

**SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
HERITAGE TOWNHOMES SUBDIVISION**

This SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HERITAGE TOWNHOMES SUBDIVISION (this "Restated Declaration"), is made effective on the date of filing of this Restated Declaration in the Official Records of Brazos County, Texas, by a majority of Owners entitled to vote within the property known as Heritage Townhomes Subdivision.

FACTS

A. Declaration of Covenants, Conditions and Restrictions Heritage Townhomes was recorded in Volume 4319, Page 309, Official Records, Brazos County, Texas; Amendment to Declaration of Covenants, Conditions and Restrictions Heritage Townhomes recorded in Volume 8037, Page 209, Official Records, Brazos County Texas; and Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Townhomes recorded in Volume 8896, Page 251, Official Records, Brazos County, Texas (collectively referred to herein as the "Original Declaration"), subjected certain property described as all that certain 6.629 acre tract or parcel of land being situated in the Maria Kegans League, Abstract No. 28, College Station, Brazos County, Texas, and being the same property shown on the plat of Heritage Townhomes recorded in Volume 4309, Page 251, Official Records, Brazos County, Texas (referred to herein as the "Property") to certain covenants, conditions and restrictions.

B. Pursuant to the Original Declaration, the Original Declaration may be amended by a majority of Owners entitled to vote within the Property.

C. Owners holding at least a majority of the total votes of all Owners within the Property desire to amend, create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property, and to file this Restated Declaration to be valid and effective against all Lots, as covenants running with the Lots.

D. When recorded, this Restated Declaration fully restates, replaces, and supersedes the Original Declaration.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, liens, and charges, which are for the purpose of preserving the value and desirability of, and which shall run with, the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof; and (ii) that each contract or deed that 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 or referred to in said contract, or deed.

ARTICLE 1 DEFINITIONS

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

1.01 "Amended Declaration" shall mean and refer to each and every instrument recorded in the Official Records of Brazos County, Texas which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Restated Declaration.

1.02 "Architectural Review Committee" (sometimes referred to herein as the "ARC") shall mean and refer to the committee which is described in Article 9 below.

1.03 "Articles" shall mean and refer to the Articles of Incorporation (and amendments thereto and restatements thereof) of the Association on file with the Secretary of State of Texas.

1.04 "Assessable Property" shall mean and refer to each and every lot within the Property which: (i) has been subjected to and imposed upon a set of restrictive covenants calling for the payment of Assessments to the Association; (ii) may have been or will be given a separately identifiable tax or parcel number by the Central Appraisal District ("CAD") or a similar governmental agency; and (iii) is not designated an "open space" or otherwise a portion of the Common Properties.

1.05 "Assessment" or "Assessments" means a regular assessment or special assessment, or other amount an Owner is required to pay to the Association under this Restated Declaration or other dedicatory instrument described herein, and shall be a charge on the Lots and shall be a continuing lien upon the Lot against which any such Assessments and other charges are made.

1.06 "Association" shall mean and refer to Heritage Townhomes Homeowner's Association, Inc., a Texas nonprofit corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Property and all of the Common Properties, administering and enforcing the Covenants and otherwise maintaining and enhancing the quality of life within Heritage Townhomes Subdivision.

1.07 "Board" shall mean and refer to the Board of Directors of the Association.

1.08 "Bylaws" shall mean and refer to the Bylaws of the Association, as adapted and amended from time to time.

1.09 "Central Appraisal District" ("CAD") shall mean and refer to the governmental and/or quasi-governmental agency(ies) (including without limitation the Central Appraisal District of Brazos County) established in accordance with Texas Tax Code Section 6.01 et seq. (and its successor and assigns as such law may be amended from time to time) or other similar statute which has, as one of its purposes and functions, the establishment of an assessed valuation and/or fair market value for various lots, parcels and tracts of land in Brazos County, Texas.

1.10 "Common Properties" shall mean and refer to any and all areas of land within the Property which are known, described or designated as common areas, parking lots, pools, parks, recreational easements, storm water detention areas, floodway easement areas, lakes, ponds, dams, perimeter fences and columns, off-site monuments and directional signs, landscape easement, greenbelts, open spaces, paths and trails, and the like including without

limitation those shown on any recorded subdivision plat of portions of the Property as well as those not shown on a recorded subdivision plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The concept of Common Properties will also include: (i) any and all public right-of-way lands within the Property for which the City of College Station has required that the Association expend private, non-reimbursable time and monies to care for and maintain, such as but not limited to: street medians, streetscape, hike and bike trails, park areas and quasi-governmental service facilities; and (ii) any and all facilities provided by the Association to or for the benefit of the local police, fire and similar governmental departments for which no reimbursement via public funds is requested or anticipated.

1.11 "Covenants" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Restated Declaration.

1.12 "Deed" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

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

1.14 "Easement Area" shall mean and refer to those areas which may be covered by an easement specified in Article 12 below.

1.15 "Exempt Property" shall mean and refer to the following portions of the Property: (i) all land and Improvements owned by the United States of America, the State of Texas, Brazos County, the City of College Station or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental capacity; (ii) all land and Improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties; (iii) all land and Improvements which are exempt from the payment of ad valorem real property taxes by the City of College Station, Brazos County, the College Station Independent School District, and the State of Texas; and (iv) such other land(s) and/or Improvement(s) and/or Lot(s) which are specifically exempted from the payment of Assessments in accordance with a special resolution of the Board.

1.16 "Fiscal Year" shall mean each twelve (12) month period commencing on January 1 and ending on the following December 31, unless the Board shall otherwise select an alternative twelve month period.

1.17 "Improvement" shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

1.18 "Lot" shall mean and refer to each separately identifiable portion of the Assessable Property which is platted, filed and recorded in the Official Records of Brazos County, Texas

and which is assessed by any one or more of the Taxing Authorities and which is not intended to be an "open space" or a portion of the Common Properties.

1.19 "Member" shall mean and refer to each Resident who is in good standing with the Association and who has filed a proper statement of residency with the Association and who has complied with all directives and requirements of the Association. Each and every Owner shall and must take such affirmative steps as are necessary to become and remain a Member of, and in good standing in, the Association. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a nonvoting Member of the Association.

1.20 "Owner" shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot.

1.21 "Property" shall mean and refer to the land described as Heritage Townhomes Subdivision, College Station, Texas, according to the plat of Heritage Townhomes recorded in Volume 4309, Page 251, Official Records, Brazos County, Texas, and such other lands made subject to this Restated Declaration pursuant to Section 2.02.

1.22 "Resident" shall mean and refer to:

- (a) each owner of the fee simple title to any Lot within the Property;
- (b) each person residing on any part of the Assessable Property who is a bona-fide lessee pursuant to a legally cognizable lease agreement with an Owner; and
- (c) each individual lawfully domiciled in a Dwelling Unit, other than Owner or bona-fide lessee.

1.23 "Restated Declaration" shall mean this instrument entitled the "Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Townhomes Subdivision", recorded in the Official Records of Brazos County, Texas, together with any and all amendments or supplements thereto.

1.24 "Heritage Townhomes Restrictions" shall mean and refer to this Restated Declaration, together with the rules and regulations adopted by the Board, the rules and regulations adopted by the Architectural Review Committee and the Articles and Bylaws of the Association, as the same may be amended from time to time.

1.25 "Structure" shall mean and refer to: (i) any thing or device, other than trees, shrubbery (less than two feet high if in the form of a hedge) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot) including but not limited to any building, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent Improvement to any Lot; (ii) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; (iii) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (iv) any change in the grade of any Lot of more than three (3) inches from that existing at the time of initial approval by the Architectural Review Committee.

1.26 "Subdivision" shall mean and refer to the Heritage Townhomes Subdivision, a subdivision of certain land as described on the plat of Heritage Townhomes recorded in Volume 4309, Page 251, Official Records, Brazos County, Texas, as well as any and all revisions, modifications, corrections, or clarifications thereto.

1.27 "Taxing Authorities" shall mean and refer to Brazos County, the College Station Independent School District, the City of College Station and the State of Texas and any and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates.

