

Rosita
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ELLA CROSSING**

Lee

S THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF HARRIS §

THAT THIS DECLARATION is made on the date hereinafter set forth by Perry Homes, a Joint Venture (hereinafter referred to as "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Harris County, Texas, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (collectively, the "**Initial Property**"), commonly known or to be known or marketed by Declarant as "Ella Crossing"; and

WHEREAS, Declarant desires to hold, sell and convey said Initial Property and any subsequently Annexed Property (if any) (collectively referred to as the "Property") subject to the following covenants, conditions, restrictions, reservations and easements, which are for the purpose of establishing a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both present and future owners of the residential subdivision lots and commercial properties within said lands; and

WHEREAS, this Declaration grants Declarant the right and privilege with the consent of the owners of the Property, to impose additional covenants, conditions and restrictions on particular portions of the Property subject to this Declaration.

NOW, THEREFORE, Declarant hereby adopts the following covenants, conditions, restrictions, reservations and easements which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (hereinafter defined) and which shall be applicable to all of the Property from time to time subject hereto (including, without limitation, the Initial Property), and shall run with the land and title to the Property and shall bind all parties having or acquiring any right, title, or interest therein or any part thereof, their heirs or successors in title and assigns, and shall inure to the benefit of each owner thereof. The covenants, conditions, restrictions, easements, charges and liens hereinafter set forth are covenants running with the Property at law as well as in equity.

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COUNTY CLERK
HARRIS COUNTY TEXAS
Karen J. H. [Signature]

ARTICLE I

DEFINITIONS

1.01. "**Architectural Committees**" shall mean and refer to the New Construction Committee and/or the Modifications Committee, as applicable.

1.02. "**Assessable Tract**" shall mean and refer to any Lot or Building Plot from and after the date on which paved public street access and water and sanitary sewer service have been extended thereto, except for exempt property as described in Article III.

1.03. "**Assessments**" shall mean and refer to any or all of the Base Annual Assessments (as defined below).

1.04. "**Association**" shall mean and refer to Ella Crossing Homeowners Association, a non-profit corporation incorporated by Declarant or its representatives under the laws of the State of Texas, its successors and assigns.

1.05. "**Board of Directors**" and "**Board**" shall mean and refer to the duly elected Board of Directors of the Association.

1.06. "**Base Annual Assessments**" shall mean and refer to the uniform assessment made against Assessable Tracts.

1.07. "**Builder**" shall mean and refer to an Owner who builds the original improvements on a Lot or Building Plot.

1.08. "**Common Properties**" shall mean and refer to all property, real or personal, owned or held by the Association for common use and enjoyment of the Members.

1.09. "**Conveyance**" shall mean and refer to transfer of a fee simple title to a portion of the Property.

1.10. "**Declarant**" shall mean and refer to Perry Homes, a Joint Venture, the Declarant herein, and its successors and, to the extent in compliance with Article XII hereof, its assigns.

1.11. "**Declaration**" shall mean and refer collectively to the covenants, conditions, restrictions, supplemental restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration of Covenants, Conditions and Restrictions for Ella Crossing, as supplemented and/or amended, including any and all Supplemental Declarations.

1.12. "**Dwelling Unit**" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by a single family, including Townhomes and detached single-family residential structures, but excluding mobile

homes or other non-permanent structures.

1.13. "**Easements**" shall mean and refer to the various utility or other easements of record, those shown on the Plats of the subdivisions within the Property and such other easements as are created or referred to in this Declaration.

1.14. "**Lot**" or "**Building Plot**" shall each mean and refer to (i) each plot of land shown upon the recorded subdivision Plats from time to time within the boundaries of the Property and designated by lot and block number or reserve number, and to the improvements constructed or to be constructed thereon, or (ii) any unplatted raw acreage tract (and the improvements constructed or to be constructed thereon) located within the Property, but such terms shall not mean or include (A) any portions of the Property while owned by a municipal utility district or the Association, and (B) any portion of the Property conveyed or dedicated as a public street.

1.15. "**Member**" shall mean and refer to every Owner who holds membership in the Association.

1.16. "**Modifications Committee**" or "**MC**" shall mean and refer to the committee by that name created by the Board of Directors of the Association to exercise exclusive jurisdiction over the modifications, additions, or alterations made on or to existing Dwelling Units or other improvements on Residential Lots.

1.17. "**New Construction Committee**" shall mean and refer to the committee by that name created by the Declarant pursuant to this Declaration to exercise exclusive jurisdiction over all original construction of Dwelling Units and related improvements on Residential Lots, and original construction of Commercial Improvements upon Commercial Property, as provided herein.

1.18. "**Occupant**" shall mean any person not otherwise an Owner or Member authorized by an Owner to reside within such Owner's Dwelling Unit.

1.19. "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to the surface estate in any Lot or tract of land which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.20. "**Party Wall**" shall mean and refer to the common wall that is built or exists as a part of the original construction between two Townhomes.

1.22. "**Plats**" shall mean and refer to all subdivision plats from time to time filed of record by Declarant (or with Declarant's or the Association's approval as and when herein required) in the Map or Plat Records of Harris County, Texas, with respect to Properties covered by this Declaration, as the same may be amended in accordance with the terms hereof.

1.23. "**Property**" or the "**Properties**" shall mean and refer to the Initial Property described in the Recitals hereof, together with such additional lands as and when they are from time to time (if ever) made subject to this Declaration pursuant to the annexation provisions hereof. All of the Property may sometimes be commonly known and referred to as "Ella Crossing".

1.24. "**Residential Lot**" shall mean and refer to any Lot, shown on the Plats, which is restricted to Single Family Residential use (as herein defined).

1.25. "**Shared Improvement**" shall mean and refer to each improvement on a Townhome Site, which is also an improvement shared by the adjacent Townhome. By way of example, without limitation, the following items are Shared Improvements: entry ways serving more than one Townhome, exterior lighting, roofs, decking beneath the roofs, foundations, walls on shared property lines which are Party Walls, exterior facia and common walls of Townhomes.

1.26. "**Single Family Residential Use**" shall have the meaning as set forth in Article X.

1.27. "**Supplemental Declaration**" shall mean and refer to any supplemental declaration of annexation executed and filed of record by Declarant, its successors or assigns, bringing additional property within the scheme of this Declaration under the authority provided in the Declaration. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the Supplemental Declaration(s) which is or are applicable to the portions of the Property being referenced.

1.28. "**Townhome**" or "**Townhomes**" shall mean a single-family residential structure, constructed on a Residential Lot, which shares a common wall with a single-family residential structure constructed on the adjacent Residential Lot.

1.29. "**Townhome Site**" or "**Townhome Sites**" shall mean and refer to the portion of a Residential Lot on which a Townhome is situated.

1.30. "**Two-Thirds Member Vote**" shall mean the approval of two-thirds (2/3) of all Members (regardless of class) entitled to vote who either (i) are voting in person or by proxy at a meeting duly called for this purpose and at which the necessary quorum exists, or (ii) execute a written consent in lieu of a meeting for such purpose.

ARTICLE II

ELLA CROSSING HOMEOWNERS ASSOCIATION, INC.

2.01. **Duties and Powers.** In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality hereof, the Association shall also discharge those functions necessary to the general maintenance of the Common Properties. The Board of Directors

of the Association shall be empowered to oversee the activities of the Association and may take whatever lawful action that the Board, in its sole discretion, deems necessary to provide for the upkeep, development and aesthetic appearance of the Common Properties and to enforce this Declaration for the common benefit of all or some of the Members of the Association. All rights of the Association herein and hereunder are vested in its Board of Directors (with such delegation of day-to-day operations to the officers of the Association as the Board may from time to time see fit) unless specifically reserved to Declarant or a vote of the Members herein. The Association may enter into agreements with other entities, including but not limited to governmental entities for the maintenance of other property not owned by the Association. The Association shall also have authority and responsibility to enforce such other restrictions benefiting the Association as Declarant may create or obtain from nearby landowners and assign in writing to the Association, whether or not the Association has accepted or agreed to such assignment.

2.02. **Membership.** Every person or entity who is an Owner of any of the Properties which are subject to assessment by the Association (including Declarant, whether or not it is obligated to pay Assessments thereon) shall be a Member of the Association. The foregoing description is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation. No Owner shall have more than one Membership in the Association, but an Owner may have multiple votes depending on its ownership of multiple Residential Lots in accordance with the voting provisions hereof. Membership (and Member voting rights, except for proxies granted under terms permitted by the Texas Non-Profit Corporation Act, as from time to time amended) shall be appurtenant to and may not be separated from ownership of the related Lot or Building Plot which is part of the Property. Owners may not assign Membership rights (including voting rights) associated with the Lot they own even to another Lot within the Property; provided, however, that this provision will not be construed to prevent granting of proxies pursuant to the Texas Non-Profit Corporation Act but an additional restriction on proxies is that no proxy may survive the conveyance of the Lot as to which the related Member vote(s) is or are appurtenant unless the Lot conveyance occurs between the time when the record Owner of the Lot is conclusively determined for voting purposes for a particular Member meeting and the time when such meeting occurs.

2.03. **Annexation of Other Lands.** Other lands may hereafter be annexed into the jurisdiction of the Association in the manner herein described.

2.04 **Merger With Other Association.** Declarant, without a vote so long as Declarant owns any portion of the Property, or the Association, upon the written approval or assent of 67% of the outstanding votes of Members, shall have the right and option to cause the Association to merge or consolidate with any similar association or associations. Upon a merger or consolidation of the Association with another association, the Property, rights and obligations of the Association, may, by operation of law or otherwise, be transferred to the surviving or consolidated association or, alternatively, the Property, rights and obligations of another association may, by operation of law or otherwise, be added to the Property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants,

conditions, restrictions, easements, liens and charges established by this Association within the Property, together with the Covenants established upon any other real property as one plan.

