area (SFHA).

Land Use Analysis

Land Use Plan: N/A

Plan Recommendation: N/A

Consistency: N/A

Public Notification

The staff notified seven surrounding property owner regarding this request. Staff received one letter of support from Sherrie Yowell Anderson.

Recommendation

The Planning staff recommended approval of the rezone request. Commissioner Diaz made a motion to approve zoning case #Z09-16 with the following conditions:

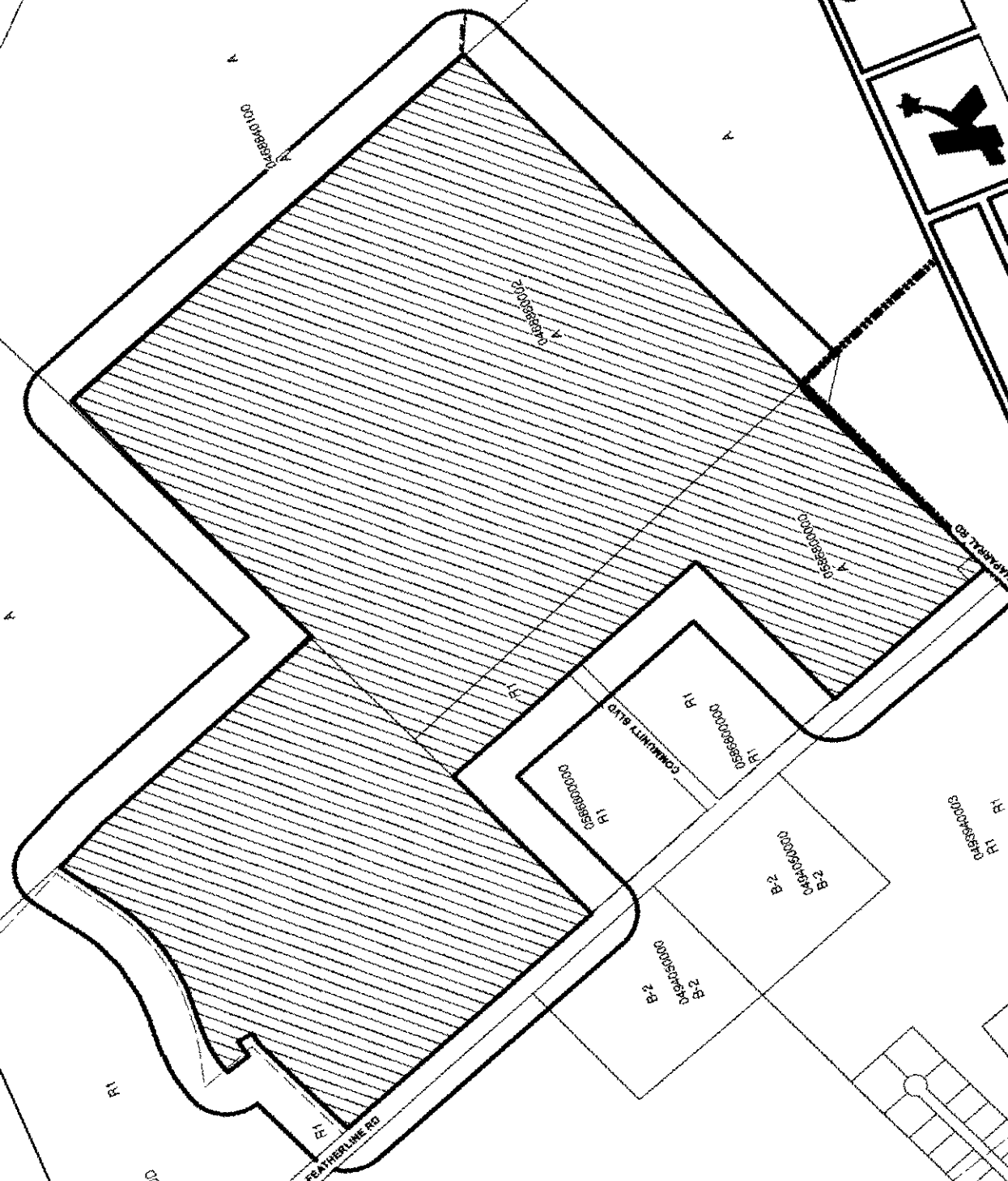
- The applicant shall specify that the minimum lot size is 5,000 square feet;
- The applicant shall provide an additional street connecting to Featherline Road, that will be located at the southwest corner of the property, south of the proposed Tract 'C'.

The motion was seconded by Commissioner Traina, and approved by a vote of 6 to 2. If approved by Council, these changes will have to be reflected in the applicant's concept plan. The Commissioners approved the rezone as the request is consistent with the previously approved PUD zoning for Yowell Ranch Phase One and integrates the same development standards. The proposed new zoning allows for single family residential uses, a possible elementary school site, as well as neighborhood-level commercial uses, all of which are consistent with existing zoning and anticipated uses along Featherline Road.

CITY OF KILLEEN
PLANNING/MAPPING
KILLEEN, TEXAS, 76540-1329



ZONING CASE #09-16



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R1

P.O.D.

FEATHERLINE RD

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B-2

B-2

R1

R1

R3

ARTICLES OF INCORPORATION
OF
YOWELL RANCH HOMEOWNERS ASSOCIATION, INC.

I, the undersigned, being of the age of eighteen years or more, acting as incorporator of a corporation under the Texas Non-Profit Corporation Act, as it may be amended, do hereby adopt the following Articles of Incorporation of such corporation:

Article 1. Name. The name of the corporation is Yowell Ranch Homeowners Association, Inc. (hereinafter called the "Corporation" or the "Association").

Article 2. Type of Corporation. The Corporation is a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act and has no capital stock.

Article 3. Duration. The Corporation shall have perpetual duration.

Article 4. Definitions. In addition to the definitions set forth herein, capitalized terms that are not defined herein shall have the meaning as defined in the Declaration of Covenants, Conditions and Restrictions for Yowell Ranch, recorded or to be recorded in the public land records of Bell County, Texas, as it may be amended from time to time (the "Declaration"), which definitions are incorporated herein by this reference.

Article 5. Registered Office and Agent. The initial registered office of the Corporation is 2501-A West Elms Rd., Killeen, Texas 76542 and the initial registered agent at such address is Burk Roberts.

Article 6. Incorporator. The name and address of the incorporator is Burk Roberts at 2501-A West Elms Rd., Killeen, Texas 76542.

Article 7. Purpose of Corporation. The Corporation does not contemplate pecuniary gain or benefit, direct or indirect, to its Members. In way of explanation and not of limitation, the purposes for which it is formed are: (i) to be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws, and as provided by law; and (ii) to provide an entity for the furtherance of the interests of the owners of property subject to the Declaration.

Article 8. Powers of the Corporation. In furtherance of its purposes, the Corporation shall have the following powers, which, unless indicated otherwise by the Declaration or the Bylaws, may be exercised by the Board of Directors: (i) all of the powers conferred upon nonprofit corporations by the laws of the State of Texas in effect from time to time; (ii) all rights and powers conferred on property owners' associations by the laws of the State of Texas; and (iii) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in these Articles of Incorporation, the Bylaws, the Declaration or the laws of the State of Texas.

Article 9. Membership. The Corporation shall be a membership corporation without certificates or shares of stock. All Owners, by virtue of their ownership of a Lot subject to the Declaration, are Members of the Association and such membership is appurtenant to, and inseparable from, ownership of the Lot.

Article 10. Voting. All Members shall have the same voting rights as provided in the Declaration and the Bylaws, except that Declarant shall be entitled to 10 votes for every Lot owned by Declarant. Cumulative voting is not allowed.

