
**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
THE ESTATES AT ASTORIA**

**A RESIDENTIAL SUBDIVISION IN
FAYETTE COUNTY, TEXAS**

NOTICE: THIS DOCUMENT SUBSTANTIALLY AFFECTS YOUR RIGHTS AND OBLIGATIONS AS AN OWNER OF PROPERTY IN THIS SUBDIVISION. **READ IT CAREFULLY.**

DECLARANT (THE DEVELOPER OF THE PROPERTIES) IS PRESENTING LOTS FOR SALE AND SUBSEQUENT DEVELOPMENT AS HOMESITES BY LOT PURCHASERS. THE DEVELOPMENT CONCEPT FOR THE ESTATES AT ASTORIA IS TO CREATE AN ATTRACTIVE, ARCHITECTURALLY CONTROLLED, SINGLE FAMILY RESIDENTIAL RANCHETTE COMMUNITY IN A DESIRABLE RURAL SETTING NEAR ROUND TOP, TEXAS.

THERE MAY BE CONDITIONS WITHIN OR IN THE VICINITY OF THE SUBDIVISION AND/OR OTHER MATTERS WHICH ARE NOT SUITABLE FOR PARTICULAR PERSONS WHICH MUST BE INDEPENDENTLY INVESTIGATED.

WATER SERVICES WILL BE PROVIDED BY WEST END WATER SUPPLY CORPORATION. EACH HOMESITE OWNER IS REQUIRED TO INSTALL, MAINTAIN, AND OPERATE THEIR OWN SEPTIC SYSTEM IN STRICT COMPLIANCE WITH ALL APPLICABLE GOVERNMENTAL REGULATIONS, AND PLANS AND SPECIFICATIONS MUST BE APPROVED IN WRITING BY THEM AND BY THE ACC. EACH HOMESITE OWNER IS REQUIRED TO INSTALL, CONNECT, AND MAKE WATER AND SEWER SERVICES AVAILABLE AND FULLY OPERATIONAL AS TO THE HOMESITE PRIOR TO OCCUPANCY. **SEE SECTIONS 7.07 & 7.08.**

DECLARANT (THE DEVELOPER OF THE PROPERTIES) RETAINS SUBSTANTIAL RIGHTS UNDER THIS DOCUMENT, ESPECIALLY DURING THE DEVELOPMENT PERIOD. SUCH RETAINED RIGHTS INCLUDE AS PROVIDED IN SECTION 9.03 OF THIS DECLARATION A REQUIREMENT THAT A "DISPUTE NOTICE" MUST BE GIVEN TO DECLARANT WITHIN 120 DAYS AS TO ANY "DISPUTE". THAT SECTION ALSO ESTABLISHES A MAXIMUM TWO- YEAR STATUTE OF LIMITATIONS AS TO ANY DISPUTE. **RIGHTS TO ASSERT A DISPUTE MAY BE LOST DUE TO FAILURE TO COMPLY WITH SECTION 9.03.**

AFTER RECORDING RETURN TO:
WILSON, CRIBBS & GOREN, P.C.
Attn: Lou W. Burton
1233 West Loop South, Suite 800
Houston, Texas 77027

TABLE OF CONTENTS*

PAGE	
1	PREAMBLE
1	ARTICLE I DEFINITIONS
2	ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION Defines what area is covered by this Declaration, and the procedures under which new property can be added to the scheme of this Declaration.
3	ARTICLE III THE ESTATES AT ASTORIA COMMUNITY ASSOCIATION, INC. Defines the membership, voting rights and business operations of the Association.
6	ARTICLE IV MAINTENANCE FUND AND ASSESSMENTS Establishes assessments and related procedures, including the purposes of the assessments, how they may be established or raised, the obligation of the owners to pay the assessment, and the Association's powers to enforce payment, including as to the Association's continuing assessment liens and right of foreclosure.
10	ARTICLE V ARCHITECTURAL CONTROL COMMITTEE Establishes the Architectural Control Committee ("ACC") and procedures and powers of the ACC, and the obligations to obtain written approval of the ACC before any work begins as to any improvements. Section 5.04 defines Application Procedures.
12	ARTICLE VI PROTECTIVE COVENANTS Defines the general rights, privileges, obligations, and restrictions which apply to Owners and tenants and within the Subdivision, including as to maintenance, leasing, and prohibitions as to short-term rentals and timeshares.
18	ARTICLE VII HOMESITE IMPROVEMENTS Describes and requires general improvements upon each homesites in the Subdivision, including as to setback lines, minimum living area square footage, fencing requirements, landscaping, and drainage and culvert crossing provisions. Also covers the requirements for obtaining and maintaining of water services from a Texas water supply corporation, and the absence of public sewer services as to the Subdivision. Each Owner is required to obtain fully operational water and sewer services and a Certificate of Compliance as to their Lot prior to occupancy.
20	ARTICLE VIII CONSTRUCTION STANDARDS Establishes requirements for structural improvements; explains the duty of each owner to maintain their Lot in compliance with all covenants and restrictions.
22	ARTICLE IX TERM; AMENDMENT; NOTICES; DEVELOPMENT PERIOD; MANAGING AGENT Sets the term of the Declaration and amendment rights, establishes notice procedures, covers Declarant development and sale rights, and provides for enforcement of this Declaration. A Managing Agent is permitted but not required.
25	ARTICLE X GENERAL PROVISIONS States general interpretation rules, rights of Fayette County, Texas, rights of mortgagees, and other general provisions.

* **NOTE:** This Table of Contents only provides the beginning page of, and a brief overview as to the general subject matter within, each Article and is not to be relied upon for any other purpose.

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR THE ESTATES AT ASTORIA ("Declaration") is made by Rocky Creek Estates LLC, the "Declarant".

PREAMBLE

WHEREAS, **Rocky Creek Estates, LLC**, a Texas limited liability company, is the current owner of all that certain real property located in Fayette County, Texas, as more particularly described in Exhibit "A" attached to this Declaration and incorporated by reference herein (the "**Subdivision**"), and the said owner desires to create and carry out a general and uniform plan for the establishment, development, improvement, maintenance, occupancy and use of the said properties, together with such other real property as may at any time be annexed thereto under the provisions of this Declaration.

NOW THEREFORE, the Declarant declares that the Subdivision is and are and shall be held, transferred, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens (sometimes herein collectively referred to as "**covenants and restrictions**"), all of which covenants and restrictions run with the said real property, are binding upon all parties having or acquiring any right, title, or interest in the said real property or any part thereof, and their heirs, predecessors, successors and assigns, and inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, when used in this Declaration, whether capitalized, and in addition to other defined terms set forth herein, the following words and substantive provisions regarding the same apply, mean, and refer to the following:

"Association" means **The Estates at Astoria Community Association, Inc.**, a nonprofit corporation, incorporated under the laws of the State of Texas, and its successors and assigns.

"Common Area" means all properties, real or personal, and all facilities and services owned, leased, built, installed, maintained, operated, provided by or through the Association, or over which the Association has an easement, for the general benefit of the Subdivision or the benefit, use, or enjoyment of the Members, excepting Lots and Homesites, and excepting any part thereof accepted for maintenance by any governmental or quasi-governmental authority or utility.

"Declarant" means **Rocky Creek Estates, LLC**, a Texas limited liability company, and its successor and assigns if such successors or assigns: (i) acquire all of the then remaining undeveloped or developed but previously unoccupied or unsold Lots within the Subdivision from Declarant for purposes of development and resale; or (ii) are expressly designated in

writings by Declarant as a successor or assign of Declarant hereunder, in whole or in part.

"Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements for The Estates at Astoria, and all lawful amendments thereof.

"Development Period" means the period, beginning on the date of filing of record of this Declaration, during which Declarant retains and reserves either rights to facilitate the development, construction, and marketing of the Subdivision, or rights to direct the size, shape, and composition of the Subdivision, and ending on the earlier occurrence of (i) 180 days after the Initial Sale of the last Lot in the Subdivision; or (ii) upon the date of filing of record of Declarant's notice of termination of the Development Period, provided that at any time prior to complete termination of the Development Period Declarant may file one or more statements of limited termination of the Development Period to apply only to the specific functions, rights and/or responsibilities as stated therein.

"Directors" or **"Board"** means the duly appointed or elected Board of Directors of the Association.

"Electronic Means" means, refers to and applies as follows:

(1) **"Electronic Means"** means any method, process or system of notice, meeting participation, or communication by using a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing or audioconferencing technologies, or the Internet, or any combination thereof. Electronic Means includes as to the said methods, processes or systems of notice, meeting participation, or communication, and without limitation, email, text messaging, facsimile, and such other method, process or system as authorized by the Governing Documents or by Applicable Law. The use of Electronic Means is subject to all reasonable Rules established by or pursuant to the Governing Documents.

(2) It is the obligation of each Owner and of each Owner's Tenant to maintain capabilities to communicate by Electronic Means, including participation by Electronic Means in any meetings relating to the Association. All such communications or participation are subject to all applicable Rules which may include reasonable limitations on or requirements for participation.

"Governing Documents" means, collectively and severally, all documents and applicable provisions thereof regarding the use, maintenance, repair, replacement, operation, modification or appearance of any properties within the Subdivision, including each Lot and Homesite, or any rights, responsibilities or obligations of any Owner, tenant or their Related Parties pertaining thereto, or to the Association, the Board or the ACC, including without limitation this Declaration, the Bylaws and Certificate of Formation of the Association, all Rules, and all lawful amendments to any of the foregoing

"**Homesite**" means each Lot and all improvements thereon.

"**Lot**" means any of the numbered plots of land shown on any Subdivision Plat upon which a single family residence is, or may be, built. The term "Lot" does not include Common Areas and does not include any commercial or other unrestricted reserves so designated by a Subdivision Plat, if any.

"**Members**" means members of the Association, which shall consist of all owners and the Declarant as provided in Article III.

"**Owner**" means the record owner(s) of a Lot or Homesite.

"**Related Parties**" means and applies as follows:

(1) **Owners and Tenants.** Tenants of each Owner are Related Parties of that Owner, and with respect to each Related Parties include (i) their respective single family members, (ii) their respective guests, invitees, servants, agents, representatives, and employees, and (iii) all other persons or entities over which each has a right of control or under the circumstances could exercise or obtain a right of control.

(2) **Association, Board and ACC.** Related Parties of the Association, the Board and the ACC include their respective officers, directors, committee members, servants, agents, representatives and employees regarding all acts or omissions related to any of the foregoing representative capacities.

(3) **Declarant.** Related Parties of Declarant include (i) as to Declarant, its affiliated companies, subsidiaries, partners, and co-venturers and all of their "affiliates", "owners" and "governing persons" (as defined in the Texas Business Organizations Code), and (iii) as to all of the foregoing, their respective officers, directors, committee members, servants, agents, representatives and employees regarding all acts or omissions related to any of the foregoing representative capacities. **Related Parties of Declarant have no authority to act on behalf of or to bind or obligate Declarant except as expressly authorized by Declarant.**

"**Rules**" means all rules, regulations, policies, or procedures as permitted by the Texas Property Code, including Chapters 202 or 209 thereof. Or the Texas Business Organizations Code, including Chapter 22 thereof, concerning the appearance, maintenance, operation, use, or occupancy of the Subdivision, or rights or obligations of the Association or of Owners regarding the Subdivision or the Association, as at any time adopted or amended by the Board after notice to the Owners, regardless of nomenclature or manner of designation, and which may include architectural guidelines.

"**Single Family**" means either (i) husband and wife, or (ii) not more than three adults not so related, together with their legal children or others over which they have legal guardianship or care, and who in either case are maintaining a common household and functioning as a single family unit with more than

minimal or incidental familial type financial and other responsibilities among such persons, and (iii) the bona fide domestic servants of either. "Single family" does not include temporary household groups such as lodgers or boarders or any other similar temporary or transient living arrangement.

"**Subdivision**" means the recorded subdivision known as The Estates at Astoria located in Fayette County, Texas, as more particularly described in Exhibit "A" attached to this Declaration and incorporated by reference herein, together with such other real property as may at any time be annexed thereto under the provisions hereof.

"**Subdivision Plat(s)**" means the respective maps or plats recorded in the Map Records of Fayette County, Texas and which shall define the development scheme of the Subdivision.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

SECTION 2.01 The Subdivision: The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is in the County of Fayette, State of Texas, and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

SECTION 2.02 Mineral Exception: There is hereby excepted from the Subdivision and Declarant will hereafter except from all its sales and conveyances within the Subdivision, or any part thereof, including the Lots and Common Areas, all oil, gas, and other minerals in, on, or under the Subdivision, but Declarant hereby waives, to the extent of its ownership interest, its right to use the surface of such land for exploration for development of oil, gas, and other minerals.

SECTION 2.03 Additions to Property Subject to Declaration: Additional property may become subject to this Declaration in the following manner:

A. ADDITIONS BY DECLARANT OR OTHERS: If Declarant or any other person, firm or corporation is the owner of any property which it desires to add to the scheme of this Declaration, it may do so by filing of record an amendment of this Declaration, which shall extend the scheme of the covenants and restrictions of this Declaration to such property; **provided however**, that such covenants and restrictions as applied to the property which is so added may be altered or modified by said amendment to this Declaration; and **provided further**, if property is added by any person, firm, or corporation other than Declarant, the Association, acting through its Board of Directors and the Declarant must give prior written consent thereto.

B. CONTENTS OF SUPPLEMENTAL AMENDMENTS: A supplemental amendment of this Declaration shall contain covenants and restrictions to which the added properties shall be subject. Such covenants and restrictions may contain additions, deletions, and modifications from those contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties. Such supplemental

amendment must impose an annual maintenance charge assessment on the property covered thereby, on a uniform, per homesite basis, substantially equivalent to the maintenance charge and assessment imposed by this Declaration, according to Article IV, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional property. In no event, however, shall such supplemental amendment to this Declaration revoke, modify, or add to the covenants established by this Declaration.

**ARTICLE III
THE ESTATES AT ASTORIA
COMMUNITY ASSOCIATION, INC.**

SECTION 3.01 Organization:

A. NONPROFIT CORPORATION: The Estates at Astoria Community Association, Inc. is a nonprofit, non-stock corporation organized and existing under the laws of the State of Texas and charged with the duties and vested with the powers prescribed by laws and set forth in the Governing Documents, as such may be amended at any time.

B. PURPOSE: The purpose of the Association in general is to protect the general scheme of the development as evidenced by the Declaration and to provide for and promote the health, safety, and welfare of the Members, to set and collect the Annual Maintenance Fund Assessments, and other fees or assessments, and to administer said funds, to provide for the protection of the Common Areas in the Subdivision and such other purposes as are stated in the Governing Documents consistent with the provisions of this Declaration, as amended.