1.28 "Texas Residential Property Owners Protection Act" or the "Act" shall mean Texas Property Code Chapter 209, as same may be amended or repealed in whole or in part.

1.29 "Zoning Ordinance" shall mean and refer to City of College Station zoning ordinances, governmental regulations, and all amendments thereto.

ARTICLE 2 PROPERTY SUBJECT TO THIS RESTATED DECLARATION

2.01 Existing Property. The residential Lots which are, and shall be, held, transferred, sold, conveyed and occupied subject to this Restated Declaration within the Heritage Townhomes Subdivision are more particularly described on the plat of Heritage Townhomes recorded in Volume 4309, Page 251, Official Records, Brazos County, Texas.

2.02 Additions to Existing Property. Upon written agreement between the Board and the owner of the land being added to the Property, add any other lands to the Property, and upon such addition, this Restated Declaration and the covenants, conditions, restrictions and obligations set forth herein shall apply to the added land, and the rights, privileges, duties and liabilities of the persons subject to this Restated Declaration shall be the same with respect to the added land as they are with respect to the lands originally covered by the Restated Declaration. In order to add lands to the Property hereunder, the Board and the owner of the added land shall be required only to record in the Official Records of Brazos County, Texas, a Notice of Addition of Land containing the following provisions:

- (A) A reference to this Restated Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Restated Declaration is recorded;
- (B) A statement that the provisions of this Restated Declaration shall apply to the added land; and
- (C) A legal description of the added land.

ARTICLE 3 THE ASSOCIATION

3.01 Membership. Every person or entity which is a record owner of any Lot which is subjected to these Covenants shall be a Member of the Association. The foregoing is not intended to include persons or entities which hold an interest merely as security for the

performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Ownership of a Lot shall be the sole qualification for membership. Membership is not intended to include persons who hold an interest merely as security for the performance of an obligations, and the giving of a security interest shall not terminate the Owner's membership. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's designated representative. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a nonvoting Member of the Association.

3.02 Voting Rights. The Owner of each Lot shall be entitled to one (1) vote per Lot. Where more than one (1) Owner owns and holds a record fee interest in a Lot such Owners may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote.

3.03 Good Standing. An Owner must be in good standing before being entitled to vote. Any Owner, Resident or Member shall not be in "good standing" if such person or entity is: (a) in violation of any portion of these Covenants, or any rule or regulation promulgated by the Board; (b) delinquent in the full, complete and timely payment of any Assessments, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board. Notwithstanding the foregoing, an Owner shall not be disqualified from voting in an election of the Board or on any matter concerning the rights and responsibilities of the Owner, regardless of whether the Owner is in good standing.

3.04 Board of Directors. The Board shall consist of no less than five (5) individual Directors elected by the Members. The Directors need not be Members of the Association. Directors shall be elected for two year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the board, by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the board by the affirmative vote of a majority of the remaining Directors. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill. The Board may make such rules and regulations, consistent with the terms of this Restated Declaration and the Bylaws, as it deems advisable, for any meeting of Members; proof of membership in the Association; the status of good standing; evidence of right to vote; the appointment and duties of examiners and inspectors of votes; the procedures for actual voting in person or by proxy; registration of Members for voting purposes; and such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

3.05 Notice and Voting Procedures. Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Texas law.

ARTICLE 4 RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES

4.01 Easement. Subject to the provisions of Sections 4.02 through 4.07, every Owner in good standing shall have a non-exclusive right and easement of enjoyment in and to all Common Properties, and such easement shall be appurtenant to and shall pass with every Lot, provided the conveyance and transfer is accomplished in accordance with this Restated Declaration. All Residents in good standing with the Association shall have a non-transferable, non-exclusive privilege to use and enjoy all Common Properties for so long as they are Members in good standing with the Association.

4.02 Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Association to prescribe reasonable regulations (e.g. limitations on parking on or in the streets and parking areas) and policies governing, and to charge reasonable expense reimbursements and/or deposits related to, the use, operation and maintenance of the Common Properties;

(b) Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Association to improve or maintain the Common Properties;

(c) The right of the Association to enter into and execute contracts with any party for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Restated Declaration;

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of the Association to enter into and execute contracts with the owner-operators of any community antenna television system ("CATV") or other similar operation for the purpose of extending cable or utility or security service on, over or under the Common Properties to ultimately provide service to one or more of the Lots;

(f) The right of the Association, in accordance with the requirements of the Texas Property Code and this Restated Declaration, to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Properties for any period during which any assessment (including without limitation "fines") against a Lot resided upon by such Member remains unpaid, or during which non-compliance with this Restated Declaration exists, and otherwise for any period deemed reasonable by the Association for any infraction of the then-existing rules and regulations and/or architectural guidelines;

(g) The right of the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be determined by the Board; and

(h) The right of the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes necessary for the proper operation of Heritage Townhomes Subdivision.

4.03 Restricted Actions by Members. No Member shall permit anything to be done on or in the Common Properties which would violate any applicable public law or Zoning Ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

4.04 Damage to the Common Properties. Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his family and guests.

4.05 Rules of the Board. All Members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and a Member determined to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

4.06 Use of Common Properties. The Board shall have the power and authority to prescribe rules and regulations which extend to and cover matters such as (but not limited to) the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, and the supervision by attending adults of children. No person or entity shall use any portion of the Common Properties to:

- (a) solicit, promote or conduct business, religious, political or propaganda matters;
- (b) distribute handbills, newsletters, flyers, circulars or other printed materials.

without the prior written consent of the Association (which consent may be withheld in its sole and absolute discretion). The Association may, on its own motion, permit and allow reasonable activities to occur on the Common Properties in accordance with rules and regulations deemed reasonable and appropriate by the Association.

4.07 User Fees and Charges. The Board may levy and collect special charges and fees for any and all extraordinary operation and maintenance of the Common Properties and services which the Board determines to be necessary for the advancement, benefit and welfare of the Owners or Residents. Examples (by way of illustration, and not limitation) of these special charges and fees would include: extraordinary utility consumption; additional gate and/or security personnel for parties or special events; management overtime services; and additional insurance conditions or requirements. In establishing special user fees, the Board may formulate reasonable classifications of users. Such fees should be uniform within each class but need not be uniform from class to class. If an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee shall be delinquent and upon written notice to said Owner shall become a personal debt of said Owner. Failure of any Owner to pay said fee and charge when due and payable, in addition, shall be a breach of these Covenants.

4.08 Encroachments. If (i) construction, reconstruction or repair activities which have been approved by the ARC; or (ii) shifting, settlement or other movements of any portion of ARC approved improvements, results either in the Common Properties encroaching on a Lot or Dwelling Unit or in a Lot or Dwelling Unit encroaching on the Common Properties or on another

Lot or Dwelling Unit, and unless otherwise directed by the ARC, a valid easement shall then and there exist to permit the encroachment and reasonable and necessary maintenance activities related thereto.

4.09 Parking Areas. The parking areas within Heritage Townhomes Subdivision are "private" and constitute a portion of the Common Properties which are subject to the jurisdiction and administration by the Association. In addition to the other provisions appearing within this Article, the Board of Directors of the Association is specifically authorized to recommend, adopt, implement and enforce rules, regulations, mechanisms and procedures governing use of the parking areas, including without limitation:

- (a) identification of vehicles entitled to park in such areas;
- (b) a "fines" system through which the Association can levy and collect fines from its Members for violations of the applicable rules and regulations; and
- (c) disclaimers of liability for any and all matters or occurrences on or related to the Common Properties.

ARTICLE 5 COVENANTS FOR ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed to a Lot, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

- (a) regular annual assessments;
- (b) special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided;
- (c) special individual assessments levied against individual Owners to reimburse the Association for extra or unusual costs incurred for items such as (but not limited to): maintenance and repairs to portions of the Property caused by the willful or negligent acts of the individual Owner, Member or Resident; the remedy, cure or minimizing of problems cause by, or as a result of, violations of these Covenants by an Owner, Member or Resident; and
- (d) individual assessments and fines levied against an individual Owner, Member or Resident for violations of rules and regulations pertaining to the Association and/or the Common Properties.