2.05. **Classes of Membership.** The Association shall have two classes of voting membership as follows:

Class A. Class A Members shall be all Owners of Assessable Tracts which are Residential Lots, with the exception of the Declarant (unless and until its Class B Membership converts to Class A Membership as contemplated below), and each such Class A Member shall be entitled to one vote for each Residential Lot owned by such person or entity. When more than one person holds an interest in a single Residential Lot, all such persons shall be Members. The vote of such Residential Lot shall be exercised as such co-owners among themselves determine, but in no event shall more than one vote be cast with respect to any one Residential Lot. If the co-owners of a single Residential Lot do not vote unanimously and in unison, no vote for that Lot shall be counted.

Class B. Class B Members shall be the Declarant, who shall be entitled to Twenty (20) votes in the Association for each Residential Lot owned by it and nine (9) votes in the Association for each one quarter acre (or major portion) of land owned by it within any unplatted property owned by Declarant. Class B Membership shall cease and be converted to Class A Membership (as to Residential Lots owned by Declarant) on the happening of the earliest to occur of the following three events (A or B):

- (A) The twenty-fifth (25th) anniversary date of the first recordation of this Declaration; or
- (B) When the Declarant terminates Class B Membership by an instrument filed in the Real Property Records of Harris County, Texas.

Thereafter, Declarant may cast votes as a Class A Member regardless of whether Declarant pays any or its full share of Assessments.

At such time that additional Property is annexed into the Association, the Class B Membership of the Declarant, shall, if it had previously ceased due to one of the conditions listed above in (A), or (B), be automatically deemed reinstated and shall apply to all Lots owned by Declarant in the newly annexed portion of the Property as well as to all Lots owned by Declarant in all other areas of the Property. Such reinstatement is subject to further cessation in accordance with the limitations set forth in the preceding paragraphs (A) or (B) of this Article, whichever occurs first. However, upon reinstatement due to annexation of additional Property, the period of time set forth in Section (A) of this Article shall be extended to the extent necessary such that in all circumstances it extends for a period no shorter than ten (10) years from the date of each such recorded annexation (i.e., Supplemental Declaration).

2.06. **Non-Profit Corporation.** The Association, a Texas non-profit corporation, has been organized, and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation. Declarant will convey and the Association will accept the conveyance of the Common Properties to the Association upon final completion of construction of all improvements to be located thereon or, at its option, prior to such construction, and reserving the right to design and build the improvements to be located thereon.

2.07. **Bylaws.** The Association may make whatever rules or bylaws it may choose to govern the organization, provided that same are not in direct conflict with the terms and provisions hereof.

2.08. **Members' Easements of Enjoyment.** Subject to the provisions of this Article stated below, every Member of the Association shall have a non-exclusive common right and easement of enjoyment in the Common Properties to the extent they are designed for such use (i.e., parks, playgrounds and the like would be subject to the right of common use, but monument sign easements and landscape easements would not) and such right and easement shall be appurtenant to and shall pass with the title to every Assessable Tract which is a Residential Lot.

2.09. **Extent of Members' Easements.** The rights and easements of enjoyment created hereby in favor of Members shall be subject to the rights and easements now existing or hereafter created in favor of Declarant or others as referred to or provided for in this Declaration.

2.10. **Enforcement of Declaration.** The Association and/or Declarant shall have the power and authority to enforce the terms and provisions of this Declaration by legal action or other means provided for herein.

ARTICLE III

COVENANTS FOR MAINTENANCE ASSESSMENTS

3.01. **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Assessable Tract owned within the Properties, hereby covenants, and each Owner of any Assessable Tract by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association Base Annual Assessments to be established and collected as provided in this Declaration. The Assessments assessed against each Lot and its Owner(s), together with interest, collection costs and reasonable attorney's fees relating thereto, shall be a charge on such Lot and shall be and are secured by a continuing contract lien hereby created by, and reserved and retained in favor of, the Association upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, collection costs and reasonable attorney's fees, shall also be the personal obligation of the person or legal entity that was the Owner of such Lot at the time when the Assessment fell due. The

personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them, but shall be secured by the above-referenced continuing lien on the Lot so transferred as security for the delinquent obligation of the prior Owner, and may be enforced against such Lot notwithstanding any such conveyance.

3.02. **Purpose of Assessments.** Except to the extent otherwise specifically set forth elsewhere in this Declaration, the Assessments levied by the Association shall be used to enforce the provisions contained in this Declaration; to improve, beautify, maintain, manage and operate the Common Properties; to pay utility bills, taxes and insurance premiums as described in Article VI; and to promote the recreation, health, safety, convenience and welfare of the Members carrying out the purposes of the Association as stated in its Articles of Incorporation and Bylaws of the Association.

The foregoing uses and purposes are permissive and not mandatory, and the decisions of the Board of Directors of the Association shall be final as long as made in good faith and in accordance with the Articles of Incorporation, the Bylaws of the Association and any applicable governmental laws, rules and regulations.

3.03 **Basis and Amount of Assessments.**

(a) The Board of Directors is authorized to establish a maximum base annual assessment (the "Maximum Base Assessment") within a reasonable period of time after the full extent of the Common Property is determined. The Board of Directors' determination shall be set forth in the written minutes of the Board.

(b) Commencing one year after the Board's determination of the Maximum Base Annual Assessment and each year thereafter, the Maximum Base Annual Assessment for the following year for each Lot, shall automatically increase ten percent (10%) above the Maximum Base Annual Assessment for the previous year without a vote of the membership or the Board of Directors.

(c) Provided that the Board has received approval by a Two-Thirds Member Vote By Class, the Maximum Base Annual Assessment for the following year for each Lot may exceed the maximum amounts set forth in Section 3.03(a) or (b) above.

3.04 **Date of Commencement of Base Annual Assessments; Due Date.** The Base Annual Assessments provided for herein shall commence as to all Lots on September 1, 2005. At that time, the Board of Directors shall levy on each Assessable Tract and collect from the Owner thereof a Base Annual Assessment. The Board may, in its sole judgment and discretion, establish the Base Annual Assessment at any amount less than the Maximum Base Annual Assessment rate. The first Base Annual Assessment shall be made for the balance of the calendar year in which it is levied. The amount of the Base Annual Assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the Base Annual

Assessments as the remaining number of months in that year bear to twelve. Notwithstanding anything contained to the contrary in this Section, it is hereby understood that the Board of Directors of the Association shall have the right to establish a payment date and payment period that is different from the monthly payment date provided herein.

3.05. **Uniform Rate of Assessments.** The Association, by action of its Board of Directors, shall levy Base Annual Assessments against the Assessable Tracts to obtain funds reasonably anticipated to be needed for purposes stated in this Article III, including reasonable reserves for contingencies and for capital improvements, replacements, and repairs; provided, however, that the Base Annual Assessments shall be levied on a uniform basis across all Assessable Tracts as follows:

- (a) Assessable Tracts, including undeveloped residential land owned by Declarant, its designated successors and assigns - **50%**
- (b) Assessable Tracts conveyed by Declarant to builders or any person or entity for any purposes, including construction of a Dwelling Unit thereon - **50%**
- (c) Assessable Tracts containing Dwelling Units owned by individual (including corporate or other legal entity) homebuyers **100%**

3.06. **Declarant Assessment Liability.** As long as there is a Class B Membership, no Assessable Tract owned by Declarant shall be subject to Assessments under this Declaration or any Supplemental Declaration, except as provided in Paragraph 3.05(a), above.

3.07. **Exempt Property.** The following property shall be exempt from the Assessments and liens created, reserved and/or contemplated herein:

- (a) All Common Properties;
- (b) All portions of the Property owned or otherwise dedicated to any political subdivision or municipal utility district (excluding portions of public or private utility easements located upon or within the boundaries of Lots, which shall not be exempt); and
- (c) Any property owned by the Association for the common use and enjoyment of its members or owned by the Members of Association, as tenants-in-common.

In addition, the Declarant shall have the right, but not the obligation, to grant exemptions to certain organizations qualifying for Section 501 (c) status under the Internal Revenue Code so long as such organizations own property subject to this Declaration for purposes listed in Section 501 (c).

3.08. **Duties of the Board of Directors.** The Board of Directors of the Association shall determine the amount to be levied as the Base Annual Assessment against each Assessable Tract for each calendar year, subject to the criteria and limitations set out in this Article. The Board of Directors of the Association shall cause to be prepared a roster of the Assessable Tracts showing the amount of each Assessment, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. The Association shall upon demand and payment of a fee to be determined by the Board of directors, at any time furnish to any Owner a certificate in writing signed by an officer or agent of the Association setting forth whether or not there are any unpaid Assessments against said Owner's Lot or Lots. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid, as to any third party who in good faith relies thereon to his or her economic detriment.

3.09. **Effect of Non-Payment of Assessment: The Personal Obligation of the Owner, the Lien, Remedies of Association.**

(a) If any Assessment or any part thereof is not paid on the date(s) when due (being the dates specified by the Board), then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and the costs of collection thereof as hereinafter provided, be a continuing lien (the "Lien") on the Lot of the non-paying Owner which shall bind such Lot in the hands of the then Owner, the Owner's heirs, executors, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain the Owner's personal obligation and shall not pass to his successors in title unless expressly assumed by them. Any assumption of the obligation to pay an Assessment by a successor in title shall not relieve the prior Owner of the Owner's personal obligation to pay such Assessment. The Lien for unpaid Assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use of the Common Property or abandonment of the Assessable Tract.