Article 11. Board of Directors. The business and affairs of the Corporation shall be conducted, managed, and controlled by a Board of Directors. The Board of Directors may delegate such operating authority to such companies, individuals, or committees as it, in its discretion, may determine. The method of election (except for the initial Board of Directors below), removal and filling of vacancies, and the term of office shall be as set forth in the Bylaws. The Board of Directors shall consist of 3, 5 or 7 members. The initial Board of Directors shall consist of the following 3 members:

Humphrey Cockrell 120 W. Central Expressway, Suite 200
Harker Heights, TX 76548

Dale Janda 3515 SW H.K. Dodgen Loop
Temple, TX 76502

Nelson Shipman 3000 Illinois Avenue, Suite 100
Killeen, Texas 76543

Article 12. Limitation on Directors' and Officers' Liability and Indemnification. Except as provided below in this paragraph, an officer, director or committee member of the Association is not liable to the Association or its Members for monetary damages or acts or omissions that occur in the person's capacity as an officer, director or committee member, except to the extent a person is found liable for: (i) a breach of the officer's, director's or committee member's duty of loyalty to the Association or its Members; (ii) an act or omission not in good faith that constitutes a breach of duty of the officer, director or committee member to the Association; (iii) an act or omission that involves intentional misconduct or a knowing violation of the law; (iv) a transaction from which the officer, director or committee member receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the person's office or position; or (v) an act or omission for which the liability of an officer, director or committee member is expressly provided by an applicable statute. The liability of officers, directors and committee members of the Association may also be limited by the Charitable Immunity and Liability Act of 1987, Chapter 84, Texas Civil Practice and Remedies Code, as amended. The foregoing limitation on the liability of an officer, director or committee member does not eliminate or modify that person's liability as a Member of the Association.

Article 13. Dissolution. The Corporation may be dissolved with the prior written consent of the city and by vote or the written approval of not less than 75% of all outstanding votes (other than suspended votes) held by the Members as may be more specifically provided in the Bylaws or the Declaration and in accordance with the laws of the State of Texas. Upon dissolution of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation will be distributed to an appropriate public agency to be used for purposes similar to those for which this Corporation was created, or shall be granted, conveyed and assigned to a nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

Article 14. Amendment. Amendment of these Articles of Incorporation shall require approval of at

least 67% of all outstanding votes (other than suspended votes) held by the Members. Amendments to Article 13 (Dissolution), as it relates to a percentage of votes required for dissolution, requires city's written consent.

Article 15. Conflict with Other Documents. In the event of a conflict between these Articles of Incorporation and the Declaration, the Declaration shall control. In the event of a conflict between these Articles of Incorporation and the Bylaws, these Articles of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this _____ day of _____, 2006.

BURK ROBERTS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me on this the ____ day of _____, 2006, by Burk Roberts.

Notary Public, State of Texas
Notary's Printed Name: _____
My commission expires: _____

**BYLAWS
OF
YOWELL RANCH HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I
NAME, PRINCIPAL OFFICE AND DEFINITIONS**

1.1 **Name.** The name of the corporation is Yowell Ranch -Homeowners Association, Inc. (the "Association").

1.2 **Principal Office.** The principal office of the Association shall be located in Bell County, Texas or in such other county in Texas as the Board of Directors determines. The Association may have such other offices, either within or outside the State of Texas, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 **Definitions.** In addition to the definitions set forth herein, capitalized terms that are not defined herein shall have the meaning as defined in the Declaration of Covenants, Conditions and Restrictions for Yowell Ranch, recorded or to be recorded in the public land records of Bell County, Texas, as it may be amended from time to time (the "Declaration"), which definitions are incorporated herein by this reference.

**ARTICLE II
ASSOCIATION; MEMBERSHIP AND MEETINGS**

2.1 **Membership.** The Owners shall be the members of the Association.

2.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

2.3 **Annual Meetings.** The first meeting of the Association, whether regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be at a time set by the Board of Directors.

2.4 **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board of Directors or upon a petition signed by Members representing at least 35% of the total votes in the Association.

2.5 **Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to an Owner of each Lot entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

2.6 **Voting.** The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference.

2.7 Proxies. At all meetings of Members, each Member may vote in person (or if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Texas law. All proxies shall be in writing specifying the Lot(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it is given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter or longer period is specified in the proxy.

2.8 Quorum - Adjournment. Except as provided in these Bylaws or in the Declaration, the presence, in person or by proxy, of Members representing 10% or greater of the total votes in the Association shall constitute a quorum at all meetings of the Association. If, however, such quorum shall not be present or represented at any meeting, the Members present at the meeting that are entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as stated above is present or represented.

2.9 Action Without a Meeting. Subject to Board approval, any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without notice and without a vote, if written consent specifically authorizing the proposed action is signed by Members holding at least fifty-one percent (51%) of the potential votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 90 days of the earliest date that a notice regarding such consent is delivered by the Association, which date shall be designated in the notices. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. For votes taken by written consent as provided above, the date specified in the notice as the ownership date, which date shall not be more than 20 days prior to the date the notices are sent, shall be the date used for determining the ownership of the Lot for the written consent voting purposes. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE III BOARD OF DIRECTORS

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by Declarant, the directors shall be Members or Residents and no Owner and Resident representing the same Lot may serve on the Board of Directors at the same time. A "Resident" shall be any natural person 18 years of age or older whose principal place of residence is a Dwelling. In the case of a Member which is not a natural person, any officer, director, partner, employee or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided no Member may have more than one such representative on the Board of Directors at a time, except for the Declarant.

3.2 Number of Directors. The Board of Directors shall consist of 3, 5 or 7 directors, as provided herein and as determined by the Board of Directors. The initial Board of Directors shall consist of 3 directors as identified in the Articles of Incorporation.

3.3 Directors - During Development Period. During the Development Period, all directors shall be selected and removed by Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant.

3.4 Directors - After Development Period. Following expiration of the Development Period, the directors shall be nominated and elected as follows:

a. Nomination Procedures. Prior to each election, the Board of Directors shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position. The Board of Directors shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations from the floor shall also be permitted.

b. Nominating Committee. Nominations for election to the Board of Directors may also be made by a nominating committee. The nominating committee, if any, shall consist of a Chairperson, who shall be a member of the Board of Directors, and three or more Members or representatives of Members. The Board of Directors shall appoint the members of the nominating committee not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced at each annual meeting. The nominating committee may make as many nominations for election to the Board of Directors as it shall in its discretion determine. In making the nominations, the nominating committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

c. Election and Term. At the first annual meeting after the expiration of the Development Period, all directors shall be elected by the Members to a term of 1 year. The number of directors to be elected at such meeting shall be determined by the then current Board of Directors. Upon the expiration of the term of office of each director elected by the Members, a successor shall be elected to serve a term of 1 year, unless the Board of Directors decides to allow one or more of the directors to be elected to serve for a term of 2 years. Unless removed as provided herein, the directors shall hold office until their respective successors shall be elected.

d. Election Procedures. Each Owner may cast the entire vote assigned to his or her Lot for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

e. Removal. Any director elected by the Members may be removed, with or without cause, by a majority vote of all outstanding votes entitled to be cast. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director. Any director who has 3 or more consecutive unexcused absences from the Board of Directors meetings, or who is more than 60 days delinquent (or is the representative of a Member who is delinquent more than 60 days) in the payment of any

assessment or other charge due the Association, or who after notice and hearing is held to be in violation of the Declaration, may be removed by a majority of the other directors present at a regular or special meeting at which a quorum is present, and the Board of Directors may appoint a successor to fill the vacancy for the remainder of the term. In the event of death, disability or resignation of a director, the Board of Directors may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term.

3.5 Compensation. Directors shall not receive any compensation from the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board of the Directors prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.6 Meetings of the Board of Directors.

a. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as a majority of the directors shall determine. Notice of the time and place of a regular meeting shall be communicated to directors not less than 4 days prior the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

b. **Special Meetings.** Special meetings of the Board of Directors shall be held when called by the President or Vice President or by any 2 directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (i) as provided in Section 8.4 herein; (ii) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iii) by facsimile, computer or such other communication device. All such notices shall be given at the director's telephone number, fax number or sent to the director's address as shown on the records of the Association. Notices given by mail shall be deposited at least 7 business days prior to the time set for the meeting. Notices given by personal delivery, telephone, or other electronic device shall be delivered or transmitted at least 72 hours before the time set for the special meeting.

c. **Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding a meeting, or an approval of the minutes.

d. **Telephonic Participation in Meetings.** Members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or committee by means of conference telephone or similar communication equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

e. **Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of

a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors, unless otherwise specified in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board of Directors cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

f. **Action Without Meeting.** Any action to be taken at a meeting of directors or any action that may be taken at a meeting of directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

3.7 **Powers of Directors.** The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles of Incorporation, and as provided by law. The Board of Directors may do or cause to be done all acts and things as are not directed by the Declaration, Articles of Incorporation, these Bylaws, or Texas law to be done and exercised exclusively by the membership generally.