The regular, special group, special individual and individual assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the continuing personal obligation of the then-existing

Owner, Member and Resident of such Lot at the time when the assessment fell due. Each Owner of each Lot shall be directly liable and responsible to the Association for the acts, conduct and omission of each and every Member and Resident associated with the Dwelling Unit(s) on such Owner's Lot.

5.02 Purposes of Assessments. The assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Residents of the Property and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of parking lots, pools, parks, floodway easement areas, walkways, common green, ponds, lakes, recreational areas and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: the payment of taxes on the Common Properties and insurance in connection with the Common Properties; the payment for utilities and the repair, replacement and additions of various items within the Common Properties; paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; carrying out the duties of the Board as set forth in Articles 4 and 7 herein; carrying out the other various matters set forth or envisioned herein or in any Amended Supplemental Declaration related hereto; and for any matter or thing designated by the City of College Station in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive but merely illustrative. The assessments levied by the Association may be used for the purpose of providing liability insurance and directors and officers liability insurance for the Association and for maintenance of the exterior portions of Dwelling Units pursuant to Section 7.01 of this Restated Declaration.

5.03 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 under the Heritage Townhomes Restrictions, the cost of enforcing the Heritage Townhomes Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's funds. Assessments sufficient to pay such estimated note 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.

5.04 Special Assessments. In addition to the regular annual assessment authorized by Section 5.03 hereof, the Board may levy Special Assessments whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under this Restated Declaration. The amount and due date of any Special Assessment shall be at the reasonable discretion of the Board. Special Assessments need not be uniform and may be assessed by the Board only against owners of Lots which will

be maintained or repaired as part of a specific maintenance activity, in the sole discretion of the Board.

5.05 Rate of Assessments. Except for special assessments, the level of Assessments shall be equal and uniform between all Lots.

5.06 Date of Commencement of Assessments; Due Dates. The annual assessment shall be due and payable in one annual, two equal semi-annual, four equal quarterly or twelve equal monthly installments in advance on the 20th day of each billing month and shall, if not automatically paid within ten (10) consecutive calendar days thereafter, automatically become delinquent. The Board shall use reasonable efforts to provide each Owner with an invoice statement of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence. The Board may further prescribe: (a) procedures for collecting advance regular annual assessments from new Owners, Members or Residents out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had a recent history of being untimely in the payment(s) of assessments.

ARTICLE 6 COLLECTION OF ASSESSMENTS

6.01 Creation of Lien and Personal Obligation; Subordination of Lien. In order to secure the payment of Assessments, and other charges and fines hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot, which may be foreclosed judicially or by Expedited Foreclosure Proceedings, pursuant to the provisions of Section 209.0092 of the Act and Texas Rules of Civil Procedure Rules 735 and 736 (and any successor statutes); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. Expedited Foreclosure Proceedings are not required under this section if the Owner of the Lot to be foreclosed agrees in writing to waive said Expedited Foreclosure Proceedings at the time the foreclosure is sought. A waiver under this section may not be required as a condition of the transfer of title to a Lot. The lien securing the payment of Assessments and other obligations provided for herein 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 or first deed of trust filed of record, securing in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid lien to any other lien. Such power shall be entirely discretionary with the Board and an officer of the Association, duly authorized by the Board, shall effectuate such subordination.

6.02 Prerequisites to Foreclosure. Prior to referring an Owner's account to a collection agent, the Association shall provide written notice, by certified mail, return receipt requested, that specifies each delinquent amount and the total amount of the payment required to make the account current, describes the options the Owner has to avoid the referral including payment plan options, and provides at least 30 days to cure the delinquency before further action is taken.

6.03 Collection Fees. Owners are not liable for costs that are dependent or contingent on amounts recovered, or under an agreement that does not require the Association to pay all fees for the action taken by the collection agent.

6.04 Contact. An agreement between the Association and a collection agent may not prohibit an Owner from contacting the Board or its designated representative regarding their delinquency.

6.05 Non-transferability of Lien. The Association shall not sell or transfer its interest in accounts receivable except for the purpose of collateral for a loan.

6.06 Notice and Opportunity to Cure for Certain Other Lienholders. The Association may not foreclose its assessment lien by Expedited Foreclosure Proceedings or judicially unless it has provided written notice by certified mail, return receipt requested, of the total amount of the delinquency to any other holder of a lien that is inferior or subordinate to the Association's lien and is evidenced by a deed of trust; and provided the recipient of the notice an opportunity to cure within sixty-one (61) days from the receipt of the notice.

6.07 Foreclosure Sale Prohibited in Certain Circumstances. The Association may not foreclose its assessment lien for debts consisting solely of fines or attorneys' fees associated with the fines assessed, or for copy charges under its Open Records Policy, pursuant to §209.005 of the Act.

6.08 Assessment Lien Filing. In addition to the right of the Association to enforce the Assessments or other charges or fines levied hereunder, the Association may file a claim of lien against the Lot of the delinquent Owner by recording a Notice of Lien setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Lot against which the lien is claimed and (e) the name of the Owner. The Notice of Lien shall be recorded in the Official Records of Brazos County, Texas, and is a legal instrument affecting title to a Lot, and shall be prepared by the Association's attorney. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice of satisfaction of the delinquent assessment upon payment by the Owner of a reasonable fee as fixed by the Board to cover the preparation and recordation of such instrument.

6.09 Attorney's Fees. All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its designated representative. Only Board members or the Association's designated representative or employees of its designated representative may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs.

6.10 Notice after Foreclosure Sale. After the Association conducts a foreclosure sale of an Owner's Lot, the Association must send to the Owner and to each lienholder of record, not later than the thirtieth (30th) day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the Lot Owner and each lienholder of record of the right of the Lot Owner and lienholder to redeem the property. The notice must be sent by certified mail, return receipt requested, to the Lot Owner's last known mailing address, as reflected in the records of the Association, the address of each holder of a lien on the Lot subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located, and the address of each transferee or assignee of a deed of trust who has provided notice to the Association of such assignment or transfer. Notice provided by a transferee or assignee to the Association shall be in writing, shall contain the mailing address of the transferee or assignee, and shall be mailed

by certified mail, return receipt requested, or United States mail with signature confirmation to the Association according to the mailing address of the Association pursuant to the most recent Management Certificate filed of record. If a recorded instrument does not include an address for the lienholder, the Association does not have a duty to notify the lienholder as provided by this section. For purposes of this section, the Lot Owner is deemed to have given approval for the Association to notify the lienholder. Not later than the thirtieth (30th) day after the date the Association sends the notice, the Association must record an affidavit in the Official Records of Brazos County, Texas, stating the date on which the notice was sent and containing a legal description of the Lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit. The notice requirements of this section also apply to the sale of an Owner's Lot by a sheriff or constable conducted as provided by a judgment obtained by the Association.

6.11 Right of Redemption after Foreclosure. The Owner of a Lot in the Subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing a the Association's assessment lien not later than the one hundred eightieth (180th) day after the date the Association mails written notice of the sale to the Owner and the lienholder under Sections 209.010 and 209.011 of the Act. A lienholder of record may not redeem the Lot as provided herein before ninety (90) days after the date the Association mails written notice of the sale to the Lot Owner and the lienholder under the Act, and only if the Lot Owner has not previously redeemed. A person who purchases a Lot at a sale foreclosing the Association's assessment lien may not transfer ownership of the Lot to a person other than a redeeming Lot Owner during the redemption period.

6.12 Removal of Foreclosure Authority. The right to foreclose the lien on real property for unpaid amounts due to the Association may be removed by a vote of at least sixty-seven percent (67%) of the total votes allocated in the Association. Owners holding at least ten percent (10%) of all voting interests may petition the Association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section. This section is required pursuant to §209.0093 of the Act, and should this provision be amended or repealed in any form, this section shall be deemed to be automatically amended or repealed in accordance therewith.