(b) In furtherance of the Lien provided in this Article, and to secure the full and timely payment of all Assessments and other amounts payable by each Owner hereunder, each Owner, by acceptance of a deed or other conveyance of the Lot and regardless of whether or not such deed or other conveyance expressly contains such a provision, does hereby grant and convey unto the Board of Directors, in trust as Trustee (the "Trustee"), for the benefit of the Association, the Assessable Tract owned by such Owner, subject to all easements and other encumbrances affecting such Lot; provided, that each such grant shall be subordinated to the lien of any mortgage or deed of trust only to the extent provided in Section 3.10; and for these purposes the provisions of this Section 3.09 shall be deemed to have created a deed of trust (the "Deed of Trust") covering all of the Assessable Tracts with a power of sale granted to the Trustee in accordance with the provisions of Chapter 51 of the Texas Property Code (the "Code") and as it may be amended from time to time. The Deed of Trust created hereby shall be upon

the same terms and conditions, and shall provide to the Association all of the rights, benefits and privileges, of the Deed of Trust promulgated by the State Bar of Texas for use by lawyers designated as Form No. 2402, and all amendments, modifications and substitutions thereof, which form is hereby incorporated by reference for all purposes hereof. The Association, acting through its president, shall have the right in its sole discretion at any time, and from time to time, to appoint in writing a substitute or successor trustee who shall succeed to all rights and responsibilities of the then acting Trustee.

(c) Without limitation of the remedies available to the Association and to the other Owners upon the occurrence of a default by any Owner in the payment of any Assessment or other amount due and payable hereunder, the Association may, at its election and by and through the Trustee, sell or offer for sale the Lot owned by the defaulting Owner to the highest bidder for cash at public auction in accordance with the provisions of the Code. The Association may, at its option, accomplish such foreclosure sale in such manner as permitted or required by the Code or by any other present or subsequent laws relating to the same. After the sale of any Lot in accordance with the provisions of this Section, the Owner of such Lot shall be divested of any and all interests and claims thereto, and the proceeds of any such sale shall be applied in the following order of priority: (i) to the payment of the costs and expenses of taking possession of the Lot, (ii) to the payment of reasonable Trustee's fees, (iii) to the payment of costs of advertisement and sale, (iv) to the payment of all unpaid Assessments and other amounts payable by such Owner to the Association hereunder, and (v) to the defaulting Owner or to any other party entitled thereto. The Association shall have the right to become the purchaser at the sale of any Lot pursuant to the Deed of Trust and shall have the right to be credited on the amount of its bid therefor all of the Assessments due and owing by the defaulting Owner to the Association as of the date of such sale.

(d) If any Assessment or part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the maximum legal rate of interest, then prevailing and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the property subject thereto. There shall be added to the amount of such Assessment the costs of preparing and filing the complaint (including reasonable attorneys' fees) in such action, and in the event a judgment is obtained such judgment shall include interest on the Assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

3.10. **Subordination of the Lien to Mortgages.** The lien securing any Assessment provided for herein shall be subordinate to the lien of any mortgage(s) now or hereafter placed upon the Assessable Tract subject to the Assessment for the purpose of securing indebtedness incurred to purchase or improve such Assessable Tract; provided, however, that such subordination shall apply only to the Assessments which have become due and

payable prior to a sale or transfer of such Assessable Tract pursuant to a decree of foreclosure or a foreclosure by trustee's sale under a deed of trust. Such sale or transfer shall not relieve such Assessable Tract from liability for any payment of any Assessment calculated being the date following any such sale or transfer of an Assessable Tract, nor from the lien securing any such subsequent Assessment. In addition to the automatic subordination provided for above, the Association, in the discretion of its Board of Directors, may voluntarily subordinate the lien securing any Assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine. No such voluntary subordination shall be effective unless given in writing by the Association upon a vote of the Board of Directors.

3.11 **Capitalization Fee.** Each Owner, upon acquisition of record title to a Lot or Building Plot, other than Declarant or a Builder, will be obligated to pay a fee to the Association in the amount of \$100.00, for the purpose of capitalizing the Association. This amount shall be known as the Capitalization Fee. The Capitalization Fee shall be in addition to, not in lieu of, the Assessments and shall not be considered an advance payment of such Assessments. The Capitalization Fee shall be deposited into the purchase and sales escrow and disbursed there from to the Association. The Capitalization Fee shall initially be used by the Association to defray its initial operating costs and other expenses, and later to ensure the Association has adequate funds to meet its expenses and otherwise, including contributions to the Association's reserve fund, all as the Board of Directors in its sole discretion shall determine.

ARTICLE IV

ARCHITECTURAL STANDARDS

4.01 Approval Required; Procedures.

(a) No structure shall be placed, erected or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained as provided below. Such improvements include but are not limited to the construction or installation of sidewalks, driveways, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the NCC or the MC, as applicable, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet above ground and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by

the appropriate Architectural Committee as to the compliance of such plans and specifications with the Architectural Guidelines as may be published by the Architectural Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the appropriate Architectural Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved." Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally-approved color scheme, or to rebuild in accordance with the originally-approved plans and specifications. The Architectural Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

(b) Following approval of any plans and specifications by the appropriate Architectural Committee, representatives of the appropriate Architectural Committee shall have the right, but not the obligation during reasonable hours to enter upon and inspect any Lot with respect to which construction is underway to determine whether or not the plans and specifications have been approved and are being complied with. In the event the appropriate Architectural Committee shall determine that such plans and specifications have not been approved or are not being complied with, the appropriate Architectural Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. Upon approval of plans and specifications, no further approval under this Article shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Disapproval of plans and specifications by the Architectural Committee may be based upon any ground which is consistent with the objects and purposes of this Declaration as defined in Architectural Guidelines which shall be promulgated by the Architectural Committees from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

(c) The Board of Directors or the Architectural Committee may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application. All Dwelling Units constructed on any portion of the Property shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer. This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Property by or on behalf of the Association. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Committee. This Article may not be amended without the Declarant's

written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration. Because architectural trends, design trends, neighborhood character and general standards of taste change with the times, the New Construction Committee and the Modifications Committee shall not be bound by prior decisions of the Committees. The granting of approval on prior occasions is no assurance that the same or similar plans will be approved on future requests.

4.02 New Construction Committee. The New Construction Committee (NCC) shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Property. Until one hundred (100%) of the Property has been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the NCC, who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors may merge the NCC with the MC (defined below) or shall appoint the members of the NCC, who shall serve and may be removed at the discretion of the Board of Directors. The members of the NCC may include architects, engineers and other persons who are not Members of the Association. In the event that the NCC fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within forty-five (45) days after submission thereof, the plans shall be deemed disapproved.

4.03 Modifications Committee. The Board of Directors shall also establish a Modifications Committee (MC) to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. As long as the Declarant has the power hereunder to appoint the members of the Board of Directors, a minimum of one (1) member of the MC shall be, at the discretion of Declarant, an individual designated by the Declarant. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC shall have exclusive jurisdiction after the initial sale from the Builder to an Owner over modifications, additions, or alterations made on any Lot or to any Dwelling Unit and the open space, if any, appurtenant thereto; provided, however, the MC may delegate this authority to the Board or other committee of the Association. Such delegation may be revoked and jurisdiction reassumed at any time by written notice.

The Modifications Committee shall promulgate detailed standards and procedures governing its areas of responsibility and practice. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a Dwelling Unit, or to paint the interior of a Dwelling Unit any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Dwelling Unit visible from outside the

Dwelling Unit shall be subject to approval hereunder. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

4.04 **No Waiver of Future Approvals.** The approval of either the NCC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute approval of similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

4.05 **Variance.** The Architectural Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No request for a variance shall be considered if it affects the rights of adjoining Owner, unless affected Owner has granted written consent to the requested variance. Additionally, the Architectural Committee shall not be obligated to grant a similar variance as a result of granting the same or similar variance in the past.

4.06 **Architectural Guidelines.** The Architectural Committee is authorized and empowered to consider all aspects of dwelling construction, construction of other improvements and the location, quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the reasonable opinion of the Architectural Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Properties. Also, the Architectural Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Architectural Committee. The Architectural Committee may, from time to time, publish and promulgate Architectural Guidelines which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. The Architectural Guidelines shall supplement this Declaration and are incorporated herein by reference. The Architectural Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of this Declaration. It is the intent of Declarant that this Declaration and any Architectural Guidelines issued by the Architectural Committee promote harmonious design throughout the Properties. However, approval of plans and specifications by the Architectural Committee and compliance with the Architectural Guidelines does not insure compliance with the building code and other restrictions imposed by applicable governmental authorities.

4.07 **Landscaping Approval.** To preserve the aesthetic appearance of the Property, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed on a Lot by any Owner unless and until the plans therefor have been submitted to and approved in writing by the appropriate Architectural Committee. The provisions of the Article regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, and so forth shall also be applicable to any proposed landscaping,

clearing, grading, excavation, or filling. Weather permitting, each Residence shall be fully landscaped within ninety (90) days from the date the Residence comes into existence.

4.08 **NO LIABILITY.** NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF ARCHITECTURAL GUIDELINES SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS, OR ARCHITECTURAL GUIDELINES WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED IMPROVEMENTS. SUCH APPROVALS AND ARCHITECTURAL GUIDELINES SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENCE OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS ARTICLE IS MADE ON THE BASIS OF AESTHETIC CONSIDERATIONS ONLY AND NEITHER THE NCC NOR THE MC SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR THE ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE APPROVAL OR DISAPPROVAL OF, OR NON-COMPLIANCE WITH, ANY PLANS OR SPECIFICATIONS, THE MANNER OR QUALITY OF APPROVED CONSTRUCTION ON, OR MODIFICATIONS TO, ANY DWELLING UNIT.