C. MEMBERSHIP: Each Owner whether one or more persons or entities of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until ownership ceases for any reason, at which time membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of each Lot and may not be separated from such ownership. Whenever the ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument be issued for transfer of membership. The term "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms, or corporations acquiring or succeeding to the title of the Member by sale, grant, will, foreclosure, execution, or by any legal process by operation of law, or in any other legal manner.

SECTION 3.02 Voting Procedures and Requirements: All regular business of the Association shall be carried out by its duly appointed or elected Boards and ACCs according to the provisions of the Governing Documents. The Board of Directors shall determine all details relating to voting on any matter subject to vote by the general membership of the Association according to the guidelines and requirements

below. In all cases, votes by proxy or in writing shall be counted as if the person issuing such proxy or written vote were present in person. The types of voting shall be as set out below and further defined elsewhere in this Declaration or the Governing Documents.

A. GENERAL BUSINESS: Any voting desired or required at any meeting shall be determined by a simple majority vote of those votes represented at such meeting at which a quorum of Members is present.

B. MATTERS REQUIRING MAJORITY VOTE OF OWNERS: Notwithstanding any meeting quorum or other requirements of the Bylaws or other Governing Documents, the vote of the Owners of a majority of all Lots then contained in the Subdivision is required at a special meeting called for such purpose for taking of the following actions:

1. PETITION FOR REFERENDUM: After the Development Period the membership of the Association has the right to bring any proposed action, review any past actions taken by the Association, or bring a petition for the recall of any Board or ACC members before a vote of the membership for purposes of denying, amending, establishing, or affirming such action or recall.

2. ACTIONS ADVERSE TO DECLARANT: Owner approval for any proceedings adverse to the Declarant as provided in **Section 9.05**.

SECTION 3.03 Corporate Structure:

A. GOVERNING DOCUMENTS: The Association shall act and operate according to the Governing Documents, including this Declaration, as amended. Such documents, as originally adopted by the Declarant, may be amended at any time according to the conditions specified in each document.

B. BOARD OF DIRECTORS: The Board of Directors is responsible for the affairs of the Association, has all powers and duties necessary for the administration of the Association's affairs as provided by the Governing Documents, and may do all acts and things as are not by the Governing Documents directed to be done and exercised exclusively by the Members.

1. INITIAL BOARD: The Initial Board of Directors shall consist of three (3) Directors appointed by the Declarant and said Directors may be replaced at the discretion of the Declarant until they are replaced by Owner elected Directors as hereinafter provided.

2. ELECTED BOARD: At the FIRST regular annual meeting following termination of the Development Period, the Owners voting alone shall elect three (3) Directors, according to the election provisions of the Bylaws.

3. **INELIGIBILITY:** Husbands and wives or other individuals residing in the same household may not serve concurrently as Directors.

4. **DECLARANT'S RIGHTS:** Prior to the FIRST regular annual meeting following termination of the Development Period, all Directors elected by the Association **must** be approved by the Declarant.

C. ARCHITECTURAL CONTROL COMMITTEE: The Architectural Control Committee ("ACC") will operate under the provisions of Article V of this Declaration and is responsible for review of all plans for any improvement within the Subdivision that is subject to this Declaration or the Governing Documents. The ACC and the Board will also monitor compliance with all provisions of this Declaration and the Governing Documents and may instigate any action necessary to bring about compliance.

SECTION 3.04 Voting Rights of Members.

A. CALCULATION OF VOTES. The number of votes which may be cast regarding any matter properly presented for a vote of the Owners (Members) will be calculated as follows:

1. The Owner of each Lot, including Declarant, will have one vote for each Lot owned.

2. In addition to the vote or votes to which Declarant is entitled by reason of Declarant's ownership of one or more Lots as provided above, Declarant will have four additional votes for every one vote outstanding in favor of any Owner other than Declarant until the expiration or termination of the Development Period.

3. If additional property is annexed into the Subdivision and jurisdiction of the Association and if at such time the voting rights of Declarant have previously ceased as provided in subsection (2) above, then those Declarant voting rights will immediately be reinstated and will thereafter apply to all Lots owned by Declarant in the newly annexed portion of the Subdivision, as well as to all Lots owned by Declarant in all other areas of the Subdivision, calculated in the same manner as set forth above. Such reinstatement is subject to further cessation in accordance with the above subsection (2).

B. MULTIPLE OWNERS. When more than one Person holds an ownership interest in a Lot, all such Persons are Members, but in no event will they be entitled to more than one vote with respect to each Lot owned. The single vote, approval, or consent of such joint Owners must be cast or given in accordance with the decision of a majority, or if such joint Owners cannot reach a majority decision, then none of the joint Owners will be permitted to vote, approve, or consent as to any such matter upon which a majority decision cannot be reached. The vote, approval, or consent of any single Owner from among such joint Owners is conclusively presumed to be cast or given in accordance with the decision of a majority of the joint Owners and with

their full authority. **The provisions of this Section apply to any vote, approval, or consent by Owners as permitted or required by this Declaration or other Governing Documents.**

C. RIGHT TO VOTE. No Owner may be disqualified from voting in an election of a member or members of the Board of Directors, or on any matter concerning the rights or responsibilities of the Owner, except as otherwise permitted by law.

SECTION 3.05 Limitation of Liability; Indemnification.

A. "ASSOCIATION REPRESENTATIVE(S)" DEFINED. As used in this Section, "Association Representative(s)" means each current or former director, governing person, officer, delegate, employee, and agent of the Association, as such terms are defined in the Texas Business Organizations Code, including Declarant and Declarant's Related Parties whenever acting for or on behalf of the Association.

B. LIMITATION OF LIABILITY. To the fullest extent allowed by the Texas Business Organizations Code, including Chapters 7 and 8 thereof, an Association Representative is not liable to the Association, to any Owner or Member of the Association, or to any other Person for any act by the Association Representative in the Person's capacity as an Association Representative unless the Person's conduct was not exercised in good faith, with ordinary care, and in a manner the Association Representative reasonably believes to be in the best interests of the Association.

C. INDEMNIFICATION. To the fullest extent allowed by the Texas Business Organizations Code, including Chapter 8 thereof, the Association agrees to and is required to indemnify, defend, and hold harmless, and to advance expenses to, each Association Representative, **including, in each case, for claims based on or arising from such person's sole, partial, or concurrent negligence**, but excluding any such items incurred because of any act or omission for which the Association Representative is liable under the preceding subsection (b). The provisions of this subsection (c) constitute a determination that indemnification should be paid and a contract to indemnify as contemplated by Sections 8.103(c) and 8.151(d)(2) of the Texas Business Organizations Code.

D. REPORT TO MEMBERS. So long as required by the Texas Business Organizations Code, any indemnification of or advance of expenses to an Association Representative must be reported in writing to all Owners upon the earlier to occur of (i) with or before the notice or waiver of notice of the next meeting of Members, or (ii) with or before the next submission to Members of a consent to action without a meeting, or (iii) within twelve months after the date of the indemnification or advance.

E. MONITORING SERVICES, CRIMINAL CONDUCT: At any time the Association may engage in activities or provide devices or services intended to or which may have the effect of enhancing safety or security, including activities, devices or services limiting or controlling Subdivision access, or providing of patrol services or

other monitoring activities within the Subdivision (including Common Areas), and may from time to time provide information through newsletters or otherwise regarding the same. Burglary or other unlawful or unauthorized intrusion devices or systems or other monitoring systems may also be initiated, installed, or implemented as to the Subdivision, including any Common Areas. All such matters, activities, services, or devices are herein referred to as "**Monitoring Services**". Without limitation of any other provisions hereof, each Owner and their tenants covenant and agree regarding any and all Monitoring Services and regarding any and all **criminal conduct**, either within or outside of the Subdivision (i) security is the sole responsibility of local law enforcement agencies and of individual Owners, tenants and their related parties., (ii) Monitoring Services may be provided at the sole discretion of the Board of Directors, (iii) the providing of any Monitoring Services at any time will in no way prevent the Board from thereafter discontinuing, or from temporarily or permanently modifying, terminating or removing, any Monitoring Services, in whole or in part, and (iv) any third-party providers of Monitoring Services are independent contractors, the acts or omissions of which are not imputable to Declarant, the Association or any of their related parties.

SECTION 3.06 Association Business:

A. GENERAL DUTIES AND POWERS: The Association has full right, power and authority to exercise and to enforce all provisions of the Governing Documents, including without limitation (i) to exercise all powers available to a Texas nonprofit corporation, (ii) to exercise all powers of a property owners association pursuant to the Texas Property Code, as amended, and (iii) to exercise all implied powers incident to the foregoing or necessary or proper to the Association's express powers or purposes, subject however to any limitations expressly stated in the Governing Documents. In addition to the foregoing duties and powers and without limiting the generality thereof, the duties and powers of the Board shall normally include, but shall not be limited to, the following:

1. CORPORATE BUSINESS: The Association has the right and authority to own, sell, grant, convey, lease, mortgage, or dedicate to any individual entity or utility, any portion of or rights pertaining to any Common Areas, roads or easements in favor of the Association; or to construct, purchase, lease, or contract for any additional property, facilities, equipment, etc., or to borrow money for the purpose of constructing, improving, maintaining, or repairing said Common Areas, roads, or easements and in aid thereof to mortgage said property.

2. ROADS: The roads within the Subdivision will be maintained by Fayette County, Texas. The Board, however, shall be responsible for working with the County to see that all County rights-of-way and public easements within the Subdivision are adequately maintained by the County or other responsible entity. The Association shall specifically have the right to assist in said maintenance in any manner agreeable to the responsible entity, including but not limited to, performing needed repairs at Association expense.

3. COMMON AREAS AND EASEMENTS: All Common Areas and easements in favor of the Association shall be maintained in good condition for the benefit and enjoyment of all Members. This shall specifically include the monument sign and surrounding landscape materials at the entrance to the Subdivision. All portions of Reserves A and B shall also be the responsibility of the Association.

4. STORMWATER DETENTION AND DRAINAGEWAYS: All storm water detention and drainageways shall be maintained and kept in good repair by the Association and shall be a common expense to be paid out of the Annual Maintenance Fund. The foregoing does **not** apply to any such storm water detention, drainage ways or easement, or to any such storm water systems, facilities or devices that are owned or maintained by Fayette County, Texas, or any other governmental or quasi-governmental authority or utility, or which are privately owned in which case the Association will require that the owner maintain said detention and drainageways at his/her personal expense.

5. ENFORCEMENT: The Board (and ACC as herein provided) shall have the right to enforce the provisions of the Governing Documents by any legal means, whether specifically defined in this Declaration or not, for the benefit and protection of the Members in general and specifically to protect the scheme of the development as evidenced by this Declaration.

6. RULES, INCLUDING FINES: The Board shall have the power to adopt, amend, and repeal Rules as it deems reasonable. The Rules may include the establishment of a system of fines and penalties. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of any Common Areas; provided, however, that the Rules may not discriminate among owners, and shall not be inconsistent with the Governing Documents. A copy of the Rules as they may at any time be adopted or amended, or a notice setting forth a reasonable summary thereof, shall be given to all Owners within a reasonable time after adoption or amendment.

7. BUDGETS AND ASSESSMENTS: The Board shall annually prepare an Operating Budget and Capital Budget as defined in **Article IV** and therefrom compute the Annual Maintenance Fund Assessment to be charged equally against each Lot. The Board shall also have the right, subject to the provisions of this Declaration, to establish other fees or assessments that may at any time be required or beneficial to the purposes of the Association, and the right to adopt procedures for the purpose of making, billing, and collecting the Assessments, user fees and charges provided for herein, provided that the procedures are not inconsistent with the provisions hereof.

8. DELEGATION: The Board shall have the right to delegate to committees, officers, employees, or agents any of its duties and powers under the Governing Documents. No such delegation, however, whether to a professional management

company, the ACC, or otherwise, shall relieve the Association of its obligations to perform such delegated duty.

9. APPEALS: The Board shall hear appeals on decisions of the ACC according as provided in **Article V** and shall hold hearings on any proposed enforcement of the Governing Documents.

10. COURT ALTERNATIVE: Prior to any case pertaining to or covered by the Governing Documents being filed for legal court action or legal suit by any Member of the Association, all claims and disputes as to the same must be submitted in writing to and must be heard by the Board which shall render a ruling that shall be binding on all parties. This paragraph shall not prohibit, however, any Member or the Association from subsequently pursuing any such claims or disputes through the Courts.

B. NOTICE TO DECLARANT: For a period of two years after termination of the Development Period, the Association must inform the Declarant of all decisions of the Board and the Association and provide copies of the minutes of all meetings, notice of change of ownership along with a copy of the Certificate of Compliance if required, notice of all applications for approval by the ACC along with decisions of the ACC, notice of actions for enforcement, notices of meetings, bulletins, newsletters, and other information provided by any means to the Members.

C. INSURANCE: The Association, to the extent available and to the extent deemed necessary or beneficial, according to the provisions of the Governing Documents, shall obtain and continue in effect in its own name the following types of insurance so long as such accounts or types of insurance coverage are not, in the good faith judgement of the Board, prohibitively expensive or no longer necessary or appropriate for the protection of the Properties, the Association, and the Members:.

1. ASSOCIATION INSURANCE: Public liability, fidelity coverage, worker's compensation if and as required by law, officers, and directors' liability insurance and/or indemnity shall be obtained and maintained where the Board, according to the provisions of the Governing Documents, shall deem necessary or beneficial to carry out the Association functions.

2. PREMIUMS: All costs, charges, and premiums for all insurance that the Board of Directors authorizes as provided herein shall be a common expense of all Members and be a part of the Annual Maintenance Fund Assessment or a Special Assessment at the option of the Board.

3. WAIVER BY MEMBERS: All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the owners and the Mortgagees as their interests may appear.

4. INSURANCE REVIEW: It shall be the duty of the Board of Directors annually to conduct an insurance review to determine if the policies in force are adequate to meet the needs of the Association and to satisfy the requirements of this

Section.

5. INSURANCE RATES: Nothing shall be done or kept in the Subdivision which would result in the cancellation of insurance or increase the rate of insurance on any property insured by the Association without the express written approval of the Board, providing, however, Declarant may keep equipment, building materials, fuel, etc. that are necessary for the development of the subdivision.

D. ASSOCIATION BOOKS AND RECORDS. The Association will keep current and accurate books and records of the business and affairs of the Association, including financial records, and including minutes of the proceedings at any meeting of the Board and any meeting of Owners. The ACC must also keep and maintain records evidencing the final decision(s) of the ACC regarding all requests for approval and requests for variance. Every Owner may inspect and copy books and records of the Association, and the Association must retain Association books and records, in accordance with the Association's policies as to the same which must be adopted in accordance with Section 209.005 of the Texas Property Code. Declarant or the Board may adopt the initial policies and at any time thereafter may adopt and amend the policies and such other policies regarding Association books and records as either may deem to be necessary or appropriate.