6.13 Exempt Property. The following property otherwise subject to this Restated Declaration shall be exempted from any assessments, charges and liens created herein:

- (a) All property dedicated to and accepted by a local public or governmental authority;
- (b) Common Properties; and
- (c) Exempt Property.

ARTICLE 7 GENERAL POWERS AND DUTIES OF THE ASSOCIATION

7.01 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to any limitations upon the exercise of its power as are expressly set forth in this Restated Declaration. Without in any way limiting the generality of the

two preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the following powers at all times:

(a) To provide and pay for, out of the assessment fund(s) provided for in Article 5 above, one or more of the following:

(i) Care, preservation and maintenance of the Common Properties and the furnishing and upkeep of any desired personal property for use in or on the Common Properties;

(ii) Maintenance, care and preservation of the lawn and any common sprinkler systems on the Lots;

(iii) Maintenance, care, preservation and repair of Easement Areas, Common Properties, entry ways, sidewalks, retention pond, irrigation equipment, fences, brick walls, entrance gates and other areas of the Property, as determined by the Board and as required or allowed by this Restated Declaration;

(iv) Maintenance of the exterior surfaces of each Unit, excluding supporting structures. The term "exterior surfaces of each Unit" shall include only the roof, exterior brick surfaces, and exterior painted surfaces, including the surfaces of garage doors and exterior doors, and fences. If damage is sustained due to casualty or catastrophic loss, the Association will facilitate the repairs of the exterior surfaces of each Unit, and fund the cost of repairs through a special assessment. It is the Owners' responsibility to file claim with their property insurance company. Regardless of any insurance disbursement, it is the Owners' responsibility to pay the special assessment by the due date determined by the Board. The Association shall establish Reserve Funds (as provided for in Section 7.04 below) to cover the estimates costs of normal wear and tear repairs of such exterior surfaces in accordance with the authorities granted the Association in this Restated Declaration. Each Owner shall afford to the Association, and to their agents or employee access onto and through the Lot reasonably necessary for those purposes. All other exterior elements and supporting structures, including, but not limited to, doors, garage doors, windows, screens, lighting, roof mounted equipment and appurtenances, patios, slabs shall be maintained by each Owner. Additionally, each Owner is responsible for the cost of maintenance, repair, and replacement of any utility installation or equipment serving only the Owner's Unit, without regard to whether the installation or equipment is located wholly or partially outside the designated boundaries of the Lot. For purposes of this subsection, utility installations and equipment include electricity, water, sewage, water heaters, heating and air conditioning equipment, and antennas.

(v) Recreational and social programs and activities for the general benefit of the Residents and programs which are designed only for separately identifiable sub-groups of Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;

(vi) Supplementing (to the extent, if any, deemed necessary, appropriate and affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the Property traditionally provided by local governmental agencies;

(vii) Taxes, insurance and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to the Common Properties;

(viii) The services of any person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association. The Board is specifically authorized to hire and employ one or more managers, secretarial, clerical, staff and support employees. The Board is specifically authorized to engage personnel and equipment (such as computers, software and electronic communication and transmission devices) for the administration of the Association and the collection of assessments described in Article 5;

(ix) Any other materials, supplies, pool furniture, labor, services maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Restated Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Restated Declaration.

(b) To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, policies, rules and Bylaws, not in conflict with this Restated Declaration, as it deems proper to address any and all aspects of its functions;

(c) To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions;

(d) To keep books and records of the Association's affairs;

(e) To levy assessments as provided in Article 5;

(f) To levy and collect fines against Owners for any violation of this Restated Declaration which is not cured by the Owner in the judgment of Board within 30 days after written notice of such violation as provided in Section 14.02. Fines may be assessed repeatedly for continuous violations. Fines shall be uniform according to a fine schedule to be established from time to time by the Board.

(g) To retain and pay for legal and accounting services necessary or proper for the operation of the Association;

(h) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(i) To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Properties; (ii) monthly escrow and impound payments by a mortgagee regarding the assessment, collection and disbursement process envisioned herein; (iii) utility installation, consumption and service matters; and (iv) the escrow or impounding of monies sufficient to timely pay Assessments applicable to any Lot;

(j) To borrow funds to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Association

(k) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(l) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;

(m) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time;

(n) To prepare an annual operating budget and to make available for review by each Owner at the Association offices within ninety (90) days after the end of each Fiscal Year an annual report;

(o) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency; and

(p) To enforce the provisions of this Restated Declaration and any rules made hereunder and, subject to the requirements of applicable law, including without limitation, the Act as amended and replaced from time to time, to enjoin and seek damages from any Owner, Resident or Member for violation of such provisions or rules.

(q) To enter at any time in an emergency, or in a non-emergency, after ten (10) days written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing this Restated Declaration or for the purpose of erecting, maintaining or repairing any Improvement to conform to this Restated Declaration, and the expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered on and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article 5 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 this Restated Declaration, The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce this Restated Declaration.

(r) To enter, after ten (10) days written notice, without being liable to any Owner, upon any Lot for the purpose of maintaining the exterior portions of the Dwelling Unit on such Lot in a manner determined by the Association for the purpose of maintaining the aesthetic continuity of the community; provided the Association reasonably believes the Dwelling Unit to be in need of maintenance, whether due to normal wear and tear, damage or otherwise. All maintenance shall be done by licensed and insured contractors.

7.02 Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner, Member or Resident for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best Interests of the Association. Such contract shall be reviewed annually and re-bid as the Board deems necessary.

7.03 Liability Limitations. Neither any Resident nor the directors and officers and managers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another Resident, whether such other Resident was acting on behalf of the Association or otherwise. Neither the Association, its directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. The Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

7.04 Reserve Funds. The Board may establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net. or taxable income to the Association.

7.05 Indemnification. The Association shall indemnify any director, officer or member of a committee duly appointed pursuant to this restated Declaration, the Articles or Bylaws, who was, is, or is threatened to be named defendant or respondent in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrate, or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding (hereinafter a "Proceeding") by reason of the fact that such person is or was a director, officer, or member of such a committee of the Association, against all judgements, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with any such Proceeding to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time. Such authorization of indemnification shall be deemed to be mandatory and deemed to constitute authorization of indemnification and advancement of expenses to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time.

ARTICLE 8 INSURANCE; REPAIR; RESTORATION

8.01 Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board of Directors, officers, managers, agents and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as

shall be deemed appropriate by the Board and/or as specifically required by the mortgagees or insurers. Such insurance may include, but need not be limited to:

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

(b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Board, Owners, Residents and Members with respect to the Common Properties;

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

(d) Liability insurance regarding the errors and omissions of directors, officers, managers, employees and representatives of the Association.

8.02 Owners' Responsibility to Purchase Insurance. Owners are required to obtain, maintain, and keep in full force and effect at all times, with all premiums paid thereon, and without notice or demand, a property insurance policy on each Owner's respective Lot and Dwelling Unit with All Risk Hazard Insurance coverage, all in a total amount equal to the replacement cost of the Owner's Lot and Dwelling Unit, at minimum equivalent to coverages required of the Association as described in 8.01; and to the following coverages: demolition and removal of all debris from the Lot; exterior partition fences and gates; and the exterior surfaces of the Units and their supporting structures, including but not limited to roofs and their exterior appurtenances, exterior walls, interior load bearing walls and drywall coverings, electrical wiring and systems, plumbing systems, exterior windows and doors. The supporting structures for these elements shall include, but not be limited to roof trusses, framing structures, and exterior sheeting, to insure completion of any and all repairs to their property in the event of loss or damage. The Association must be provided proof of insurance and be listed as an additional interest on each policy. The Association shall have the right to receive all insurance proceeds issued pursuant to such policies.

8.03 Insurance and Condemnation Proceeds. The Association shall be the exclusive representative of the Members in any proceedings, negotiations, settlements or agreements concerning insurance or condemnation. The Association and the Members may use the net insurance or condemnation proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance or condemnation. The Board, in its sole discretion, may hire a person experienced in providing insurance adjusting services for the purpose of allocating insurance proceeds between the Association and the effected Owner, based on their respective repair responsibilities set forth in this Restated Declaration. The decision of such adjuster shall be final and binding upon such Owner and the Association. Any balance from the proceeds of insurance or condemnation paid to the Association, remaining after satisfactory completion of repair and replacement or after the Board has elected to waive the repair, restoration or replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

The intent of this Article 8 is to maintain the overall plan and quality of the development of the

community by requiring damaged units be rebuilt or repaired, and that unsightly and dangerous conditions are remedied as quickly as possible. Any reconstruction and repair must be substantially in accordance with the as-built Plans and Specifications of the existing buildings, or according to Plans and Specifications approved by the Board.

ARTICLE 9 ARCHITECTURAL REVIEW COMMITTEE

9.01 Membership of Architectural Review Committee ("ARC"). The ARC shall consist of not less than three (3) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate.

9.02 Action by ARC. Items presented to the ARC shall be decided by a majority vote of the Voting Members.

9.03 Advisory Members. The Voting Members may from time to time designate Advisory Members.

9.04 Term. Each member of the ARC shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed as provided herein.

9.05 Rights of Appointment. The Board shall have the right to appoint and remove all Voting Members. The Voting Members so appointed shall be drawn from Members of the Association. Advisory Members shall, when reasonably possible, be drawn from Members of the Association.

9.06 Adoption of Rules. The ARC may adopt such procedural and substantive rules, not in conflict with this Restated Declaration, as it deems necessary or proper for the performance of its duties, including but not limited to design guidelines, building code, a fire code, a housing code, and other similar codes.

9.07 Review of Proposed Construction. Whenever in this Restated Declaration the approval of the ARC is required, the ARC shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on a Lot or any portion thereof, the Plans and Specifications therefor shall be submitted to the ARC and construction thereof may not commence unless and until the ARC has approved such Plans and Specifications. Until receipt by the ARC of any information or document deemed necessary by the ARC, it may postpone review of any Plans and Specifications submitted for approval. Upon receipt of all necessary information, the ARC shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Restated Declaration, and perform such other related duties assigned or authorized by this Restated Declaration, including at its option inspection of construction in progress to assure its conformance with previously approved Plans and Specifications. The ARC shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one construction. The

ARC may, in its review of Plans and Specifications and such other information as it deems proper, consider whether any proposed Improvement upon a Lot would unreasonably obstruct the view from other portions of the Property. The ARC may, but shall not be required to, disapprove any Improvement upon any Lot that would unreasonably obstruct the view from any other portion of the Property. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property and the surrounding area. The ARC shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the ARC shall be final and binding so long as it is made in good faith. The ARC shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans and Specifications be deemed an endorsement, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes not of its authorship.

9.08 Actions of the ARC. The ARC 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 ARC in the absence of such designation, the vote of a majority of all members of the ARC taken without a meeting, shall constitute an act of the ARC.

9.09 No Waiver of Future Approvals. The approval or consent of the ARC of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any other Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

9.10 Work in Progress. The ARC may at its option inspect all work in progress to insure compliance with approved Plans and Specifications.

9.11 Nonliability of ARC Members. Neither the ARC nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the ARC's duties under this Restated Declaration unless due to the willful misconduct or bad faith of the ARC or its members, as the case may be. Neither the ARC nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots.

9.12 Address. Plans and Specifications shall be submitted to the ARC in care of Neighborhood Partners at 4519 Mills Park Cir. #200, College Station, TX 77845; or in care of such other person at such other address as may be designated by the Board, from time to time.

9.13 Failure to Act. In the event the ARC or its designated representative fails to approve or disapprove any Plans and Specifications within ten (10) days after the same have been submitted to it, complete with all other information requested by the ARC in connection with such submission, approval shall be assumed.

9.14 Variances. Notwithstanding any other provision of this Restated Declaration, in order to prevent undue hardship upon the Owner or Owners of any individual Lot or Lots upon the Property, variance from any restrictions set out in this Restated Declaration may be granted by a unanimous decision of the ARC in written instrument to be duly acknowledged, if and when such a variance shall over be granted.

9.15 Governmental Agency Approval. Nothing in this Restated Declaration shall be construed to relieve any Owner from securing such approvals, certificates and/or permits as may be required by law in connection with the construction of any Improvements on any Lot.

9.16 Relationship with Association. The ARC has been created pursuant to this Restated Declaration to perform certain functions specified herein relating to the review and approval of Plans and Specifications for Improvements built on the Property. The ARC does not exercise the authority of the Board, and shall not do so unless and until (i) the Board shall have duly appointed a majority of Board members to the ARC, and (ii) the Board shall by unanimous resolution, duly recorded in the records of the Association, make the ARC a committee of the Board in accordance with the Texas Business Organizations Code.

ARTICLE 10 GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following Limitations and restrictions:

10.01 Construction of Improvements. No Improvements or Structures shall hereafter be constructed upon any of the Property without the prior approval of the ARC.

10.02 Antennae and Signals. No antenna or other device for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot, whether attached to a building or structure or otherwise, without the prior written approval of the ARC. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot so as to unreasonably interfere with the reception of television or radio signals on any other Lot. Notwithstanding the provisions of this paragraph to the contrary, it shall be permissible for the Owners of any Lot to have one small satellite dish no more than 18 inches in diameter for receipt of television signals provided it is not visible from any street. Notwithstanding the foregoing, this Section is not attempting to violate the Telecommunications Act of 1996 (the "Act"), as may be amended from time to time. This section shall be interpreted to be as restrictive as possible while not violating the Act.

10.03 Insurance Rates. Nothing shall be done or kept on a Lot which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the improvements located thereon without the prior written approval of the Board.

10.04 Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ARC.

10.05 Signs. No sign of any kind may be erected or maintained on any Lot without the written consent of the ARC, except the following permitted signs:

(A) An Owner may display on the Owner's Lot signs advertising a political candidate or ballot item for an election on or after the ninetieth (90th) day before the date of the election to which the sign relates or ten (10) days after that election date. No Owner shall display more than one (1) sign for each candidate or ballot item.

(B) An Owner may display on the Owner's Lot not more than one (1) sign not exceeding 2' x 3' advertising the Lot is for sale or for rent.

(C) An Owner may display on the Owner's Lot school spirit signs.

(D) An Owner may display on the Owner's Lot not more than one (1) sign advertising commercial services (construction or landscaping, for example), which may be displayed during a period beginning with the commencement of the service or project and ending upon the termination of the service or project.

(E) An Owner may display on the Owner's Lot security signs.

Any sign permitted by this section shall be ground mounted. Any sign permitted by this section that contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative components, is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object, includes the painting of architectural surfaces, threatens the public health or safety, is larger than four (4) feet by six (6) feet, violates a law, contains language, graphics or may display that would be offensive to the ordinary person, or is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists is prohibited without the written approval of the ARC. The Association shall have the right to enter and remove a sign placed on any Lot in violation of this section, and in so doing, shall not be liable and is expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal.

10.06 Displays. Subject to this section, Owners may display to their Dwelling Unit one or more items, the display of which is motivated by the Owner's or Resident's interests, beliefs, or school spirit. Notwithstanding the foregoing, the display or affixation of an item on the Dwelling Unit that threatens public health or safety, violates a law, or contains language, graphics, or any display that is patently offensive is prohibited. The Board shall have sole discretion in determining whether an item threatens public health or safety, violates a law, or contains language, graphics, or any display that is patently offensive. This section does not authorize an Owner to use a material or color for an entry door or door frame, or make an alteration to the door or door frame of the Owner's Dwelling Unit that is not authorized by the ARC and any ARC guidelines. The Association may remove an item displayed in violation of this section.

10.07 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon a Lot and no odors shall be permitted to arise therefrom so as to render the Property or 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. If rubbish or debris accumulates upon any Lot in violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the Lot.

10.08 Noise. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Property or to its occupants.

10.09 Lighting. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable security or landscape lighting that has the approval of the Architectural Review Committee.

10.10 Nuisance and Lateral Support. No noxious or offensive activity or work shall be conducted upon any Lot so as to impair the structural soundness or integrity of any Improvement of any other Lot, or which may be or may become an annoyance or nuisance to the neighborhood.

10.11 Repair of Improvements. All Improvements upon the Property, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof in accordance with this Restated Declaration.

10.12 Alteration or Removal of Improvements. Exclusive of normal maintenance, any construction, repair, alteration or removal in connection with any Improvement which in any way alters the exterior appearance of said Improvement shall be performed only with the prior written approval of the ARC. Notwithstanding anything to the contrary, the approval of the ARC shall not be required for repainting exterior surfaces of the Improvements provided the color scheme, arrangement of colors and color of paint are not altered. Any change to the exterior colors of any Improvements must be approved in writing by the ARC.

10.13 Roofing Materials. The surface of all roofs of principal and secondary structures shall be dimension architectural quality composition shingle. The ARC shall have authority to approve other roof treatments and materials when in its determination such treatments and materials in the form utilized will not be a detriment to the quality of the neighborhood.

10.14 Solar Energy Devices. As used in the Section 202.010 of the Texas Property Code, "solar energy device" has the meaning assigned by Section 171.107 of the Tax Code. A solar energy device is not permitted anywhere on a Lot except on the roof of the residential Dwelling Unit or other permitted structure on the Lot or in a fenced yard or patio within the Lot. A solar energy device may not extend higher than the Dwelling Unit's or other permitted improvement's roofline, and shall conform to the slope of the roofline; shall have a frame, support bracket or visible piping that is silver, bronze or black tone commonly available in the marketplace, and shall be located on a roof as designated by the ARC, unless an alternate location increases the estimated annual energy production of the device by more than ten percent (10%) above the energy production of the device if located in the area designated by the ARC. For determining estimated annual energy production, the parties shall use a publicly available modeling tool provided by the National renewable Energy laboratory. A solar energy device located in a fenced yard or patio shall not be taller than or extend above the fence enclosing the yard or patio. A solar energy device shall not be installed on a Lot in a manner that voids material

warranties. A solar energy device that, as adjudicated by a court threatens the public health or safety, violates a law, or is located in the Common Properties is prohibited. The ARC may not withhold approval if the guidelines of this section are met or exceeded, unless the ARC determines in writing that placement of the devices as proposed constitutes a condition that substantially interferes with the use and enjoyment of the land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The written approval of the proposed placement of the device by all Owners of property adjoining the Lot in question constitutes prima facie evidence that substantial interference does not exist.

10.15 Driveway and Parking. The ARC shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways within the Property. Parking in the streets or access easements shall not be allowed. All parking must be confined to driveways or the designated parking areas within the Property. No overnight parking shall be allowed except for Owners, Residents and their overnight guests.

10.16 Tanks. No tanks of any kind, including, but not limited to, tanks for storage of fuel, water, oil or LPG and hot tub tanks, shall be placed on any Lot.

10.17 Rain Barrels and Rain Harvesting Systems. No rain barrel of rainwater harvesting system shall be permitted in the Common Properties or located on a Lot between the front of the Dwelling Unit and an adjoining or adjacent street, be of a color inconsistent with the color scheme of the Owner's Dwelling Unit, display any language or other content that is not typically displayed by a barrel or system as it is manufactured. The ARC may adopt guidelines that regulate the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located in the side of a Dwelling Unit or any other location that is visible from a street, another Lot, or the Common Area, if it does not prohibit the economic installation of the device or appurtenance on the Owner's Lot. There must be a reasonably sufficient area on a Lot to install these devices and appurtenances.

10.18 Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices, for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on Improvements as approved in writing by the ARC, except what has already been constructed by the City of College Station, prior to the date hereof; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the ARC. The installation method, including but not limited to location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities, shall be subject to review and approval by the ARC.

10.19 Drainage. There shall be no interference with the established drainage patterns over any of the Property unless adequate provision is made for proper drainage and approved by the ARC.

10.20 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on a Lot that 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, and 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.

10.21 Mining and Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

10.22 Machinery and Equipment. Without the approval of the Association, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Brazos County, Texas, in connection with the use, maintenance, or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association; provided however, such machinery or equipment may be placed, operated or maintained by any governmental or quasi-governmental agency, or by a public utility, in the performance of its legitimate functions.

10.23 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon a Lot without the prior written approval of the ARC.

10.24 Prohibited Vehicles. Unless otherwise approved by the ARC, commercial vehicles, vehicles with commercial writing on their exteriors (excluding vehicles with lettering or logos confined to the front door on each side), vehicles primarily used or designed for commercial purposes, tractors, travel trailers, recreational vehicles, trailers (either with or without wheels), campers, camper trailers boats and other watercraft, and boat trailers shall be kept, parked, stored or maintained only within an enclosed structure or a screened area which prevents the view thereof from adjacent Lots or streets. Stored vehicles and vehicles which are stripped down, wrecked, junked, obviously inoperable or do not have current operating licenses shall not be permitted on the Property, except within enclosed garages. Vehicles that become inoperable while on the Property must be removed within seventy-two (72) hours thereof. For purposes of this section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the ARC. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Property during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Properties. Any vehicle parked in violation of this section may be towed by the Association.

10.25 Unightly Articles. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery, equipment or tents shall be permitted in any driveway or yard adjacent to a street, on the street or in any guest parking area.

10.26 Mobile Homes. No mobile homes shall be parked or placed on any Lot at any time.

10.27 Fences. Except as otherwise provided herein or approved by the ARC in writing, fences may be constructed only on that portion of the Lot behind the Dwelling Unit. All fences must be constructed of 1" by 6" cedar privacy fence materials, with the finished (smooth) side facing all streets or common areas, or adjoining properties and the rough side facing the interior of the Lot. No fence, wall, or hedge shall be built or maintained forward of the front wall line of the Dwelling Unit, not including decorative walls or fences which are part of the architectural design of the main structure, and which are not to be built or maintained within the front building setback line of any Lot. An exception shall be made in the case of retaining walls not to exceed twenty-four inches (24") above the ground. Notwithstanding the foregoing, the ARC is empowered to waive the aforesaid height or setback limitation in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material and the resulting decorative wall and/or retaining wall will not detract from the general appearance of the neighborhood.

10.28 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, 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 or maintained on the Property. No domestic household pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets shall be allowed on the Property other than on the Lot of its Owner, except when confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No domestic household pet shall be allowed to run at large and all of such pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the ARC, 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. No more than a total of four (4) adult dogs or cats, or a combination thereof, may be kept on a single lot. All domestic household pets shall be kept in strict accordance with all local laws and ordinances.

10.29 Landscape Design. All landscaping shall be designed so as to protect and promote, as far as practicable, the natural local landscape environment through use of native materials, natural drainage, indigenous plant selection and site design. All landscaping designs shall install live, growing sod covering the front, side and backyards, within thirty (30) days of occupancy of any residence constructed on a Lot, and shall maintain it in a healthy and growing condition. All front, side and back yards must be irrigated with automatic sprinkler systems, and have landscaping acceptable to the ARC.

10.30 Construction and Sales Activities. Notwithstanding any provision herein to the contrary, this Restated Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner upon any Lot within the Property, or the sale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Restated 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. No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to commence

improvements, and then the material shall be placed within the property lines of the Lot upon which the Improvements are to be erected and shall not be placed on the street or on any other part of the Property. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the ARC, provided that such waiver shall be only for the reasonable period of such construction.

10.31 Mailboxes. Mailboxes shall be of materials approved by the ARC, and shall be located on at cluster mailbox locations designated by the ARC. Notwithstanding the foregoing, mailboxes shall comply with United States Postal Service requirements.

10.32 Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot in violation of the Codes of the City of College Station.

10.33 Garage Conversions. No garage, or any portion thereof, may be converted into enclosed living space.

10.34 Leasing of Units.

(a) Definition. "Leasing" for purposes of this Restated Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

(b) Leasing Provisions.

(i) General. Dwelling Units may be rented only in their entirety, no fraction or portion may be rented, and all leases shall be in writing and shall be for an initial term of no less than thirty (30) days, except with the prior written consent of the Board. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Dwelling Unit Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of this Restated Declaration, Bylaws, and the rules and regulations adopted pursuant to the foregoing. The Board may adopt reasonable rules regulating leasing and subleasing.

(ii) Occupancy. Occupancy of any Dwelling Unit, when occupied under a lease, shall be restricted to occupancy by (a) any number of related persons, or (b) not more than one unrelated person for each bedroom of any Dwelling Unit, and any lineal descendants who qualify as a dependent on the income tax return of such unrelated persons, but in no event shall the number of unrelated persons occupying any Dwelling Unit under a lease exceed three (3). Persons are related within the meaning of this definition if they are related (i) within the third degree of consanguinity, (ii) within the second degree of affinity, or (iii) by a legal guardianship.

(ii) Compliance. Every Owner shall cause all occupants of his or her Dwelling Unit to comply with this Restated Declaration, Bylaws, and the rules and regulations adopted pursuant to the foregoing, and shall be responsible for all violations and losses to the Common

Properties caused by such occupants, notwithstanding the fact that such occupants of a Dwelling Unit are fully liable and may be sanctioned for any such violation.

(iii) Existing Violation. If, on the date of recording of this Restated Declaration, any Dwelling Unit is occupied in violation of this Restated Declaration under an existing lease, this pre-existing condition shall continue to be allowed until such time as the existing lease of any such occupants expires by its terms or is otherwise terminated. Any extensions or renewals of such lease will not be allowed and will not be considered a pre-existing condition.

10.35 Basketball Goals, Sports Equipment and Playground Equipment. All basketball goals (pole, backboard or rim), sports equipment and playground equipment shall be placed in the back yard unless otherwise approved by the ARC in writing.

10.36 Use of Common Properties. The Board may establish rules and regulations for use or prohibitions against use of the Common Properties from time to time.

10.37 Compliance with Provisions of this Restated Declaration. Each Owner shall comply strictly with the provisions of this Restated Declaration as the same may be amended from time to time. Failure to comply with any of the Covenants shall constitute a violation of this Restated Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggrieved Owner.

ARTICLE 11 RESIDENTIAL RESTRICTIONS

11.01 Residential Use. All Lots shall be improved and used solely for residential purposes, inclusive of a garage, fencing and such other Improvements as are necessary or customarily incident to residential use. No Owner shall occupy or use his Lot or any Improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose, including religious, other than as a private residence for the Owner, his family, tenants and guests. All Lots within the Property shall be used and improved solely for single-family residential purposes, with no more than one (1) residential Dwelling Unit per Lot. Anything herein to the contrary notwithstanding, any Lot may be used or improved for greenbelt, open space and/or drainfield purposes.

11.02 Garages. No Lot shall have improvements erected which do not provide for a minimum of a two vehicle garage.

11.03 Outbuildings. There shall be not constructed any outbuildings on a Lot, including without limitation detached garages, storage buildings or greenhouses, without the prior written approval by the ARC.

11.04 Building Height. No Improvement greater than thirty-five (35) feet in height may be constructed on any Lot without the prior written approval of the ARC. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

11.05 Building Materials; Dwelling Size. All Dwelling Units shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows, and similar openings) shall be constructed of that certain percentage of masonry or other material specified in the ARC approved plans for a Dwelling Unit by NTS Architects or as specifically approved in writing by the ARC. Masonry includes ceramic tile, brick, rock and all other materials commonly referred to in the Brazos County, Texas area as masonry. Unless an exception is granted by the ARC, all Dwelling Units shall contain not less than one thousand two hundred (1,200) square feet of heated enclosed living space, exclusive of porches (open or covered), decks and garages.

11.06 Set-back Requirements. No building shall be located or erected nearer to any Lot line than the building line shown on the recorded plats of the Property. For purposes of these covenants, the eaves of buildings shall not be deemed to be part of a building or structure, but steps and porches shall be deemed to be a part of a building or structure. This Section shall not be construed to allow any building or structure to encroach upon another Lot.

11.07 Party Walls and Structures.

(a) In most cases, a Dwelling Unit on a Lot will be constructed such that one or more of its side walls will be party walls shared with the Dwelling Unit on the adjacent Lot(s). In addition, there will be fences which serve and/or separate adjoining Lots. Such shared walls, fences and other such structures will constitute party structures. To the extent not inconsistent with this Section 11.07, the general rules of law regarding party walls and liability for property damaged due to negligence or willful acts or omissions shall apply to such party walls and structures.

(b) Unless otherwise determined by the Board, the cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners making use of the party structure. All repairs shall be made (i) in a good, substantial and workmanlike manner, (ii) in strict conformity to the laws, ordinances and regulations of the State of Texas and the City of College Station, Texas, in effect at the time of repair, and (iii) in such a way as not to injure the Improvements or Dwelling Unit on the adjoining Lot.

(c) if a party wall or structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. All restored walls between adjoining Dwelling Units shall be constructed on the property line between the two adjoining Lots and shall be built in a good, substantial and workmanlike manner in strict conformity to the laws, ordinances and regulations of the State of Texas and the City of College Station, Texas, in effect at the time of construction.

(d) The right of any Owner to contribution from any other Owner under this Section 11.07 will be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Each Owner shall maintain property insurance in amounts sufficient to cover the Owner's share of the cost of repairing or replacing party walls and structures in the event of damage or destruction by fire or other hazards. Each Owner shall provide proof of insurance,

including annual renewals each year. In the event an Owner does not provide proof of insurance, the Owner can be fined in accordance with this Restated Declaration.

11.08 Landscaping; Maintenance. Construction of each and every residential Dwelling Unit on a Lot shall include the installation and placement of appropriate landscaping. Each Owner, Member and Resident of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep and maintain the Lot, and all improvements therein and thereon, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include (without limitation);

- (a) the pruning and cutting of all trees and shrubbery within the fenced area of each Lot;
- (b) prompt removal of all litter, trash, refuse and waste;
- (c) watering of all landscaping (other than lawns during such times that the Association controls operation of a common sprinkler system serving the Lot);
- (d) keeping exterior lighting and mechanical facilities in working order;
- (e) keeping lawn and garden areas alive, free of weeds and attractive;
- (f) keeping driveways in good repair and condition;
- (g) promptly repairing any exterior damage; complying with all governmental health and police requirements;

all in a manner and with such frequency as is consistent with aesthetics, safety and good property management. The Association and its agents, during normal business hours, shall have the right (after 5 days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any person or entity) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement will be paid to the Association upon demand and if not paid within thirty (30) days thereof, shall become a lien upon the Lot affected subject to the requirements of Chapter 209, Texas Property Code. The Association, or its agent, shall further have the right (upon like notice and conditions), to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance. The lien provided under this section will constitute a lien retained against such property with the same force and effect as the Payment and Performance Lien for assessment set forth in these Covenants.

11.09 Yard Maintenance; Sprinkler System. The Association will have primary responsibility for the mowing, trimming, and edging of grass only on each Lot and for operation and maintenance of any sprinkler system on each Lot that is part of a common sprinkler system.

The Association is not responsible for: planting and/or re-planting grass or landscaping materials; grass loss; seasonal color and/or decorations; and the maintenance of exotic or poorly suited landscape plants within the fenced area of any Lot. Each Owner is encouraged to consult with authorized representatives of the Association or the ARC for further information if in doubt concerning the grounds maintenance program.

ARTICLE 12 EASEMENTS

12.01 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the Property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Hausman Interests Townhomes, Ltd., prior to the Property becoming subject to the Original Declaration, are incorporated herein by reference and made a part of this Restated 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 by or on behalf of Hausman Interests Townhomes, Ltd., conveying any part of the Property.

12.02 Installation and Maintenance. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Property. Within these easements, if any, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction of flow of water through drainage channels in such easements. The Easement Area of each Lot, if any, and all Improvements in such area shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible. No utility company using the easements herein or referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

12.03 Surface Areas. The surface of Easement Areas for underground utility services may be used for planting of shrubbery, trees lawns or flowers. However, no supplier of any utility service using any Easement Area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity reasonably relating to the construction, maintenance, operation or repair of any facility in any such Easement Area.

12.04 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 ARC thereon require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Restated Declaration and shown on the recorded plat of the Property. There shall be no construction of improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the ARC.

12.05 Blanket Easement. An easement is hereby retained in favor of the Association over all Lots and the Common Properties for the purpose of enforcing the Covenants in accordance with this Restated Declaration, and for the construction of a common cable television system, a common sprinkler system, maintenance of landscaping, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot or the Common Properties to effectuate the foregoing purposes shall not be deemed as trespass.

12.06 Easement for Repainting and other Maintenance. An easement is hereby retained in favor of the Association over all Lots for the purpose of repainting and performing other maintenance on exterior portions of Dwelling Units pursuant to Section 7.01 of this Restated Declaration. An entry upon any Lot by the Association to effectuate the foregoing shall not be deemed as trespass.

ARTICLE 13 REGISTRATION

13.01 Registration with the Association. In order that the Association can properly acquaint every Lot purchaser and every Owner, Resident and Member with these Covenants and the day-to-day matters within the Association's jurisdiction, each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as:

- (a) the full name and address of each Owner, Member and Resident;
- (b) the name, email address and telephone numbers of other local individuals who can be contacted (in the event the Resident cannot be located) in case of an emergency;
- (c) such other information as may be reasonably requested from time to time by the Association; and
- (d) Owner All Hazard Casualty and Liability Property Insurance policy information.

In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and Resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

ARTICLE 14 ENFORCEMENT

14.01 Power to Enforce Restrictions. The Association or their designated agent shall have the power to enforce the provisions of this Restated Declaration and any rules, regulations, policies or guidelines pursuant thereto, and shall take such action as the Board deems necessary or desirable to cause such compliance by each Owner.

14.02 Duty to Provide Notice Before Enforcement Action. Before the Association may suspend an Owner's right to use the Common Properties, file a suit against an Owner other than a suit to collect a regular or special assessment, or foreclose under the Association's lien, charge an Owner for property damage, or levy a fine for a violation of this Restated Declaration, the Association or its designated representative must give written notice to the Owner by certified mail, return receipt requested. The notice must describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Association from the Owner and inform the Owner that the Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension (unless the Owner was given notice and a

reasonable opportunity to cure a similar violation within the preceding six months), may request a hearing under Section 209.007 of the Act on or before the thirtieth (30th) day after the date the Owner receives the notice, and may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the Owner is serving on active military duty.

14.03 Hearing Before Board; Alternative Dispute Resolution. If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board or before the Board if a committee is not appointed. If a hearing is to be held before a committee, the notice prescribed by Section 209.006 of the Act must state that the Owner has the right to appeal the committee's decision to the Board by written notice. The Association shall hold a hearing under this section not later than the thirtieth (30th) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting. The Association shall hold a hearing under this section not later than the thirtieth (30th) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting and may use alternative dispute resolution services. The Owner's presence is not required to hold a hearing.

14.04 Attorney's Fees. The Association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the Association relating to collecting amounts, including damages, due the Association for enforcing restrictions contained in its dedicatory instruments only if the Owner is provided a written notice that attorney's fees and costs will be charged to the Owner if the delinquency or violation continues after a date certain. An Owner is not liable for attorney's fees incurred by the Association relating to a matter described by the notice under this section if the attorney's fees are incurred before the conclusion of the hearing; or, if the Owner does not request a hearing, before the date by which the Owner must request a hearing. All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its designated representative. Only Board members or the Association's designated representative or employees of its designated representative may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs.

ARTICLE 15 GENERAL PROVISIONS

15.01 Duration. The Covenants of this Restated Declaration shall run with and bind the land subject to this Restated Declaration, and shall inure to the benefit of and be enforceable by the Association and/or Owner and Resident of any land subject to this Restated Declaration, their respective legal representatives, heirs, successors and assigns, for an original fifty (50) year term expiring on the fiftieth (50th) anniversary of the date of recordation of this Restated Declaration, after which time these Covenants shall be automatically extended for successive

periods of ten (10) years unless an instrument is signed by the Owners of at least sixty percent (60%) of all Lots within the Subdivision and recorded in the Official Records of Brazos County, Texas, which contains and sets forth an agreement to abolish these Covenants; provided, however, no such agreement where approved by less than seventy-five percent (75%) of the Owners of all Lots within this Subdivision to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

15.02 Amendments. This Restated Declaration may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty percent (60%) of votes entitled to be cast pursuant to Section 3.02 hereof.

15.03 Enforcement. Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s), guests and invitees. The Payment and Performance Lien shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional restraints and restrictions on the "good standing" qualifications of the Residents and Members of such Owner's Lot. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Property. Enforcement of these Covenants may be initiated by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City of College Station, Texas is specifically authorized (but not obligated) to enforce these Covenants. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, from the non-prevailing party.

15.04 Validity. Violation of or failure to comply with these Covenants shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of these Covenants, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of College Station (including, without limitation, the Zoning Ordinance), then such municipal requirement shall control.

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

15.06 Notices to Resident/Member/Owner. Any notice required to be given to any Resident, Member or Owner under the provisions of this Restated Declaration shall be deemed to have been property delivered when: (i) deposited in the United States Mail, postage prepaid,

addressed to the last known address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing; or when (ii) delivered by hand or by messenger to the last known address of such person within the Property; or when (iii) posted on the Association's bulletin board for at least thirty (30) consecutive calendar days.

15.07 Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagors/Member's/Owner's obligation(s) as established by this Restated Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

15.08 Disputes. Matters of dispute or disagreement between Owners, Residents or Members with respect to interpretation or application of the provisions (excluding architectural matters) of this Restated Declaration or the Association Bylaws, shall be determined by the Board of Directors. Matters pertaining to architectural matters shall be determined by the Architectural Review Committee. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners, Residents and Members.

15.09 Enforcement and Nonwaiver.

(a) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense and/or the Board shall have the right to enforce any and all of the provisions of this Restated Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

(b) Nonwaiver. The failure to enforce any provision of this Restated Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

(c) Liens. The Association shall have the right, when appropriate in its judgment and subject to Chapter 209, Texas Property Code, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Restated Declaration.

15.10 Interpretation. The provisions of this Restated Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the property and of promoting and effectuating the fundamental concepts of the Property set forth in this Restated Declaration.

15.11 Construction.

(a) Restrictions Severable. The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof,

(b) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.

(c) Captions. All captions and titles used in this Restated Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles.

(d) Deadlines on Business Day. If any deadline in this Restated Declaration should fall on a Saturday, Sunday or a Texas or federal holiday, such deadline shall automatically be extended to the next business day.

(e) Choice of Law. This Restated Declaration shall be construed and enforced in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, David Cole, President of Heritage Townhomes Homeowner's Association, Inc., a Texas nonprofit corporation, personally states and attests that this Restated Declaration has been approved by at least a majority of the record owners of lots within the property known as Heritage Townhomes Subdivision, and executes this Restated Declaration, to be effective on the date of its filing in the Official Records of Brazos County, Texas, as of this _____ day of _____, 2019.

DAVID COLE, President of Heritage Townhomes Homeowner's Association, Inc., a Texas nonprofit corporation

STATE OF TEXAS

COUNTY OF BRAZOS

This instrument was acknowledged before me on the ____ day of _____, 2019, by DAVID COLE, President of Heritage Townhomes Homeowner's Association, Inc., a Texas nonprofit corporation.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Lauren E. Turnbull
Hoelscher, Lipsey, Elmore, Poole & Turnbull, P.C.
1021 University Drive East
College Station, Texas 77840
File # 150179

LT\Declarations\HeritageTownhomes\Restated Declaration