ARTICLE V

EASEMENTS

5.01. **General.** The rights and duties of the Owners of Lots within the Property with respect to sanitary sewer, water, electricity, gas, telephone, and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer and/or water line connections, or electricity, gas or telephone and cable television lines or drainage facilities, are installed within the Property, which connection lines or facilities or any portion thereof, lie in or upon Lots owned by any party other than the Owner of a Lot served by connections, lines or facilities, such Owners of Lots served shall have the right, and are hereby granted an easement to the full extent necessary, to enter upon the Lots within the Property in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary.

(b) Wherever sanitary sewer and/or water line connections, or electricity, gas, telephone or cable television lines or drainage facilities, are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by connections shall be entitled to the full use and enjoyment (for their

designed purposes) of such portions of said connections which service the Owner's Lot.

5.02. **Reservation of Easements.** Easements over the Lots and Common Properties for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities are hereby reserved by Declarant, together with the right to grant and transfer such easements and/or the dedication rights retained herein.

5.03. **Surface Areas of Utility Easements.** Easements for installation and maintenance of utilities are reserved by Declarant as shown and provided for on the recorded Plat(s), and/or in the deeds of conveyance by which such Lots are conveyed by Declarant to the subsequent Owner thereof, and/or in separate easement instruments recorded by Declarant prior to or contemporaneously with the conveyance of portions of the Property affected thereby. All electric, gas and telephone service within the Lots shall be located underground. Subject to the applicable rules and regulations of the utilities owning lines or other facilities therein, and provided the Owner or the homebuilder makes any required or necessary arrangements with the utility companies furnishing electric, gas and telephone service and provides and installs any necessary conduit of approved type and size under such improvements, utility easements reserved within the Property for the underground service may be crossed by driveways, walkways, patios, brick walls and fences. Such easements for utilities shall, prior to construction of such underground service, be kept clear of all improvements other than fences. Neither Declarant, nor the grantor of such utility easements, nor any utility company using such utility easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees, flowers or other improvements (including crossing driveways, walkways, patios, brick walls or fences) of the Owner located on the land covered by said easements as a result of the maintenance, repair, installation, removal, reinstallation, upkeep, inspection or rearrangement or replacement of any underground utility lines, facilities or improvements installed by any such utility in such easements.

5.04. **Public Streets.** All Lots within the Property shall abut and have access to a public street. Public street rights-of-way are or shall be shown on the Plat(s).

5.05. **Emergency and Service Vehicles and Access.** An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles and other service vehicles to enter upon the Common Properties, in the performance of their duties and further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Common Properties to render any service or perform any function contemplated herein.

5.06 **Universal Easement.** Each Lot and its Owner is hereby declared to have an easement, and the same is hereby granted to Declarant, over all adjoining Lots, and Common Properties for the purpose of accommodating any encroachment due to engineering error, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of any encroachment, settling or shifting. In the event a structure on any Lot is partially or totally destroyed and

then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of any encroachments so long as they shall exist. Each Owner grants to the Association a perpetual easement for any encroachment of improvements on to such Owner's Lot caused by the Declarant or the Association prior to such Lot Owner's purchase of the lot. Each of the easements referred to in this Section shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of the Lot. Notwithstanding the foregoing, in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

5.07. **Audio and Video.** In the event that audio and video communication services and utilities are made available to any Lots, pursuant to an agreement entered into by Declarant or the Association, in the form of an underground coaxial, fiber optic or other type of cable system, the company furnishing such services and facilities shall have a two foot (2') wide easement along and centered on the underground wire or cable when and as installed by said company from the utility easement nearest to the point of connection on the permanent improvement or structure constructed, or to be constructed upon said Lot, and in a direct line from said nearest utility easement to said point of connection.

5.08. **Electric Distribution System.** An electric distribution system will be installed within the boundaries of the Properties pursuant to one or more agreement for electric service to be executed and recorded by Declarant and the relevant utility. This electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three-phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes and such other appurtenances as shall be necessary to make electrical service available to the boundary of each Lot. The Owner of each occupied or improved Lot shall, at the Owner's or its own cost, furnish, install, own and maintain (all in accordance with the requirements of the local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the exterior of the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service (the "Electric Company") shall make the necessary connections at said point of attachment and at the meter. Declarant has granted or will grant either by designation on the Plat(s) or by separate instrument, necessary easements to the Electric Company providing for the installation, maintenance and operation of its electric distribution system and has also granted or will grant to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various Owners to permit installation, repair and maintenance of each Owner's owned and installed service wires, but the Declarant has no responsibility for the construction of any electrical service facilities. In addition, the Owner of each Lot containing improvements shall, at the Owner's or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications

of the Electric Company) for the location and installation of the meter of such Electric Company for each Dwelling Unit involved.

5.09. **Easement Reserved for the Association.** Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot and the Property for the carrying out by the Association of its rights, functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as minimum inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association.

5.10 **Storm Water Quality Control Easement.** Declarant grants to the Association an easement to access and maintain structural controls and to implement non-structural controls in accordance with any applicable storm water quality permit(s) or plan(s), as specified in City of Houston, Texas Ordinance No. 2001-800, and its successor ordinances related to storm water quality control.

5.11 **Shared Improvements Access Easement.** Declarant grants to the Owners of each Townhome, their heirs, executors, administrators, successors and assigns, an easement over adjacent Townhome Sites for the purpose of accessing and maintaining Shared Improvements.

ARTICLE VI

UTILITY BILLS, TAXES AND INSURANCE

The Association shall have the following responsibilities regarding utility bills, taxes and insurance for the Common Properties and Facilities:

- (a) The Association shall pay as a common expense of all Owners, for all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Properties and the appurtenances appertaining thereto or to any part thereof.
- (b) The Association shall render for taxation and shall pay, as part of the common expenses of all Owners, all taxes levied or assessed against or upon the Common Properties and appurtenances appertaining thereto or to any part thereof.
- (c) The Association shall have authority to obtain and continue in effect as a common expense of all Owners, a blanket property insurance policy or policies to insure the structures and facilities, if any, located in the Common Properties and the contents thereof and the Association against the risks of loss or damage by fire and other hazards as are covered under standard extended or all-risk coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such limits as it shall deem desirable,

insuring the Common Properties, the Association, the Board of Directors, and the agents and employees of the Association, from and against liability in connection with the Common Properties. Director and officer liability insurance and fidelity bonds are also allowable coverages that may be obtained by the Association at the expense of the Association.

(d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid as a common expense of all Owners and shall be a part of the Base Annual Assessment.

ARTICLE VII

CONDEMNATION

In the event that all or any part of the Common Properties shall be taken by any authority having the power of condemnation or eminent domain, no Owner shall be entitled to notice thereof nor be entitled to participate in the proceedings incident thereto. Any decision by the Board of Directors to convey Common Properties in lieu of or under threat of condemnation, or to accept an agreed award as compensation for such taking, shall require approval by a vote of fifty-one percent (51%) of a quorum of the Members of the Association present and voting at a regular meeting or a special meeting called for such purpose.

ARTICLE VIII

MAINTENANCE AND REPAIRS

8.01. **By the Owners.** It shall be the duty, responsibility and obligation of each Owner at the Owner's own cost and expense to care for, maintain and repair the exterior and interior of all improvements on the Owner's Lot including the fixtures, appliances, equipment and other appurtenances thereto and also including the private driveway(s), sidewalks and fences which are situated on the Owner's Lot, excepting only Association-owned improvements located in any easement benefiting the Association, which shall be maintained by the Association. The Association shall have the right to enforce the requirements of this Section by any means provided for enforcement of this Declaration, including by self-help entry and repairs by the Association at the cost and expense of a Lot owner. If any improvement on a Lot is damaged or destroyed, the Owner shall promptly commence and diligently proceed to complete the restoration of such improvements to their condition existing prior to such damage or destruction (but, to the extent of new requirements of the Architectural Control Guidelines or new law, then in compliance therewith) or, in the alternative, raze or remove such improvement and landscape the Lot pursuant to a "Removal Plan" approved by the Modifications Committee.

8.02. **By the Association.** The Association, as a common expense of all Owners, shall perpetually care for, maintain and keep in good repair the Common Property, including but

not limited to, esplanades, and improvements owned by the Association, except that it shall be the obligation of each Owner, and not the obligation of the Association, to pay for the cost of repair and maintenance of any private driveway, sidewalk, and fence or fences which are located on such Owner's Lot. The Board has the additional right, but not the obligation, to have the grass or vegetation cut and maintained, in a neat and sanitary manner, on the land that is owned by or dedicated to any county flood control district or any municipal utility district and that lies within the Properties (or adjacent thereto) if the appropriate county agency's or utility district's maintenance standards are not acceptable to the Board.

ARTICLE IX

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

9.01. **The Common Properties.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Properties and shall keep them in good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof. All landscape reserves dedicated in any Plat (or to the Association in any separate recorded instrument) shall be utilized and maintained as Common Properties for the Association, unless otherwise described on the Plat or by separate instrument signed by the Declarant and recorded in the Harris County Official Public Records for Real Property.

9.02. **Personal Property and Real Property for Common Use.** The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant. Notwithstanding anything contained in this Declaration to the contrary, Declarant, and the Association upon its succeeding to Declarant's rights, shall have the right, power and authority to dedicate to any public or quasi-public authority water lines, sanitary sewer systems, storm water facilities, streets and esplanades situated in the Common Properties and to unilaterally terminate or modify these restrictive covenants with respect to such dedicated Property. Such dedication and acceptance thereof shall not prohibit the Association from maintaining the land and facilities located within dedicated areas, nor relieve the Owners of the obligation to participate in the payment of the cost of such maintenance.

9.03. **Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this initial Declaration and any subsequent Supplemental Declarations. Sanctions may include, but are not limited to: (a) reasonable monetary fines which shall constitute a lien upon the Owner's Lot (and improvements located thereon); (b) suspension of the right to vote; and (c) suspension of the right to receive services contracted for through the Association. In addition, the Board shall have the power (but not the obligation) to seek

relief in any court for violations or to abate unreasonable disturbance.