ARTICLE IV MAINTENANCE FUND AND ASSESSMENTS

SECTION 4.01 Covenants for Assessment: Each owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his Lot or assessed against him by virtue of his ownership thereof, as the same shall become due and payable, without demand. No member shall be exempt or excused from paying any such charge or assessment by waiver of the use or enjoyment of the Common Areas, or any part thereof, or by abandonment of his homesite or his interest therein.

SECTION 4.02 Purpose of Assessments: The Assessments levied by the Association shall be used as necessary for the general maintenance, beautification, landscaping of all common areas, front entrance, repair, utility bills and any other expense of all common areas for mowing and maintenance of all side road ditches until individual property owners occupy their homes, for paying off any indebtedness of the Association; and for carrying out the general business responsibilities of the Association, pertaining to the health, safety and welfare of the owners within the Subdivision as provided for in the Governing Documents, including the funding of appropriate reserves for future repairs and replacement.

SECTION 4.03 Annual Maintenance Fund Assessments:

A. INITIAL ANNUAL MAINTENANCE FUND ASSESSMENTS:

The initial full base rate of the Annual Maintenance Fund Assessment for 2023 per Lot (and continuing during 2023 and thereafter unless and until modified as herein provided) is \$500.00 per Lot per year.

B. COMPUTATION OF OPERATING BUDGET AND ASSESSMENT:

Annually, the Board must prepare an Operating Budget covering the estimated costs of operating the Association during the coming year, including a reasonable amount for contingencies and the amount of the annual contribution required for the Capital Budget provided below. The Board shall cause the Operating Budget and a statement of the amount of the Annual Maintenance Fund Assessment to be levied against each Lot for the following year to be delivered to each Member at each annual meeting, along with a status report indicating any Owners who are delinquent in payment of their assessments and the amount thereof. Except in the case of Special Assessments or Specific Assessments, the assessments levied must be uniform and on a per Lot basis. The amount of the Annual Maintenance Fund Assessment may be increased in any year up to twenty percent (20%) more than the previous year at the sole discretion of the Board. The maximum amount of the assessment increase as aforesaid may be assessed annually or may be accumulated (in whole or in part) and assessed after a number of years. An increase in the Operating Budget or Annual Maintenance Fund Assessment which exceeds the foregoing is effective only if approved at an annual or special meeting of Owners. Notwithstanding the foregoing, if the membership disapproves the proposed budget for the succeeding year as aforesaid, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year.

C. CAPITAL BUDGET AND CONTRIBUTION: The Board of Directors shall annually prepare a Capital Budget which shall consider the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the Capital Budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the Operating Budget for the purpose of computing the Annual Maintenance Fund Assessment according to the provisions of Subsection A above. A copy of the Capital Budget shall be distributed to each Member in the same manner as the Operating Budget. All amounts collected under the Capital Budget may only be used for capital improvements and repairs and shall be deposited by the Board in a separate interest-bearing account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

D. DUE DATES: The Board has the right to require payment of Annual Maintenance Fund Assessments annually, semi-annually, quarterly, or monthly, in advance. If the Board requires payment other than annually as provided below, then the semi-annual, quarterly, or monthly installments of Annual Maintenance Fund Assessments will be rounded upward to the next dollar, and Annual Maintenance Fund Assessments will be automatically adjusted upward by the amount of such rounding. **Unless and until otherwise determined by the Board as aforesaid, the full amount of Annual Maintenance Fund Assessments are due and payable annually, in advance, on the first day of January of each calendar year.**

SECTION 4.04 Special Assessments: If the Annual Maintenance Fund Assessment proves inadequate for any year or purpose, the Board may levy a Special Assessment against all owners, payable in one payment or over such period as may be set by the Board. Any Special Assessment shall be levied on an equitable basis, as determined by the Board, against all owners. Prior to becoming effective, however, any Special Assessment shall be approved by the affirmative vote of a majority of a Quorum of Members at a special meeting called for such purpose.

SECTION 4.05 Specific Assessments.

A. LEVY AND PAYMENT. Specific assessments must be assessed against individual Lots and the Owner(s) thereafter at the time liability for the same accrues as provided in this Section.

B. CAPITALIZATION FEES. Unless waived by Declarant as to any Lot, beginning with the Initial Sale of each Lot, a per Lot "Capitalization Fee" must be paid to the Association as herein provided. At the time of closing as to the Initial Sale of each Lot, an initial Capitalization Fee must be paid to the Association in an amount equal to the greater of (i) \$500.00, or (ii) fifty percent (50%) of the then amount of the regular annual assessment, rounded up to the next dollar. At the time of closing as to each subsequent sale of each Lot a Capitalization Fee must be paid to the Association in the same amount as aforesaid, or such other amount as from time to time set by adoption of applicable Rules. The buyer must pay the applicable Capitalization Fee unless otherwise agreed between buyer and seller. Capitalization Fees will be deposited in the Maintenance Fund and may be used by the Association for general operations, funding of any reserves or as otherwise determined by the Board. Capitalization Fees are nonrefundable and are not to be deemed in any manner as an advance payment of any other assessments.

C. INTEREST. Interest from the due date at the rate of the lesser of eighteen percent (18%) per annum or the maximum legal rate, or such other rate or rates as from time to time determined by the Board or as set by the Association's assessment collection policies not to exceed the maximum rate allowed by law, will be charged on all delinquent assessments, annual, special or specific, as to each assessment account for each Lot which is not paid in full by the end of each month.

D. LATE CHARGES. A late charge in the amount of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) per month, or such other reasonable amount or amounts as from time to time determined by the Board or as set by the Association's assessment collection policies, is hereby imposed as to each assessment account for each Lot which is not paid in full by the end of each month.

E. COMPLIANCE COSTS. All expenses reasonably attributable to or incurred by reason of a breach or violation of or to obtain compliance with any provisions of the Governing Documents must be assessed against the Owner who occasioned the incurrence of such expenses, including reasonable attorney's fees whether incurred prior to, during the pendency of or after successful completion of any actions in a court of competent jurisdiction. The foregoing includes, without limitation, all costs, expenses, and reasonable attorney's fees incurred in connection with the judicial or nonjudicial foreclosure of the Association's assessment lien, including prosecution or defense of any claims or actions relating to any such foreclosure proceedings.

F. OTHER OBLIGATIONS (INCLUDING TRANSFER AND ARCHITECTURAL REVIEW FEES). All other monetary obligations established by or pursuant to the Governing Documents or which are otherwise permitted or authorized by law, and which are intended to apply to one or several but not all Lots must be assessed against the applicable Owner(s). The Board may from time to time contract with a Managing Agent to provide statements of assessments or resale certificates, or to process changes of ownership or tenancy or applications for architectural approval, or to provide other services specific to individual Lots or Owners, and in connection therewith (but subject to authority of the Board to waive any specific assessment as herein provided) may by grant the Managing Agent the right to set the amounts of fees or charges for any such services and to receive payments for the same.

SECTION 4.06 Assessments Prorated: When Lots are purchased from third parties (not from the Declarant) during the year, then the maintenance assessment shall be pro-rated to the date of closing between the buyer and seller or as otherwise provided by the Board, upon closing or completion of said purchase.

SECTION 4.07 Exemptions and Exclusions. The following exemptions and exclusions to payment of assessments apply:

A. BUILDER ASSESSMENT: Any builder or construction company owning any homesites for the purpose of building homes for resale to third parties shall be exempt from assessments until the home is completed.

B. DECLARANT ASSESSMENT: All Lots owned by the Declarant shall be exempt from all assessments until such time as the Lots are sold to an unaffiliated third party.

C. DECLARANT RE-ACQUISITION OF HOMESITE: If any Lot

or homesite is sold to any person or entity by the Declarant by deed or other instrument and the purchaser defaults in any manner and the homesite is repossessed or foreclosed, or such contract is canceled by Declarant, the Association's right to collect the past due assessments and any related charges as to the Lot or homesite payable prior to re-acquisition of the Lot/Homesite shall be cut off and all Association liens securing payment of assessments or related charges prior to such re-acquisition shall be extinguished in like manner as a superior lien as provided in **Section 4.13**. Nothing herein contained shall relieve the purchaser in default from whom the Lot/homesite was re-acquired from any obligations, including payment of such delinquent assessments and related charges to the Association.

SECTION 4.08 Exempt Properties: The following properties are exempt from all assessments, charges, and liens created herein (i) all Common Areas as defined in **Article I**, and (ii) any other areas or properties which the Board, in its good faith judgement, may specifically exempt for the benefit of the Association, its Members, or the general development plan of the Subdivision.

SECTION 4.09 Owner's Personal Obligation for Payment of Assessments: All assessments provided for herein shall be the personal and individual debt of the owner of the property covered by such assessments. No owner may exempt himself from liability for such assessments. In the event of default in the payment of any such assessment, the owner of the property shall be obligated to pay such penalty fees as may be established by the Association, along with interest, at the rate established by the Association up to the maximum rate allowed by law, on the amount of the assessment from the due date thereof, together with all costs and expenses of collection, including attorneys' fees. No Member shall be personally liable for the payment of any assessment made or becoming due and payable after his ownership ceases, and the personal obligation for delinquent assessments shall not pass to successors in title unless specifically assumed by them.

SECTION 4.10 Lien for Assessments.

A. ESTABLISHMENT OF LIEN. All sums assessed against any Lot pursuant to this Declaration, whether by regular, special, or specific assessment as provided herein, are secured by a continuing lien on such Lot in favor of the Association.

B. PERFECTION OF LIEN. The recordation of this Declaration constitutes record notice and perfection of the Association's continuing lien, effective from the date of recordation of this Declaration. No further filing of record of a claim of lien or other notice of any type or kind whatsoever is required to establish or perfect such lien. To further evidence such lien as to any one or more Lots, the Association may, but is not required to, at any time, prepare written notices of default in payment of assessments to be filed of record, in such form as the Board may direct.

C. PRIORITY OF LIEN. The Association's continuing lien is superior to all other liens or encumbrances on each Lot except

only for tax liens and all sums unpaid on any purchase money lien or deed of trust lien of record, securing in either instance sums borrowed for the purchase or improvement of the property in question, and shall specifically, be prior to any declaration of homestead. The Association, in its sole discretion, has the power to subordinate the aforesaid assessment lien to any other lien.

SECTION 4.11 Effect of Nonpayment of Assessments.

A. DELINQUENCY DATE. Any assessments which are not paid by the due date are delinquent as of midnight of the due date.

B. AUTOMATIC REMEDIES. Except to the extent otherwise expressly required by law or unless otherwise agreed in writing by the Declarant or Board, if any assessments are not paid by the due date, then:

1. late charges, interest from the due date, and all compliance costs (including reasonable attorney's fees) will be added to and included in the amount of any such assessment except as otherwise expressly provided herein;

2. the Association may notify any credit bureau and/or any mortgagee or other lienholder with respect to the applicable Lot as to any default under the Governing Documents, including delinquency in payment of assessments and any other monetary amounts due to the Association; or

3. the Association may exercise any other rights and remedies and institute and prosecute such other proceedings as it deems necessary to collect all amounts due.

C. SUSPENSION OF SERVICES. The Association may suspend until all assessments (including all specific assessments) are paid in full, all rights of the delinquent Owner, the Owner's tenants, and the Related Parties of either, to (i) receive any and all services provided by the Association to the applicable Lot and any Improvements thereon, and/or (ii) use, employ or receive the benefits of any other Common Areas, including all rights to use of any and all recreational facilities, if any.

D. ACTION FOR DEBT; FORECLOSURE, INCLUDING EXPEDITED FORECLOSURE.

1. Each Owner, by acquisition of any Lot within the Subdivision or any right, title, or interest therein, grants to the Association (i) the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt; (ii) the right and power to foreclose the Association's continuing lien for assessments by all methods available for the enforcement of a mortgage, deed of trust or any other contractual lien, including foreclosure by an action brought in the name of the Association either judicially or nonjudicially by power of sale; and (iii) a continuing power of sale in connection with the nonjudicial foreclosure of the

Association's continuing lien for assessments as herein provided.

2. The Board or the then President of the Association may appoint, in writing, at any time and from time to time, an officer, agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of and as the agent of the Association. The Board or the then President of the Association may, at any time and from time to time, remove any such Trustee and appoint a successor or substitute Trustee without further formality than an appointment and designation in writing. The Association has the right and power to bid on any Lot at any foreclosure sale, either judicial or nonjudicial, and to acquire, hold, lease, mortgage, or convey the same.

3. If directed by the Association to foreclose the Association's continuing lien, Trustee will, either personally or by agent, give notice of the foreclosure sale as required by law, and will sell and convey the applicable property "AS IS", "WHERE IS", and "WITH ALL FAULTS" to the highest bidder, subject to prior liens, encumbrances and any other matters of record and without representation or warranty, express or implied, by Trustee or the Association. The Association must indemnify Trustee and hold Trustee harmless from and against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the Association's lien or otherwise pursuant to this Declaration or other Governing Documents, including indemnification for all court and other costs, and attorney's fees incurred by Trustee in defense of any action or proceeding taken against Trustee regarding any of the foregoing.

4. The filing of a lawsuit to collect any sums due hereunder or to foreclose the Association's continuing lien for assessments may never be considered an election to preclude exercise of any other rights or remedies. After foreclosure, either judicial or nonjudicial, the former Owner and anyone claiming under the former Owner must immediately surrender possession to the purchaser. If not, the former Owner and anyone claiming under the former Owner will be mere Tenants at sufferance of the purchaser, and the purchaser may obtain immediate possession pursuant to any actions or remedies permitted by law, including an action for forcible detainer or eviction to be maintainable by the purchaser.

5. Each owner, by acquisition of any Lot within the Subdivision or right, title or interest therein, specifically covenants and stipulates as to each and every Trustee's foreclosure sale that the recitals in any appointment or designation of Trustee, any conveyance by the Trustee and any affidavit of the Trustee or the Association related thereto is full proof and evidence of the matters therein stated, that all prerequisites of the foreclosure sale are presumed to have been performed, and that the foreclosure sale made under the powers herein granted is a perpetual bar against the Owner(s) of the Lot(s) sold and their heirs, executors and administrators, successors and assigns, and any Persons whatsoever claiming or to claim thereunder.

6. The provisions of this **Section 5.08.4** are subject to Texas Property Code, Section 209.009 regarding foreclosure sales that are prohibited in certain circumstances, Section 209.0091 regarding notices to certain lienholders, and Section 209.0092 regarding applications for expedited foreclosure and applicable rules of the Texas Supreme Court regarding the same.

SECTION 4.12 Certificate of Account. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or other authorized representative of the Association setting forth whether assessments on a specified Lot have been paid or the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same. Upon the written request of any mortgagee holding a prior lien on any part of a Lot, the Association shall report to the said mortgagee any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.