3.8 **Duties of Directors.** The duties of the Board of Directors shall include, without limitation:

- a. preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- b. levying and collecting such assessments from the Owners;
- c. providing for the operation, care, upkeep, and maintenance of the Common Maintenance Areas;
- d. designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- e. depositing all funds received on behalf of the Association in appropriate bank accounts or in other accounts approved by the Board of Directors, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;
- f. making and amending rules in accordance with the Declaration;
- g. opening the bank accounts on behalf of the Association and designating the signatories required;
- h. making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Maintenance Areas in accordance with the Declaration and these Bylaws;

- i. enforcing the provisions of the Declaration and any rules or standards developed pursuant to the Declaration, the Articles of Incorporation, these Bylaws and bringing any legal proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;
- j. obtaining and carrying insurance as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- k. paying the cost of all services rendered to the Association;
- l. keeping books with detailed accounts of the receipts and expenditures of the Association;
- m. taking such actions as contemplated by the Board of Directors in the Declaration, these Bylaws and/or the Articles of Incorporation;
- n. permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Property; and
- o. indemnifying a director, officer or committee member, or former director, officer or committee member of the Association or any agent, contractor or management company of the Association to the extent such indemnity is required or permitted under Texas law, the Articles of Incorporation or the Declaration.

3.9 **Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, the Board of Directors shall obtain Member approval in the same manner provided for Special Assessment as specified in the Declaration if the total amount of such borrowing, together with all other debt incurred within the previous 12 month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

ARTICLE IV OFFICERS

4.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The President and Secretary shall be elected from among the members of the Board of Directors; other officers may, but need not be members of the Board of Directors. Any two or more offices may be held by the same person, except for the offices of President and Secretary.

4.2 **Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

4.3 **Term.** The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for 1 year, unless he or she shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

4.4 **Special Appointments.** The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

4.5 **Resignation and Removal.** Any officer may be removed from office, with or without cause, by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 **Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

4.7 **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors, including, without limitation, the following:

a. **President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Board of Directors and the Members and shall see that orders and resolutions of the Board of Directors are carried out.

b. **Vice President.** The Vice President shall act in place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board of Directors.

c. **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board of Directors.

d. **Treasurer.** The Treasurer shall receive and deposit, in appropriate bank accounts or in other accounts approved by the Board of Directors, all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; sign all checks of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

4.8 **Authorized Agents.** Except when the Declaration, these Bylaws or the Articles of Incorporation require execution of certain instruments by certain individuals, the Board of Directors may authorize any person to execute instruments on behalf of the Association. In the absence of such Board of Directors' resolution, the President and the Secretary are the only persons authorized to execute instruments on behalf of the Association. However, only the President and/or Secretary shall have the authority to sign a mortgage or deed of trust relating to the Common Area.

**ARTICLE V
ASSOCIATION MATTERS**

5.1 **Committees.** The Board of Directors may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board of Directors may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Management.** The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

5.3 **Right to Contract.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational, or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board of Directors.

5.4 **Accounting Standards.** The following management standards of performance shall be followed unless the Board of Directors by resolution specifically determines otherwise: (i) accrual accounting, as defined by generally accepted accounting principles, shall be employed; (ii) accounting and controls should conform to generally accepted accounting principles; (iii) cash accounts of the Association shall not be commingled with any other accounts; (iv) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; any thing of value received shall benefit the Association; and (v) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors.

5.5 **Accounting Reports.** Unless the Board of Directors by resolution specifically determines otherwise, the Board of Directors shall obtain the following reports:

a. **Quarterly Reports.** Commencing at the end of the quarter in which the first Lot with a Dwelling thereon is conveyed, financial reports shall be prepared for the Association at least quarterly containing (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis; (ii) a variance report reflecting the status of all accounts in an actual versus approved budget format; (iii) a balance sheet as of the last day of the preceding period; and (iv) a delinquency report listing all Owners who are delinquent in paying any assessment at the time of the report and describing the status of any action to collect such assessments which remain delinquent.

b. **Annual Reports.** An annual report consisting of at least the following, which shall be made available to all Members within 6 months after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board of Directors determines, by an independent public accountant.

5.6 **Enforcement of Declaration.** The Association shall have the power, as provided in the Declaration and in accordance with all applicable laws, regulations, rules and statutes, to impose

sanctions for any violation of any duty imposed under the Declaration (and any rules promulgated pursuant thereto), these Bylaws and the Articles of Incorporation and any amendment thereto.

a. **Notice, Opportunity to Cure and Hearing.** Prior to imposition of any sanction, lawsuit or enforcement of the terms of the Declaration, the Board of Directors or its designee shall: (i) deliver written notice to the Owner of the Lot related to or connected with the alleged violation, if such delivery of notice is desired by the Board of Directors or is required by law, statute, regulation or rule, (ii) inform the Owner of its opportunity to cure the alleged violation if such cure period is desired by the Board of Directors or is otherwise required by law, statute, regulation or rule, and (iii) inform the Owner of its right to a hearing if such hearing is desired by the Board of Directors or is required by law, statute, regulation or rule.

b. **Optional Courtesy Letter.** The Association may, at its option and in its sole and absolute discretion, voluntarily provide the Owner of the Lot related to or connected with the alleged violation with a courtesy letter informing the Owner of the violation. The foregoing courtesy letter is not required to be given by the Association and such notice shall not constitute the written notice described Section 5.6a above. The Board of Directors or its designee shall have the sole and exclusive right to determine under which facts and circumstances the Association may elect to send a courtesy letter.

c. **No Waiver.** In the event the Board of Directors decides, in its discretion, not to take enforcement action, such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenant, restriction, or rule.

ARTICLE VI ASSESSMENTS

As more fully provided in the Declaration each Member is obligated to pay to the Association annual and special assessment (and specific assessments if applicable) which are secured by a continuing lien upon the Lot against which the assessment is made. If an assessment is not paid as provided in the Declaration, then the Association shall be entitled to the remedies provided in the Declaration, these Bylaws and the Articles of Incorporation.

ARTICLE VII AMENDMENTS

7.1 **Amendment by Declarant or Board of Directors.** During the Development Period and subject to any applicable provisions in the Declaration, the Declarant may amend these Bylaws with approval of the Board of Directors. In addition, after the expiration of Development Period, Declarant or the Board of Directors may amend these Bylaws if such amendment (i) is necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) is necessary to comply with the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U. S. Department of Veterans Affairs, the U. S. Department of Housing and Urban Development, or any other applicable governmental agency or secondary mortgage market entity; (iii) is necessary to clarify or to correct technical, typographical or scrivener's errors; or (iv) or any other purpose; provided, however, any such amendment must not have a material adverse effect upon any right of any Owner.

7.2 Amendment by Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of at least 51% of all outstanding votes entitled to be cast. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

7.3 Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon the date of the amendment, unless a different date is specified in the amendment. Any procedural challenge to an amendment must be made within 3 months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

ARTICLE VIII MISCELLANEOUS

8.1 Fiscal Year. The fiscal year of the Association shall be determined by the Board of Directors. If the Board of Directors fails to adopt a certain fiscal year, then until the Board of Directors adopts a specific fiscal year the fiscal year shall be January 1st to December 31st of every year, except that the first fiscal year shall begin on the date of incorporation.

8.2 Conflicts. In the event of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the event of any conflict between the Declaration and these Bylaws, the Declaration shall control.

8.3 Books and Records.

a. Inspection by Members. The Board of Directors shall make the books and records of the Association available for inspection and copying by any Member, or the duly appointed representative of any Member. The files and records of an attorney or accountant who performs services for the Association are not records of the Association and are not subject to inspection by Members. The Board of Directors may deny the request to review particular records to the extent the Board of Directors determines that the Member is not entitled to such documents as a matter of law.

b. Rules of Inspection. The Board of Directors may establish reasonable rules with respect to: (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing copies of documents requested.

c. Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical property owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

8.4 Notices. Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements and other communications under the Declaration or these Bylaws shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given 3 days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a

Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member or director at any meeting shall constitute waiver of notice by the Member or director of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members or directors shall be deemed the equivalent of proper notice.

**ARTICLE IX
INDEMNIFICATION OF DIRECTORS AND OFFICERS**

9.1 The Association shall indemnify any director or officer or former director or officer of the Association, or any person who may have served at its request as a director or officer or former director or officer of another Association in which it owns shares of capital stock or of which it is a creditor, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding, whether civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in performance of duty. The Association shall also reimburse any such director or officer or former director or officer or any such person serving or formerly serving in the capacities set forth in the first sentence above at the request of the Association for the reasonable cost of settlement of any such action, suit or proceeding, if it shall be found by a majority of the directors not involved in the matter in controversy, whether or not a quorum, that it was in the best interests of the Association that such settlement be made, and that such director or officer or former director or officer or such person was not guilty of negligence or misconduct in performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which such director or officer or former director or officer or such person may be entitled, under any by-law, agreement, insurance policy or vote of shareholders, or otherwise.