9.04. **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the by-laws, and every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein necessary to effectuate any such right or privilege.

ARTICLE X

RESTRICTIONS OF USE

10.01. Residential Lots.

(a) Each Residential Lot shall be used only for the construction of Dwelling Units each for use only as a "Single Family Residence" which shall mean a residence for a single family of individuals related by blood or marriage, or maintaining a common household as husband and wife, or by co-owners (excluding cooperative-type ownership if being used to avoid the intent of this restriction), and residential related improvements and amenities not intended for occupancy. All Dwelling Units and other improvements erected, altered, or placed upon any Residential Lot within the Property shall be of new construction. No part of any Residential Lot shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other non-residential purposes, nor (subject to constraints of applicable law) for any commercial use of a residential nature (e.g., as a boarding house, day-care facility, half-way house, nursing home, rehabilitation or therapy facility, church or place of religious assembly, etc.). No activity, whether for profit or not, which is not directly related to single-family residential use, shall be carried on upon any Residential Lot, except on those Residential Lots which may be designated by the Declarant for use as sales offices, construction offices and storage facilities for a period of time commensurate with home construction and sales within the residential sections of the Property. Notwithstanding the foregoing, however, any Occupant of a Residential Lot may engage in a home occupation on a full or part time basis upon the Residential Lot if and only if: (A) such business is transacted or conducted (insofar as activity on or within the Residential Lot is concerned) entirely through telephone communication (including facsimile transmissions, computer modems and similar communications equipment); (B) there is no visible manifestation exterior to the Dwelling Unit structure that would indicate that such home occupation is being conducted in the Dwelling Unit; and (C) the home occupation usage complies with the following other specific restrictions:

- (i) No employees of the business (other than the permitted occupant(s) or permitted resident(s) conducting the business) shall be permitted on the Residential Lot in connection with the conduct of the business;

(ii) The business shall not invite or otherwise allow customers to visit the Residential Lot in connection with the business being conducted thereon;

(iii) The home occupation use shall not generate any noise that would be in excess of or materially different in nature from that normally associated with a strictly residential use;

(iv) The home occupation use shall not cause there to be traffic generated on or in the vicinity of the Residential Lot in excess of that normally associated with a strictly residential use;

(v) There shall be no assembly, fabrication or manufacturing process carried out on the Residential Lot in connection with such home occupation; and

(vi) There shall be absolutely no signage or advertisement of the home occupation business located on the Residential Lot, whether permanent or temporary in nature.

(b) Notwithstanding the foregoing, however, certain Lots (including Residential Lots) may be designated by Declarant for use as sales offices, construction offices, and storage facilities for a period of time commensurate with home construction and sales within the Property. Except for this temporary use of selected Lots, no noxious or offensive activity of any sort shall be permitted, nor shall anything be done, on any portion of the Properties which may be or become an annoyance or nuisance to the owners or users of the Property.

(c) No Dwelling Unit shall be occupied by permanent residents numbering more than two (2) for each room designated as a "bedroom" or "alternate bedroom" on the Plans and Specifications for such Dwelling Unit approved by the relevant Architectural Committee. A person shall be conclusively deemed a "permanent resident" if the person is expected to continue in occupancy on a regular basis for in excess of six months, or if the person does not own or have under bona fide lease in the Owner's name any other lawful place of abode (unless the person is a legal dependent of a person who owns or leases the Dwelling Unit).

(d) No Dwelling Unit shall be erected, altered or permitted to remain on any single Residential Lot, other than one single-family residential dwelling and a private garage. No carports shall be permitted on any Lot within the Properties. The maximum allowable height of any residential structure shall not exceed two and one-half (2-1/2) stories.

Use in compliance with this Section is herein called "Single-Family Residential Use."

10.02. No Temporary Structures. No structure of a temporary character, trailer, mobile home, tent, shack, barn, or outbuilding shall be permanently or temporarily erected,

maintained, or installed on any Lot at any time, except as may be approved by the Association, but in no event shall any such approved temporary structure on a Residential Lot be used as a residence, either temporarily or permanently.

10.03. **Reasonable Enjoyment.** No nuisance shall ever be erected, placed, or suffered to remain upon any Lot, and (subject to the Declarant's rights reserved herein) no Owner or Occupant of any Lot shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or Occupant. The Association's Board of Directors is hereby authorized to conclusively determine what constitutes a violation of this restriction.

10.04. **Animal Husbandry.** No sheep, goats, horses, cattle, swine, poultry, dangerous animals (the determination as to what is a dangerous animal shall be in the sole discretion of the Board), snakes or livestock of any kind shall ever be kept in or upon any part of the Property, except that (i) dogs, cats or other common household pets may be kept by the Owner or Occupant of any Dwelling Unit, provided they are not kept for any commercial purpose, and (ii) animals may be kept in a pet store, veterinarian's office or pet boarding facility located on any Commercial Property. Any allowable pet that is kept in a household must be confined to its Owner's Lot either by constraints of a backyard fence or a leash, or kept within the Dwelling Unit. No animal shall be permitted to run freely away from its Owner's Lot and must be controlled by a leash. All applicable leash and licensing laws in effect in Harris County shall also apply to this animal husbandry provision and shall be complied with by all Owners and Occupants of Residential Lots.

10.05. **Trash and Rubbish Removal.** No trash, rubbish, garbage, manure, or debris of any kind shall be kept or allowed to remain for extended periods on any Lot except in approved containers inside a structure as approved by the relevant Architectural Committee. The Owner of each Lot shall remove such trash and other prohibited matter from the Owner's Lot at regular intervals at the Owner's expense. During any hours when such refuse containers on a Residential Lot are outdoors for pick up by any trash collecting company, all such prohibited matter shall be placed in sanitary refuse containers. No trash containers shall be placed outside on any Residential Lot earlier than 6:00 a.m. on the day of pick up. Reasonable amounts of construction materials and equipment may be stored upon a Lot for reasonable periods of time during the construction of improvements thereon.

10.06. **Oil and Mining Operations.** Except upon and within drill sites designated by Declarant or its predecessors in title to the Property, which Declarant shall have no obligation to any Owner to approve or designate under any circumstance, no oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying, or mining operations of any kind, no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained or permitted in the Properties.

10.07. **Prohibited Use.** Industrial use of Lots is expressly prohibited. No use of any Lot shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise or

pollution, or which is hazardous by reason of excessive danger of fire or explosion. No activity or use shall be permitted on or with respect to any of the Lots which is determined by the Board to be obnoxious to or out of harmony with a distinctive residential community, including, but not limited to, any trailer houses and parks, junk or scrap metal yard, waste material business, any dumping, disposal, incineration or reduction of garbage or refuse, and any fire, bankruptcy or auction sale or operation. No excavations shall be made and no sand, gravel or soil shall be removed from the Properties except in connection with a grading and/or building plan approved as provided by the New Construction Committee. No burning of rubbish or trash shall be permitted at any time.

10.08. **Septic Tanks.** No privy, cesspool or septic tank shall be placed or maintained in the Property.

10.09. **Declarant's Rights During Development Period.** During that period of time while any parcels of land, Lots or Dwelling Units located within the Property are being developed and marketed (the "Development Period"), the Declarant, with the right of assignment, shall have and hereby reserves the right to reasonable use of the Common Properties and land owned by the Declarant within the Property in connection with the promotion and marketing of land within the boundaries of the Properties. Without limiting the generality of the foregoing, Declarant may erect and maintain such signs, temporary buildings, model homes and other structures as Declarant may reasonably deem necessary or proper with the promotion, development, and marketing of land within the Property during the Development Period.

10.10. **Builder Rights.** During the Development Period, the Declarant shall have the right to allow any one or more approved homebuilders (a "Builder") the right to erect and maintain such signs, model homes, and other structures Declarant may reasonably deem necessary or proper in connection with such Builders' promotion, development, and marketing of Lots and residential improvements located within the Property. The approvals granted by the Declarant as described above are discretionary and may be revoked in the manner specified in an agreement between Declarant and the Builders or, if there is no agreement, a Builder shall be given at least ten (10) days' notice to comply with any revocation of approval by the Declarant.

10.11. **Storage of Boats, Trailers and Other Vehicles and Equipment.** No boat, trailer, recreational vehicle, camping unit, bus, commercial use truck, or self-propelled or towable equipment or machinery of any sort or any item deemed offensive by Declarant or the Association shall be permitted to park on any Residential Lot except in an enclosed structure or behind a solid fence, except that during the construction of improvements on a Residential Lot, necessary construction vehicles may be parked thereon from and during the time of necessity therefor. Stored vehicles and vehicles which are either obviously inoperable or do not have current licenses shall not be permitted, 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 paragraph, 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

Board. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property during the daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Dwelling Unit or the Common Property. Any vehicle parked in violation of this section or parking rules promulgated by the Board may be towed. No vehicle shall ever be permitted to be parked on the front or side lawn within view of the public, and no vehicle shall ever be permitted to park on a driveway on a Residential Lot at a point where the vehicle obstructs pedestrians from use of a sidewalk.

10.12. **Clothes Lines.** No clothing or other materials shall be aired or dried within the boundaries of the Property except in a manner so as not to be visible to public view from the street.

10.13. **Construction Work.** Except in an emergency or when other unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work on new construction of a Dwelling Unit shall be permitted only after 6:00 A.M. and before 8:00 P.M., and on modification or alteration work subsequent to original construction, only after 7:00 A.M. and before 8:00 P.M.