SECTION 4.13 Foreclosure of Superior Lien: Any foreclosure of any superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through Court proceedings in which the respective concerned Association has been made a party, shall cut off and extinguish the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosures shall free any homesite from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

SECTION 4.14 Assessments as Independent Covenant. The obligation to pay assessments is a separate and independent covenant and contractual obligation on the part of each Owner.

ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

SECTION 5.01 *Organization.*

A. ESTABLISHMENT; DECLARANT'S RETAINED ACC AUTHORITY. An Architectural Control Committee ("ACC") is hereby established for the Subdivision as provided herein and in other applicable Governing Documents. The ACC is the architectural review authority for the Subdivision.

B. DECLARANT'S RETAINED ACC AUTHORITY; DIVISION OF AUTHORITY.

1. Declarant reserves and retains full and exclusive right and authority unto Declarant and its designee(s) to act as the ACC (i) during the Development Period as to all Lots and all other real property tracts or parcels of real property within the Subdivision, and (ii) after the Development Period as to each Lot and each other tract or parcel of real property within the Subdivision until, as to each, the

initial sale of each of the same to an Owner other than Declarant or a builder, such right and authority after the Development Period being herein referred to as "**Declarant's retained ACC authority**".

2. Any reference herein to the ACC includes Declarant and its designee(s) and Declarant's retained ACC authority as aforesaid. Declarant or its designee(s) may exercise Declarant's retained ACC authority independently and unilaterally, in the sole and absolute discretion of Declarant or its designee(s), and in Declarant's sole interest. **Notwithstanding any other provisions in this Declaration or any other Governing Documents, all decisions of Declarant or its designee(s) while acting as the ACC are final and are not subject to any further review or appeals.**

3. Declarant's retained ACC authority may during periods of time or as to certain Lots or other real property result in a division of authority as to the ACC. Any application or request for ACC approval must be submitted in accordance with any such **division** of ACC authority and is deemed submitted and received only upon submission and receipt by the correct ACC authority.

C. BOARD ACTING AS ACC. From and after termination of the Development Period the Board will act as the ACC, subject in all respects to Declarant's retained ACC authority as above provided. Declarant, the Board, or the ACC with Declarant or Board approval, may adopt Rules and procedures consistent with this Declaration and as deemed appropriate to the discharge of the duties of the ACC. The act of a majority of the members of the ACC constitutes an act of the ACC.

D. COMPENSATION. No member of the ACC is entitled to compensation for the performance of the functions of the member as herein provided but may be reimbursed for reasonable expenses in such manner and amounts as may be approved by Declarant or the Board. The ACC may also employ any of its members or others as architects, engineers, or other professionals to render professional services deemed necessary or appropriate for the proper evaluation of any request for ACC approval, and any such professionals may be compensated for their services in such manner and amounts as may be approved by Declarant or the Board.

SECTION 5.02 Meetings of the ACC; Designees: The ACC shall meet from time to time as necessary to perform its duties hereunder. The ACC may, from time to time, by resolution unanimously adopted in writing, designate one or more of the Members of the ACC to take any action or perform any duties for and on behalf of the ACC. Upon such designation, the approval, with or without conditions, or disapproval of plans and specifications by such persons is equivalent to approval or disapproval by all members of the ACC. In the absence of such designation, the vote of a majority of the Members of the ACC constitutes an act of the ACC and is final, conclusive, and binding.

SECTION 5.03 Function of the ACC: No improvement, as that term is hereinafter defined, shall be erected, constructed, placed, altered (by addition or deletion), maintained, or permitted to remain on any portion of the Subdivision until plans and specifications, in any such form and detail as the ACC may deem reasonably necessary

according to the published application procedures described herein, including in **Section 5.04**, has been submitted to and approved in writing by the ACC. The ACC may employ professional consultants to assist it in discharging its duties. In addition, the ACC will monitor compliance by all owners with the provisions of this Declaration. All actions, interpretations, or decisions of the ACC are final and binding, subject only to appeal by the Member or other party to the Board.

SECTION 5.04 Application Procedures:

A. GENERAL PROCEDURES FOR ANY ADDITION OR CHANGE; CERTIFICATES OF COMPLIANCE:

1. Each homesite owner will submit his proposal for any addition, alteration, or improvement, in writing, to the ACC at the address of the principal place of business of the Association unless otherwise provided for. The applicant shall provide a description of the project, including the height, width, length, size, shape, color, materials, and location of the proposed improvement. Photographs or sketches of similar completed projects will aid in the consideration. If the alteration affects the existing drainage pattern, the proposed drainage pattern must be included.
2. Oral requests will not be considered.
3. Each alteration or addition must be specifically approved even though the intended alteration or improvement conforms to the Declaration, and even when a similar or substantially identical alteration or addition has been previously approved.
4. The applicant shall be informed in writing of the decision.
5. If the applicant fails to receive a reply within sixty (60) days, from the date of the written "Receipt of Plans" issued by the ACC, the request shall be considered to have been approved.
6. If a proposal is rejected, the reason(s) for disapproval shall be stated as part of the written decision.
7. The applicant is free to request reconsideration, if new or additional information which might clarify the request or demonstrate its acceptability can be provided.
8. All plans, specifications and other materials submitted shall become the property of the ACC and will not be returned. All items submitted will be filed according to the homesite number, along with the written decision and a statement of action taken, if any.
9. In cases of new residential construction, the ACC must be informed in writing upon completion of all construction and improvements. Within fifteen business days after the receipt of the notice and such other information as is required for the issuance of a Certificate of Compliance, the ACC will inspect the property for determining compliance and providing of a Certificate of Compliance.

B. CHANGES IN PROCEDURES: The ACC, subject to the approval of the Board of Directors, may change the procedures and requirements set forth in this **Sections 5.04** by recording such

changes or new procedures in the Book of Resolutions and subsequently making available to all owners upon request a copy of the new procedures.

C. CHARGES: The ACC shall have the right to establish reasonable minimal fees for its regular services, and or deposits to ensure compliance. Said fees may be used to cover the costs of providing the services, including, but not limited to, research, copying of materials, etc. Any fees established will be subject to the approval of the Board of Directors and shall be noted in the Book of Resolutions.

D. BUILDER APPROVAL:

1. Declarant has the option to establish guidelines for builder approval.
2. Builder must carry One (1) Million dollars liability per entity to hold harmless the Declarant and the Association.
3. Declarant reserves the right to approve all builders.

SECTION 5.05 Definition of Improvement: "Improvement" means and include all buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, driveways, swimming pools, changes in any exterior color or shape, and any new exterior construction or exterior improvement which may not be included in any of the foregoing. It does not include garden, shrub or tree replacements, or any other normal replacement or repair which does not change exterior colors or exterior appearances. It does include both original improvements and all later changes and improvements.

SECTION 5.06 Basis of Approval: Approval of plans and specifications shall be based, among other things, on adequacy of site dimensions, structural design, conformity, and harmony of external design and of location with respect to neighboring structures and sites, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of this Declaration.

SECTION 5.07 Minimum Construction Standards: The ACC may, from time to time, establish an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and the ACC shall not be bound thereby.

SECTION 5.08 Variances.

A. GENERAL. The ACC, including Declarant when acting as the ACC as above provided, may grant specific variances to Rules or to covenants and restrictions set forth herein or in other Governing Documents. A variance must be requested in writing. A variance must be supported by evidence of good cause and compliance so far as practicable. A variance may be granted only in writing and must be signed by Declarant or by not less than a majority of the members of the ACC. A variance may include conditions as determined in the sole discretion of Declarant or the ACC. Conditions may include required execution of the variance by the Owner, tenant or other recipient and acknowledgment of the variance sufficient for filing of record of the same.

B. BASIS AND DURATION. A variance may be granted only upon specific determinations (i) that the variance is necessary due to unusual circumstances or hardship which are reasonably beyond the control of the applicant to mitigate or rectify, or in other circumstances as to which it is determined a variance will result in an enhancement to the applicant's Lot or to the Subdivision, and (ii) the granting of a specific variance will not materially and adversely affect the architectural, aesthetic, or environmental integrity of the Subdivision or the scheme of development therein. **Whether or not so stated in a variance and notwithstanding anything in a variance to the contrary, a variance extends only for the period during which, and continues to apply only to the extent that, the circumstances which formed the basis therefor continue to exist. Declarant, the Board, or the ACC retain full authority as to any variance to modify or terminate a variance at any time in accordance with any such change in circumstances.**

C. ACC DECISIONS: Declarant or the ACC may approve, with or without conditions, or deny a request for variance in their sole discretion. Reasonable effort to respond to a *request* for a variance within forty-five (45) days after receipt must be made but in any case, if a request for variance is not approved, with or without conditions, in writing within the 45-day period, then the request is automatically denied.

SECTION 5.09 Limitation of Liability: Neither the Declarant, the Association, the ACC, nor any of the Members or Related Parties thereof are liable in damages or otherwise to anyone submitting plans and specifications for approval or to any owner of land affected by this Declaration by reason of mistake of judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval, or failure to approve or to disapprove any plans and specifications.

SECTION 5.10 No Warranty Implied: The approval or lack of disapproval by the ACC shall not be deemed to constitute any warranty or representation by the ACC including, without limitation, any warranty or representation relating to fitness, design, or adequacy of the proposed construction or compliance with applicable statutes, codes, and regulations.

SECTION 5.11 Procedures for Monitoring Architectural Compliance and Compliance with this Declaration:

A. INSPECTION:

1. The ACC may periodically survey the Subdivision for compliance with architectural standards and the provisions of this Declaration.

2. The ACC will inspect Homesites/Lots undergoing improvement at completion, notify the owner in writing of violations, if any, and, when satisfied that the conditions set forth in the approved application and the provisions of this Declaration have been met, issue a Certificate of Compliance.

B. ALLEGED VIOLATIONS:

1. All reports of alleged violations must be submitted in writing to the ACC.

2. The Chairperson will appoint one member to investigate the allegation. If no violation is discovered, the complainant will be informed in writing. If it appears that there is a violation, the ACC will determine the appropriate disposition of the matter after validity of the violation has been established.

3. In all cases, the name(s) of the Lot owner(s) responsible for the alleged violations shall be kept confidential until the violation has been established.

4. In all cases the name(s) of the complainant(s) shall be kept confidential unless they decide to speak at any hearing.

SECTION 5.12 Appeals to the Board: After the Development Period an Owner may appeal to the Board a denial of or any condition as to any request for approval or for a variance, whether the denial is express or implied. The appeal must be submitted in writing to the Board and the ACC on or before the 60th day after the date of the request for approval or variance. The appeal must state generally and as applicable each denial and each condition to be reviewed by the Board and the reasons for each review. If requested by the Board, the ACC must review the request and submit its written recommendations to the Board as directed by the Board. Within 45 days following receipt of the appeal, the Board shall render its written approval or disapproval of the ACC's decision(s). The failure of the Board to decide 45-day period shall be deemed a decision in favor of the ACC.

**ARTICLE VI
PROTECTIVE COVENANTS**

SECTION 6.01 Use Restrictions: Homesites in the Subdivision are intended for single family residential purposes only, as further described herein, and are additionally subject to the restrictions of this Section.

A. RESIDENTIAL ONLY: Each Lot, (including land and improvements) shall be used and occupied for single family residential purposes only. No owner or other occupant shall use or occupy his homesite, or permit the same of any part thereof, to be used or occupied for any purpose other than as a private single-family residence for the owner, his family, parents of the owner and/or his children and their spouses, or domestic helpers (and their families) employed on the premises. As used herein, the term "**single family residential purpose**" shall be deemed to prohibit specifically, but without limitation, the use of any Lot for multiple or duplex structures, apartment houses, or other type of dwelling designed for multi-family dwelling or use, or for operation of or use as a boarding or rooming house or residence for transients.

B. NO COMMERCIAL: No profession, business, or commercial activity which is in any way evident from the exterior of any building, or which entails visitation by the public shall be allowed on any homesite. No business or commercial structure of any

kind or nature whatsoever shall be built on any portion of the property and no structure, facility, or area on any homesite shall be used for mechanical repair or construction work, manufacturing or production of any product except for repairing one's own vehicles in an area not visible from the road or neighboring properties, or purely for such purposes as would be considered a hobby and not a primary business regardless of whether such hobby shall be done for purposes of profit. This provision will not prohibit an Owner from having tractors or trucks in an enclosed area or totally shielded from the road. This provision will not prohibit any homeowner from maintaining his/her office in the home or providing such things as sewing or piano lessons, however, there should be no visual evidence of any such activity from the exterior of the home, no signage of any kind, no commercial advertising, and no noise because of the activity. In any case, all activities shall be carried out in a manner and/or in a facility keeping with the intent that said homesite be kept in a neat and presentable manner.

C. TEMPORARY AND OTHER STRUCTURES:

1. TEMPORARY STRUCTURES: No structure of a temporary character; trailer, mobile home, tent, or shack shall be placed on any homesite, either temporarily or permanently and no previously used residence, house, garage, or other structure appurtenant thereto, shall be moved upon any homesite from another location without prior approval by the ACC.

2. SALES AND CONSTRUCTION OFFICES: Declarant reserves the exclusive right to erect, place and maintain and to permit builders to erect, place and maintain such facilities in and upon the Subdivision as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of homesites, construction and selling of residences, and construction of other improvements in the Subdivision. Such facilities may include, but not necessarily be limited to a temporary office, storage area, signs, portable toilet facilities and sales office. Declarant and builders shall also have the temporary right to use a residence situated on a homesite as a temporary office or model home during the period of and in connection with construction and sales operations in the Subdivision.

3. PERMANENT OUTBUILDINGS: Barns, equipment and/or storage buildings are permitted providing that they:

- a. Are located a minimum of twenty-five (25) feet behind the back property line of the residence.
- b. Are not at any time to be used as a residence, or for any other type of habitation.
- c. Are not a temporary or pre-manufactured building, or a relocated building.
- d. Meet construction standards of this Declaration or the Association standards for outbuildings.

- e. Have an architectural style consistent with and complimentary to the main residence.
- f. Have a minimum pitch of 5 X 12 on the roofline.
- g. Have a minimum of one (1) foot overhang on the eaves and a minimum of one (1) foot overhang on the gable.
- h. May not be constructed prior to construction of the main residence.
- i. Are approved by the ACC.
- j. Exterior finish is compatible with main residence.

D. SIGNS: Except for signs, billboards or other advertising devices displayed by Declarant for so long as Declarant (or any successors or assigns of Declarant to whom the rights of Declarant under this Section are expressly transferred) shall own any portion of the Subdivision, no sign of any kind shall be displayed to the public view on any homesite or the Common Areas, EXCEPT as follows:

1. No signs may be displayed or maintained on any homesites except one "For Sale" sign with the following requirements.

- a. Three (3) feet x three (3) feet sign.
- b. The Estates at Astoria approved frame.
- c. All signs of same color and font.
- d. Sign will be in center of homesite twelve (12) inches above grade.