IN WITNESS WHEREOF, we being all of the officers of the Association have executed these Bylaws on the dates set forth below.

Date: _____

TBD, President

Date: _____

TBD, Vice President

Date: _____

Nelson Shipman, Secretary-Treasurer

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

YOWELL RANCH HOMEOWNERS
ASSOCIATION, INC.

A Residential Community in Bell County, Texas

Declarant: W.B. DEVELOPMENT, Ltd., a Texas limited partnership

Association: YOWELL RANCH HOMEOWNERS ASSOCIATION, INC., a Texas non-profit
corporation

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
YOWELL RANCH HOMEOWNERS ASSOCIATION, INC.**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
YOWELL RANCH HOMEOWNERS ASSOCIATION, INC.

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BELL §

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made by W.B. DEVELOPMENT, a Texas limited partnership (the "Declarant"), and is as follows:

RECITALS:

A. Declarant owns all of the Lots (as herein defined) in Yowell Ranch, a subdivision located in Bell County, Texas, according to the map or plat recorded in Cabinet____, Slide ____ and____, in the Official Public Records of Bell County, Texas.

B. Declarant desires to create upon the Property (as herein defined) a residential community and carry out a uniform plan for the improvement and development of the Property for the benefit of the present and all future owners thereof.

C. Declarant further desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Property to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Property.

NOW, THEREFORE, it is hereby declared: (i) that all of the Property shall be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which shall run with the Property and shall be binding upon all parties having right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

ARTICLE 1

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

"Architectural Control Committee" ("ACC") shall mean the committee created pursuant to Section 7.02 of this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot.

"Articles" shall mean and refer to the Articles of Incorporation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

“Assessment” or **“Assessments”** shall mean assessments imposed by the Association under this Declaration.

“Association” shall mean and refer to the Yowell Ranch Homeowners Association, Inc., a Texas non-profit corporation.

“Board” shall mean the Board of Directors of the Association.

“Builder” shall mean any person or entity who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person’s or entity’s business.

“Bylaws” shall mean and refer to the Bylaws of the Association as adopted and as amended from time to time.

“Common Area and Facilities” shall mean and refer to all real property and any interest, including any Improvements located thereon, which is designated by Declarant as common area for the benefit of the Property, and is conveyed to the Association or is otherwise held by Declarant for the benefit of the Owners. The Common Area and Facilities shall include all areas that shall be or have been dedicated to all public authorities but not yet accepted by such authorities. The Common Area and Facilities shall be for the common use and enjoyment of the Owners. Common Area and Facilities may be designated by Declarant from time to time and at any time.

“Declarant” shall mean and refer to W.B. DEVELOPMENT, LTD., a Texas limited partnership, its successors or assigns, including, without limitation, Builders who acquire Lots directly from Declarant; provided that any assignment(s) of the rights of Declarant must be expressly set forth in writing and recorded in the Official Public Records of Bell County, Texas.

The “Declarant” is the party who causes the Property to be developed for actual residential use. The Declarant enjoys special privileges to help protect its investment in the development. These special rights are described in this Declaration. These rights do not terminate until Declarant either: (i) has sold all Lots which may be created out of the Property; or (ii) voluntarily terminates these rights by a written instrument recorded in the Official Public Records of Bell County, Texas. The rights reserved by the Declarant may be assigned unilaterally in whole or in part to one or more third parties.

“Design Guidelines” shall mean the standards for design, construction, landscaping, and exterior items placed on a Lot adopted pursuant to *Section 7.02(cc)*, as amended. Declarant may (but will have no obligation to) adopt the initial Design Guidelines.

“Improvement” shall mean every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, play equipment, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

“Lot” shall mean and refer to a portion of the Property designated by Declarant or shown as a subdivided lot on a Plat other than Common Area and Facilities.

"Members" shall mean and refer to every person or entity who holds membership privileges in the Association.

"Mortgage" or **"Mortgages"** shall mean any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

"Mortgagee" or **"Mortgagees"** shall mean the holder(s) of any Mortgage(s).

"Owner" shall mean the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but shall not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

"Plat" shall mean a subdivision plat of any portion of the Property as recorded in the Official Public Records of Bell County, Texas, and any amendments thereto.

"Property" shall mean all Lots and the Common Areas and Facilities in Yowell Ranch, a subdivision located in Bell County, Texas, according to the map or plat recorded in Cabinet D, Slide 72 D and 73 A, in the Official Public Records of Bell County, Texas, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 11.03* and *Section 11.04* of this Declaration.

"Restrictions" shall mean the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, or in any rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time.

ARTICLE 2

GENERAL RESTRICTIONS

2.01 General. All Lots shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to: (i) the applicable conditions, restrictions, reservations, and easements contained in this Declaration; (ii) the Design Guidelines; and (iii) any rules and regulations adopted by the Board.

NOTICE

This Declaration, the Design Guidelines, and the rules and regulations adopted by the Board are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with this Declaration, the Design Guidelines, and the rules and regulations, as they may change from time to time.

2.02 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, at its discretion.

2.03 Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

2.04 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area and Facilities or the improvements located thereon, without the prior written approval of the Board.

2.05 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

2.06 Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.07 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Property. No Owner may keep on such Owner's Lot more than four (4) cats and dogs, in the aggregate, not more than two (2) of which may be dogs. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. All animal waste shall be removed immediately by Owner from neighboring Lots and Common Areas and Facilities when walking the pet. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Architectural Control Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

2.08 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to render the Property any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view. Each Owner shall contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.09 Maintenance. The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Architectural Control Committee, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this *Section 2.09* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Architectural Control Committee, in its sole discretion:

- (i) Lawn mowing and edging.
- (ii) Tree and shrub pruning.

- (iii) Watering of exterior landscaping (including, without limitation, all trees, bushes, shrubs, lawns and other plantings on the Lot).
- (iv) Keeping exterior lighting and mechanical facilities in working order.
- (v) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (vi) Keeping sidewalks and driveways in good repair.
- (vii) Complying with all government, health and police requirements.
- (viii) Repainting of Improvements.
- (ix) Repair of exterior damage, and wear and tear to Improvements.
- (x) Keeping Lots and Improvements free of trash, litter, refuse, wastes, and other unsightly material.

2.10 Antennae. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any solar energy system, shall be erected, maintained or placed on a Lot without the prior written approval of the Architectural Control Committee; provided, however, that:

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- (ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
- (iii) an antenna that is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the “Permitted Antennas”) will be permitted subject to reasonable requirements as to location, size, and screening as may be set forth in rules adopted by the Architectural Control Committee, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

2.11 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area and Facilities, or any other portion of the Property. A Permitted Antenna shall be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the other areas of the Property. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Architectural Control Committee are as follows:

- (i) Attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots, Common Area and Facilities, and the street; then

(ii) Attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots, Common Area and Facilities, and the street.

The Architectural Control Committee may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

Satellite dishes one meter or less in diameter, e.g., DirectTV or Dish satellite dishes, are permitted, HOWEVER, you are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the Architectural Control Committee from time to time. Please contact the Architectural Control Committee for the current rules regarding installation and placement.

2.12 Signs. No sign of any kind shall be displayed to the public view on any Lot without the prior written approval of the Architectural Control Committee, except for:

(i) signs which are part of Declarant's overall marketing or construction plans or activities for the Property;

(ii) one (1) temporary "For Sale" sign placed on the Lot being advertised "For Sale". The sign will be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade from the spot where the sign is located may not exceed three (3) feet. The sign must be removed within two (2) business days following the sale or lease of the Lot;

(iii) one (1) temporary "For Rent" sign limited to a maximum face area of five (5) square feet, to be placed only in the window of the home.

(iv) one (1) small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the principal residence constructed upon the Lot;

(v) permits as may be required by legal proceedings; and

(vi) one (1) political sign limited to a maximum face area of five (5) square feet. The sign may be displayed no sooner than sixty (60) days before an election and no later than thirty (30) days after an election.

(vii) permits as may be required by any governmental entity.

An Owner will be permitted to post a "no soliciting" sign near or on the front door to the principal residence constructed upon the Lot, provided, that the sign not exceed twenty-five (25) square inches. Any advertising and/or sales program for the sale of Lots, other than advertising and/or sales programs initiated or maintained by the Declarant, must be approved in advance by the Architectural Control Committee.