10.14. **Television and Radio Antennas and Satellite Dishes.**

- (a) Architectural Committee approval of a "dish antenna" or an antenna designed to receive local broadcast signals is not required, except where the antenna will be located on a mast higher than 12 feet above the roofline. As used herein, a "dish antenna" means an antenna that is one meter (39.37") or less in diameter, designed to: (a) receive direct broadcast satellite service, including direct-to-home satellite service; (b) receive or transmit fixed wireless signals via satellite; (c) to receive video programming services via wireless cable, or (d) to transmit fixed wireless signals other than via satellite.
- (b) All antennas other than those described in 10.14(a) above must be approved by the Architectural Committee, and must not be located upon any portion of a Residential Lot visible from the street abutting the front of the Dwelling Unit.

10.15. **House Numbers and Mail Boxes.** House numbers, mail boxes and similar matter used in the property/must be harmonious with the overall character and aesthetics of the community and be continually maintained in an attractive manner. The decision of the applicable Architectural Committee, as applicable, that any such matter is not harmonious shall be final.

10.16. **Signs and Picketing.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling Unit, fence or other improvement upon such Lot so as to be visible from public view except the following:

- (a) **For Sale Signs.** An Owner may erect one (1) sign on the Owner's Lot, not exceeding 2' x 3' in area, fastened only to a stake in the

ground and extending not more than three (3) feet above the surface of such Lot advertising the property for sale.

- (b) **For Lease Signs.** No signs advertising a Lot or Dwelling Unit for lease shall be permitted during a period two years following the date of the conveyance of the last Lot on the Property by the Declarant. In the event that a sign is erected in violation of this paragraph, the Association or Declarant will have the right, without the obligation, to remove such sign, advertisement, or billboard, without any liability in trespass, tort, or otherwise, arising from such removal.
- (c) **Builders' Signs.** Any Dwelling Unit **builder** may utilize one professional sign (of not more than five (5) square feet in size) per Lot for advertising and sales promotion of such Dwelling Unit.
- (d) **Model Home Sign.** The one allowable yard sign will be a maximum of 12 square feet in area on a standard lot and 24 square feet in area on a corner lot. This sign will be allowed for a period of time commensurate with the homes model or sales program only. Additionally, builders will be allowed only one builder names sign per model park. Model homes are allowed one model name sign, each which includes only the model's name. These model identification signs may not exceed three square feet in surface area.
- (e) **Political Signs.** Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and shall be removed within ten (10) days after such election.

10.17. Lot Maintenance. The Owner of each Lot shall maintain the same and adjacent street right-of-way, and the improvements, sod, trees, hedges, and plantings thereon, in a neat and attractive condition. Such maintenance shall include regular mowing, edging of turf areas, weeding of plant beds, fertilizing, weed control and watering of the turf and landscape areas on each Lot. Diseased or dead plants or trees must be removed and replaced within a reasonable time. On front lawns and wherever visible from any street, there shall be no decorative appurtenances placed, such as sculptures, birdbaths, birdhouses, fountains, artificial flowers, benches, swings, play structures, or other decorative embellishments unless such specific item(s) have been approved in writing by the applicable Committee. The Association shall have the right, but not the obligation, after ten (10) days' notice to the Owner of any Lot, setting forth the action intended to be taken by the Association, provided at the end of such time such action has not already been taken by such Owner (i) to mow or edge the grass thereon, (ii) to remove any debris therefrom, (iii) to trim or prune any tree, hedge, or planting that, in the opinion of the Association, by reason of its location or height, or the manner in which it has been

permitted to grow, is detrimental to the enjoyment of adjoining Property or is unattractive in appearance, (iv) to repair or stain/paint any fence thereon that is out of repair or not in harmony, with respect to color, with fencing on adjacent Property, and (v) to do any and all things necessary or desirable in the opinion of the Association to place such Property in a neat and attractive condition consistent with the intention of this Declaration. The person who is the Owner of such Property at the time such work is performed by the Association shall be personally obligated to reimburse the Association (or Declarant, as the case may be) for the cost of such work within ten (10) days after it is performed by the Association or Declarant, and if such amount is not paid within said period of time, such Owner shall be obligated thereafter to pay interest thereon at the maximum rate allowable by law, and to pay attorney's fees and court costs incurred by the Association in collecting said obligation, and all of the same to the extent performed by the Association shall be secured by a lien on such Owner's Lot, subject to liens then existing thereon. Such lien shall be enforceable as any other Assessment lien as provided in this Declaration.

10.18. Roof Ventilators or Projections. All roof ventilators (other than ridge ventilators) shall be located to the rear of the roof ridge line and/or gable of any structure and shall not extend above the highest point of such structure, so as not to be visible from any public street. Declarant and the New Construction Committee may approve exceptions to this restriction when energy conservation and heating/cooling efficiency require ventilators that, because of a particular roof design, cannot be hidden from view as described above.

No projections of any type shall be placed or permitted to remain above the roof of any Dwelling Unit or related structure with the exception of one (1) or more chimneys and one (1) or more vent stacks without the written permission of the New Construction Committee.

10.19. Window Coolers. No window or wall type air conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any Dwelling Unit on any part of the Property, if visible from any adjacent lot, Common Properties, or street.

10.20. Driveways. The Owner of each Lot shall maintain at the Owner's expense a driveway to an abutting street, including the position in the street easement, and shall repair at the Owner's expense any damage to the street occasioned by connecting the Owner's driveway thereto. The New Construction Committee reserves the right to restrict the location of any driveway on any Lot.

10.21. Sod. The Owner of each Residential Lot, as a minimum, shall solid sod the front and side yards of the Owner's Lot with grass, and shall at all times maintain such grass in a neat, clean and attractive condition, periodically resodding damaged areas of the lawn as they occur. The grass shall be of a type and within standards prescribed by the New Construction Committee.

10.22. Outbuildings. No tree house or children's playhouse shall be permitted on any Residential Lot in the Property without prior written approval of applicable Committee. Outbuildings or other structures, temporary or permanent, other than the main residence

or garage shall be limited to eight feet (8') in height and shall be subject to approval by the applicable Committee. Temporary structures may be used as building offices and other related purposes by Declarant or a Builder. Any other type of permitted outbuilding must be in keeping with the overall character and aesthetics of the Dwelling Unit located on the Lot, provided that metal storage sheds may be permitted in styles and locations approved in the discretion of the applicable Committee. The applicable Committee shall be entitled to review and approve or disapprove, without limitation, all outbuildings, play structures (including basketball backboards and hoops), and storage structures. Any such outbuilding will be required to be constructed with material and design that is determined by the applicable Committee to be architecturally and aesthetically compatible with the design of the Dwelling Unit thereon and other structures nearby the Property. All playground and recreational equipment pertaining to a Lot must be placed at the rear of such Lot. No basketball hoop and/or backboard shall be installed closer to the front or side Lot lines facing on any adjacent street than the applicable building set-back line along such street. The New Construction Committee is hereby authorized to determine what constitutes a violation of this restriction.

10.23. **Lot Drainage.** All drainage of water from any Lot and the improvements thereon shall drain or flow as set forth below:

- (a) All slopes or terraces on any Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining Property.
- (b) No structure, planting or other material shall be placed or permitted to remain or other activities undertaken within the Property or any portion thereof by any Owner which might damage or interfere with established slope ratios or interfere with established drainage functions or facilities.

10.24. **Building Height.** No building or Dwelling Unit on any Residential Lot in the Property shall exceed two and one-half (2-1/2) stories in height. Furnished attics shall not be considered for the purposes of this Section to be separate stories.

10.25. **Building Requirements.** As to each Lot in the Property, the following building requirements shall apply unless the relevant Architectural Committee agrees to the contrary in writing, to-wit:

- (a) No building (i) shall be placed or built on any Lot nearer to the front Lot line or nearer to a side Lot line than the building lines therefor shown on the relevant subdivision Plat, or (ii) shall encroach on any easement shown on the relevant subdivision Plat unless (A) approved in writing by the relevant Architectural Committee as having resulted from setting or shifting of improvement, and (B) permitted by applicable law and governmental authorities having jurisdiction.
- (b) Before the Dwelling Unit constructed on the Lot is completed, the Owner shall construct an improved walkway of a size, nature, type and configuration to be approved by the relevant Architectural Committee.

(c) Orientation of each garage entrance to the public street on which the Dwelling Unit fronts, and other aspects of garage location, type, configuration and construction materials shall be as approved by the relevant Architectural Committee.

10.26. **Walls and Fences.** No walls or fences shall be erected or maintained nearer to the front Lot line than the front building line on such Lot, nor on corner Lots nearer to the side Lot line than the building setback line parallel to the side street, except in special circumstances necessitated by the geography of a particular Residential Lot. No fence or wall shall be more than six (6') feet in height, unless otherwise permitted in a Supplemental Declaration or unless approved for such Lots in writing by the relevant Architectural Committee, in its sole judgment and discretion. No chain link fence type construction will be permitted on any Lot except, however, Declarant is exempt from this prohibition as long as it owns portions of the Property. Any wall or fence erected on a Lot by Declarant, or its assigns, shall pass ownership with title to the Lot and it shall be Owner's responsibility to maintain said wall or fence thereafter. Approval of the relevant Architectural Committee shall be obtained prior to the erection of any wall or fence on any Lot.

All walls and fencing shall be made of wood, ornamental metal or brick except as set forth herein, in the Guidelines, or in any applicable Supplemental Declaration filed by Declarant, or as otherwise permitted in the discretion of the relevant Architectural Committee. The use of chain link fencing is prohibited on all Lots, except for tennis courts and other special applications, and then only with prior written permission from the relevant Architectural Committee.

10.27. **Roofs.** The roof of each Dwelling Unit shall be covered with asphalt or composition type shingles of a weight and color approved by the New Construction Committee, such other architecturally compatible and attractive roofing material as may from time to time be approved by the relevant Architectural Committee in its sole discretion for particular Lots or areas. The decision with regard to shingle weight and color shall rest exclusively with the relevant Architectural Committee, as the case may be, and its decision regarding same shall be final and binding. All roof stacks and flashing must be painted to match the approved roof color.