2. No "For Sale" signs are permitted on unimproved homesites EXCEPT the Declarant's signs or other signs approved by the Declarant. Any owner, or owner's representative may display one (1) sign of not more than nine (9) square feet on a homesite improved with a residential structure to advertise the residence for sale.

3. The Association or Declarant specifically is granted the right to enter on any property to remove signs not permitted by these Covenants.

E. GARBAGE AND REFUSE STORAGE AND DISPOSAL: All Lots and Common Areas shall always be kept in a healthful, sanitary, and attractive condition. No homesite or any part of the Common Areas shall be used or maintained as a dumping ground for garbage, trash, junk, or other waste matter. All trash, garbage or waste matter shall be kept in adequate containers constructed of metal, plastic, or masonry materials, with tightly fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view except as necessary for trash pick-up days. No homesite shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction or improvements erected on any homesite may be

placed upon such homesite at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot.

F. REMOVAL OF DIRT: The excavation of dirt or the removal of any dirt from any homesite or from any portion of the Common Areas is prohibited, except by the Declarant and except as necessary in conjunction with landscaping or construction of improvements thereon, and subject to the Approval of the ACC.

G. CONTRACT RELEASE BY DECLARANT: No owner shall commence construction upon any homesite on which the Declarant has any lien or security interest without the express written approval of the Declarant.

H. WINDOW AIR CONDITIONERS: No window or wall type air conditioners shall be permitted to be used, erected, placed, or maintained on or in any building in any part of the Subdivision, provided that the ACC may, at its discretion, permit window or wall type air conditioners to be installed if such unit, when installed, shall not be visible from a street, such permission to be granted in writing.

I. PROTECTION OF PROPERTY PINS: All property pins shall be initially installed by the Declarant. After the purchase of any Lot, the owner shall be responsible for placing visible markers or posts immediately adjacent to all property pins he wishes to protect. Any pins subsequently damaged or removed after a Homesite has been purchased shall be replaced at the owner's expense if the owner did not properly mark them with visible posts.

J. FIREARMS AND FIREWORKS: The use or discharge of firearms, firecrackers or other fireworks in the Subdivision is prohibited.

K. ANTENNAS AND SATELLITE DISHES:

1. GENERAL RULES: Except as otherwise expressly approved by the ACC in writing, or as otherwise expressly permitted by applicable Rules or by law, no antenna or satellite dish system of any kind is permitted upon any Lot, or the residence or other improvement thereon, except one dish antenna, one meter or less in diameter or diagonal measurement which is designed to receive direct broadcast satellite or to receive or transmit "fixed wireless signals" (as defined by the Federal Communications Commission), and one television antenna to the extent necessary for reception of local television broadcasts, either or both of which must be installed so as not to be visible from any street. Declarant during the Development Period and the Board at any time may adopt and amend Rules regarding any antenna or satellite dish system in accordance with this Declaration, subject to the aforesaid laws.

2. Prohibited Antenna. No antenna, "dish" or other device may ever be used for transmitting electronic signals of any kind except as to fixed wireless signal transmission as provided above. Antenna and similar devices of any type used for citizen band ("CB") radio, amateur ("HAM") radio, AM/FM radio, or Digital Audio Radio Service ("DARS"), are prohibited and may not be erected, placed, or permitted to remain on any Lot, on any improvement located on any Lot, or elsewhere in the Subdivision. Without limitation as to the authority of the ACC to grant variances as provided in **Article V**, the ACC is specifically authorized to (but is not in any event required to) grant variances as to prohibited antenna. The ACC may condition the granting of any such variance upon placement of the applicable antenna in the attic of a residence or other specific Homesite location.

L. NUISANCE: Noxious, destructive, offensive activities, or any activity constituting a nuisance shall not be carried on in any homesite or in the Common Area or any part thereof, and the Association shall have a standing to initiate legal proceedings to abate such activity. Each owner shall refrain from any act or use of his or her homesite that could cause unreasonable embarrassment, discomfort, or annoyance to other owners, and the Board of Directors shall have the power to make and to enforce reasonable Rules in furtherance of this provision.

SECTION 6.02 Owner Maintenance Responsibilities.

A. GENERAL. Except as otherwise herein expressly provided, all maintenance, repair, and replacement of and as to each Lot and all improvements thereon is the sole responsibility of the Owner thereof. Each Owner must always maintain their Lot and all Improvements thereon in such manner as to obtain and maintain prevailing community standards on a continuing basis as may be more specifically determined by this Declaration and other applicable Governing Documents.

B. INTERIOR MAINTENANCE: Each Owner must properly maintain, at each Owner's sole cost and expenses, the interior of the Owner's residence and garage, including all fixtures, equipment, appliances, things, and devices located therein. In no case shall windows be covered by sheets, aluminum foil, or other unsightly articles. **Maintenance which affects the exterior appearance of a residence or garage is subject to applicable provisions of Article IV regarding ACC approval.**

C. RESIDENCES AND OTHER IMPROVEMENTS. Each Owner must maintain the exterior of each Owner's residence, garage, and all other buildings, structures, fences, walls, recreational equipment, and Improvements located upon each Owner's Lot, in an attractive, sound, and well-maintained condition, including proper maintenance and repair as needed of paint, bricks, siding, roofs, exterior walls, driveways, parking areas and all other exterior portions of the Owner's residence and garage.

SECTION 6.03 Inspections; Owner Maintenance Defaults:

A. In the event the Board determines that (i) an Owner may have or has failed or refused to discharge properly the Owner's

maintenance obligations as provided in this Article, or (ii) the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder may have or has been caused through the willful or negligent act or omission of an Owner, the Owner's Tenants, or their respective Related Parties, then the Association may conduct inspections of any affected Lot, the exterior of the residence and all other buildings thereon, and all other structures and Improvements thereon (a "Compliance Inspection") and/or perform the repair, replacement or maintenance (the "Required Work") in accordance with this Section.

B. The Association must give written notice of intent to conduct a Compliance Inspection and/or to perform Required Work. The notice may be given by posting on the front door of the residence at the applicable Lot regardless of any other address maintained by the Owner, or in any other manner permitted by the Governing Documents. Except in the case of an emergency the notice must give the applicable Owner not less than ten days to schedule a Compliance Inspection and to perform Required Work (or to commence and thereafter proceed with diligence to completion of Required Work which cannot be reasonably completed in ten days), failing which the Association may proceed without further notice. In the case of an emergency the Association may proceed immediately with any Required Work as deemed necessary to abate the emergency but will thereafter proceed as aforesaid.

C. All costs and expenses of conducting a Compliance Inspection as to which a violation is determined to exist and all costs and expenses of Required Work performed by the Association will be assessed against the applicable Lot and the Owner thereof as a specific assessment which must be paid within ten days after notice of the same is given to the Owner. The good faith determination by the Board as to the need for a Compliance Inspection and as to all aspects of Required Work is final and conclusive and extends to anything or condition as to such Lot or which adversely affects any other Lot or Common Area. Declarant, the Association, the Board, and their Related Parties are not liable for trespass or any other tort or claim for damages in connection with any actions or failure to act pursuant to this Section.

SECTION 6.04 Vehicles and Unsightly Articles:

A. STORAGE: No article deemed to be unsightly by the ACC is permitted to remain on any homesite that is visible from adjoining property or streets. Without limiting the generality of the foregoing, boats, RV's, wagons, motor scooter/bikes, golf carts, trailers (with or without wheels), tractors and garden maintenance equipment shall be parked or stored at all times, except when in actual use, in enclosed areas totally shielded from public view of the road or view of adjoining properties either in an out-building, in the garage, or behind a fence approved by the ACC. No vehicle of any type shall be parked on the street in front of the Lot. The Board may adopt Rules for the regulation of the admission and parking of vehicles within the Subdivision, including the assessment of charges to owners who violate or whose invitees violate such rules, and the right to tow away any vehicles parked or stored in violation of said Rules.

B. REPAIR: No repair work, dismantling or assembling of motor

vehicles or other machinery or equipment shall be done or permitted on any street, driveway, or other portion of any Common Areas. No repair work shall be performed on automobiles or other vehicles in driveways, or visible from the street except such work that is of a temporary nature. Any regularly recurring repair or dismantling work shall take place within a garage or other building screened from public view.

C. MOTOR VEHICLES: No unlicensed motor vehicles, other than those specifically and individually allowed in writing by the Board, shall be operated within the Subdivision. The permission form shall always be kept in the possession of the operator of the vehicle and must be shown without question to anyone requesting it. Unlicensed motor bikes, motorcycles, motor scooters, 3 or 4 wheelers, ATV's or other similar vehicles shall be permitted to be operated in the Subdivision. At the sole judgment of the Board of the Association such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance or annoyance, this operation will end on an individual basis. Vehicles of this type must comply with all State and County regulations.

D. PARKING

1. VEHICLE PARKING: Vehicles shall be parked only in the garage or driveway. No vehicles shall be parked in the yard. Garage doors shall not face the street and must either be side loading or located in the rear proximity of the residence. See also **Section 8.02.** Garage doors must remain closed when not in use.

2. RV PARKING:

a. HOMEOWNER'S RV: Homeowners may park their RV in their drive for a maximum of (2) days to pack or unpack before or after going on a trip. Homeowner RV's must otherwise be parked in a location not visible to the street or other residences.

b. VISITING RV: When visitors or relatives from out of town come with an RV, it may be parked in the driveway for a maximum of then (10) days per year.

SECTION 6.05 Animals and Pets: In addition to the provisions set out below, the Board shall have the right and authority to adopt Rules pertaining to the keeping of any insects, reptiles, animals, livestock, or poultry within the Subdivision, and to establish such fees, fines, or penalties as necessary to carry out all such Rules.

A. FARM ANIMALS: There shall be a limit of one (1) large farm animal per acre of land (2) miniature horses or goats will count as one (1) horse and no such animal(s) shall be maintained upon any single tract of land less than three (3) acres in size. Natural offspring shall be exempt until one (1) year old. No swine or roosters shall be permitted, and no commercial poultry operation is allowed. Multiple Lots adjacent to each other and having common ownership shall be treated as one (1) lot for purposes of this Section.

B. PETS:

1. All dogs shall be kept in a fenced area or secured by chain or leash and no animal will be allowed to roam or run about at large. Dogs must be leashed and always controlled while outside of a Homesite/Lot or within public or Common Areas. Each dog owner is responsible for cleaning-up and removing all waste from the Common Areas. Every female dog while in heat shall be confined in a building or secure enclosure by its owner in such a manner that she will not be in contact with another dog (except for intentional breeding purposes) nor create a nuisance by attracting other animals.

2. Furthermore, all dogs and cats shall always wear a collar exhibiting a current rabies vaccination tag issued by a licensed veterinarian in compliance with the regulations of Fayette County, along with an identification tag indicating the animal's name and the pet owner's name, address, and phone number. Said identification tag may, at the option of the Board, be designated to be of a defined size, shape or color which shall be common to the Subdivision for purposes of readily identification of stray animals.

C. NUISANCE: Nothing herein contained shall permit the keeping of animals or pets that become an unreasonable annoyance or be obnoxious to the occupants or owners of neighboring property, or to become a hazard to the health, welfare and well-being of the community, and all animal owners are responsible for any property damage, mess, injury, and disturbances their pet(s) may cause or inflict. Said determination shall rest completely with the Board at their discretion, and the Board shall have the right and power to take any action necessary for the enforcement of this Section for the protection of the Members.

SECTION 6.06 Leases:

A. DEFINITION; RESTRICTIONS; CERTAIN LIMITATIONS.

1. As used herein (or in other Governing Documents, as applicable), "**lease**," "**leased**," "**leasing**" or equivalent means occupancy of any part of a Lot or the residence thereon by any Person other than an Owner, with the Owner's consent, express or implied, and for which the Owner or any Related Party of the Owner receives any consideration or benefit, including without limitation, any fee, service, gratuity, or emolument, regardless of whether or not such occupancy is pursuant to a written lease. "**Tenant**" includes any occupant as aforesaid pursuant to a lease.

2. All leases must be in writing. No Lot may be leased other than for use for residential purposes by one single family as herein provided and defined, or for occupancy or use which is otherwise in violation of the Governing Documents. No Owner may lease a Lot and attendant use of the residence or Improvements thereon for transient or for hotel, motel, or any similar purposes.

3. **No lease may be for an initial term of less than six months.** No Owner may lease less than an entire Lot and attendant use of the residence and improvements thereon.

4. All occupants pursuant to a lease (whether in writing) are specifically subject in all respects to all provisions of the Governing Documents (whether expressly stated in a lease).

5. **Subleasing of any kind is prohibited.**

6. The Association may not adopt or enforce any provisions pursuant to the Governing Documents that (i) requires a lease or rental applicant or a Tenant to be submitted to and approved for tenancy by the Association, or (ii) requires regarding a lease or rental application or a current Tenant submission to the Association of a consumer credit report, or a lease or rental application.

7. The following information regarding a lease or rental applicant must be submitted in writing to the Association: (i) "**contact information**", including the name, mailing address, phone number, and email address of each Tenant, and (ii) the commencement date and term of the lease. The Contact Information must be submitted to the Association within the earlier to occur of ten days after the date of any written request for contact information from the Association or ten days prior to the commencement date of the lease.

8. A true and correct copy of any current lease applicable and any other documents which grant any rights as to use, possession, or occupancy of a homesite, to a Lot or any part thereof must be submitted to the Association within ten days after the date of any written request for the same from the Association. In such case any of the following may be redacted or otherwise made unreadable or indecipherable before submission: (w) social security number; (x) driver's license number; (y) government-issued identification number; or (z) account, credit card or debit card number. Except as provided in this subsection, nothing herein prohibits the Association from adoption or enforcement of restrictions, including Rules relating to occupancy or leasing.

9. Rental privileges may be suspended by the Association should any rental result in disturbances, nuisances, excessive noise, or inappropriate behavior.

10. Except as expressly above provided, nothing herein prohibits the Association from adoption or enforcement of restrictions, including Rules relating to occupancy or leasing.

B. JOINT AND SEVERAL LIABILITIES. Lessor(s) and Tenant(s) are jointly and severally liable for the observance and performance of all terms and provisions of the Governing Documents. The foregoing includes without limitation joint and several liability for all damages, fines, costs or expenses, including attorneys' fees, and any other applicable assessments resulting from any violation and with respect to all other rights and remedies regarding enforcement of the Governing Documents.

C. DEFAULT:

1. Any failure by a Tenant or the Tenant's Related Parties to comply with the Governing Documents is a default under the lease. In the event of default, the Association may (but has no obligation to) (i) require prompt termination of the lease by the Owner and eviction of the Tenant and all other occupants pursuant to the lease at the

Owner's sole cost and expense, or (ii) initiate any proceedings, actions or litigation under the lease to enforce compliance or to terminate the lease and/or for eviction, including forcible detainer or forcible entry and detainer.