2.13 Tanks / Swimming Pools. The Architectural Control Committee must approve any tank used or proposed in connection with a single-family residential structure, including tanks for storage of fuel, water, oil, gas, or LPG, and swimming pool filter tanks. No elevated tanks, including a elevated

swimming pool, of any kind shall be erected, placed or permitted on any Lot without the advance written approval of the Architectural Control Committee. All tanks shall be screened so as not to be visible from any other portion of the Property. In-ground pools must receive approval from the ACC prior to construction. All pools and hot tubs must be fully enclosed with a self-closing and self-latching fence and gate.

2.14 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property without the prior written approval of the Architectural Control Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner shall be permitted, without Architectural Control Committee approval, to erect one (1) outbuilding on the Owner's Lot if: (i) the surface area of the pad on which the outbuilding is placed is less than or equal to one hundred (100) square feet; (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to eight (8) feet; (iii) the outbuilding is constructed within an area completely enclosed by a privacy fence of not less than six (6) feet in height; (iv) the exterior and roof of the outbuilding is constructed of the same or substantially similar materials as the exterior and roof of any residence located on the Lot; and (v) the outbuilding is constructed within building setback lines set forth on the Plat. The Architectural Control Committee shall be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

2.15 Window Air Conditioning and Water Cooler Units. No window air conditioning or water cooler units shall be attached to the exterior wall of the residence.

2.16 Rain Water Collectors. Collectors of these types are not allowed on the Lot or on the Improvements thereon except in the rear yard, obstructed from public view.

2.17 Solar Panels. Solar panels are prohibited within the Subdivision.

2.18 Unsightly Articles and Vehicles. No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any Lot so as to be visible from adjoining Lots, Common Areas or Facilities, or from public or private thoroughfares. Without limiting the generality of the foregoing, play equipment, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have no fewer than one (1) garage space.. Lot Owners shall not keep more than two (2) automobiles in such a manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any roadway within the Property. No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Architectural Control Committee.

2.19 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time, and no

motor homes, travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining Lots, Common Areas and Facilities, or from public or private thoroughfares at any time.

2.20 Basketball Goals; Permanent and Portable. Permanent basketball goals are permitted between the curb and the front of the residence on a Lot provided the basketball goal is located a minimum of 20 feet from the street curb or midway between the house and the end of the driveway, whichever is applicable. The basketball goal backboard must be perpendicular to the street and mounted on a black metal pole permanently installed in the ground. Basketball goals must be properly maintained and painted, with the net in good repair. Backboards are not allowed to be attached to the residence. Portable basketball goals are **NOT ALLOWED** within the Subdivision. All basketball goals must be approved by the Architectural Control Committee prior to being installed on any Lot.

2.21 Window Coverings and Treatments. No aluminum foil, newspaper, reflective film bed sheet or linens or similar treatments will be placed on windows or glass doors of the residence.

2.22 Exterior Decorations and Seasonal Holiday Decorations. Lighting or decorations which constitute a nuisance or unreasonable source of annoyance to the owners of adjacent Lots may not be used. Sole determination of what constitutes a nuisance or annoyance will be at the sole discretion of the Board or its assigns. Holiday Decorations can be displayed 30 days in advance, and must be removed within 30 days after, the applicable Holiday.

2.23 Compliance with Association Restrictions. Each Owner his or her family, occupants of a Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Association Restrictions as the same may be amended from time to time. Failure to comply with any of the Association Restrictions shall constitute a violation of the Association Restrictions and may result in a fine levied against the Owner in accordance with *Section 6.09* of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, together with reasonable attorney's fees and costs incurred, which may be maintainable by the Declarant, the manager, the Board on behalf of the Association, the Architectural Control Committee, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Association Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 2.22 (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

If you fail to comply with Association Restrictions, you can be fined or a claim may be pursued against you in court.

2.24 Liability of Owners for Damage to Common Area and Facilities. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area and Facilities without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to: (i) the Common Area and Facilities and any improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as the Assessments.

2.25 No Warranty of Enforceability. Declarant and Builder make no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Declaration. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant and Builder harmless therefrom.

ARTICLE 3

USE AND CONSTRUCTION RESTRICTIONS

3.01 Single-Family Residential Use. The Lots shall be used solely for private single-family residential purposes and there shall not be constructed or maintained thereon more than one detached single-family residence. No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot, except an Owner or occupant of a residence may conduct business activities within a residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (ii) the business activity conforms to all R1 zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents within the Property; (iv) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required. Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or an Owner engaged in the business of constructing homes for resale who acquires a Lot for the purpose of constructing a residence thereon for resale to a third party.

3.02 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for

terms of at least six (6) months. All leases shall be in writing. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. The Owner must provide to its lessee copies of the Restrictions, the Bylaws, and the rules and regulations of the Association.

3.03 Garages. Each Lot must contain a private garage for not fewer than two (2) automobiles. The location and orientation of all garages must be approved in advance by the Architectural Control Committee. All garages shall be maintained for the parking of automobiles, and no garage may be permanently enclosed or otherwise used for habitation.

3.04 Fences; Sidewalks. All fences and walls will comply with all applicable governmental ordinances. Fencing which encloses the rear yard of a Lot may not exceed six (6) feet in height and shall be constructed with #1 grade cedar pickets and with treated pine or cedar railings and posts. No fence or wall may be erected, placed or altered on a lot nearer to the front street than the front wall of the single family dwelling which is located on the Lot. Construction of gates or other access openings in subdivision perimeter fencing shall not be allowed on any Lot without prior written consent by the Architectural Committee. The location, design, and materials to be incorporated into any fence must be approved in advance by the Architectural Control Committee. Any fencing which is constructed on a street side must have the smooth portion exposed to the street side; the rail side of the fencing will face the interior of the lot. Only clear protective stain is allowed to treat fences. Any other color of stain must be approved by the Architectural Control Committee. If required by the Plat, the Owner of each Lot shall construct, at such Owner's sole cost and expense and prior to occupying any Improvement, a sidewalk on such Owner's Lot, located and designed in conformance with the Plat.

3.05 Driveways. No painted driveways are permitted. A driveway may be sealed with clear sealant only.

3.06 Dwelling Size; Building Materials. All residences shall contain not less than 1,200 square feet of enclosed living space, exclusive of porches (open or covered), decks, and garages. All building materials shall be approved by the Architectural Control Committee, and only new building materials (except for used brick) shall be used for construction of any Improvements. Exposed metal roof decks are prohibited. Other roofing materials may be used with the prior written consent of the Architectural Committee, which may specify a minimum quality or grade of materials. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the color of the surface from which they project, or shall be of a color approved by the Architectural Control Committee. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

The masonry requirements for single and two-story dwellings shall be as follows:

One-Story Dwellings. The exterior walls of all single family dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which collectively comprise a 90 % masonry" veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors and trim work.

Two-Story Dwellings. The front exterior wall of all two-story single family dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which, collectively, comprise a 90% masonry" veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work. The

side exterior walls of the first floor of all two-story single family dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which, collectively, comprise a 90% masonry" veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work.

3.07 Dwelling Height. No residence constructed on a Lot may exceed two (2) stories in height without the prior written approval of the Architectural Committee.

3.08 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement shall be performed only with the prior written approval of the Architectural Control Committee.

3.09 Trash Containers. Trash containers and recycling bins must be stored in one of the following locations:

(i) Inside the garage of the single-family residence constructed on the Lot; or in such a manner that the trash container and recycling bin are not visible from any street, alley, or adjacent Lot.

(ii) All disposal containers and trash must be removed and screened from view on or before 24 hours after container has been emptied by waste service collection.

The Architectural Control Committee shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

3.10 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Architectural Control Committee. If the backyard is not sodded, it will be the Owner's responsibility to ensure there is not a negative impact of drainage or erosion for the Owner of the Lot or adjacent Lots.

3.11 Landscaping. The front yards of all Lots, from the front property line to the front wall of the house, shall be fully sodded with St. Augustine, Bermuda, or other sod approved by the Architectural Control Committee and at least one (1) tree shall be planted in the front yard and five (5) bushes prior to occupancy of the residence located on the Lot. In no way will any landscaping installed by the Owner of the Lot, impede, hinder, or cause a negative impact for drainage for the Lot or adjacent Lots, this includes but not limited to, flower beds, fountains, ponds, and gardens.

3.12 Decorative Ground Cover. Rock or similar decorative ground cover may not exceed 20% of the total area of front and side yard and must be approved by the ACC.