10.28. **Party Walls and Shared Improvements.** The cost of maintenance of a Party Wall or any Shared Improvement shall be shared equally by the Owners of the applicable Party Wall, or the Owners who benefit from the Shared Improvement. In the event that a Townhome is destroyed or removed for any reason and not reconstructed, the cost of the restoration shall be borne by the Owner of the Townhome which was destroyed or removed. No Owner shall alter or change the Party Wall in any manner (interior decoration excepted) and the Party Wall shall always remain in the same location as when erected. Notwithstanding any other provision herein, an Owner who by such Owner's negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The rights of

any Owner to contribution from any other Owner under this agreement shall be appurtenant to the land and shall pass to such Owner's successors in title. Each Owner shall have the right to enforce by any proceeding at law or in equity the provisions contained in this paragraph. Failure by any Owner to enforce any provision of this paragraph shall in no event be deemed a waiver of the right of any other Owner to do so thereafter.

ARTICLE XI

ANNEXATION OF ADDITIONAL PROPERTY DEANNEXATION

11.01. Annexation Without Approval of Membership.

As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Declarant, its successors or assigns, shall have the unilateral right, privilege, and option, from time to time at any time until twenty (20) years from the date this initial Declaration is recorded in the Office of the County Clerk of Harris County, Texas, to annex and subject to the provisions of this Declaration and the jurisdiction of the Association any property it may desire, whether in fee simple or leasehold, whether contiguous or non-contiguous, by filing in the Harris County, Texas, Real Property Records a Supplemental Declaration annexing such property as more fully described below. Such Supplemental Declaration shall not require the vote of Members of the Association or approval by the Association or any person. Any such annexation shall be effective upon the filing of such Supplemental Declaration in the Harris County, Texas, Real Property Records, unless otherwise provided therein. Any such annexation or addition shall be accomplished by the execution and filing for record by Declarant (or the other Owner of the Property being added or annexed, to the extent such Owner has received a written assignment from Declarant of the right to annex), of a Supplemental Declaration.

At such time as any Supplemental Declaration (of annexation) is filed for record as hereinabove provided, the annexation shall be deemed accomplished and the annexed area shall be a part of the Properties and subject to each and all of the provisions of this initial Declaration (as amended), and to the jurisdiction of the Association, in the same manner and with the same force and effect as if such annexed Property' had been originally included in this initial Declaration as part of the Initial Property.

After additions or annexations are made, all Assessments collected by the Association from the Owners in the annexed areas shall be commingled with the Assessments collected from all other Owners so that there shall be a common maintenance fund for the Properties. Nothing in this Declaration shall be construed to represent or imply that Declarant, its successors or assigns, are under any obligation to add or annex additional Property to this development.

11.02. Annexation With Approval of Membership. Subject to the written consent of the owner thereof, upon the written consent by affirmative vote of two-thirds (2/3) of the total number of votes of the Association present or represented by proxy at a meeting duly

called for such purpose, but only if Declarant approves the same in writing during any period when the Declarant is a Class B Member, the Association may annex or permit the annexation of real property to the provisions of this Declaration and the jurisdiction of the Association by filing, or having the party owning such property file, a Supplemental Declaration in respect to the Property being annexed in the Harris County, Texas, Real Property Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and any such annexation shall be effective upon recording in the Harris County, Texas, Real Property Records unless otherwise provided therein. The timing of and manner in which notice of any such meeting of the Members of the Association, called for the purpose of determining whether additional Property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the by-laws of the Association for regular or special meetings, as the case may be.

11.03. **De-annexation.** At any time and from time to time, as Declarant may determine in its sole and absolute discretion, without any obligation or liability to any Owner or any Owner's lender by reason thereof, Declarant may remove Property owned by it from this Declaration (and, thereby, from the jurisdiction of the Association) by filing in the Real Property Records of Harris County, Texas, a "Notice of De-annexation of Property" stating that the parcel or parcels of land described therein are no longer part of the Property or subject to this Declaration. Such de-annexation shall be effective immediately upon the filing of the Notice of De-annexation in the Harris County, Texas, Real Property Records, without notice to any party whomsoever, including, without limitation, any other Owner.

ARTICLE XII

GENERAL PROVISIONS

12.01. **Assignment of Declarant Rights.** Declarant may assign or transfer some or all of its rights as Declarant hereunder to one or more third parties provided that (i) at the time of the assignment such assignee owns more than one Lot (or, contemporaneously with the assignment of the Declarant's rights, is being conveyed more than one Lot), and (ii) such assignee is expressly designated in writing by Declarant, as an assignee of all or part of the rights of Declarant. In any assignment of all or part of the Declarant's rights to a third party pursuant to the terms hereof, Declarant, may specify that the assignee has or does not have the right (or has a limited right) to further assign the Declarant rights being transferred to the assignors. However, in the absence of any reference to a restriction on further assignment, the assignee shall have the right to further assign such transferred Declarant rights on the same terms as are stated above for Declarant, except that the assignment under clause (ii) will be executed by the assignee of Declarant's rights having such power of assignment and the assignment by such assignee may not transfer Declarant rights more expansive than those transferred to the assigning Declarant pursuant to the assignment instrument by which it received such rights. Any attempted assignment or transfer of Declarant rights hereunder which does not strictly comply with the requirements of this Section shall be liberally interpreted as being in compliance with

the requirements hereof if the intent of the parties to transfer Declarant rights pursuant hereto is reasonably clear.

12.02. **Enforcement.** The terms and provisions of this Declaration shall run with and bind the land included in the Property, and shall inure to the benefit of and be enforceable by Declarant, the Association, or the Owner of any Lot, and by their respective legal representatives, heirs, successors and assigns. This Declaration may be enforced in any proceeding at law or in equity against any person or entity violating or threatening to violate any term or provision hereof, to enjoin or restrain violation or to recover damages, and against the Property to enforce any lien created by this Declaration, and failure of Declarant, the Association, or any Owner to enforce any term or provision of this Declaration shall never be deemed a waiver of the right to do so thereafter.

12.03. **Incorporation.** The terms and provisions of this Declaration shall be construed as being adopted in each and every contract, deed, or conveyance hereafter executed by Declarant conveying all or any part of the land in the Property, whether or not referred to therein, and all estates conveyed therein and warranties of title contained shall be subjected to the terms and provisions of this Declaration.

12.04. **Covenants Running With Title.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

12.05. **Amendments.** This Declaration may be amended in whole or in part by any instrument executed by the President of the Association when approved by Members entitled to cast not less than Fifty-one percent (51%) of the aggregate of the votes of all Members of the Association, regardless of whether such Members are or are not present at a meeting of the Members called for that purpose. Following any such amendment, every reference herein to this Declaration shall be held and construed to be a reference to this Declaration as so amended. All amendments shall be recorded in the Real Property Records of Harris County, Texas.

12.06. **Amendments by Declarant.**

(a) Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration, and shall not impair or affect the vested property or other rights of any Owner or such Owner's mortgagee.

(b) Particularly reserved to Declarant is the right and privilege of Declarant to

designate, by Supplemental Declaration, additional and/or more specific restrictions applicable to any portion of the Properties within the jurisdiction of this Declaration so long as Declarant owns at least sixty percent (60%) of the number of Lots within the portion(s) of the Property to be so affected. Such additional restriction may be done by Declarant without the consent or joinder of the other forty percent (40%) of Lot owners in such affected area. No such designation of additional or more specific requirements or restrictions, or subsequent change of requirements or restrictions, as provided for herein, shall be deemed to adversely affect any substantial right of any existing Owner.

12.07. **Books and Records.** The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any Member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any Member or Members will not become burdensome to nor constitute harassment of the Association.

12.08. **Indemnification and Hold Harmless.**

(a) **By the Association.** The Association shall **INDEMNIFY** every officer and director and the Declarant against any and all expenses, including fees of legal counsel, reasonably incurred by or imposed upon any officer, director or the Declarant in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reasons of being or having been an officer, director or the Declarant. The officers, directors and Declarant shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall **INDEMNIFY** and forever hold each such officer and director free and **HARMLESS** from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

(b) **By an Owner.** Each Owner shall be liable to the Association for any damage to the Common Properties of any type or to any equipment thereon which may be sustained by reason of the negligence of said Owner, the Owner's tenants, employees, agents, customers, guests or invitees, to the extent that any such damage shall not be covered by insurance. Further, it is specifically understood that neither the Declarant, the Association, the Board of Directors, or any Owner shall be liable to any person for injury or damage sustained by such person occasioned

by the use of any portion of the Common Properties. Every Owner does hereby agree to defend, **INDEMNIFY** and **HOLD HARMLESS** the Declarant, the Association, the Board of Directors and other Owners from and against any such claim or damage as referenced in the immediately preceding sentence hereof, including, without limitation, legal fees and court costs.

12.09. **Rights of Mortgagees and Lien holders.** No violations of any of these restrictions, covenants or conditions shall affect or impair the rights of any mortgagee or lien holder under any mortgages or deed of trust, or the rights of any assignee of any mortgagee or lien holder under any such mortgage or deed of trust.

12.10. **Right to Subdivide or Resubdivide.** Prior to the time Declarant parts with title thereto, Declarant shall have the right (but shall never be obligated) to subdivide or re-subdivide into Lots, by recorded Plat or in any other lawful manner, all or any part of the land included within the Property. During any period that Declarant owns any part of the Property, Declarant's prior written approval must be obtained to any subdivision plat to be filed of record by any Owner if such Plat would result in the division of the Property being Platted into more platted lots or reserves than was the case prior to the recordation thereof. Except for Platting by Declarant, the Association's prior written approval shall also be required for any subdivision Platting which changes the boundaries of any Plat previously filed or approved by Declarant or the Association.