2. For purposes of any action by the Association as provided in subsection (a) above, each Owner irrevocably appoints the Association or its designee(s) as their attorney-in-fact, agrees to indemnify, defend, and hold harmless the Association, its designee(s), and its Related Parties relating to any such action, directly or indirectly, and agrees to be solely responsible for all costs thereof. No proceedings, action or litigation under this Section or any other provisions of the Governing Documents may ever be construed as an assumption by the Association, its designee(s), or its Related Parties of any obligation whatsoever under any lease or regarding any leasehold interest, including without limitation any obligation regarding security deposits, maintenance, and any other obligations pursuant to Title 8 of the Texas Property Code, all such obligations being hereby expressly disclaimed.

SECTION 6.07 SHORT-TERM RENTALS PROHIBITED.

A. **DEFINITIONS.** Without limitation as to other applicable provisions of the Governing Documents or Applicable Law, this Section applies regarding any "Short-Term Rental" including as follows:

1. "Primary Resident" means the Owner, the Owner's Tenant, and the other single family members of either who reside at a Primary Residence in accordance with the Declaration, including Sections 7.01 and 7.07 of the Declaration.

2. "Primary Residence" means the usual abode or place of return for housing within the Subdivision by a Primary Resident, including the Lot, the residence, and other improvements thereon or therein,

3. "Sham Sale or Lease" means the purported sale, leasing, or other transfer of rights to use, possession, or occupancy of a Primary Residence for purposes of avoiding or evading application of this Section. A Sham Sale or Lease is presumed if the Primary Resident reacquires ownership of, or otherwise resumes or acquires the right to resume use, possession, or occupancy of, the Primary Residence within 180 days after the purported sale, lease, or other transfer.

4. "Short-Term Rental(s)" or "STR(s)" mean any Occupancy Agreement (i) for an initial period or term of less than 180 continuous days (an "Initial Term"), or (ii) for use, possession, or occupancy of a Primary Residence on any other terms or in any other manner prohibited by or otherwise in violation of this Section 7.08 or other applicable Governing Documents, including applicable Rules, or by Applicable Law. An Initial Term is deemed to commence on the first to occur of the commencement date stated in the Occupancy Agreement or the date upon which actual use, possession, or occupancy begins as reasonably determined by the Board.

5. "Occupancy Agreement" means any arrangement, agreement, or offer to make available any right of use, possession, or occupancy of a Primary Residence to any Person other than a Primary Resident, whether oral or written, for compensation or consideration of any kind or amount, and including any sale, lease, license, rental, subleasing, subletting, or other offer or agreement as aforesaid.

B. SHORT-TERM RENTALS PROHIBITED

1. Notwithstanding any other provisions of the Governing Documents, Short-Term Rentals of any kind are strictly prohibited to all or any part of any Primary Residence. The foregoing and this Section 6.07 apply, for example but without limitation, to any Short-Term Rental by Airbnb, Home-Away, VRBO, and any other hosting or service platforms, to overnight, nightly, or vacation rentals, and to any other Short-Term Rentals, regardless of nomenclature.

2. Upon commencement and through the entire period of the Initial Term of an Occupancy Agreement (the "First Occupancy Agreement"), no other Occupancy Agreement covering the same homesite or any part thereof is permitted, the person or group of persons subject to the First Occupancy Agreement when the Initial Term begins may not be changed, and no other person or group of persons may be substituted in their place.

3. Upon commencement and through the entire period of the Initial Term of a First Occupancy Agreement, no other Occupancy Agreement is permitted as to the applicable Primary Residence if any use, possession, or occupancy would be permitted during the said Initial Term.

4. Advertising or listing of any kind at any time by or on behalf of any Primary Resident which states or implies that Short-Term Rentals are available within the Subdivision is prohibited, whether by or in signage, newspapers, magazines, brochures, websites or otherwise on the Internet, mobile applications, hosting platforms or services, databases, or by any other medium. In the event of any such advertising or listing it is presumed that one or more violations of this Section have or will soon occur.

5. This Section does not prohibit a lease made for an Initial Term of less than 180 continuous days if made incident to the bona fide sale of a Primary Residence between the buyer and the seller.

C. **VARIANCES.** The Board may grant variances as to this Section in specific instances upon written request stating good cause if the Board determines (i) the Owner acted in good faith with no intent to circumvent the requirements of this Section, (ii) the Owner could not have reasonably anticipated the early termination or other need for a variance at the time the Occupancy Agreement was signed, (iii) the need for a variance is due to unusual circumstances reasonably beyond the control of the Owner to mitigate or rectify, and (iv) the granting of a specific variance will not materially and adversely affect the neighborhood or community character or characteristics, or the architectural aesthetic, or environmental integrity of the Subdivision or the scheme of development therein.

D. **AMENDMENT.** After the Development Period any provisions of this 6.07 may be amended by the Owners of a majority of the Lots then

contained within the Subdivision, or by the Association as permitted herein, and in either case by any method permitted by this Declaration. Any such amendment must be Filed of Record.

SECTION 6.08 *Timeshares Prohibited.* No part of any Lot or the residence or any other improvements thereon may be made subject to any type of timesharing, fraction-sharing, or a similar program whereby the right to exclusive use of all or any part of a Lot or the residence or any other improvements thereon rotates among members of the program on a fixed, floating, or other time schedule. The foregoing prohibition includes any Lot which is or becomes subject to the Texas Timeshare Act, Texas Property Code, Chapter 221.

SECTION 6.09 *Resale of Lots:*

A. REFERENCE TO DECLARATION: Reference shall be made to this Declaration in any instrument transferring title to any Lot.

B. NOTICE OF SALE: The Board of Directors (and the Declarant during the Development Period) must be notified of any conveyance of a homesite by any method or in any manner. The notice must indicate the Homesite address, date, and type of conveyance, new Owner's name, contact address, email address, and home and mobile phone numbers. The notice must also include or be followed by notice as to any other information or documentation as may be required for the issuance of a Certificate of Compliance, as may be required by the Board or ACC before a new resident may move into the residence upon the Homesite/ Lot.

C. ESTOPPEL CERTIFICATE: The Board, upon receipt of the above information, shall prepare an Estoppel certificate which shall set forth any assessments and charges due upon such homesite at time of conveyance and certify as to whether or not there are violations of the Governing Documents remaining on the homesite as of the date of preparation of such certificate and further stating the remaining assessment balance, if any, due from the buyer for the balance of the fiscal year. This certificate shall be delivered to the place of closing, and the outstanding assessments, if any, and a reasonable charge to cover the cost of providing such certificate shall be deducted from the seller's account at the closing and transmitted directly to the Association.

SECTION 6.10 *Liability for Damages:* Each homesite owner, his family, guests, or his builders, subcontractors and agents shall be liable, both jointly and severally, for any damages to any part of the Subdivision by them or their agents by reason of the negligent or intentional misconduct of such person or entity. This includes, without limitation, dumping of materials or concrete tailings in any area not specifically designated for that purpose by the Declarant or the Association, damages to ditches, roads, culverts, etc. by trucks or other vehicles, and damages to any other vegetation or improvements anywhere within the Subdivision. The dumping of materials and concrete tailings in any ditches is specifically prohibited. The correction of any damages applicable under this Section shall be handled the same as the enforcement of maintenance on any homesite according to the provisions of Section 9.01 with any charges arising here from becoming a lien upon the

responsible owner's homesite with the same attributes of an assessment lien set forth in **Article IV.**

**ARTICLE VII
HOMESITE IMPROVEMENTS**

SECTION 7.01 *Minimum Setback Lines:* No structure of any kind and no part thereof shall be placed within the setback lines adjacent to any street as per the Subdivision Plat. Setback lines as recorded are measured from the property pins, not from the edge of the pavement.

SECTION 7.02 *Minimum Square Footage:* The minimum primary living area (air-conditioned space) for each one story single family residence is 2,500 square feet. The minimum primary living area (air-conditioned space) for each two story single family residence is 3,000 square feet. The primary living area (air-conditioned space) for each single family residence may not be reduced by reconstruction or other modification in any manner to less than the square footage of the living area as originally constructed. Eaves, roof overhangs, steps, fireplaces, chimneys, bay windows, unroofed terraces, and similar architectural details which are a part of a permitted residence or garage, attached garages, non-airconditioned porches, patios, breezeways, and other appurtenances or appendages are not to be considered for the purposes of this Section.

SECTION 7.03 *Traffic Areas:* All driveways or parking areas used for vehicles shall be constructed of asphalt or reinforced concrete.

SECTION 7.04 *Walls and Fences:* Front yard fencing is not required but if installed, then all such fencing must be three-rail, split rail wood fencing not to exceed five feet (5') in height, must extend fully across each Lot (corner to corner) along and parallel to each roadway which abuts each Lot, excluding sidewalk, driveway and other permitted openings, and must be painted "Black Bean" (SW 6006). All Lot fencing must be approved by the ACC and each Owner is responsible for installation and maintenance of said fencing. Fencing must also be consistent in appearance, materials, and design with any Declarant installed Subdivision entry fencing. Secondary Fencing between or along the rear of lots is not required, however, if desired, all such fencing (at a minimum) must match the roadway fencing and extend from the roadway fencing to a line corresponding with the front face of the primary residence. Wooden frame or split rail style fences may be backed with vinyl coated chain link fencing as necessary to confine small animals. All wooden fences shall be constructed of cedar, redwood, treated or painted lumber. All fencing shall be maintained in a fully repaired, neat, and presentable manner. Vinyl coated chain link fence may be used for tennis courts, kennels and pools located behind the rear elevation of houses, provided, no such fences shall be higher than ten feet (10') except tennis court fencing. Otherwise, no chain link fencing is allowed.

SECTION 7.05 *Landscaping:* Landscaping as required by the Governing Documents is required for a Certificate of Compliance. All open, unpaved space in the front and at the

sides of a Homesite, shall be planted and landscaped. Landscaping in accordance with the plans approved by the ACC must be installed prior to occupancy of any Dwelling constructed on the property. Any significant changes in the existing landscaping visible from the street on any Homesite must have written approval from the ACC. It shall be the responsibility of every Owner to install and maintain, in an attractive manner, groundcover and/or grass in the front and/or the side of that portion of the Lot that adjoins a street in the Subdivision up to the paved roadway. The Association may adopt landscape standards or Rules and shall make these standards and Rules available to owners any time upon written request. The landscape standards or Rules must establish minimum requirements and must be reasonable in expense. Property owners are not allowed to clear cut all foliage from any homesite, every effort must be made to save all trees on the Lots. Clearing underbrush for property owners pad site may be done without any approval. Except as installed by, or at the direction of, or with the approval of Declarant, all fencing must be approved in writing as to location, design, materials, appearance, and as otherwise herein required by the ACC prior to commencement of any work as to the same.

SECTION 7.06 Water Service:

A. SERVICE PROVIDER: Domestic water service will be provided to the Subdivision by West End Water Supply Corporation ("WEWSC"). WEWSC is a Texas non-profit, member-owned, and member-controlled corporation organized under Chapter 67, Texas Water Code. WSCs are subject to the laws and regulations governing the operations of non-profit corporations. The operation of a WSC is the responsibility of its elected board of directors. Directors are elected by the corporation's members. WSCs govern themselves under the direction of their elected board of directors. The WSCs tariff and customer service policies, including rates set by the board of directors, are not subject to review or approval by the Texas Public Utilities Commission ("PUC") unless ten percent (10%) or more of the affected ratepayers file an appeal in the form of a petition with the PUC to review the board's decision changing the rates.

B. MEMBERSHIP AND SERVICE REQUIRED: Each homesite Owner is required to obtain and make water services available and fully operational as to the homesite prior to occupancy and thereafter to always maintain such services. Not more than one tap and meter is permitted for each residence. To obtain water services from the WEWSC, the current owner of each Lot must obtain membership in WEWSC, the water service corporation for the Subdivision. Qualifications for membership, as well as rates, fees, and most other rules and policies, are set forth in the tariff and bylaws of WEWSC. Usually, the process for obtaining membership is for the current owner to complete an application, grant an easement for the tap and meter to be located on the Lot (as determined or at least approved by WEWSC), and pay a membership fee (similar to a deposit) and other applicable upfront fees, if any. The fees will include a tap fee if a tap and meter are not already in place. The tap fee generally includes the cost of labor and materials

for installation and administrative costs. The water service corporation must sell and deliver water service to a qualified applicant and the applicant must purchase and receive service in accordance with the tariff and bylaws of the corporation.

C. CONTACT INFORMATION: The Texas Rural Water Association ("TRWA") is a non-profit, professional organization of WSCs. Questions may be directed to: Texas Rural Water Association, 1616 Rio Grande Street, Austin, Texas 78701-1122; Telephone #: 512-472-8591. Questions may also be directed to: Customer Protection Division, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, TX 78711-3326; Telephone #: 888-782-8477.

D. OWNER RESPONSIBILITIES: Each Owner is wholly and solely liable for all damages to persons or property related, directly or indirectly, to the installation, maintenance, or operation of their private water system. Declarant, the Association, the ACC, and their Related Parties do not warrant the workability, reliability, or any other aspect of any private water system or any affiliated service corporation or professional organization and have no liability regarding the same.

SECTION 7.07 Septic Systems:

A. NOTICE: Public Sanitary sewer service is not available to the Subdivision. Each Homesite owner is required to install their own septic system which must be installed and fully operational as to each Homesite prior to occupancy.

B. SEPTIC SYSTEM REQUIRED: Design and installation of the septic system must strictly comply with all applicable governmental regulations, including as to applicable permitting requirements, and plans and specifications must be approved in writing by the applicable governmental authorities and by the ACC prior to commencement of any work as to the same. Subsequent maintenance and operation must also strictly comply with all applicable governmental regulations and Association Rules, if any. Under no circumstance shall any disposal be made that cannot be wholly contained within the boundaries of the Lot being served by such system. Neither the Association, the ACC nor the Declarant warrants the workability of any septic system. Each Homesite owner is wholly and solely liable for any damages to persons or property related, directly or indirectly, to the installation, maintenance, or operation of their septic system. Declarant, the Association, the ACC, and their Related Parties do not warrant workability, reliability, or any other aspect of any septic system and have no liability regarding the same.

SECTION 7.08 Culverts and Drainage:

A. LIABILITY: All entries to any homesite shall be across an approved culvert crossing. In no case shall a ditch be crossed on a regular basis until such culvert crossing is constructed. Any road damage resulting from crossing ditches shall be the liability of the owner of the homesite adjacent to such damage.

B. CULVERT CROSSINGS: All culvert crossings shall be constructed exactly according to detailed plans and specifications designated by and available from the Declarant and shall contain culvert pipe sized to the specifications required by the County. Said culvert crossing shall consist of a minimum of twenty (20) feet of culvert pipe covered by concrete and finished on both ends with reinforced concrete.