3.13 Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Architectural Control Committee in its sole good faith judgment, the Architectural Control Committee shall have the authority to seek an injunction to stop such construction.

In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Architectural Control Committee may contract for or cause such debris to be removed, and the Owner of the Lot shall be liable for all expenses incurred in connection therewith.

3.14 Declarant / Builder – Development and Construction. Notwithstanding any other provision herein, Declarant and its successors and assigns, and any Builders, will be entitled to conduct on the Property all activities normally associated with and convenient to the development of the property and the construction and sale of dwellings on the Property.

ARTICLE 4

YOWELL RANCH HOMEOWNERS ASSOCIATION, INC.

4.01 Membership.

(a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

If you acquire a Lot you automatically become a member of the Association. Membership is Mandatory.

(b) Every Member shall have a right and easement of enjoyment in and to all of the Common Area and Facilities and an access easement by and through any Common Area and Facilities, which easements shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:

- (i) The right of the Association to suspend the Member's voting rights and right to use the Common Area and Facilities for any period during which any Assessment against such Member's Lot remains past due and for any period during which such member is in violation of any provision of this Declaration;
- (ii) The right of the Association to dedicate or transfer all or any part of the Common Area and Facilities to any public agency, authority or utility;
- (iii) The right of the Association to borrow money for the purpose of improving the Common Area and Facilities and, in furtherance thereof, mortgage the Common Area and Facilities;
- (iv) The right of the Association to make reasonable rules and regulations regarding the use of the Common Area and Facilities and any Improvements thereon; and
- (v) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

4.02 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members shall be calculated as follows:

(a) Class A Members shall include each Owner of each Lot and shall have one (1) vote for each Lot so owned. In the event of the re-subdivision of any Lot into two or more Lots, the number of votes to which such Lot is entitled shall be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision, e.g., each Lot resulting from the re-subdivision will be entitled to one (1) vote. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights and Assessments shall continue to be determined according to the number of original Lots contained in such consolidated Lot, unless otherwise approved by the Board. Nothing in this Declaration shall be construed as authorization for any re-subdivision or consolidation of Lots, such actions being subject to the conditions and restrictions of this Declaration.

(b) Class B Membership shall be the Declarant which shall have ten (10) votes for each Lot owned by the Declarant. The Class B Membership shall covert to a Class A Membership upon the earlier to occur of: (i) the Declarant has conveyed all Lots to owners; or (ii) the Declarant voluntarily converts the Class B Membership to a Class A Membership by written instrument recorded in the Official Public Records of Bell County, Texas.

(c) When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities shall be Members. The vote or votes (or fraction thereof) for such Lot shall be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event shall the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 4.02*.

(d) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such owner's Lot(s) remains past due, or for any period during which such Owner or such Owners' Lot(s) are in violation of this Declaration.

4.03 Right of Entry and Enforcement. The Association will have the right to enter at any time in an emergency or, in the case of a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon, for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in *Article 6* hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors, or assigns.

4.04 Common Area and Facilities. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

(a) To accept, own, operate and maintain all Common Area and Facilities which may be conveyed or leased to it by Declarant, together with all Improvements of whatever kind and for whatever

purpose which may be located in said areas; and to accept, own, operate and maintain all other property, real or personal, conveyed or leased to the Association by Declarant and to maintain in good repair and condition all lands, improvements and other Association property owned by or leased to the Association. Such maintenance shall include, but not be limited to, painting, mowing and removal of rubbish or debris of any kind.

(b) To pay all real and personal property taxes and other taxes and Assessments levied upon or with respect to Common Area and Facilities or any other property owned by or leased to the Association to the extent that such taxes and Assessments are not levied directly upon the Members of the Association. The Association shall have all rights granted by law to contest the legality of the amount of such taxes and Assessments.

(c) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment of the Common Area and Facilities. Such insurance shall be in an amount as the Board shall deem appropriate.

(d) To borrow money and to mortgage, pledge or hypothecate any or all of the Common Area and Facilities as security for money borrowed or debts incurred subject to the limitations set forth in this Declaration, with the consent of at least two-thirds (2/3rds) of the number of votes entitled to be cast pursuant to *Section 4.02 hereof*.

(e) Common Areas and Facilities. No land within any Common Area and Facilities shall be improved, used or occupied, except in such manner as shall have been approved by a two-thirds vote of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, with the same quorum as required for Special Assessments herein. Such required approval shall extend to the nature and type of use, occupancy and improvement. Notwithstanding the foregoing provisions, during the time that Declarant owns Lots within the Subdivision, Declarant shall have the right to construct Improvements within the Common Areas, including park areas, if any, without the consent of the Members or the Association. Access to any Common Area and Facilities may be limited to persons currently paying Assessments, fees and other charges, or otherwise conditioned or restricted, or made available to non-owners, all upon such terms and conditions as the Board may determine.

(f) Condemnation. If all or part of the Common Area and Facilities is taken or threaten to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall be entitled to participate in the proceedings incident thereto. The expense of participation in such proceedings by the Association shall be a common expense to be paid out of Assessments. The Association is specifically authorized to obtain and to pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other person as the Association, in its discretion, deems necessary or advisable to aid it in any matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association, The Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to contest or defend any such proceedings, to make any settlement with respect thereto or to convey such property to the condemning authority in lieu of condemnation.

ARTICLE 5

INSURANCE

5.01 Insurance. Each Owner shall be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association shall not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary to, among other things, insure the Common Areas and Facilities and the acts or omissions of the Association. Insurance premiums for such policies shall be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot, or any Improvements or personal property located on a Lot.

5.02 Restoration. In the event of any fire or other casualty, the Owner shall promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement shall be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner shall be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month shall be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in the 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. **EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 5.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

5.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this *Article 5*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair,

restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 6

COVENANT FOR ASSESSMENTS

6.01 Assessments.

(a) Right to Levy Uniform Assessments. The Association may from time to time levy Assessments against each Lot which has been improved with a completed single-family residence. The level of Assessments shall be equal and uniform between and among all Lots. No Assessments hereunder shall be levied against any Lot unless a completed single-family residence has been constructed on the Lot. Declarant will not be charged Lot Assessments.

(b) Proration of Assessments. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

(c) Assessments as Secured Personal Obligations. Each Assessment together with such interest thereon and costs of collection as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which the Assessment is levied and shall be secured by a lien hereby granted and conveyed by the Declarant to the Association against each such Lot and all Improvements thereon (such lien, with respect to any Lot not in existence on the date hereof, shall be deemed granted and conveyed at the time that such Lot is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Declaration.

(d) Builders Subsidy. Builders shall hereby covenant and agree that in the event the annual maintenance fund and replacement fund revenues are insufficient to pay the operating expenses of the Association, all the Builders shall pay, within thirty (30) days of receipt of a written request for payment thereof, a prorated share according to the total percentage of Lots that each Builder has committed to purchase in the entire community. Any Builder who no longer owns a Lot for the purpose of constructing a dwelling will not be required to pay subsidies. The subsidy will be prorated for the year in which the Builder owns the last Lot.

6.02 Exemptions. The following areas within the Property shall be exempt from the Assessments provided for in this Article:

(a) All areas dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Records of Bell County, Texas;

(b) The Common Area and Facilities; and

(c) Any portion of the Property or any Lot owned by the Declarant or Builder.

6.03 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing

the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

6.04 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the regular annual Assessments per Lot for the year 2006 exceed the sum of \$375. Thereafter, at the Board's sole and absolute discretion, the maximum regular annual Assessments per Lot permitted hereunder may be increased by no more than five percent (5%) per year (which may be cumulative – i.e., 5% for each year not previously increased), unless approved by the Declarant (unless Declarant has relinquished such approval right by written instrument recorded in the Official Public Records of Bell County, Texas) and at least two-thirds of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, with the same quorum as required for Special Assessments herein.

6.05 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments to enable the Board to carry out the mandatory functions of the Association under the Restrictions, upon the approval of the Declarant (unless Declarant has relinquished such approval right by written instrument recorded in the Official Public Records of Bell County, Texas) and at least two-thirds of the Owners of Lots within the Property at a meeting called for that purpose, by adequate notice, with at least sixty percent (60%) of the Owners of Lots within the Property or their proxies present at said meeting. If sixty percent (60%) of the Owners of Lots within the Property do not attend, a second meeting may be called with the same notice and the quorum needed for said second meeting shall be thirty percent (30%) of the Owners of Lots within the Property or their proxies.