12.11. **No Obligation as to Adjacent Property.** The Property is or may be a part of a larger tract or block of land owned by or under contract to Declarant. While Declarant may subdivide other portions of its property now or hereafter acquired, or may subject the same to a declaration similar to or dissimilar from this Declaration, Declarant shall have no obligation to do so, and if Declarant elects to do so, any subdivision plat or declaration executed by Declarant with respect to any of its other property may be the same as or as similar to or dissimilar from any subdivision Plat, this Declaration or Supplemental Declaration covering the Property, or any part thereof, as Declarant may desire and determine in its sole and exclusive discretion.

12.12. **Renting or Leasing.** Improvements on Residential Lots that are rented or leased shall be subject to the following restrictions:

- (a) All tenants shall be subject to the terms and conditions of this Declaration, the By-laws, the Articles of Incorporation, and the rules and regulations promulgated thereunder as though such tenant were an Owner.
- (b) Each Owner agrees to cause the Owner's lessee, Occupant, or persons living with such Owner to comply with this Declaration, By-laws, and the rules and regulations promulgated thereunder, and is responsible for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such Occupants of the Dwelling Unit are fully liable for any violation of the documents and regulations.

(c) In the event that a lessee, Occupant or person living with the lessee violates a provision of this Declaration, By-laws or rules and regulations adopted pursuant to thereto, the Board shall have the power to bring an action or suit against the lessee or other Occupant and/or Owner (in the Association's sole discretion) to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity, including, but not limited to, all remedies available to a landlord upon the breach or default of the lease agreement by the lessee.

(d) The Board of Directors shall also have the power to impose reasonable fines upon the lessee, other Occupant and/or the Owner for any violation by the lessee, Occupant, or person living with the lessee of any duty imposed under this Declaration, the Association By-laws, or rules and regulations adopted pursuant thereto, and to suspend the right of the Owner, lessee, Occupant or person living with the lessee to use the Common Properties and Facilities.

12.13. **Notice.** Any notice required or desired to be given under this Declaration shall be in writing and shall be deemed to have been properly served when (i) delivered in person and receipted for, or (ii) three (3) days after deposit in the United States Mail, certified, return receipt requested, postage prepaid, addressed, if to an Owner, to the Owner's last known address as shown on the records of the Association at the time of such mailing or, if to the Association, to its President, Secretary or registered agent. The initial address for the Association and Declarant shall be:

ELLA CROSSING HOMEOWNERS ASSOCIATION, INC.
P.O. Box 34306
Houston, Texas 77234

The foregoing address for the Association and Declarant shall be effective unless and until a supplement to this Declaration or management certificate shall be made and filed in the Real Property Records of Harris County, Texas, specifying a different address for the party filing such supplement (in which event such address specified in such supplement or management certificate shall be the address, for the purposes of this Section, for the addressee named in such supplement or management certificate).

12.14. **Enforcement.** The covenants, conditions, restrictions, easements, uses, privileges, Assessments and liens of this Declaration shall run with the land and be binding upon and inure to the benefit of Declarant, the Association and each Owner of the Properties or any part thereof, their respective heirs, legal representatives, successors and assigns. The enforcement of the provisions of this Declaration shall be vested in the Association. In the event the Association fails or refuses to enforce a provision of this Declaration for a period of thirty (30) days after written notice from Declarant or any Owner, as the case may be, Declarant or any Owner shall have the right, but not the obligation, to enforce such provisions. A breach of any of the provisions of this Declaration

shall give to the party entitled to enforce such provision the right to bring a proceeding at law or in equity against the party or parties breaching or attempting to breach this Declaration and to enjoin such party or parties from so doing or to cause such breach to be remedied or to recover damages resulting from such breach. A breach of this Declaration by an Owner relating to the use or maintenance of any portion of the Properties or part thereof is hereby declared to be and constitute a nuisance and every public or private remedy allowed by law or equity for the abatement of a public or private nuisance shall be available to remedy such breach. In any legal or equitable proceedings for the enforcement of this Declaration or to restrain a breach thereof, the party or parties against whom judgment is entered shall pay the attorney's fees and costs of the party or parties for whom judgment is entered in such amount as may be fixed by the court in such proceedings. All remedies provided under this Declaration, including those at law or in equity, shall be cumulative and not exclusive. No party having the right to enforce this Declaration shall be liable for failure to enforce this Declaration.

12.15. **Good Faith Lender's Clause.** No violation of this Declaration shall affect any lien or deed of trust of record upon any Property subject to Assessment or any part of the Property, when held in good faith. These liens may be enforced in due course, subject to the provisions of this Declaration.

12.16. **Conflict with Deeds of Conveyance; Declarant's Rights.** If any part of this Declaration shall be in conflict with any term of a previously recorded deed of conveyance to any portion of the Property, the term of the prior deed of conveyance shall govern, but only to the extent of such conflict. Where rights are reserved to Declarant by the restrictions of this Declaration, Declarant reserves the right to modify such restrictions as necessary in subsequent deeds of conveyance, in which case the terms of the deeds of conveyance shall prevail.

12.17. **Duration.** This Declaration shall remain in full force and effect for a term of thirty (30) years from the date this Declaration is recorded in the Office of the County Clerk of Harris County, Texas, after which time this Declaration shall be extended automatically for successive periods of ten (10) years each unless and until an instrument signed by the Members entitled to cast not less than Fifty-one percent (51%) of the aggregate of the votes of all of the Classes of Membership viewed as a whole has been filed for record in the Office of the County Clerk of Harris County, Texas, agreeing to terminate this Declaration. Such an instrument so filed for record shall become effective on the date stated therein or one (1) year after it is so filed for record, whichever is the later date. No particular area annexed herein by Supplemental Declaration, nor the Owners thereof, shall be entitled to elect not to renew the term hereof, as it pertains to such area except upon a vote of the requisite percentage (set forth above) of all Members of the entire Association, including those Members owning Lots within and those owning Lots outside of the annexed area that desires non-renewal.

12.18. **Severability.** Invalidity of any term or provision of this Declaration by judgment or otherwise shall not affect any other term or provision of this Declaration, and this Declaration shall remain in full force and effect except as to any terms and provisions

which are invalidated.

12.19. **Gender and Grammar.** The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all case be assumed as though in each case fully expressed.

12.20. **Titles.** The titles of this Declaration and of Articles and Sections contained herein are for convenience only and shall not be used to construe, interpret, or limit the meaning of any terms or provisions contained in this Declaration.

12.21. **Successors in Title.** The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of Declarant and the Association, and their respective successors and assigns.

Executed this 13 day of July, 2005

DECLARANT:

Perry Homes, a Joint Venture

By: Perry-Houston Interests, Ltd.,
a Texas limited partnership,
as the Managing Joint Venturer

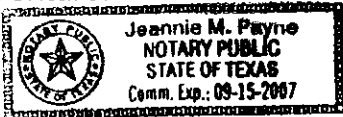
By: PH Financial L.L.C.,
a Texas limited liability company,
as the General Partner

By: Gerald W. Noteboom
Gerald W. Noteboom
Senior Executive Vice President

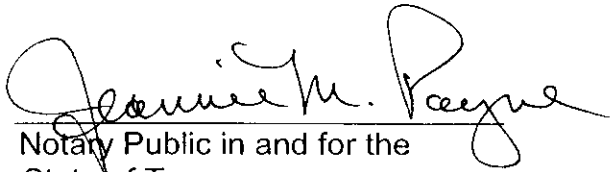
ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 13 day of July, 2005 by Gerald W. Noteboom, Senior Executive Vice President of PH Financial L.L.C., a Texas limited liability company, as the General Partner of PERRY-HOUSTON INTERESTS, Ltd., a Texas limited partnership, the Managing Joint Venturer of PERRY HOMES, A Joint Venture.



Seal Showing Name and
Commission Expiration


Notary Public in and for the
State of Texas

AFTER RECORDING RETURN TO:

S. Bradley Todes
Perry Homes
P.O. Box 34306
Houston, TX 77234

L:\Ella Crossing\Declaration.final.doc

PROPERTY DESCRIPTION

Ella Crossing Sec. 1, an addition in the City of Houston, Harris County, Texas, according to a map or plat thereof, recorded under Clerk's File No. Y524515 and Film Code No. 583137, of the Map Records of Harris County, Texas.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

JUL 27 2005



Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

EXHIBIT "A"

6. The Additional Property shall hereinafter be a portion of the "Property" as such term is defined in the Declaration.
7. Except as set forth in this instrument, the Declaration is not otherwise affected and remains in full force and effect.

Executed to be effective on the date set forth above.

DECLARANT:

Perry Homes, a Joint Venture

By: Perry-Houston Interests, Ltd.,
a Texas limited partnership,
as the Managing Joint Venturer

By: PH Financial L.L.C.,
a Texas limited liability company,
as the General Partner

By: *Gerald W. Noteboom*
Gerald W. Noteboom
Senior Executive Vice President

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 19 day of July, 2005, by Gerald W. Noteboom, Senior Executive Vice President of PH Financial L.L.C., a Texas limited liability company, as the General Partner of PERRY-HOUSTON INTERESTS, Ltd., a Texas limited partnership, the Managing Joint Venturer of PERRY HOMES, A Joint Venture.



Seal Showing Name and
Commission Expiration

Merrilee J. Zedan
Notary Public in and for the
State of Texas

L:\Deed Restrictions (BT)\DR(Intown)\Houston\StCharlesSq 3rdSupp.doc

FILED
05 JUL 27 AM 9:38
COUNTY CLERK
HARRIS COUNTY TEXAS