C. DRAINAGE: No owner may block or impede the flow of any drainage ditch, whether natural or manmade, and including but not limited to, roadway ditches and drainage easements. All culverts shall be installed with sufficient depth to prevent erosion. Each owner shall be responsible for maintaining all drainage ways, (including but not limited to the planting of grass, removal of debris on the road ditches adjacent to his Lot) natural and manmade, planting grass, stopping erosion, etc. and culverts on or adjacent to his homesite in a manner that will encourage the free flowing of water without erosion, including but not limited to the planting and removal of debris or sediment, and clearing of any obstructions that may develop in said drainage ways or culvert. The Declarant or the Association may remove or repair any culverts, culvert crossings, or other obstructions or impediments; or repair damage from improperly placed culverts at the homesite owner's expense according to the provisions of this Declaration, including **Article VII**.

D. MOWING: Fayette County has the responsibility of mowing all ditches from the edge of the road to property lines. However, the Association may choose to supplement mowing if the County does not adequately provide those services.

E. SLAB ELEVATION: The Homesite owner must determine the proper slab elevation to prevent any flooding of the residence. Particular attention should be paid to the following:

1. 100 YEAR FLOOD PLAIN: The slab should be sufficiently above the 100-year flood plain to prevent any possibility of flooding. If the 100-year flood plain is on your property or nearby, a qualified engineer should verify the location of the 100-year flood plain and determine the proper elevation of the slab.

2. ROADWAYS: If the home is on the high side of a road, then the slab should be at least one (1) foot above the roadway to allow water to go over the road during severe storms and not damage the home.

3. DRAINAGE DITCHES: The slab should be sufficiently high allowing for overflow drainage ditches or sheet flow during severe storms.

SECTION 7.09 Mailbox: U.S. Postal Service will require clustered mailboxes near the entrance of the subdivision, rather than individual deliveries to each homesite. Declarant will provide a centralized kiosk for clustered mailboxes.

SECTION 7.10 Address Numerals: All assigned address numbers shall be prominently displayed in a decorative manner. The address numbers shall be a minimum of five (5) inches in height and shall be located so that the lighting required in **Section 7.11** shall make the address readily visible at night.

SECTION 7.11 Lighting: Each homesite shall contain night lighting in conjunction with the address display. Said lighting or other lights adjacent to the roadway shall automatically turn on every evening and off every morning. Outdoor lighting on any building or structure shall be directed downward in a manner that prevents any light pollution (upward) toward the sky **OR** in the direction of the street and other homesites.

SECTION 7.12 Lot Subdivision or Combination. No Lot as originally conveyed by Declarant to any other Owner, including any builder, may be thereafter subdivided, or combined with any other Lot, or the boundaries thereof otherwise changed. The foregoing does not preclude any replating, reconfiguration, or any other Development Rights of Declarant, including as provided in **Section 9.05**. The foregoing does not preclude use of an "Adjacent Lot" for "residential purposes" if and only to the extent expressly permitted by Section 209.015 of the Texas Property Code and applicable Rules regarding the same.

ARTICLE VIII CONSTRUCTION STANDARDS

SECTION 8.01 General: All buildings or structures within the Subdivision shall meet the following requirements except as otherwise modified by this Declaration or the ACC.

A. NEW CONSTRUCTION: All buildings and structures placed upon any homesite in the Subdivision shall be constructed of all new materials except for used brick or other decorative accessories that are commonly used in the construction of new residences. All exterior material (other than those which are not commonly decorated or painted), shall be stained, or painted with at least two (2) coats of paint.

B. ROOFING: All roofs shall be constructed of:

1. Two hundred forty (240) pound (or equivalent) heavyweight, accented shadow-line composition roof in an earthen tone color.

2. Tile.

3. Factory finished metal roofs (not corrugated).

4. In no case shall lightweight or flat composition shingles be allowed on any structure.

5. Roof pitch shall be at least 6 on 12.

6. No HIP roofs facing the street.

7. Gables are required on any portion of roof exposed to the street.

8. No straight run roofs on the front elevation of home.

C. MASONRY: Masonry is considered brick, stone, or stucco; all of which are acceptable. The approval of all materials and appearances is at the sole discretion of the ACC. C.

D. MATERIALS ON LOT: No construction materials may be stored upon any homesite prior to the commencement of construction. Prior to issuance of a Certificate of Compliance the homesite must be cleaned according to the provisions of this Declaration, including **Article V1**.

E. ARCHITECTURAL GUIDELINES AND CONSTRUCTION STANDARDS: To ensure value and quality in the development, the ACC may adopt Architectural Guidelines, including Minimum Building or Construction Standards. Prior to developing plans and specifications, each Homesite Owner should get a copy of such guidelines and standards, if adopted. Inspections during construction may be required to facilitate compliance. During the Development Period, said guidelines and standards must be approved by the Declarant prior to being adopted.

F. TIME FOR COMMENCEMENT AFTER LOT PURCHASE: Each Lot purchaser has one year (12 months) from the closing date to submit design drawings to the ACC (or Declarant during the Development Period) for approval for the construction of a home and related initial improvements upon the Lot. If Lot purchaser does not commence construction (as hereafter defined) within six (6) months after approval of design drawings, Declarant reserves the right to repurchase the Lot for the original purchase price, less real estate commissions.

G. TIME OF COMPLETION; CERTIFICATE OF COMPLIANCE REQUIRED PRIOR TO OCCUPANCY: All construction required for compliance with this Declaration and issuance of a Certificate of Compliance, including but not limited to the exterior of the residence, garage, and all structures appurtenant thereto, the culvert crossing, lighting, address display, driveways, and homesite grading; must be completed not later than eighteen (18) months following commencement of construction. For purposes hereof, the term "**commencement of construction**" means the date on which the foundation is completed. No structure may be occupied or used until the exterior construction thereof is completed and a Certificate of Compliance is issued. Using any structure prior to completion of all construction required for a Certificate of Compliance is a violation of the covenants and restrictions. The Association may seek any relief necessary to force a timely completion, including injunctive relief or the eviction of said residents until a Certificate of Compliance is obtained. Failure to complete construction and apply for a Certificate of Compliance within eighteen (18) months from the commencement of construction shall be considered a violation of these covenants and restrictions and subject to, at the option of the Board, the fines and other remedies as provided in the Governing Documents.

H. BUILDER APPROVAL: See Section 5.04.

SECTION 8.02 Garages:

A. TWO CAR MINIMUM: All residences must have an enclosed garage, architecturally similar to the residence. The garage must be at least a two-car garage. Also required is a concrete or asphalt parking pad the same width as the garage and a minimum of twenty (20) feet in depth immediately in front of the garage. **ALL garages must be side or rear loading. Under no circumstance will garage doors be allowed to face the roadway.** Garages are required to maintain fully operational overhead doors.

B. USE: No garage shall be permitted to be enclosed for living or used for purposes other than storage of automobiles and other common uses of a garage.

SECTION 8.03 Outbuildings: All outbuildings other than the garage or domestic help quarters shall be constructed or installed behind the back line of the residence and consist of similar construction materials as the residence. No unfinished tin or aluminum materials may be used in the construction of any outbuildings.

SECTION 8.04 Swimming Pools; Play Equipment:

A. Swimming pools must have the approval of the ACC before any work is undertaken. Permanent above ground-level swimming pools will not be approved.

B. Temporary semi-permanent children's play equipment such as sandboxes, temporary swimming pools having a depth of less than twenty-four (24) inches, playhouses, and tents shall not require the approval of the ACC provided that such equipment is located behind the back line of the main residence and remain in good repair.

SECTION 8.05 Owner Maintenance Responsibilities: Owners and occupants (including lessees) of any part of the Subdivision shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that homesite or portion of the Subdivision so owned or occupied, including buildings, improvements, and grounds in connection therewith, in a well maintained, safe, clean, and attractive condition at all times. Such maintenance includes but is not limited to the following:

A. Completion of all improvements and compliance with all the requirements for a Certificate of Compliance.

B. Prompt removal of all litter, trash, refuse, and wastes.

C. Prompt removal of any trees or vegetation infested with communicable diseases or parasites and dead or unsightly trees or vegetation.

D. Regular mowing of all cleared areas.

- E. Tree and shrub pruning after completion of improvements.
- F. Keeping lawn and garden areas alive, free of tall weeds, and attractive.
- G. Watering as necessary.
- H. Keeping parking areas, driveways, roads, and drainage ways in good repair.
- I. Complying with all restrictions or requirements of this Declaration and the Governing Documents, including applicable Rules.

ARTICLE IX

TERM; AMENDMENT; NOTICES; DEVELOPMENT PERIOD; MANAGING AGENT

SECTION 9.01 Term. Subject to the provisions hereof regarding amendment, these covenants, conditions, restrictions, reservations, easements, liens and charges run with the land and are binding upon and inure to the benefit of the Association, all Owners, their respective legal representatives, heirs, executors and administrators, predecessors, successors and assigns, and all Persons claiming under them for a period of twenty years from the date this Declaration is Filed of Record, after which time said covenants, conditions, restrictions, reservations, easements, liens and charges will be automatically extended for successive periods of ten years each.

SECTION 9.02 Amendment.

A. BY OWNERS. After the Development Period, the Owners of sixty-seven percent (67%) of the total number of Lots then contained within the Subdivision always have the power and authority to amend this Declaration, in whole or in part, at any time. The Owner's approval of any amendment of this Declaration may be obtained (i) by execution of the amending instrument or a consent thereto by any Owner of each Lot so approving, (ii) by affirmative vote, in person or by proxy, at a special meeting called for consideration of any such amendment, or (iii) by any combination of the foregoing.

B. BY DECLARANT. See Article IX.

C. BY ASSOCIATION. After the Development Period, the Board of Directors may in its sole judgment and at any time, amend this Declaration without the vote, joinder, or consent of any Owner or any other person or entity for the following purposes:

1. to resolve or clarify any ambiguity or conflicts herein, or to correct any inadvertent misstatements, errors, or omissions herein; or
2. in any manner deemed necessary or appropriate by the Board to provide for or to facilitate notices, communications

and/or meetings of Owners, the Board or any ACC by Electronic Means, including conducting and tabulation of any votes; or

3. in the sole discretion of Declarant or the Board, to conform this Declaration; to the requirements of any lending institution; provided, the Board has no obligation whatsoever to amend this Declaration in accordance with any such lending institution requirements, and the Board may not so amend this Declaration if in the sole opinion of the Board any material rights of Owners would be adversely affected thereby; or

4. to conform this Declaration to the requirements of any governmental agency, including the Federal Home Loan Mortgage Corporation, Federal National Mortgage Agency, Veterans Administration or Federal Housing Administration, and in this respect the Board must so amend this Declaration to the extent required by law upon receipt of written notice of such requirements and request for compliance; or

5. to conform this Declaration to any state or federal constitutional requirements, or to the requirements of any local, state or federal statute, ordinance, rule, ruling, regulation or other applicable law, or to any decisions of the courts regarding the same, including, without limitation as required to conform this Declaration or any other Governing Documents to, or as deemed necessary or appropriate by the Board as a result of, any amendments to the Texas Property Code or other applicable law.

D. EFFECTIVE DATE. Except for correction amendments which will be effective as stated therein, any amendment of this Declaration will be effective from and after Filing of Record the amending instrument, or such later date as may be stated in the amending instrument.

E. "AMENDMENT" DEFINED. In this Declaration and all other Governing Documents, the terms "amend", "amendment" or substantial equivalent mean and refer to any change, modification, revision, termination, or release as to any provisions of this Declaration or other Governing Documents.

SECTION 9.03 Notices.

A, GENERAL: All notices or other communications permitted or required under this Declaration, as amended. Any notice is deemed properly given if given in accordance with this Section except as otherwise expressly provided in this Declaration. All notices must be given in writing, must be properly dated, and must identify all the persons or entities giving the notice and all persons or entities to whom the notice is being given. All notices must also be signed by the sender(s). Notice by Electronic Means given in accordance with applicable provisions of this Declaration constitutes written and signed notice. Unless otherwise required by law or the Governing Documents, actual notice, however delivered, is sufficient.

B. DELIVERY. Except as otherwise expressly provided herein, all notices may be given by personal delivery acknowledged in writing, by certified or registered mail, return receipt requested, by "verified mail" as defined in Texas Property Code, Section

209.002(13) (being as of the date of filing of this Declaration any method of mailing for which evidence of mailing is provided by the United States Postal Services or a common carrier), or by Electronic Means. Notices by mail must be by deposit of the notice, enclosed in a postpaid properly addressed wrapper, in a post office or official depository of the United States Postal Service. Personal delivery may be made to any person at the recipient's address, or in the case of any Owner or tenant by posting on the front door at the Owner's Homesite/Lot address (or alternate street address, if applicable). Personal delivery may be acknowledged either by the recipient or by a third-party delivery service or common carrier.

C. DEEMED DELIVERY. Refusal by any Owner or tenant to receive or accept delivery or transmission of any notice given in accordance with this Section, or failure by any Owner or tenant to properly maintain the means for delivery or transmission (including failure to properly maintain a mailbox, or failure to maintain reception capabilities by Electronic Means), is deemed actual notice and actual knowledge of the materials delivered or transmitted in accordance with this Section.

D. OWNER/TENANT RESPONSIBILITIES AS TO ELECTRONIC MEANS. It is the obligation of each Owner and each tenant (i) to provide and keep the Association updated as to current "contact information" as provided below, and (ii) to maintain the capability to receive any notices or other communications from the Association or Declarant by, and to participate in any meetings as provided in this Declaration, the bylaws, or other Governing Documents by, Electronic Means. By acceptance of any right, title, or interest in any Homesite/Lot, or by occupancy thereof, each Owner and their tenant(s) consent to the use of Electronic Means by the Association or by Declarant as to any notices, communications, or meetings in accordance with this Declaration, and in accordance with the Bylaws and other Governing Documents.

E. CONTACT INFORMATION REQUIRED. As used in this Section (and this Declaration or other Governing Documents, when applicable), "contact information" means indicate the Owner's name, tenant's name as applicable, contact address, email address, and home, mobile phone numbers, and in the case of a sale the date and type of conveyance and other information as provided in **Section 6.04**. Not later than thirty days after acquiring an ownership interest in a Homesite/Lot, the Owner must give notice to the Association of the contact information for all persons or entities who are Owners of the applicable Homesite/Lot. Not later than thirty days after any person or entity acquires a leasehold interest or other right of occupancy in a Homesite/Lot, the Owner and tenant must give notice to the Association of the contact information for all persons or entities who are tenants or who have otherwise acquired a right to occupy the Homesite/Lot. Upon written request, an Owner must also provide to the Association in accordance with the request (i) the name(s) of any other person(s) occupying the Lot other than the Owner and each

such person's relationship to the Owner, and (ii) any other information or documentation as may be reasonably requested in writing by the Board or ACC. **Not later than ten days after any change in any contact information, the Owner and tenant, as applicable, of the applicable Lot must give notice to the Association of all such changes.**

F. ONE ADDRESS/NUMBER AND DELIVERY LIMIT. The Association is not required to give notice by more than one delivery method. The giving of notice to any single Owner or tenant as to a Homesite/Lot constitutes notice given to all Owners or tenants as to that Lot.

G. ANY WEBSITE TO CONTAIN DEDICATORY INSTRUMENTS; EFFECT OF WEBSITE NOTICES. If the Association, or the Managing Agent on behalf of the Association, maintains a publicly accessible or Member accessible website, then the Association must make its dedicatory instruments relating to the Association or Subdivision which are Filed of Record available on the website. The foregoing includes this Declaration, the Certificate of Formation, the Bylaws, Architectural Guidelines and Rules and Regulations. **Unless otherwise expressly required by Applicable Law, notice by posting on an Association website is notice to all Owners, tenants, and their Related Parties for all purposes.**

SECTION 9.04 *Managing Agent.* Declarant during the Development Period or the Board at any time may retain, hire, employ or contract with one or more persons or entities to provide management services to the Association, including discharge of such functions and duties of the Association, the Board or the ACC as determined by the Board (any such persons or entities herein referred to as a "**Managing Agent**"). Any Managing Agent may be retained, hired, employed, or contracted for on such terms and conditions as Declarant or the Board, as applicable, may determine; provided, the Association retains the right in all cases and as to any Managing Agent to remove the Managing Agent, with or without cause, upon not more than sixty days written notice. The right to remove any Managing Agent applies whether provided for in any applicable contract or agreement, and notwithstanding any contrary provisions in any contract or agreement.

SECTION 9.05 *Development Period.*

A. DEFINITIONS: In this Section and this Declaration, the following definitions apply (whether capitalized):

1. "**Development Personnel**" means all constructors, subcontractors, suppliers, vendors, sales agents, realtors, and all other related personnel and designers of Declarant to the extent authorized or permitted by Declarant to conduct any Development Activities. The conducting of any Development Activities at any time or place, or in any manner, will not constitute any violation of any Governing Documents.

2. "**Dispute**" means any claim, demand, action or cause of action, and all rights and remedies regarding the same, claimed or asserted by a "Dispute Claimant" (as hereafter

defined) against or adverse to Declarant or to any Related Parties of Declarant ("Declarant Parties")

3. "Dispute Claimant" means the Association, the Association's Related Parties and any other person or entity asserting a Dispute on behalf of, or by, through or under, the Association by derivative action or otherwise.

B. DECLARANT RIGHTS: Notwithstanding any other provisions of the Governing Documents, during the Development Period (and thereafter as applicable) Declarant may exercise all rights, authority, powers, privileges, and prerogatives of Declarant as provided in or permitted by the Governing Documents, including this Declaration, independently and unilaterally, without notice to, and without the joinder, vote or consent of the Association, the ACC, any other Owner or any other person or entity. In the same manner and to the same extent, during the Development Period Declarant may independently exercise any rights, authority, powers, privileges or prerogatives of the Association. Declarant may exercise any such rights, authority, powers, privileges, and prerogatives in Declarant's sole and absolute discretion and in Declarant's sole interest, and Declarant owes no duty of any kind whatsoever to any other person or entity regarding any of the same. Except as otherwise provided in this Declaration, such rights, authority, powers, privileges, and prerogatives of Declarant as the Declarant will terminate upon termination of the Development Period.

C. DECLARANT'S VETO AUTHORITY. Declarant reserves and retains full and exclusive rights and authority, in Declarant's sole and absolute discretion, to veto any decisions or actions of the Owners, the Association, the ACC, and any of their Related Parties regarding or which affect any Lot or other real property within the Subdivision which at the time is owned by or otherwise subject to Declarant's retained ACC authority.

**D. AMENDMENT OF GOVERNING DOCUMENTS;
CHANGES IN COMPOSITION OF SUBDIVISION.**

1. **GENERAL.** During the Development Period Declarant reserves the sole and exclusive right without joinder, vote, consent or any other approval of and without notice of any kind to the Association, the Board, the ACC, any Owner or any other Person (i) to adopt, amend, modify, revise or repeal, from time to time and at any time, this Declaration and any other Governing Documents, (ii) to prepare, amend, modify, revise or repeal any Plat covering or to cover the Subdivision, including without limitation elimination, change or reconfiguration, including as to size or boundaries, of any Lots, reserves, compensating open space, streets, easements, or any other parts, features, depictions, descriptions, notes, restrictions and any other aspects of any Plat, or any amendments or revisions thereof, (iii) to grant one or more residential use easements in any part of any reserve in favor of any Owner whose Lot or any part thereof abuts a reserve, in which case the area of land covered by each residential use easement will be appurtenant to and will be subject to all applicable provisions of applicable

Governing Documents to the same extent as the applicable abutting Lot, and to all other provisions of the residential use easement grant, (iv) to combine with, annex in to and/or to otherwise make a part of the Subdivision any other real property, any part of which is adjacent to, or across any street from, or otherwise located within one-half mile from, any part of the Subdivision as configured at the time of the combination or annexation, (v) with the consent of the owner thereof, to withdraw or remove any real property from the Subdivision, and (vi) as to any or all of the foregoing, to amend any Governing Documents accordingly.

2. OTHER CHANGES OR RECONFIGURATIONS.

During the Development Period Declarant reserves the sole and exclusive right without joinder, vote, consent or any other approval of and without notice of any kind to the Association, the Board, the ACC, any Owner or any other Person, to change or reconfigure any Subdivision Improvements, including without limitation (i) with respect to costs for or the price range of Lots, residences and other Improvements, and/or the size, appearance, type, grade or configuration of any Lot, and/or the size, square footage, height, appearance, style or types of residences and/or roofing, siding or any other exterior materials, color scheme or any other features of any residence or any other Improvements, and (ii) to designate, construct or expand the Common Areas, and to modify, eliminate, discontinue, reconfigure, redesign, re-designate, or in any other manner change the Common Areas.

3. **METHOD; EFFECTIVE DATE.** Any amendment, modification, revision, repeal, residential use easement, combination, annexation, or other matter as provided in this Section may be made by execution by or with the authority of Declarant of the appropriate instrument or instruments and will be effective from and after the date of Filing of Record of the applicable document or such later date as expressly provided in the applicable document. Any changes or reconfigurations as provided above may but are not required to be made in a similar manner.

4. **DEEMED CONSENT; WAIVER; DECLARANT AS ATTORNEY-IN-FACT.** By acceptance of any right, title or interest in any Lot or other properties within the Subdivision, including as to any lien or other security interest as to the same, the Association, each Owner and their Related Parties and each holder of a lien or other security interest as to each Lot or other properties thereby (i) consent to all Declarant's rights, authority and prerogatives as set forth in this Section 9.03, (ii) irrevocably designate Declarant as their attorney-in-fact for purposes of consenting to, approving, executing and filing of record of any plats and any amendments, modifications and/or replats thereof, and any other instruments deemed necessary or appropriate in Declarant's sole and absolute discretion for the exercise of any or all rights, authority or prerogatives as aforesaid, and (iii) waive and release any and all claims, demands, actions and causes of action whatsoever regarding all of the foregoing.

E. DISPUTE RESOLUTION, INCLUDING MEDIATION AND BINDING ARBITRATION.

1. Any Declarant Party may, by written request, require that any Dispute be submitted to mediation or binding arbitration to be conducted in the County in which the Subdivision is located. The Dispute Claimant must then obtain Owner approval as required by **Section 3.02**, failing which any claim, demand, action, or cause of action regarding the dispute will be waived, barred, released, and forever discharged. Unless the parties otherwise mutually agree, any binding arbitration must be conducted in accordance with the Construction Industry Arbitration Rules (or substantial equivalent) of the American Arbitration Association, and such rules are incorporated by reference herein. A request for mediation or binding arbitration may be made either during or after the Development Period, and either before or after initiation of any other legal action. If mediation is requested but does not fully resolve any Dispute, then a request may be made by any Declarant Party for binding arbitration as to the Dispute or any unresolved matters as to the same. The decisions of the arbitrator(s) in binding arbitration will be final and conclusive. Judgment may be entered as to any mediation settlement or arbitration award in any court that has jurisdiction as to the same.

2. If any Dispute Claimant fails to comply with any request for mediation or binding arbitration, or to attend or otherwise fully participate in good faith in the mediation or binding arbitration proceedings, then the Dispute Claimant will be deemed to have waived any and all claims, demands, actions and causes of action regarding all disputes related to the request or the proceedings, and all Declarant Parties and any other parties to the dispute will thereby be fully released and discharged from any and all liabilities regarding the same.

F. DISPUTE NOTICE REQUIRED; LIMITATIONS.

Notice as provided in this Section B7.01 of any Dispute must be given to all Declarant Parties not later than one hundred twenty days after, and suit regarding any Dispute must be filed in a court of competent jurisdiction not later than two years plus one day after, the date any claim or cause of action regarding the dispute accrues. Any claim, demand, action, or cause of action regarding any Dispute as to which notice is not given or as to which suit is not filed as aforesaid is in either case thereafter waived, barred, released, and forever discharged.

ARTICLE X GENERAL PROVISIONS

SECTION 10.01 No Waiver: Failure by the Association, the Declarant, or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, or Association Rules, in any certain instance or on any occasion shall not be deemed a waiver of such right of enforcement on any such future breach of the same or any other covenant, condition or restriction.

SECTION 10.02 Cumulative Remedies: All rights, options and remedies of Declarant, the Association, or the owners under

this Declaration are cumulative, and not one of them shall be exclusive of any other, and Declarant, the Association, and the owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

SECTION 10.03 Rights of Fayette County Notwithstanding anything herein to the contrary, any officials of County shall have the right to enforce any of the provisions of this Declaration for the benefit of the public or any other affected individual by any action defined under this Declaration or any other action, which shall be legally available to the County.

SECTION 10.04 Rights of Mortgagees: Any violation of any of the easements, agreements, restrictions, reservations, or covenants contained herein shall not have the effect of impairing or affecting the rights of any mortgagee, guarantor or trustee under any mortgage or Deed of Trust outstanding against the Lot, at the time that the easements, agreements, restrictions, reservations, or covenants are violated. Nothing contained in this Declaration shall impair or defeat the lien of any mortgage or Deed of Trust made in good faith and for value, but titles to any property subject to this Declaration obtained through sale and satisfaction of any such mortgage or Deed of Trust shall thereafter be held subject to all the protective restrictions hereof.

SECTION 10.05 Interpretation: If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

SECTION 10.06 Omissions: If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity or effect to any other work, clause, sentence, or provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision shall be supplied by inference.

SECTION 10.07 Gender and Grammar: The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males, or females, shall in all cases be assumed as though in each case fully expressed.

SECTION 10.08 Titles: The titles, headings, and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

SECTION 10.09 Severability of Provisions: If any paragraph, section, sentence, clause, or phrase of this Declaration shall be or become illegal, null, or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null, or void, the remaining paragraphs, sections, sentences, clauses, or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is

hereby declared that said remaining paragraphs, sections, sentences, clauses, and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases shall become or be illegal, null, or void.

SECTION 10.10 Attorneys' Fees: In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorney's fees, and costs of such suit.

SECTION 10.11 Choice of law and Conflicts: In case of any conflict between this Declaration and the certificate of formation or bylaws or Association rules, this Declaration will control. The validity, construction, and interpretation of this Declaration and all other Governing Documents is controlled and to be construed under the laws of the State of Texas.

SECTION 10.12 Non-liability of Officials: To the fullest extent permitted by law, neither the Board, the Declarant, the ACC, nor any other committees of the Association or any Member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

SECTION 10.13 Acceptance by Lienholders: The undersigned Lienholders, if any, have executed this Declaration to evidence their consent to the imposition of the foregoing covenants, conditions, and restrictions upon all tracts included within Subdivisions as described in **Exhibit "A"** regardless of whether such tracts may be encumbered by a pre-existing lien. It is agreed hereby that any such lines shall be subordinated to this Declaration and all the provisions thereof.

SECTION 10.09 Conflicts in Governing Documents. In the event of any conflict in the Governing Documents which cannot be reasonably reconciled after application of rules of interpretation as provided herein or by law, this Declaration controls over any other Governing Documents, and all other Governing Documents control in the following order of priority: (i) Architectural Guidelines; (ii) Rules; (iii) Certificate of Formation, (iv) bylaws; (v) Board and Member resolutions; and (vi) all others.

SECTION 10.10 Effective Date. This Declaration is effective from and after the date of Filing of Record of the same, subject to amendment as herein provided.

IN WITNESS WHEREOF, the undersigned has executed this Declaration to be effective as stated above.

EXECUTED this 6th day of October, 2023.

ROCKY CREEK ESTATES, LLC,
a Texas limited liability company
"Declarant"

By: Brett Rowley
Brett Rowley, Authorized Representative

[ACKNOWLEDGMENT FOLLOWS]

DECLARANT'S ACKNOWLEDGMENT

STATE OF TEXAS

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§
§

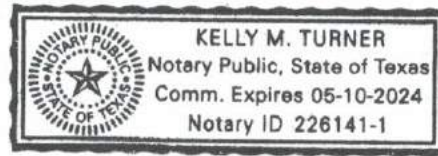
COUNTY OF FAYETTE

This instrument was acknowledged before me on the 6th day of October, 2023, by Brett Rowley, as the Authorized Representative of **Rocky Creek Estates, LLC**, a Texas limited liability company, on behalf of the company.

[SEAL]

Kelly M. Turner
Notary Public, State of Texas
Print Name: Kelly M. Turner
My Commission Expires: 5-10-2024

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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS
FOR
THE ESTATES AT ASTORIA**

EXHIBIT "A": THE SUBDIVISION

The real property which, by the recording of the Declaration, will be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the Declaration is that certain real property located in Fayette County, Texas, more particularly described as follows, to wit:

THE ESTATES AT ESTORIA, an addition in Fayette County, Texas according to the map or plat thereof filed under Clerk's Instrument No. 23-06178, Official Public Records of Real Property of Fayette County, Texas, and recorded in Volume 3, Page 353, Map Records of Fayette County, Texas.

10/6/2023 3:34:47 PM

STATE OF TEXAS COUNTY OF FAYETTE
I hereby certify that this instrument was FILED on the
date and at the time stamped hereon by me and was duly
RECORDED in the Volume and Page of the OFFICIAL RECORDS
of Fayette County, Texas as stamped hereon above time.

BRENDA FIETSAM, COUNTY CLERK

Stamp: 30 Page(s)