6.06 Late Charges. If any Assessment, whether regular or special, is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) shall be a charge upon the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge shall never exceed the maximum charge permitted under applicable law.

6.07 Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein shall be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefore (or if there is no such highest rate, then at the rate of one and one half percent (1 ½%) per month, together with all costs and expenses of collection, including reasonable attorneys fees.

6.08 Assessment Lien and Foreclosure.

(a) All sums assessed in the manner provided in this Article but unpaid shall, together with interest as provided in *Section 6.07* hereof and the cost of collection, including attorneys' fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first Mortgage lien of record, securing in either instance sums borrowed for the improvement of the Lot in question. Any foreclosure by the holder of a first Mortgage lien of record shall terminate the liability of the Lot for delinquent, pre-foreclosure Association Assessments. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must be signed by a duly authorized officer of the Association. To evidence the aforesaid Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Bell County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting Owner's Lot by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due. Mortgagees are not required to collect any assessments, which may be owed on any lot. Failure to pay assessments does not constitute a default under an insured mortgage.

(b) In addition to foreclosure by appropriate judicial proceedings, the Association may foreclose its lien against each Lot, in like manner as a Deed of Trust or contractual lien by nonjudicial foreclosure in accordance with Section 51.002 of the Texas Property Code or any future amendments or recodification thereof, without waiving its right to also proceed against the Owner on the Owner's personal liability. Each Owner, by acceptance of a deed to a Lot hereby expressly vests in the Board of Directors of the Association a power of sale to enforce the lien. The Board may exercise its power of sale by appointing an Agent or Agents, who may be removed and replaced at any time without any formality other than a written appointment, signed by the president or a vice president of the Association. The Board, acting on behalf of the Association, and acting through its appointed Agent or Agents, shall have the power to bid upon any Lot foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and to convey the same from and after the time that a foreclosure sale is conducted. The recitals in the conveyance to the purchaser or purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his heirs, assigns, executors, and administrators. In the event any sale is made of a Lot, the former Owner, his tenants and other persons in possession under him, shall forthwith upon the making of the sale, surrender and deliver possession of the Lot to the purchaser at the sale, and in the event of their failure to do so, any occupant shall become a tenant at sufferance of the purchaser at the foreclosure sale and the purchaser shall have the right to evict any persons by a proceeding brought in the Justice of the Peace Court where the Lot is situated. Any personal property left on the premises and not reclaimed within 10 days from the date of sale, shall be conclusively presumed to have been abandoned by the former Owner, his tenants or other parties in possession under him.

(c) In addition to the preceding, the Association is hereby given an assignment of rents and may directly collect from any tenant rents that are owed to an Owner in any amount that is owed to the Association that has not been paid by the Owner within thirty (30) days of written demand to the Owner at the last known address for the Owner as reflected in the books of the Association, such demand being effective upon being placed in the mail, certified mail, return receipt requested, postage prepaid. The Association is granted the right, without an obligation, to send a notice of Owner's non-payment to any lien holder on a Lot.

6.09 Fines and Damages Assessment. The Board may assess fines against an Owner for violations of any Restrictions which have been committed by an Owner, an occupant of the Owner's Lot, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 6.09* shall be considered an Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area and Facilities by the Owner or the Owner's family, guests, agents, occupants, or tenants. The manager of the Association shall have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

The procedure for assessment of fines and damage charges shall be as follows:

(a) the Association, acting through an officer, Board member or manager of the Association, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;

(b) the notice of the fine or damage charge must describe the violation or damage;

(c) the notice of the fine or damage charge must state the amount of the fine or damage charge;

(d) the notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and

(e) the notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges shall be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 6.07* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 6.01(c)* of this Declaration. Unless otherwise provided in this *Section 6.09*, the fine and/or damage charge shall be considered an Assessment for the purpose of this Article, and shall be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 6*.

ARTICLE 7

ARCHITECTURAL CONTROL COMMITTEE

7.01 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than the Declarant without the prior written approval of the Architectural Control Committee.

7.02 Architectural Control Committee.

(a) **Composition.** The Architectural Control Committee shall be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who shall review Improvements proposed to be made by any Owner other than Declarant. Declarant shall have the right to appoint and remove (with or without cause) all members of the Architectural Control Committee. Declarant may delegate this right to the Board by written instrument, and thereafter, the Board shall have the right to appoint and remove all members of the Architectural Control Committee. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the Architectural Control Committee. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties shall no longer be discharged by the Architectural Control Committee unless the sub-committee exercising such duties and responsibilities is dissolved by the Declarant. The right to create, dissolve, and appoint members of such sub-committees shall reside exclusively with the Declarant until such time as Declarant has delegated its right to appoint members of the Architectural Control Committee to the Board. The Architectural Control Committee shall have the right to employ consultants and advisors as it deems necessary or appropriate. Improvements constructed by the Declarant, or any assignee of Declarant's rights, need not be approved in advance by the Architectural Control Committee or any sub-committee thereof.

(b) **Submission and Approval of Plans and Specifications.** Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, shall be submitted in accordance with any rules adopted by the Architectural Control Committee together with any review fee which is imposed by the Architectural Control Committee in accordance with *Section 7.02(c)* to the Architectural Control Committee at the offices of Declarant designated in writing from time to time. No re-subdivision or consolidation shall be made, nor any Improvement placed or allowed on any Lot until the plans and specifications for the proposed structure or Improvement have been approved in writing by a majority of the members of the Architectural Control Committee. The Architectural Control Committee may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Architectural Control Committee or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Architectural Control Committee may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Architectural Control Committee, in its sole discretion, may require. The Architectural Control Committee may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Architectural Control Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(c) **Architectural Guidelines.** The Architectural Control Committee, or any sub-committee thereof created pursuant to *Section 7.02(a)* (but any amendment to the Design Guidelines made by a sub-

committee shall only apply to the Improvements under the jurisdiction of such sub-committee) shall have the power, from time to time, to amend, modify, or supplement the Design Guidelines. All amendment, modifications and supplements to the Design Guidelines must be approved in advance by the Declarant unless the Declarant has relinquished such approval right by written instrument recorded in the Official Public Records of Bell County, Texas. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration shall control. In addition, the Architectural Control Committee shall have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges shall be held by the Architectural Control Committee and used to defray the administrative expenses incurred by the Architectural Control Committee in performing its duties hereunder; provided, however, that any excess funds held by the Architectural Control Committee shall be distributed to the Association at the end of each calendar year. The Architectural Control Committee shall not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the Architectural Control Committee. The Architectural Control Committee shall have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(d) Actions of the Architectural Control Committee. The Architectural Control Committee may, by resolution unanimously adopted in writing, designate one or two of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the Architectural Control Committee, except the granting of variances. In the absence of such designation, the vote of a majority of all of the members of the Architectural Control Committee taken at a duly constituted meeting shall constitute an act of the Architectural Control Committee.

(e) Failure to Act. In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and the Architectural Control Committee shall fail either to approve or reject such plans and specifications for a period of ninety (90) days following such submission, no approval by the Architectural Control Committee shall be required, and approval of such plans and specifications shall be presumed; provided, however, that such ninety (90) day period shall not begin to run until all information required to be submitted by the Architectural Control Committee to assist in its review of any plans or specifications has been received by the Architectural Control Committee. Any failure of the Architectural Control Committee to act upon a request for a variance shall not be deemed a consent to such variance, and the Architectural Control Committee's written approval of all requests for variances shall be expressly required.

(f) Variances. The Architectural Control Committee may grant variances from compliance with any of the provisions of this Declaration, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Architectural Control Committee, in its sole and absolute discretion, such variance is justified due to visual or aesthetic considerations or unusual circumstances. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Architectural Control Committee. Plans and specifications which have been approved by the Architectural Control Committee without conditions or exceptions and which reflect deviations from this Declaration shall constitute a writing for the purpose of the foregoing sentence. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any supplemental declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this Declaration, or any supplemental declaration, for any purpose except as to the particular

property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration.

(g) Duration of Approval. The approval of the Architectural Control Committee of any plans and specifications, whether by action or inaction, and any variances granted by the Architectural Control Committee shall be valid for a period of one hundred and twenty (120) days from the date of approval. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion thereafter, the Owner shall be required to resubmit such plans and specifications or request for a variance to the Architectural Control Committee, and the Architectural Control Committee shall have the authority to re-evaluate such plans and specifications in accordance with this *Section 7.02(g)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(h) No Waiver of Future Approvals. The approval of the Architectural Control Committee to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Architectural Control Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Architectural Control Committee.

(i) Work in Progress. The Architectural Control Committee, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications.

(j) Address. Plans and Specifications shall be submitted to the Architectural Control Committee at 12301-B Riata Trace Parkway, Building 2, Austin, Texas, 78727, Attn. Cameron Scott, or such other address as may be designated from time to time.

(k) Non-Liability of Committee Members. Neither the Architectural Control Committee, nor any member shall be liable to any Owner or to any other person for any loss, damage or injury arising out of the performance of the Architectural Control Committee's duties under this Declaration, unless such loss, damage, or injury is due to the willful misconduct or bad faith of the Architectural Control Committee or one or more of its members, as the case may be.

ARTICLE 8

MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property.

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

easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property.

10.03 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as approve in writing by the Architectural Committee.

10.04 Utility Easements. Declarant hereby reserves unto itself and Declarant's successors and assigns a perpetual non-exclusive easement over and across the Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Property and any other property owned by Declarant; and (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and any other property owned by Declarant. Declarant shall be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and improvements described in (i) through (iii) of this *Section 10.04*. The exercise of the easement reserved herein shall not extend to permitting entry into any residence, nor shall it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon. The Owner will be liable for any planting of shrubbery, trees, lawns, or flowers which are in easement areas for utility services.

10.05 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and shall be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

ARTICLE 11

DEVELOPMENT RIGHTS

11.01 Development by Declarant. It is contemplated that the Property will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant reserves the right, but shall not be obligated, to create and/or designate Lots, Common Area and Facilities and to subdivide with respect to any of the Property pursuant to the terms of this *Section 11.01*, subject to any limitations imposed on portions of the Property by any applicable Plat. These rights may be exercised with respect to any portions of the Property. As each area is developed or dedicated, Declarant may record one or more supplemental declarations and designate the use, classification, modify or amend the restrictions and covenants set forth in this Declaration, and/or promulgate such additional covenants,

9.09 **Gender.** Whenever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

9.10 **Acceptance by Grantees.** Each grantee of Declarant of a Lot, or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. All impositions and obligations hereby imposed shall constitute covenants running with the land within the Property, and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

9.11 **Notices.** Any notice permitted or required to be given to any person by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

9.12 **City Permission.** Permission is extended to the city for practical access to public infrastructure at any time without liability when on official business. This practical access will also extend to the city, without liability, permission to remove obstructions including, but not limited to any gate or any other type of obstacle that precludes the accomplishment of the official business. Yowell Ranch Home Owner's Association, as owner of common use facilities, agrees to release, and hold harmless the city, any governmental entity, and public utility for damages to common facilities occasioned by the reasonable use of such common facilities by the city, governmental entity, or public utility and for damages and injury arising from the condition of said common use facilities. Any amendment to this section requires the city's written consent.

ARTICLE 10

EASEMENTS

10.01 **Right of Ingress and Egress.** Declarant, its agents and employees, shall have a right of ingress and egress over and the right of access to the Common Area and Facilities to the extent necessary to use the Common Area and Facilities and the right to such other temporary uses of the Common Area and Facilities as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property.

10.02 **Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said

9.03 Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Bell County, Texas, of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (unless Declarant has relinquished such approval right by written instrument recorded in the Official Public Records of Bell County, Texas) and Members entitled to cast at least seventy-five percent (75%) of the number of votes entitled to be cast by members of the Association. No amendment shall be effective without the written consent of Declarant, its successors or assigns. Specifically, and not by way of limitation, Declarant may unilaterally amend this Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on Lots; (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development, or (e) to annex any other land to be governed by this Declaration. Amendments to any section of this Declaration regarding the following require the city's written consent: self-sustaining reserve fund for the operation, repair, and maintenance of all private infrastructure and common use facilities; providing for a current repair and maintenance plan for all private infrastructure and common use facilities; and mandatory membership in the association and payment of dues and assessments.

9.04 Roadway and Utility Easements. Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, relocated, constructed, erected, and maintained in and on any streets maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Common Area and Facilities, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of repair and maintenance.

9.05 Enforcement. The Association or the Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration shall not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

9.06 Higher Authority. The terms and provisions of this Declaration are subordinate to federal and state law, and local ordinances. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

NOTICE

Users of this Declaration and the Design Guidelines should periodically review statutes and court rulings that may modify or nullify the terms and provisions of those documents or their enforcement, or which may create rights or duties not contemplated therein.

9.07 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

9.08 Conflicts. If there is any conflict between the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted pursuant to the terms of such documents, the provisions of this Declaration shall govern.

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

(b) Any delinquency in the payment of Assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or occupant which is not cured within sixty (60) days; or

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

8.02 Examination of Books. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours.

8.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law shall relate only to the individual Lots and not to any other portion of the Property.

ARTICLE 9

GENERAL PROVISIONS

9.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration shall run with and bind the portion of the Property described in such notice, and shall inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Records of Bell County, Texas, and continuing through and including January 1, 2035, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least ninety percent (90%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that such change shall be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Bell County, Texas. Notwithstanding any provision in this *Section 9.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision shall be stricken herefrom and the remaining provisions of this Declaration shall remain in full force and effect.

9.02 Eminent Domain. In the event it shall become necessary for any public authority to acquire all or any part of the Common Area and Facilities for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received shall be held by the Association for the benefit of the Owners.

conditions and restrictions as Declarant may deem appropriate for that area. Any supplemental declaration may provide its own procedure for the amendment of any provisions. All lands, Improvements, and uses in each area so developed shall be subject to both this Declaration and the supplemental declaration, if any, for the affected area of the Property.

11.02 Special Declarant and Builder Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant and Builder shall have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of Improvements by Declarant and Builder shall not be considered a nuisance, and Declarant and Builder hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 11.02* until Declarant and Builder has relinquished such rights by written instrument recorded in the Official Public Records of Bell County, Texas.

11.03 Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property and, upon the filing of a notice of addition of land, such land shall be considered part of the Property for purposes of this Declaration, and such added lands shall be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, as modified or amended by any supplemental declaration filed for the added land, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property, Declarant shall be required only to record in the Official Public Records of Bell County, Texas, a notice of addition of land containing the following provisions:

A reference to this Declaration, which reference shall state the volume and initial page number of the Official Public Records of Bell County, Texas wherein this Declaration is recorded;

(a) A statement that such land shall be considered Property for purposes of this Declaration, all of the terms, covenants, conditions, restrictions and obligations of this Declaration shall apply to the added land, as modified or amended by any supplemental declaration filed for the added land; and

(b) A legal description of the added land.

11.04 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association: (i) any portions of the Property which have not been included in a Plat; (ii) any portion of the Property included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portions of the Property included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal and renewal this Declaration and the covenants conditions, restrictions and obligations set forth herein shall no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Public Records of Bell County, Texas, a notice of withdrawal of land containing the following provisions:

(a) A reference to this Declaration, which reference shall state the volume and initial page number of the Official Public Records of Bell County wherein this Declaration is recorded;

(b) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and

- (c) A legal description of the withdrawn land.

ARTICLE 12

DISPUTE RESOLUTION

12.01 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all parties subject to this Declaration (collectively, the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 12.02* in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Restrictions; or
- (ii) the rights, obligations, and duties of any Bound Party under the Restrictions; or
- (iii) the design or construction of improvements within the Property, other than matters of aesthetic judgment under *Article 7*, which shall not be subject to review.

The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 12.02*:

- (i) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration; and
- (ii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Restrictions; and
- (iii) any suit in which any indispensable party is not a Bound Party; and

- (iv) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by *Section 12.02 (a)*, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

12.02 Dispute Resolution Procedures.

(a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in *Section 12.02(a)* (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Bell County, Texas.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such

agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

12.03 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, excluding the votes held by the Declarant, except that no such approval shall be required for actions or proceedings:

- (a) initiated while Declarant or Builder owns any portion of the Property; or
- (b) initiated to enforce the provisions of the Restrictions, including collection of assessments and foreclosure of liens; or
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings; or
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment shall also be approved by the Declarant for so long as Declarant owns any portion of the Property.

[CONTINUED ON FOLLOWING PAGE]

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Bell County, Texas.

DECLARANT:

W.B. DEVELOPMENT, LTD., Texas limited partnership

By: **W.B. Development Company,** a Texas corporation, its General Partner

By: _____
Bruce Whitis, President

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2006, by Bruce Whitis, President, W.B. Development, a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas