



THE STATE OF TEXAS

COUNTY OF TOM GREEN

**DEDICATION AND DECLARATION OF  
COVENANTS AND RESTRICTIONS FOR**

**IRON HORSE I**

On the 31st day of July, 2006, LIPAN DEVELOPMENT COMPANY, LLC, with the principal office in Wall, Texas, hereinafter called "Developer:"

**WITNESSETH:**

**WHEREAS**, Developer is the Owner of the real property described in Article II of this Declaration and desires to create thereon a Rural Residential Estates community with open spaces, and other facilities for the benefit of the said community:

**WHEREAS**, Developer desires to provide for preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities, and, to this end, desires to subject the real property described in Article II, to the Covenants, Restrictions, easements, charges and liens, hereinafter set forth, all of which are for the benefit of said property and each Owner thereof:

**WHEREAS**, Developer believes that it is desirable for the efficient preservation of the values and amenities in said community to create an Association that would have the powers of maintaining, administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter created.

**WHEREAS**, the real property described in Article II hereinbelow shall be referred to as "Iron Horse I."

**WHEREAS**, Developer has filed in the Official Records the plat or map recorded as Instrument Number 612077, Official Public Records of Tom Green County, Texas, and also that Replat of Block 1, Block 2, and Part of Avery Lane, as Instrument Number 615237, Official Public Records of Tom Green County, Texas.

**NOW, THEREFORE**, Developer does hereby adopt the map, designated thereon and to be known as "Iron Horse I," Tom Green County, Texas, and its plan for subdividing such lands into Tracts, roads and easements. Further, Developer declares that the real property described in Article II, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, limitations, charges and liens, sometimes hereinafter referred to as "Covenants and Restrictions," hereinafter set forth.

## **ARTICLE I**

### **Definitions**

**Section 1.** The following words when used in this Declaration or any Supplemental Declaration, unless the context shall prohibit it, shall have the following meaning:

- (a) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be from time to time duly amended or modified.
- (b) "Assessment" or "Assessments" shall mean and refer individually or collectively to the Annual Assessments, the Special Assessments, the Special Group Assessments and the Individual Assessments, where the context requires.
- (c) "Association" shall mean and refer to a non-profit Texas corporation to be formed and named at the discretion of Developer and the Association which has (or will have) the power, duty and responsibility of administering and enforcing these restrictions and covenants and otherwise maintaining and enhancing the quality of life for the Plot Owners.
- (d) "Board" shall mean and refer to the Board of Directors of the Association.
- (e) "Bylaws" shall mean and refer to the Bylaws of the Association, as adopted and amended from time to time in accordance with the provisions thereof.
- (f) "Charges" shall mean and refer to charges imposed against an Owner delinquent in the payment of his/her/its Assessments, including, but not limited to the "fines" as described in Article IV, Section 41 hereof.
- (g) "Class A Member" shall mean each Owner of a Plot.
- (h) "Class B Member" shall mean Developer.
- (i) "Developer" shall mean and refer to LIPAN DEVELOPMENT COMPANY, LLC, a Texas Limited Liability Company, or any entity which may be assigned the rights of Developer pursuant to a written assignment executed by the then present Developer and recorded in the Records. In addition, in the event an entity obtains title to all of the Plots then owned by Developer as a result of foreclosure of any mortgage or deed in lieu thereof, such entity may elect to become Developer by a written election recorded in the Records. No Person merely purchasing one or more Plots from LIPAN DEVELOPMENT COMPANY, LLC, or its successor or assigns, in the ordinary course of business shall be considered a "Developer."
- (j) "Development Period" shall mean a period commencing on the date of the recording of these covenants and restrictions in the Records and continuing thereafter until and ending on the earlier of (a) the date of the sale by Developer of the last Plot owned by Developer, (b) the date Developer voluntarily terminates its Class B Member status by recording a written notice of such termination in the Records or (c) December 31, 2025.
- (k) "Dwelling Unit" shall mean and refer to any building or portion of a building situated upon any Plot which is designed and intended for residential use.

- (l) "Individual Assessments" shall mean and refer to the assessments that may be from time to time imposed upon an individual Owner in accordance with the provisions of Article IV, Section 34(c) hereof.
- (m) "Managing Agent" shall mean and refer to any Person who has been designated or engaged by the Board to manage the affairs of the Association, to the extent the Board elects to make such designation.
- (n) "Maximum Lawful Rate" shall mean and refer to the lesser of (a) the maximum lawful rate of interest permitted to be charged from time to time for the use or forbearance of money by applicable law, or (b) eighteen percent (18%) per annum.
- (o) "Member" shall mean and refer to each Owner.
- (p) "Owner" shall mean and refer to the holder(s) of record title to the fee simple interest of any Plot whether or not such holder(s) actually reside(s) on any part of the Plot.
- (q) "Payment and Performance Lien" shall mean and refer to the lien described within Article IV, Sections 41 and 42 below.
- (r) "Person" shall mean an individual, partnership, joint venture, corporation, limited liability company, joint stock company, trust (including a business trust), unincorporated association or other entity, or a government or any political subdivision or agency thereof.
- (s) "Plat" shall mean the plat and replat of the Property as mentioned above.
- (t) "Plot" or "Tract" shall mean an entire numbered Tract or Plot as shown on the Plat and as included in the above-described property or a Developer-approved combination of one or more of said Plots or parts of said Plots. Developer may refuse to approve a splitting or combination of said Plots.
- (u) "Records" shall mean the Official Public Records of Real Property or Official Public Records of Tom Green County, Texas, including the Map, Plat, and/or Cabinet Records of Tom Green County, Texas.
- (v) "Special Assessments" shall mean and refer to assessments imposed upon Owners for capital improvements or unusual or emergency matters, in accordance with the provisions of Article IV, Section 37 hereof.
- (w) "Special Group Assessment" shall mean and refer to assessments imposed upon certain of the Owners for capital improvements or unusual or emergency matters, in accordance with the provisions of Article IV, Section 38 hereof.
- (x) "Trustee" shall mean any entity or person selected by the Association from time to time to act as trustee in connection with the Association's enforcement of remedies.

**ARTICLE II**  
**Property Subject to This**  
**Declaration and Additions Thereto**

The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Tom Green County, Texas, and is more particularly described as follows:

**THE SURFACE ESTATE ONLY, IN AND TO:**

The lands situated in Tom Green County, Texas and more fully described in "Exhibit A" attached hereto and incorporated herein. Field notes for the Replat of Block 1, Block 2, and Part of Avery Lane are attached hereto and incorporated herein as Exhibit "B".

**ARTICLE III**  
**Limitations to Title**

All Properties shall be subject to the following limitations, exceptions and conditions, or pertinent part thereof;

**Section 1.** Title is subject to all easements, rights-of-way, restrictions and Covenants of record in Tom Green County, Texas, prior to the recording hereof or apparent from an examination of the land, and the Map or Plat for Iron Horse I of record in Tom Green County, Texas.

**Section 2.** Title is subject to all outstanding oil, gas and other minerals, and any leasehold estates heretofore granted or which may hereafter be granted in connection therewith, including the right of ingress and egress and the reasonable use of the surface for exploring, developing and producing any and all such oil, gas and other minerals. Developer hereby waives in favor of Owner, and hereby grants to Owner, all of Developer's right, title and interest in and to all surface damages resulting therefrom which may occur on or to Owner's Tract, if any.

**Section 3.** Title to subsurface water rights shall be transferred to and owned by each respective tract owner with exception to pre-existing wells provided for Public Water Supply backup and Green Belt irrigation purposes. (Refer to subdivision plat for location and identification of subject wells located within Block 3, Lot #4, Block 3, Lot #10, Block 7, Lot #2).

**Section 4.** All streets and roads within Iron Horse I are owned by Developer and maintenance of all roads and streets indicated on the plats will be the responsibility of the Developer and will be funded from annual dues and/or special assessments from the Owners. Developer contemplates that the roads and streets will be conveyed and transferred to an Association to be formed by Developer for the benefit of the Iron Horse I development. After conveyance to the Association, said Association shall be responsible for the maintenance of all roads and streets indicated on the plat, with cost to be funded from annual dues and/or special assessments from the Owners.

**ARTICLE IV**  
**Covenants and Restrictions**

In addition to all other Covenants and Restrictions provided in or by this Declaration, the Properties shall be, unless otherwise expressly exempt therefrom in this Declaration, subject to the following Covenants and Restrictions running with the land which shall be binding on all parties having any right, title or interest in the Properties, or any part thereof, their heirs, representatives, successors or assigns, to-wit:

**Section 1.** No mobile home, house trailer, or camper trailer shall be placed or maintained on the Properties, except that any mobile home or house trailer owned by a contractor may be maintained on any Tract by such contractor only during the period of construction. Any dispute or question as to what constitutes a mobile home, house trailer, camper trailer, ready-built home, modular home, recreational vehicle, tent, or structures similar thereto, shall be resolved conclusively by the determination of the Architectural Control Committee, which is set out in Article V below.

**Section 2.** No residence on any Tract within Blocks 3,4, 5, 6, and 7 shall contain less than 2,200 square feet of heated and cooled living area, excluding garages, carports, covered porches, and attached storage areas. No residence on any Tract within Block 1A shall contain less than 1,800 square feet of heated and cooled living area, excluding garages, carports, covered patios, and attached storage areas. All residential construction shall have 90% exterior of brick or stone. Stucco can be used as an accent to brick or rock, not to exceed 50% of total exterior surfaces. All fireplace chimneys will consist of rock, brick or stucco finish. Construction shall only use new materials and all construction will be concluded within 270 days of starting date. Any deviation must be approved in writing and signed by the Architectural Control Committee.

**Section 3.** All residences must have at least a two car garage. The garage can be detached but must be of same architecture and finish as residence. Any parking structures other than garages must have prior written approval of the Architectural Control Committee. No shared driveways or front entry garage shall be on any tract.

**Section 4.** No more than one (1) residence per Tract and no Tract will be subdivided. There shall be no multiple family dwellings constructed on a Tract. There shall be no more than one single family per household.

**Section 5.** All roofs will be of the following: 250 lb. or greater laminated composition roofing shingles, standing seam metal or hidden fastener metal roofs, clay, slate tile. No wood roofs are acceptable.

**Section 6.** All exterior paint, stain, brick, rock, and roof colors must be identified in plans submitted to and approved in writing by the Architectural Control Committee.

**Section 7.** All Tracts must have a minimum of 24 transverse feet of concrete in driveway apron accessing garages. All driveways will be paved of concrete, asphalt, or two-coat and compacted by a contractor pre-approved by the Architectural Control Committee.

**Section 8.** Any landscape design and improvement must be reviewed and approved by Architectural Control Committee. Any and all plan elevations are subject to Architectural Control Committee review and approval.

**Section 9.** No trailer houses, double-wide, or other manufactured homes can be moved onto a Tract. All automobiles, tractors, trucks, motor homes, campers, and any other vehicles on a Tract must be currently inspected and in operable condition unless they are stored in a fully enclosed garage or barn. No commercial vehicles may be stored on a Tract at any time.

**Section 10.** All Tracts must be well maintained at all times including dwellings, out buildings and fences. The landscaping of all Tracts shall be maintained in a clean and neat manner, and each Owner shall mow all grass and vegetation on each Tract every thirty days. Should an Owner fail to keep said Tract mowed every thirty days, Developer or Association shall be entitled to mow the Tract and assess a fine or penalty to Owner in the amount of \$50. Only interior fencing shall be allowed and same

shall enclose no more than 20% of property surface area. The interior fencing must be attached to residence and shall be constructed pursuant to requirements provided in Section 24. Since Iron Horse I is designed as an open area community, no property boundary fencing shall be allowed.

**Section 11.** There shall not be located on any Tract any radio, or other towers.

**Section 12.** A maximum of one (1) water well shall be permitted/drilled and installed on individual tracts.

- (a) Pump size cannot exceed one and one-half (1 ½ ) horse power.
- (b) Tract owner must notify Architectural Control Committee in advance of any well drilling activity on any tract.
- (c) Well houses must be constructed of new materials and consist of same architecture and finish of residence and may not contain more than sixty-four (64) sq. ft. of floor space. Electrical service to well must be buried.
- (d)
  - (i) Drinking water will be provided to each tract by an individually owned well located on each tract. Developer will drill and case well for a tract and the cost will be included in the sale price of each tract. Each tract owner will be responsible for the purchase and installation of the pump, pressure tank, electrical and well housings at time of construction of residence on an owner's tract.
  - (ii) The Developer will construct an engineered and approved water distribution pipeline that meets State requirements during the development period to allow for future delivery of water to all tracts within the Iron Horse I development by a recognized certificated public water supply provider.
  - (iii) Lipan Development Company, LLC will retain ownership of the water distribution pipeline and the easements related thereto, until such time Lipan Development Company, LLC conveys, transfers and sells said pipeline system to a public water supply and receives the recovery of Developer's capital expenditure for said pipeline.
- (e) It is mandatory that every residence constructed within Iron Horse I be adequately plumbed to include an R. O. (Reverse Osmosis) water treatment system and such shall be provided on all interior sinks and ice makers.

**Section 13.** All outbuildings must be of new materials that are of low maintenance, brick, or pre-engineered metal buildings are preferred. All buildings must have exterior finished within 45 days of start. All outbuildings must be approved in writing by the Architectural Control Committee before construction may begin.

**Section 14.** All buildings and structures of whatever nature, except for fences, must be set back at least one hundred (100) feet from center of front property access to streets and at least thirty (30) feet from any Tract owned by another Owner.

**Section 15.** No buildings or improvements, including, but not limited to, residential buildings, garages, carports, barns, patios, sleeping porches, fences or walls, bar-b-cue pits, storage houses, swimming pools, or other facilities of whatever nature, whether permanent or temporary, shall be

constructed or moved on until the construction plans and specifications, including exterior color or material, and a plat showing the location of the proposed structure have been approved in writing by the Architectural Control Committee, as to quality of workmanship and materials, harmony of external design with existing structures on the property and with the natural surroundings, and as to location with respect to the topography, and the finish grade of elevation.

**Section 16.** No toxious or offensive activity shall be conducted upon the Properties, nor shall anything be done thereon which may become an annoyance or nuisance to any Owner.

**Section 17.** All electrical wiring and all plumbing installation (including sprinkler systems) in any building, structure, or exterior irrigation shall be installed in a good and workmanlike manner and in compliance with all applicable rules and regulations of the Texas Department of Health or other regulatory authority.

**Section 18.** All residences shall be connected to a permanent septic tank system for sewage disposal. Each septic tank system shall comply with the minimum standards required or recommended by the State of Texas or Tom Green County, or any regulatory authority of either the state or the county, whichever standards are the more stringent.

**Section 19.** No abandoned or inoperative motor vehicle or other machinery shall be placed, or permitted to remain, on the Properties. No part of the Properties shall be used or maintained as a dumping or storage ground for junk, rubbish, trash, garbage or other waste material, and no such items or materials shall be kept or permitted on the Properties except temporarily in containers adequate for that purpose. All such containers or receptacles shall be placed either indoors or in an area screened by natural vegetation or terrain or artificial structure so that it is not visible from the roads or streets or from the neighboring Tracts. Every Owner shall be responsible for keeping his Tract in a neat and clean condition.

**Section 20.** No quarrying or mining operations of any kind or character shall be conducted on or under any Tract.

**Section 21.** All Tracts must be used only for residential purposes.

**Section 22.** No Tract shall be used for any kind or character of business or commercial purpose, except as explicitly described in Section 23 below.

**Section 23.** No swine, poultry or livestock (including horses) shall be permitted on the Properties. Household pets and domestic animals (dogs and/or canines) may be permitted on the Properties, provided; however, that nothing herein shall be construed to permit the business or commercial use thereof other than explicitly stated hereinbelow or to permit an annoyance or nuisance to any Owner. Any and all such pets or domestic animals must be confined at all times to the Tract of Owner by fence or otherwise. As an exception to Section 21 and 22 above, however, the following uses of the Properties shall be permitted:

(a) Any Owner may conduct planting, growing, cultivating and harvesting from a domestic garden produced from the soil whether on the ground or enclosed provided, that no operational activities in connection therewith shall be conducted during darkness, no retail sales shall be conducted thereon, and no operation shall be conducted thereon under conditions of wind and dryness that would cause dust to be carried to any adjoining Tract.

(b) Any Owner may conduct on a Tract in an enclosed building any work of art, crafts, journalism, or other personal fabrication, design or construction provided that no third-party employees are required on a Tract in connection with such work and no retail sales are conducted on a Tract.

**Section 24.** An approved interior fence would be 6' x 1" x 6" dog-eared cedar pickets with metal posts (pipe or tubing), rock or brick matching dwelling, and/or professionally constructed wrought iron fencing.

**Section 25.** No firearm shall be discharged upon any Tract, or on any road, at any time, or for any manner whatsoever. No dairies, dog kennels, or other type of breeding kennels shall be permitted on the Properties.

**Section 26.** No Tract shall be used or maintained as a dumping ground for rubbish, trash, or junk of any nature. All garbage and waste shall be kept in containers upon each Tract until disposed of in an approved landfill. Temporary storage shall be permitted for only seven (7) days. No burning of trash or debris shall be permitted at any time.

**Section 27.** Owners of each Tract shall be subject to individual well irrigation rules and regulations for the development by not watering more than three times each week, and watering on the Tract shall be limited to night-time hours only after the yard on the Tract is established, night-time hours being after 6:00 P.M. daily. Developer will allow Owners to employ additional watering when each Tract Owner is establishing new turf around landscaping, said additional hours to be with the written consent of Developer.

**Section 28.** If any Owner sells an undeveloped Tract at any time prior to the completion of the sale of all originally platted Tracts by Developer, Owner will be required to provide Developer with a copy of the sales contract regarding the sale of its Tract to a third-party. Sale of that Tract will require the consent of the Developer, in writing, to said sale and shall entitle Developer to receive 50% of the net profit of the sale of that lot over the purchase price of that lot from Seller to Owner. Seller will maintain a lien on any lot sold by Owner prior to the sale of all of the originally platted lots by Developer. After the sale of all original platted Tracts by Developer, all rights of the Developer to any portion of the sales price for any Tract sold by an Owner shall terminate and expire and will be no of further force and effect.

**Section 29.** These Covenants and Restrictions shall be effective for a term of thirty years from date of recording during which time they may be amended, altered or revised by an instrument signed by Owners of not less than eighty percent (80%) of the Tracts, and duly recorded. Following such thirty year period, all such Covenants and Restrictions shall be automatically extended for successive periods of ten years unless otherwise amended, altered or revised by an instrument signed by Owners of not less than eighty percent (80%) of the Tracts, and duly recorded.

### **Section 30. Membership**

- (a) Each and every Owner of each and every Plot shall automatically be a Member of the Association. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of a Plot. Ownership of any Plot shall be the sole qualification for being a Member; however, a Member's privileges may be regulated or suspended as provided in these covenants and restrictions, the Bylaws or the rules and regulations promulgated by the Board. Any Person who holds an interest in and to all or any part of a Plot merely as security for the performance of an obligation shall not be a Member.



- (b) During the Development Period, the Association shall have two (2) classes of Members:

**Class A:** The Class A Members shall be all Owners of Plots (other than Developer during the Development Period).

**Class B:** The Class B Member shall be Developer.

- (c) Upon the expiration of the Development Period, the Class B membership shall terminate, and thereafter the Association shall have one (1) class of Members (the Class A Members).

### **Section 31. Transfers**

- (a) The membership of an Owner may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale or assignment of such Owner's interest in such Owner's Plot and then only to the purchaser or assignee as the new Owner of the Plot in question. Each Owner shall notify the Association of any transfer or assignment of the fee title to his/her/its Plot. Such transfer shall automatically operate to transfer the membership to the new Owner thereof.
- (b) Within a reasonable period of time following the recordation in the public records of a deed to any Plot, the Owner of such Plot shall have the affirmative duty and obligation to provide to the Association (and thereafter to revise and update, within fifteen (15) days after any material change has occurred) various items of information reasonably requested by the Association, including, but not limited to, (i) the full name and address of the Owner; (ii) the full name of each individual family member who resides within the Dwelling Unit of such Owner; (iii) the business address, occupation and telephone numbers of such Owner; (iv) the description and license plate number of each automobile owned or used by such Owner (or those residing with such Owner) and brought within the Plots; (v) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Owner cannot be located) in case of an emergency; and (vi) such other information as may be reasonably requested from time to time by the Association. In the event any Owner fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

### **Section 32. Voting Rights**

- (a) During the Development Period, the Class A Members and the Class B Member shall constitute the voting Members of the Association. Class A Members in good standing (as defined below) shall be entitled to cast one (1) vote per Plot. Where more than one (1) Owner owns and holds a record fee interest in a Plot, such Owner(s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Plot yield more than one (1) vote. The Class B Member shall be entitled to cast eight (8) votes for each Plot, except with respect to matters covered by Article IV, Sections 36(g) and 37 hereof, for which the Class B Member shall be entitled to cast only one (1) vote for each Plot.

- (b) Following the expiration of the Development Period, the Class A Members shall constitute the sole voting Members of the Association. Class A Members in good standing shall be entitled to cast one (1) vote per Plot. Where more than one (1) Owner owns and holds a record fee interest in a Plot, such Owner(s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Plot yield more than one (1) vote.
- (c) Any Member shall not be in "good standing" if such Person is: (i) in violation of any portion of these covenants and restrictions, the recommendation by Developer applicable to the plans and specifications for his/her/its Plot, or any rule or regulation promulgated by the Board; or (ii) delinquent in the full, complete and timely payment of any Assessment or Charge which is levied, payable or collectible pursuant to the provisions of these covenants and restrictions, the Bylaws or any rule or regulation promulgated by the Board. The voting rights of any Member who is not in good standing may be suspended by the Board for any period during which such Member remains not in good standing. Prior to suspending a Member's voting rights for failure to maintain good standing, the Board shall provide the Member with a written notice of each violation affecting the Member's good standing and an opportunity to cure such violations. If, after receiving notice of a violation, the Member does not cure the violation and return to good standing within thirty (30) days of the date of notice, the Board may suspend the Member's voting rights without further notice.
- (d) The Board may make such rules and regulations, consistent with the terms of these covenants and restrictions and the Bylaws, as it deems advisable, for: (i) any meeting of Members; (ii) proof of membership in the Association; (iii) the status of good standing; (iv) evidence of right to vote; (v) the appointment and duties of examiners and inspectors of votes; (vi) the procedures for actual voting in person or by proxy; (vii) registration of Members for voting purposes; and (viii) such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

**Section 33. Notice: Voting Procedures; Meetings** Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Texas law. During the Development Period, from time to time, as and when determined necessary by the Board, the Board may call and schedule a meeting of the Members. From and after the expiration of the Development Period, the Members shall meet annually to deal with and vote on matters relating to the business of the Association, as directed by the Board, including the election of the Directors.

**Section 34. Creation of the Lien and Personal Obligation of Assessments** Subject to Section 36(c) below, Developer, for each Plot owned by it during any period following the expiration of the Development Period, hereby covenants and agrees, and each subsequent Owner of any Plot, by acceptance of a Deed therefor, whether or not reference to the covenants shall be so expressed in any such Deed or other conveyance, shall be deemed to have covenanted and agreed (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Plot so as to have affected the purchase price) to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

- (a) regular Annual Assessments;
- (b) Special Assessments, and, to the extent applicable, Special Group Assessments, to be fixed, established and collected from time to time as hereinafter provided; and

- (c) Individual Assessments and fines levied against individual Members to reimburse the Association for (i) extra or unusual costs incurred for items such as (but not limited to) (A) maintenance and repairs to portions of the Plots required to be made as a result of the willful or negligent acts of the individual Member; or (B) the remedy, cure or minimizing of problems caused by, or as a result of, violations of these covenants and restrictions by a Member; and (ii) costs incurred relating to or resulting from violations by individual Members of rules and regulations pertaining to the Association.

The Annual, Special, Special Group, and Individual Assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge running with the land and shall be a continuing lien upon each Plot against which each such Assessment is made and shall also be the continuing personal obligation of the then-existing Owner of such Plot at the time when the Assessment fell due. Subject to applicable state law, each Owner shall be directly liable and responsible to the Association for the acts, conduct and omission of such Owner and its respective Guests, invitees and employees, associated with the Dwelling Unit(s) or improvements located on such Owner's Plot.

**Section 35. Purposes of Assessments** The Assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Members of the Association and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the operation of the Association, including, but not limited to or for: (i) carrying out the duties of the Board as set forth in these covenants and restrictions; (ii) carrying out the other various matters set forth or envisioned herein; and (iii) for any matter or thing designated by the recognized controlling governmental entity in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive but merely illustrative.

**Section 36. Basis and Amount of Annual Assessments**

- (a) Regular Annual Assessments, Special Assessments and Special Group Assessments shall be borne one hundred percent (100%) by the Class A Members and, if applicable, Developer.
- (b) Notwithstanding the foregoing, until the end of the expiration of the Development Period, Developer shall not be liable for Annual Assessments for any Plots owned by it. In lieu thereof, during the Development Period, Developer shall be responsible for all expenses actually incurred by the Association, in excess of the Annual Assessments. Notwithstanding the foregoing, in the event the Association incurs any expense not ordinarily anticipated in the day-to-day management and operation of the Association, including but not limited to expenses incurred in connection with lawsuits against the Association, or incurred in connection with damage to property, or injury or death to any person, which are not covered by insurance proceeds, the liability of Developer for such expenses shall not exceed the amount that Developer would be required to pay if it were liable for Annual Assessments as any other Owner, and any excess, amounts payable by the Association shall be assessed to all Owners, including Developer. From and after the expiration of the Development Period, to the extent that Developer owns one (1) or more Plots, Developer shall pay regular Annual Assessments in the same manner as the other Owners of Plots. In the event Developer fails to pay any sums by this paragraph (b), there shall exist a self executing and continuing Performance Lien and equitable charge against each Plot owned by Developer or the Association shall be entitled to exercise the remedies contemplated in Section 26 below.

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- (c) The regular Annual Assessments relating to any common properties for the current Fiscal Year shall be established, assessed, included in and covered by the regular Annual Assessments to be imposed upon Owners of Plots pursuant to subparagraph (e) below.
  - (d) In determining each regular Annual Assessment, the Board shall separately assess each Plot in the manner herein provided, and each Plot shall be charged with and subjected to a lien for the amount of such separate Assessment which shall be deemed the "Annual Assessment" with respect to such Plot.
  - (e) The initial Annual Assessments for the initial calendar year shall be pursuant to a budget prepared by the Developer upon Developer's projections of reasonable expenses to be incurred in that initial calendar year. Thereafter, the Board may be permitted at any time during the term of these covenants and restrictions to increase the regular Annual Assessment for each Plot without a vote of the Members from Fiscal Year to Fiscal Year, but such an adjustment shall not exceed ten percent (10 %) of the previous Fiscal Year's regular Annual Assessment assessed against the Plots in question.
  - (f) The maximum Annual Assessment may not be otherwise increased beyond the restrictions set forth in subparagraph (e) above without the approval of at least fifty-one percent (51%) of the Class A Members at a meeting or meetings called for that purpose with at least fifty percent (50%) of the Class A Members (or their proxies) present, after adequate notice.
  - (g) Following the expiration of the Development Period, the Board shall not take formal action on the Annual Assessment more than once in any Fiscal Year. Each and every meeting of the Board in which final action is taken on an Annual Assessment, Special Assessment or Special Group Assessment shall be open to Owners.
  - (h) In addition to regular Annual Assessments, Special Assessments, Special Group Assessments and Individual Assessments, each Owner of a Plot (other than the initial, bona fide developer or homebuilder) shall be obligated, at the time of the purchase of the Plot by such Owner and simultaneously therewith, to pay the Association the sum of Two Hundred Fifty and No/100 Dollars (\$250.00) as a one-time acquisition and transfer fee to supplement the funds of the Association. Developer may defer collection of this one-time acquisition and transfer fee for certain Plots purchased for resale until such resale.

**Section 37. Special Assessments.** In addition to the regular Annual Assessments authorized by Section 36 hereof, the Association may levy in any Fiscal Year a Special Assessment, applicable to that Fiscal Year only, for the purpose of (a) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any common properties Developer may later dedicate to the Plots, including any necessary fixtures and personal property related thereto, or (b) defraying, in whole or in part, the cost of any extraordinary, unusual or emergency matters (including, without limitation, those matters arising out of litigation and/or judgments). Prior to the expiration of the Development Period, any Special Assessment in respect to dedication of and any improvements to common properties must have the affirmative vote of Developer and at least two-thirds (2/3's) of the Class A Members, and such assessment shall be payable by all Owners, including Developer. From and after the expiration of the Development Period, any Special Assessment must have the affirmative approval of at least two-thirds (2/3's) of the Class A Members at a meeting or meetings called for that purpose with at least thirty percent (30%) of the Class A Members (or their proxies) present, after adequate notice.

**Section 38. Special Group Assessments.** Where any such funds are required for the purpose of (a) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including any necessary fixtures and personal property related thereto, or (b) defraying, in whole or in part, the cost of any extraordinary, unusual or emergency matters (including, without limitation, those matters arising out of litigation and/or judgments) upon a portion of the Plots restricted to the common use and enjoyment of the Owners of Plots sharing a common interest, separate and apart from the interest of all of the Owners of Plots, then the Board shall be permitted to levy a Special Group Assessment against only the Plots in that group. These Special Group Assessments shall be levied in the same manner as hereinbefore provided for Special Assessments, except that the voting Members shall be comprised only of Owners of Plots to be affected by the Special Group Assessment.

**Section 39. Rate of Assessments** Prior to the expiration of the Development Period, regular Annual Assessments, Special Assessments, and, to the extent of the affected Plots only, Special Group Assessments in respect to Plots must be fixed at a uniform rate for all Plots, unless otherwise approved by Developer. From and after the expiration of the Development Period, regular Annual Assessments, Special Assessments, and, to the extent of the affected Plots only, Special Group Assessments in respect to Plots must be fixed at a uniform rate for all Plots, unless otherwise approved by at least two-thirds (2/3rds) of the members of the Board.

**Section 40. Due Dates of Assessments** Once Developer has established a budget for the Annual Assessments and has notified all Plot Owners as to the initial date when such Annual Assessments first become due and payable, the Annual Assessment shall be due and payable in full in advance on the first day of each Fiscal Year and shall, if not paid within thirty (30) consecutive calendar days thereafter, automatically become delinquent. The Board shall use reasonable efforts to provide each Owner with an invoice statement of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence. The Board may further prescribe (a) procedures for collecting advance regular Annual Assessments from new Owners out of "closing transactions" and (b) different procedures for collecting Assessments from Owners who have had a recent history of being untimely in the payment of Assessments. Written notice of the applicable Assessment shall be furnished in a timely manner by the Board to every Owner by mail.

**Section 41. Effect of Non-Payment of Assessment; the Personal Obligation of Owner; the Lien in Respect to a Plot; and Remedies of Association**

- (a) Effective as of, and from and after the filing and recordation of these covenants and restrictions, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Plot to secure the full and timely payment of each and all Assessments and all other Charges and monetary amounts and performance obligations due hereunder with respect to the Plots, including the obligations of Developer under Section 36(b) hereof. Such lien shall be at all times superior to any claim of homestead by or in any Owner of a Plot. If any Assessment or Charge or other monetary amount or any part thereof is not paid by the Owner of a Plot on the date(s) when due, then the unpaid amount of the Assessment or Charge or other monetary amount shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the Maximum Lawful Rate and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Plot of the non-paying Owner which shall bind such Plot in the hands of the Owner and the Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid Assessment or other monetary obligation

and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such Assessment or other monetary obligation shall remain the Owner's personal obligation and shall not pass to the Owner's successors in title unless expressly assumed by them. However, the lien for unpaid Assessments or other monetary obligation shall be unaffected by any sale, conveyance or transfer of a Plot and shall continue in full force and effect.

- (b) No Owner may waive or otherwise escape liability for any Assessment or other monetary obligation provided herein by abandonment of his/her/its Plot. No diminution or abatement of Assessments or other monetary obligation shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments or other monetary obligation being a separate and independent covenant on the part of each Owner.
- (c) The Association may also give written notification to the holder(s) of any mortgage on the Plot of the non-paying Owner of such Owner's default in paying any Assessment or Charge or other monetary obligation, particularly where the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage, and a written request to receive such notification.
- (d) If any Assessment or Charge or other monetary obligation or part thereof not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent Assessment or Charge or other monetary obligation shall bear interest from and after the date when due at the Maximum Lawful Rate until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid Assessments or Charges and delinquent accounts, and there shall also be added to the amount of any unpaid Assessment or Charge or any delinquent account any and all reasonable attorneys' fees and other costs of collection incurred by the Association.
- (e) In respect to the Plots, the Association may, at its discretion, but subject to all applicable debt collection statutes, prepare and file a lien affidavit in the Records which specifically identifies the unpaid Assessments or Charges or other monetary obligation. Each owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.
- (f) All agreements between any Owner and the Association and/or Developer, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Developer or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be

reduced to the limit of such validity, and if from any such circumstance the Association and/or Developer should ever receive an amount deemed interest by applicable law which shall exceed the Maximum Lawful Rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of Owner to the Association and/or Developer and not to the payment of interest of, if such excessive interest exceeds the unpaid balance of the actual Annual Assessment due and such other indebtedness, the excess shall be refunded to Owner in question. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Developer shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this subparagraph (f) shall control and supersede every other provision of all agreements between any Owner and the Association and/or Developer.

#### **Section 42. Power of Sale in Respect to Plots**

- (a) The lien covering the Plots described within Section 41 above is and shall be a contract Payment and Performance Lien. Each Owner of a Plot, for the purpose of better securing each and all monetary obligations described within these covenants and restrictions and in consideration of the benefits received and to be received by virtue of the ownership of its Plot, by acceptance of its Deed, is deemed to have granted, sold and conveyed unto the Trustee, such Owner's Plot, to have and to hold such Plot, together with the rights, privileges and appurtenances thereto belonging unto the Trustee, and to its substitutes or successors, forever. Each Owner, by its acceptance of the Deed is deemed to have bound himself and/or herself and/or itself, and his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns to warrant and forever defend such Owner's Plot unto the Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all Persons claiming or to claim the same or any part thereof.
- (b) This conveyance by Owners of the Plots is made in trust to secure payment by Owners of all Plots of each and all Assessments and other obligations prescribed by these covenants and restrictions to and for the benefit of the Association, as the beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, the Association may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject, however, to the notice and cure provisions set forth in Section 51.002 of the Texas Property Code), and in the event of default in the payment of such indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or its successor or substitute as hereinafter provided, at the request of the Association (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Plot then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, Texas Property Code, as then amended, and otherwise complying with that statute, the Trustee shall sell the Plot of the non-paying Owner, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Plot then subject to the lien hereof as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the purchaser or purchasers (the

"Purchaser" or "Purchasers" herein), with general warranty binding upon Owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees herein provided for, and then to the Association the full amount of principal, interest, attorney's fees and other charges due and unpaid on such indebtedness secured hereby, rendering the balance of the sales price, if any, to Owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns and/or to any other lien holders (if so required by applicable law); and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to such sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against Owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns.

- (c) It is agreed that in the event foreclosure of the Performance and Payment Lien hereunder is commenced by the Trustee, or its substitute or successor, the Association may at any time before the sale of the Plot of the non-paying Owner direct the Trustee to abandon the sale, and may then institute suit for the collection of such indebtedness and for the foreclosure of the contract Payment and Performance Lien created hereby. It is further agreed that if the Association should institute a suit for the collection thereof and/or for a foreclosure of the contract Payment and Performance Lien created hereby, that the Association may at any time before the entry of a final judgment in such suit dismiss the same, and require the Trustee, its substitute or successor, to sell the Plot of the non-paying Owner in accordance with the provisions of this Section 42. The Association, if it is the highest bidder, shall have the right to purchase at any sale of the Plot in question and to have the amount for which such Plot is sold credited on the debt then owing. The Association in any event is hereby authorized to appoint a substitute Trustee, or a successor Trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor Trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute Trustees successively until the indebtedness hereby secured has been paid in full, or until the Plot of the non-paying Owner is sold hereunder, and each substitute and successor Trustee shall succeed to all of the rights and powers of the original Trustee named herein. In the event any sale is made of the Plot of the non-paying Owner, or any portion thereof, under the terms of this Section 42, owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the Plot so sold to the Purchaser or Purchasers at such sale, and in the event of Owner's failure to do so, Owner shall thereupon from and after the making of such sale be and continue as a tenant at will of such Purchaser or Purchasers, and in the event of Owner's failure to surrender possession of the Plot in question upon demand, the Purchaser or Purchasers, his or her or its or their heirs, executors, administrators, devisees, personal representatives, successors and assigns, shall be entitled to institute and maintain an action for forcible detainer of the Plot of the non-paying Owner in the Justice of the Peace Court in the Justice Precinct in which such Plot, or any part thereof, is situated. The foreclosure of the continuing contract Payment and Performance Lien on any one or more occasions shall not remove, replace, impair or extinguish the same continuing Payment and Performance Lien from securing all obligations arising from and after the date of foreclosure.



**Section 43. Subordination of the Lien** The lien on the Plots securing the payment of the Assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Plot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

- (a) bona-fide first mortgage or deed of trust liens for purchase money and/or improvement purposes placed against a Plot prior to the recording of a lien by the Association, including without limitation Institutional Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;
- (b) liens for taxes or other public charges as are by applicable law made superior to the Association's lien; and
- (c) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien; provided however, such subordination shall apply only to (i) the Assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Plot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien; (ii) the permitted Payment and Performance Lien on the Plot alone and not on or to any easement appurtenant for use and enjoyment of any common properties. Such sale shall not relieve such Plot from liability for the amount of any Assessment thereafter becoming due nor from the lien of any such subsequent Assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay Assessments and/or to hinder the Association in performing its functions hereunder.

**Section 44. Constitution of the Board of Directors**

- (a) The affairs of the Association shall be managed by a Board consisting of three (3) individuals, each of whom shall be elected by a vote of Members.
- (b) The Directors need not be Members of the Association. Of the initial Board, one (1) Director shall be elected for a one (1) year term, one (1) Director shall be elected for a two (2) year term, and the remaining one (1) Director shall be elected for a three (3) year term. Other than the constitution of the initial Board, Directors shall be elected for two (2) year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise of a Director, may be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Directors. Any Director elected to fill a vacancy shall serve in such capacity until the expiration of the term of the Director whose position he or she was elected to fill.

**Section 45. Powers and Duties**

- (a) The affairs of the Association shall be conducted by its Board. The Board, for the benefit of the Association and Members, may provide and may pay for, out of the Assessment fund(s) provided for in Section 36 above, costs and expenses incurred in connection with the affairs of the Association. If for any reason during the Development Period, the Board is not deemed authorized to act for and on behalf of the Association and Members, then Developer may exercise the powers and authority granted under this Section 45, to

act for and on behalf of the Association and Members, and the Association shall reimburse Developer for any and all reasonable expenses incurred in so acting.

- (b) The Board may provide and may pay for, out of the Assessment fund(s) provided for in Section 36 above, one or more of the following:
- (i) Care, preservation and maintenance of any common properties and the furnishing and upkeep of any desired personal property for use in or on any common properties;
  - (ii) Supplementing (to the extent, if any, deemed necessary, appropriate and affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the Plots traditionally provided by local governmental agencies;
  - (iii) Taxes, insurance and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to any common properties;
  - (iv) The services of any Person (including Developer and any affiliates of Developer) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association, including the hiring and employment of one or more managers, secretarial, clerical, staff and support employees;
  - (v) Such fidelity bonds as the Board may determine to be advisable;
  - (vi) Legal and accounting services (including audit fees) and all costs and expenses reasonably incurred by the Board; and
  - (vii) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or Assessments which the Board is required to obtain or pay for pursuant to the terms of these covenants and restrictions or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of these covenants and restrictions.
- (c) The Board shall have the following additional rights, powers and duties:
- (i) To execute all declarations of ownership for tax assessment purposes with regard to any common properties owned by the Association;
  - (ii) To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on individual Plots and utility companies with respect to (A) any taxes on any common properties, (B) monthly escrow and impound payments by a mortgagee regarding the assessment, collection and disbursement process, (C) utility installation, consumption and service matters, and D) the escrow or impounding of monies sufficient to timely pay the Annual Assessment applicable to any Plot;

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- (iii) To borrow funds (including, without limitation, the borrowing of funds from Developer and/or its affiliates) to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Association;
  - (iv) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
  - (v) To protect or defend any common properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;
  - (vi) To make reasonable rules and regulations for the operation of any common properties and to amend them from time to time;
  - (vii) To prepare an annual operating budget and to make available for review by each Owner, upon the written request of an Owner desiring such review, at the Association offices within ninety (90) days after the end of each Fiscal Year an financial report;
  - (viii) To adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property; if proceeds are insufficient to repair damaged or replace lost property; and to assess Owners in proportionate amounts to cover the deficiency;
  - (ix) To provide adequate reserves for maintenance, repairs, operations, taxes and assessments for any common properties;
  - (x) To engage the services of attorneys and accountants (including an annual audit) in connection the business of the Association; and
  - (xi) To enforce the provisions of these covenants and restrictions and any rules made hereunder or by the Board and to enjoin and seek damages from any Owner for violation of such provisions or rules.
- (d) The Board is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fines" system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted Individual Assessment secured by the continuing contract Payment and Performance Lien herein established.
- (e) The Association may (i) borrow monies from Developer; (ii) lease equipment from Developer; (iii) contract with Developer concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are (A) generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties, and (B) as to professional management contracts, terminable by the Association at any time for any reason whatsoever and without penalty upon furnishing at least ninety (90) days advance notice thereof to Developer. The Board shall not be required to solicit bids from unrelated third parties before entering into any contract with Developer and the reasonable judgment and

resolution of the Board to enter into any such contract with Developer (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

**Section 46. Duties of the Board of Directors with Respect to Assessments**

- (a) In the event that the Board determines for any Fiscal Year to revise the amount or rate of the Annual Assessment established for the then current or prior Fiscal Year or to establish a Special Assessment or Special Group Assessment, the Board shall fix the amount of the Assessment in question against each Plot and the applicable due date(s) for each Assessment, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Plots and Assessments applicable thereto which shall be kept in the office of the Association.
- (b) The Board shall, upon reasonable demand, furnish to any Owner originally liable for any Assessment, a certificate in writing signed by an officer of the Association or the Managing Agent, setting forth whether the Assessment in question has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

**Section 47. Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any owner (including, without limitation, Developer) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association. Any contract entered into on behalf of the Association shall have a term not to exceed three (3) years and be terminable on thirty (30) days prior written notice.

**Section 48. Liability Limitations** Neither any Owner nor a Director nor the officers and managers of the Association, including the Managing Agent, shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another Owner, whether such other Owner was acting on behalf of the Association or otherwise. Neither Developer, the Association, its Directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any Plot or the improvements located thereon or portion thereof or for failure to repair or maintain the same. Developer, the Association or any other Person liable to make such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Plot or any improvement located thereon or portion thereof.

**Section 49. Reserve Funds.** The Board may, at its option, establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.

**Section 50. Registered Sex Offenders** No registered sex offender (as defined in Chapter 62 of the Texas Code of Criminal Procedure and those certain provisions in the criminal codes applicable to sex offenders for each state in the United States of America) shall own or reside on any part of any Plot. Developer and/or the Association may from time to time, at its own discretion, search the following

online databases (as long as such databases continue to be in existence under their respective URL's listed below) to determine if any Owner or any person residing on any Plot owned by Owner, if such information has been furnished to Developer and/or the Association by such Owner, is a registered sex offender in the State of Texas, or any other state in the United States of America, and found to be in violation of this restriction:

- <https://records.txdps.state.tx.us/soSearch/soSearch.cfm>
- [www.instantbackgroundchecks.us](http://www.instantbackgroundchecks.us)

The failure to comply with this restriction may, at the Association's option, subject the Owner to an individual assessment of \$1000.00 per day for each day that such Owner fails to comply with this restriction. The non-payment of such assessment can result in a lien against said Plot, which lien may be foreclosed on in order to collect such fine in accordance with the provisions of covenants and restrictions.

To help prevent future violations of this restriction, every Owner of a Plot shall also search the online databases listed above prior to selling each Plot to a prospective purchaser. Developer and/or the Association shall not be obligated to provide any Owner or prospective purchaser (including any potential lender of prospective purchaser) an Estoppel Certificate or other letter evidencing Owner's current "good standing" under these covenants and restrictions until such Owner provides Developer and/or the Association with a notarized affidavit evidencing that Owner has conducted the required searches under this Section 50.

**DEVELOPER ASSUMES NO LIABILITY FOR THE USE OR INTERPRETATION OF INFORMATION IN THESE COVENANTS AND RESTRICTIONS RELATING TO THE RESTRICTION PROVIDED UNDER THIS SECTION 50. THESE COVENANTS AND RESTRICTIONS AND ITS CONTENTS (INCLUDING, BUT NOT LIMITED TO THE RESTRICTION PROVIDED UNDER THIS SECTION 50) ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS, AND EVERY OWNER OF EACH AND EVERY PLOT, AGREES THAT HE/SHE/IT WILL NOT BRING ANY ACTION OR SUIT AGAINST DEVELOPER, THE ASSOCIATION, THE ACC, THE BOARD, OR THE OFFICERS, MANAGERS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM, TO RECOVER ANY SUCH DAMAGES BASED ON ANY PROVISION OF THESE COVENANTS AND RESTRICTIONS (INCLUDING, BUT NOT LIMITED TO, THIS SECTION 50) AND EACH AND EVERY OWNER HEREBY RELEASES, REMISES AND QUITCLAIMS ALL CLAIMS, DEMANDS AND CAUSES OF ACTION (INCLUDING, BUT NOT LIMITED TO, ANY POSSIBLE CLAIMS UNDER SECTIONS 209.009 AND 301.004 OF THE TEXAS PROPERTY CODE) ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.**

**Section 51. Rights of Certain Mortgagees and Mortgage Insurers** The provisions within these Sections 51 – 61 are for the primary benefit of:

- (a) The owners and holders of Institutional Mortgages which are required to satisfy the applicable requirements of FHA, VA, FNMA, FHLMC and other similar governmental, quasi-governmental and nationally recognized public and/or private sources of end

financing (such mortgages sometimes collectively referred to herein as "Eligible Mortgagees" and their mortgages referred to as "Eligible Mortgages"); and

- (b) The insurers, guarantors, participants and subsidizers of the Eligible Mortgages, sometimes collectively referred to herein as the "Eligible Insurers".

To the extent applicable, necessary or proper, the provisions of Sections 51 – 61 apply not only to these covenants and restrictions but also to the Articles and By-Laws of the Association. Sections 51 – 61 are supplemental to, and not in substitution of, any other provisions of these covenants and restrictions, the Articles and By-Laws, but in the event of ambiguity or conflict, Sections 51 – 61 shall control.

**Section 52. Notices of Action** An Eligible Mortgagee or Eligible Insurer who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and a reasonable description of the Dwelling Unit covered by the Eligible Mortgage) will be entitled to receive timely written notice of:

- (a) any proposed termination of the Association;
- (b) any condemnation loss or any casualty loss which affects a material portion of the Plots or which materially affects any Dwelling Unit on which there is an Eligible Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;
- (c) any delinquency in the payment of Assessments or charges owed by an Owner of a Dwelling Unit subject to the Eligible Mortgage of such Eligible Mortgagee or Eligible Insurer, where such delinquency has continued for a period of sixty (60) days;
- (d) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of the Eligible Mortgagees as required hereinbelow.

**Section 53. Joinder to Documents**

- (a) In addition to the provisions set forth within these Sections 51 – 61, Eligible Mortgagees who have requested the Association to notify them concerning any proposed action that requires the consent of a specified percentage of Eligible Mortgagees also have the right to join in the decision making about certain amendments to these covenants and restrictions. In such regard amendments of a "material nature", as hereinafter defined, must be approved by (i) at least sixty-seven percent (67%) of Owners, and (ii) Eligible Mortgagees representing at least fifty-one percent (51%) of the Dwelling Units that are subject to Eligible Mortgages. A substantive change to any of the following would be considered material.
  - (i) voting rights;
  - (ii) assessments, assessment liens, or subordination of assessment liens;
  - (iii) reserves for maintenance, repair and replacement of any common Properties;
  - (iv) responsibilities for maintenance and repairs;

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- (v) boundaries of any Plot covered by an Eligible Mortgage;
  - (vi) convertibility of Dwelling Units into common properties or vice versa;
  - (vii) expansion to the Plots;
  - (viii) insurance or fidelity bonds;
  - (ix) leasing of Dwelling Units;
  - (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Dwelling Unit;
  - (xi) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgagee; or
  - (xii) modification of any provisions that expressly benefit Eligible Mortgagees or Eligible Insurers.

Additions or amendments such as the correction of a technical error or the clarification of a statement shall not be considered or construed as being of a material nature.

- (b) If and when Owners are considering termination of the coverage of these covenants and restrictions over the Plots for reasons other than substantial destruction or condemnation, the Eligible Mortgagees representing at least sixty-seven percent (67%) of the mortgaged Dwelling Units in the Plots must approve such termination.

#### **Section 54. Special FHLMC Provision**

- (a) So long as required by FHLMC, the following provisions apply in addition to and not in lieu of the other provisions of these Sections 51 – 61. Unless two-thirds (2/3) of the Eligible Mortgagees or Owners of Plots give their consent, and subject to the condition that any proposed action of the Association purportedly covered by the following requirements must be material and adverse, the Association shall not:
  - (i) except as expressly permitted hereby, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any common properties which the Association owns, directly or indirectly (exclusive of the granting of easements for public utilities or for other public purposes consistent with the intended use of the Plots);
  - (ii) change the method of determining the obligations in respect to Assessments, Charges or other monetary obligations which may be levied against an Owner;
  - (iii) by act or omission charge, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance as contemplated by these covenants and restrictions and maintenance of Dwelling Units and of any common properties;

- (iv) assign any future income of the Association, including its right to receive Assessments;
- (v) fail to maintain fire and extended coverage insurance on assets owned by the Association, as required by these covenants and restrictions; or
- (vi) use hazard insurance proceeds for any losses to any common properties for any purpose other than the repair, replacement or reconstruction of such properties.
- (b) The provisions of this Section 54 shall not be construed to reduce the percentage vote that must be obtained from Eligible Mortgagees when a larger percentage vote is otherwise required for any of the actions described in this Section 54.
- (c) Eligible Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the common properties (if any) and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for any common properties owned by the Association, and Eligible Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.
- (d) No provision of these covenants and restrictions or the Bylaws shall give or shall be construed as giving any Owner or other party priority over any right of the first mortgage of any Plot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of a common property (if any).
- (e) Upon request, each Owner shall be obligated to furnish the Association the name and address of the holder of any Mortgage encumbering such Owner's Plot.
- (f) Should FNMA or FHLMC subsequently delete any of their respective requirements which necessitate the provisions of these Sections 51 – 61 or make any such requirements less stringent, the Board, without the approval of Owners, may cause an amendment to these Sections 51 – 61 to be recorded to reflect such change or changes.

**Section 55. Approval of Amendments** The failure of an Eligible Mortgagee or Eligible Insurer to respond within thirty (30) days to any written request of the Association or the Board for approval of an addition or amendment shall constitute an implied written approval of the addition or amendment.

**Section 56. Inspection of Books** The Association shall have current copies of the Declaration, Articles, Bylaws, rules and regulations, books, records and financial statements available for inspection by Owners and by Eligible Mortgagees and Eligible Insurers during normal business hours or under other reasonable circumstances.

**Section 57. Financial Statements** The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request with a copy of an annual financial statement within ninety (90) days following the end of each Fiscal Year. Each such Eligible Mortgagee and Eligible Insurer shall have the right to have such statements audited by an independent certified public accountant at its sole cost and expense, which audited report shall be made available to the Association within thirty (30) days following completion. The Association shall not be obligated to cause its financial statements to be audited by more than one (1) Eligible Mortgagee or Eligible Insurer more than once in any Fiscal Year.



**Section 58. Enforcement** The provisions of these Sections 51 – 61 are and shall be for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means, at law, or in equity.

**Section 59. Attendance at Meetings** Any authorized representative(s) of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting of the Association which an Owner may attend.

**Section 60. Annexation** With respect to any annexation of additional lands within the scheme of these covenants and restrictions, the following additional provisions shall apply:

- (a) Prescribing Assessments and/or granting voting rights to the annexed properties shall be generally in accordance with these covenants and restrictions;
- (b) All improvements intended for future phases will be substantially completed prior to annexation and will be consistent with the initial improvements in terms of quality of construction; and
- (c) The annexation document(s) that will be recorded will likely be a declaration similar to these covenants and restrictions.

**Section 61. Working Capital Fund** To the extent required by any promulgated regulations of any Eligible Mortgagees and/or Eligible Insurers, and/or, after the expiration of the Development Period, if determined by the Board to be reasonably necessary to the operation of the Association, the Association shall establish a working capital fund at least equal to two month's, or one-sixth (1/6), of the Annual Assessment for each Plot. Any amounts paid into this fund should not be considered as advance payments of regular assessments. Each Owner's share of the working capital fund should be collected at the time the sale of the Plot is closed or at the time such fund is established and then should be transferred to the Association for deposit to a segregated fund.

**Section 62. Power of Attorney.**

- (a) Except with respect to any matter set forth herein which requires the consent and/or approval of a certain number or percentage of Owners and such consent and/or approval is not obtained (for which the power of attorney granted herein shall not apply), and only during the term of the Development Period, each and every Owner hereby makes, constitutes and appoints Developer as his/her/its true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her/its and in his/her/its name, place and stead and for his/her/its use and benefit, to do the following:
  - (i) to exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Plots;
  - (ii) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Developer shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

- (iii) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Plots, or any part thereof, with any easements and rights-of-way to be therein contained as Developer shall deem necessary, proper and expedient under the conditions as may then be existing.
- (b) The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Records and shall remain in full force and effect until the expiration of the Development Period, at which time such rights, powers and authority shall terminate.
- (c) Notwithstanding any other provision set forth herein, the provisions of paragraph (a) above cannot be amended or modified in any respect without the consent of Owners owning at least fifty-one percent (51%) of the Plots subject to this Declaration.

**Section 63. Amendments.** The covenants and restrictions set forth herein are expressly subject to change, modification and/or deletion by means of amendment, at any time and from time to time, on the following basis:

- (a) During the Development Period (i) in response to any governmental or quasi-governmental guideline requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance, or (ii) in respect to any amendments desired by Developer, Developer shall have the complete and unfettered right and privilege to amend, change, revise, modify or delete portions of these covenants and restrictions, and each and every Owner specifically and affirmatively authorizes and empowers Developer, utilizing the attorney-in-fact status set forth in Section 62 above, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions as Developer (in its sole and absolute discretion) shall deem reasonable and appropriate.
- (b) From and after conclusion of the Development Period, these covenants and restrictions, other than amendments of a "material nature", may be amended or changed upon the express written consent of the Board, without the approval of any Owner.
- (c) Amendments of a "material nature" to the Declaration must be agreed to and approved, from and after the expiration of the Development Period, by Owners owning at least fifty-one percent (51%) of the Plots.
- (d) A substantive change to any provision dealing with or governing any of the following items will be considered an amendment of a "material nature":
  - (i) voting rights of any Member;
  - (ii) increases in Annual Assessments that raise the previous Annual Assessment amount by more than ten percent (10%), liens securing the payment of Assessments, or subordination of liens securing the payment of Assessments, or materially and adversely changing the method of determining the obligations in respect to Assessments, Charges or other monetary obligations which may be levied against an Owner;

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- (iii) material reduction of reserves for maintenance, repair, and replacement of any common properties;
  - (iv) responsibility for maintenance and repairs;
  - (v) except as expressly permitted herein, convertibility of any Plot into common properties or vice versa;
  - (vi) the addition, annexation, or withdrawal of the property to or from the Plots, except as expressly permitted by the provisions of these covenants and restrictions hereof;
  - (vii) hazard or fidelity insurance requirements;
  - (viii) imposition of any restrictions on an Owner's right to sell or transfer his/her/its Plot;
  - (ix) restoration or repair (after a hazard damage or partial condemnation) of common properties in a manner other than that specified herein; or
  - (x) any action to terminate the legal status of the Plots after substantial destruction or condemnation occurs or any action which materially and adversely alters the use of hazard insurance proceeds in respect to any losses to any common properties for any purpose other than the repair, replacement or reconstruction of any common properties.
- (e) A substantive change to any provision dealing with or governing any of the following items will be considered as "material", subject to the condition that any proposed action of the Association purportedly covered by the following must be material and adverse:
- (i) except as expressly permitted hereby, any act or omission to act seeking to abandon, partition, subdivide, encumber, sell or transfer an common properties which the Association owns, directly or indirectly (exclusive of the granting of easements for public utilities or for other public purposes consistent with the intended use of the Plots);
  - (ii) any act or omission to act changing, waiving or abandoning any scheme of regulations or enforcement thereof pertaining to the design or the exterior appearance as contemplated by these covenants and restrictions and maintenance of any common properties;
  - (iii) any act assigning any future income of the Association, including its right to receive Assessments; or
  - (iv) failing to maintain fire and extended coverage insurance on assets owned by the Association, as required by these covenants and restrictions.
- (f) Additions or amendments to these covenants and restrictions such as the correction of a technical error or the clarification of a statement shall not be considered or construed as

being "material," which amendment or amendments may be made by Developer or the Board. Any and all amendments shall be duly recorded in the Records.

**Section 64. Severability.** Each section, part, term or provision of these covenants and restrictions shall be considered severable, and if, for any reason, any section, part, term or provision herein or therein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other affect on other sections, parts, terms or provisions of these covenants and restrictions, as applicable, as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto and thereto, and said invalid sections, parts, terms or provisions shall not be deemed to be a part of these covenants and restrictions, as applicable.

## **ARTICLE V.**

### **Architectural Control Committee**

There shall be maintained an Architectural Control Committee, hereinafter referred to as the Committee, which shall be governed by the following rules and regulations.

**Section 1. Committee Members.** The Committee shall consist of five members. Each member shall serve for life unless he resigns or is removed as hereinafter provided. The initial members of the Committee shall be Michael Biggerstaff, Cole McCrory, Charlie Halfmann, Gene Gully, and Jim Mundell. At the death, resignation or removal of any member, then a majority of the Owners of the Tracts shall select his successor. The designation of new members shall be in writing and shall be duly recorded in the Official Records of Tom Green County, Texas.

**Section 2. Committeemen.** Any member may resign by filing with the Committee a ten day written notice thereof. Any member may be removed for good cause by a majority vote of the Committee. If a member delivers to the Committee a written request for a hearing within ten days after receiving written notice of his removal, he shall be given a hearing before the Committee to reconsider whether good cause exists. If the Committee determines after hearing that no good cause exists, then the member shall be reinstated.

**Section 3. Failure to Act.** In the event a Committee member fails to perform his responsibilities as generally provided herein, then the other Committee members may replace the member of the Committee with a new member selected and approved by remaining members who shall likewise serve for life subject to the rules and procedures herein stated. The designation of such new members shall be in writing, duly recorded, and same shall be conclusive as to the membership of the Committee.

**Section 4. Responsibilities.** It shall be the responsibility of the Committee to preserve the value of the Properties and to encourage its prudent and proper development. It shall review the construction plans and specifications and proposed location of improvements as required in Article IV, Section 15, above and shall make prompt rulings thereon. All rulings or recommendations shall be in writing with a copy to be delivered to the Owner or his agent and a copy to be retained for the permanent records of the Architectural Control Committee.

**Section 5. Timeliness.** In the event the Committee should fail to issue its written ruling in response to the Owner's request therefore within thirty (30) days from receipt of each request and properly supported with adequate plans and specifications and location data, then it shall be presumed that the Architectural Control Committee has approved such request. All documents must be delivered to Architectural Control Committee in person or by certified mail.

**Section 6. Failure of Owner to Submit Request.** In the event an Owner fails to submit a request properly accompanied with construction plans and specifications and location data but proceeds with the construction thereof, or in the event an Owner proceeds with construction following the disapproval of the Committee, or proceeds with construction that is inconsistent with the plans and specifications or locations that have been approved by the Committee, the Committee shall have the right, at its election, to secure injunctive relief against such construction, including judicial relief requiring the removal of such construction, by bringing suit thereon prior to the expiration of sixty days following completion of the construction thereof. Architectural Control Committee reserves the right to recover any/all incurred costs relative to pursuit of violating party.

**Section 7. Policies and Guidelines.** The Committee shall, by a majority vote, determine such policies and guidelines as it shall deem to be feasible in assisting Owners in planning the construction of their improvements. Nothing herein, however, shall be construed as an estoppel of the Committee in adopting new policies and guidelines when prior rulings or policies and guidelines have, in the opinion of the Committee proven to be detrimental to the purposes and responsibilities of the Committee.

**Section 8. Delegation.** The Committee may, at its discretion and from time-to-time, delegate its duties of review and approval and rulings thereon to one or more of its members. Any rulings by either the Committee or any delegate thereof shall be final and conclusive unless, upon receipt of written request for review from the Owner within ten days from a ruling rendered only by any delegate, the Committee should determine to grant a review of the ruling. If such request is granted, the Committee shall set a time and place for a full Committee review, the decision of which by a majority of its members shall then be final.

**Section 9. Fees and Compensation.** Members of the Committee shall serve without remuneration for their personal services except that they shall be reimbursed for all reasonable expenses, including automobile mileage, incurred by them in the performance of their duties and further except that the Committee shall remunerate any delegate for his reviewing and issuing a ruling on the plans and specifications and locations data, including an inspection of the site of the proposed improvement. The Committee may, at its discretion, charge an Owner a fee not to exceed \$50.00 for each separate item to be constructed to defray its expenses. Any additional financial needs of the Committee shall be funded by the Developer upon the presentation of requests by the Committee and approval thereof by the Developer.

**Section 10. Enforcement.** It shall be the primary responsibility, but not the duty, of the Committee to enforce strict compliance by Owners with the Covenants and Restrictions provided in Article IV above. As an exception to the funding provision of Section 9 above, the Developer shall fund all reasonable and necessary legal expense of the Architectural Control Committee in pursuing such enforcement. Said Covenants and Restrictions may be enforced by proceedings at law or in equity, including injunctive relief to prevent construction, to remove improvements, or otherwise to compel compliance, or by any other legal remedy. Owner waives notice of non-compliance. If, however, the Committee should notify Owner in writing of non-compliance of any Covenants and Restrictions and Owner fails to cure same within ten days from delivery thereof, the Committee, or its agent, shall be authorized to enter upon Owner's tract to correct such non-compliance at the expense and cost of Owner which shall become due and payable on demand, shall bear interest at the rate of eighteen percent (18%) per annum, and shall become liable for the Committee's reasonable attorney's fees and court costs incurred in enforcement which shall likewise become payable upon demand, bear interest at the rate of eighteen percent (18%) per annum, and become a lien against the Tract. Failure of the Committee to enforce any covenant or restriction shall not be deemed a waiver of any prior or subsequent violation of any such covenant or restriction. Violation of any covenant or restriction shall not, however, bring about a forfeiture of title to any such Tract under violation. Enforcement of the strict compliance with the

Covenants and Restrictions may also be pursued by the Developer at the cost and expense of the Developer or by any Owner also at the cost and expense of the Developer; provided, however, that the Owner is successful in obtaining judicial relief thereon.

## **ARTICLE VI**

### **Annual Charge**

For the purpose of providing funds for the maintenance of common areas and common elements, each Tract shall be subject to an annual charge, (hereinafter referred to as the "Annual Charge"), as follows:

**Section 1.** The Annual Charge shall be \$250.00 commencing on June 1, 2006, and shall be paid to Developer. The Developer may increase the amount of the Annual Charge, but the Annual Charge shall in no event be increased more than 10% per year.

**Section 2.** The Annual Charge shall be billed each year in June. Any Owner failing to pay within thirty (30) days of billing date, the same shall be deemed delinquent and shall bear interest at the maximum legal annual rate until paid.

**Section 3.** The Annual Charge hereby imposed shall be and remain a charge against and a continued lien against any Tract, and shall run with, bind and burden such land. Provided, however, the lien of any mortgage, mechanics lien, contract, deed of trust or vendor's lien imposed as a bona fide security for purchase of money, construction loan or improvement loan on the Tract in question shall be considered a prior and superior lien on the Tract and shall not be invalidated by the foreclosure of the lien imposed by the Annual Charge.

**Section 4.** If the Owner of any Tract shall fail to pay the annual Charge, when due, the Developer shall have the right to enforce the lien which is hereby imposed, under the law of the State of Texas, including a foreclosure sale and deficiency decree, subject to the same procedures as in the case of deeds of trust.

**Section 5.** Such funds received by Developer shall be used by it for the payment of any expense in maintaining the Common Properties contained in the Plat.

## **ARTICLE VII**

### **General Provisions**

**Section 1. Notices.** All Notices required herein shall be deemed effective if delivered personally or if sent by United States certified mail with adequate postage paid addressed to the Sendee at his last known address.

**Section 2. Severability.** Invalidation of any one of the provisions, covenants, restrictions or conditions of this Declaration by judgment of a court of competent jurisdiction shall in no wise affect any other provisions, covenant, restriction or condition which shall remain in full force and effect.

DATED this 31<sup>st</sup> day of July, 2006.

LIPAN DEVELOPMENT COMPANY, L.L.C.

By: Michael G. Biggerstaff

Michael G. Biggerstaff, President

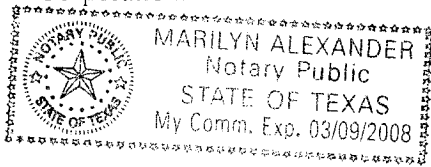
By: Cole Christian McCrory

Cole Christian McCrory, Secretary/Treasurer

THE STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the 1<sup>st</sup> day of ~~July~~ <sup>AUGUST</sup>, 2006, by MICHAEL G. BIGGERSTAFF, President of LIPAN DEVELOPMENT COMPANY, L.L.C., on behalf of said Corporation.

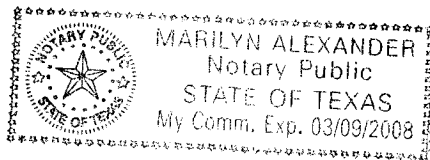


Marilyn Alexander  
Notary Public - State of Texas

THE STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the 1<sup>st</sup> day of ~~July~~ <sup>AUGUST</sup>, 2006, by COLE CHRISTIAN MCCRORY, Secretary/Treasurer of LIPAN DEVELOPMENT COMPANY, L.L.C., on behalf of said Corporation.



Marilyn Alexander  
Notary Public - State of Texas

F:\George\clients\Lipan Development\Restrictions - revisions for Iron Horse 1.doc

AFTER RECORDING, PLEASE RETURN TO:  
GOSSETT, HARRISON, REESE  
MILICAN & STIPANOVIC, P.C. ✓  
ATTORNEYS AT LAW  
P.O. Drawer 911  
San Angelo, TX 76902-0911

ENIV

"EXHIBIT A"

## Iron Horse I

118.64 acres of land in Survey No. 69, Abstract No. 1969, S.P.R.R.Co., District 11, being all of that 59.32 acre tract described in deed dated May 7, 1987, from William J. Schwertner, Jr. and wife, Joan M. Schwertner to Gene David Gully and wife, Wanda Sue Gully recorded in Tom Green County Clerk, Official Public Record, Instrument No. 272347, Volume 23, Page 271, Tom Green County, Texas, and all of that 59.32 acre tract described in deed dated April 7, 2006, from Larry B. Book and wife, Nancy L. Book to Gene Gully and wife Wanda Gully recorded in Tom Green County Clerk, Official Public Record, Instrument No. 60885, Tom Green County, Texas, said 118.64 acres being more particularly described by metes and bounds as follows;

Beginning at 1" iron pipe having Texas State Plane Central Zone Grid Coordinates of N 10466483.60, E 2308220.81 found in a north-south paved public road (Hawk Avenue) for the Southeast corner of a 59.32 acre tract referred to as Exhibit G, Tract 7 recorded in Volume 686, Page 627 Deed Records, Tom Green County, Texas, also being in the west line Survey No. 68 said District 11 for the Northeast corner this tract from which a 1" iron pipe found for the Northeast corner said Survey No. 69 bears N 01° 39' 46" E 2885.90 feet;

Thence S 01° 39' 46" W with east line said Survey No. 69, the west line said Survey No. 68 and said north-south paved public road at 944.63 feet pass a point from which a 1" iron pipe found for the Southeast corner said 59.32 acre Schwertner to Gully tract, the Northeast corner said 59.32 acre Book to Gully tract, bears N 88° 41' 01" W 0.10 feet continuing in all 1832.43 feet to 1" iron pipe found having Texas State Plane Central Zone Grid Coordinates of N 10464652.28, E 2308167.65, the Northeast corner remainder 58.86 acre tract recorded in Tom Green County Clerk, Official Public Record, Instrument No. 500151, Volume 804, Page 12, Tom Green County, Texas, for the Southeast this tract;

Thence N 88° 41' 01" W with north line said remainder 58.86 acre tract at 20.54 feet a 1" iron pipe found continuing in all 2909.61 feet to a ½" iron rod with cap set, the Northwest corner said remainder 58.86 acre tract, also being in the east line of a 148.214 acre tract recorded in Tom Green County Clerk, Official Public Record, Instrument No. 487484, Volume 760, Page 729, Tom Green County, Texas, for the Southwest corner this tract;

Thence N 01° 30' 31" E with said east line 148.214 acre tract at 887.78 feet pass a point the Northwest corner said 59.32 acre Book to Gully tract, the Southwest corner said 59.32 acre Schwertner to Gully tract continuing in all 1395.50 feet to a cedar post in concrete found, the Northeast corner said 148.214 acre tract, also being in the south line of a 55.4 acre tract recorded in Tom Green County Clerk, Official Public Record, Instrument No. 606952, Tom Green County, Texas, from which a ½" iron rod found for a reentrant corner said 55.4 acre tract bears N 88° 41' 59" W 1904.81 feet, for the west Northwest corner this tract;



Thence **S 88° 41' 59" E** with said south line 55.4 acre tract **385.18 feet** to a 1" iron pipe found, the Southeast corner said 55.4 acre tract, a reentrant corner this tract;

Thence **N 01° 19' 16" E** with east line said 55.4 acre tract **436.79 feet** to ½" iron rod with cap set, the Southwest corner said 59.32 acre tract (Exhibit G, Tract 7), from which a 1" iron pipe found for the Northeast corner said 55.4 acre tract bears **N 01° 19' 16" E 429.04 feet**, for the north Northwest corner this tract;

Thence **S 88° 41' 01" E** with south line said 59.32 acre tract (Exhibit G, Tract 7) **2530.79 feet** to the point of beginning and containing 118.64 acres of land.

## Iron Horse I

### Replat Block 1, Block 2 and Part of Avery Lane

15.36 acres of land in Survey No. 69, Abstract No. 1969, S.P.R.R.Co., District 11, being all of Block 1, Block 2 and that part of Avery Lane adjacent to said Blocks, Iron Horse I filed for record, Plat Cabinet G, Slide 98, Tom Green County Clerk, Tom Green County, Texas, also being part of that 59.32 acre tract described in deed dated May 7, 1987, from William J. Schwertner, Jr. and wife, Joan M. Schwertner to Gene David Gully and wife, Wanda Sue Gully recorded in Tom Green County Clerk, Official Public Record, Instrument No. 272347, Volume 23, Page 271, Tom Green County, Texas, said 15.36 acres being more particularly described by metes and bounds as follows;

Commencing at 1" iron pipe having Texas State Plane Central Zone Grid Coordinates of N 10466483.60, E 2308220.81, found in a north-south paved public road (Hawk Avenue) the Northeast corner said Iron Horse I, the Northeast corner said 59.32 acre tract and the Southeast corner of a 59.32 acre tract referred to as Exhibit G, Tract 7 recorded in Volume 686, Page 627 Deed Records, Tom Green County, Texas, also being in the east line said Survey No. 69 S.P.R.R. Co. District 11 and the west line Survey No. 68 S.P.R.R. Co. District 11, from which a 1" iron pipe found for the Northeast corner said Survey No. 69 S.P.R.R. Co. bears N 01° 39' 46" E 2885.90 feet;

Thence N 88° 41' 01" W with north line said 59.32 acre tract (Gully) and the south line said 59.32 acre tract (Exhibit G, Tract 7), 145.00 feet to a ½" iron rod with cap found for the Northeast corner this tract, the Northeast corner said Block 1, Iron Horse I and Lot 1, Block 1A Iron Horse I, Replat Block 1, Block 2 and part of Avery Lane, the **Point of Beginning**;

Thence S 01° 18' 59" W with east line said Block 1 and said Lot 1, Block 1A **280.40 feet** to a ½" iron rod with cap found for the Southeast corner this tract, said Block 1 and said Lot 1, Block 1A in the north Right of Way McCormick Drive,

Thence N 88° 41' 01" W with south line said Block 1, crossing Avery Lane, continuing with south line said Block 2, said Block 1A and said north Right of Way McCormick Drive **2385.81 feet** to a ½" iron rod with cap found for the Southwest corner this tract, said Block 2 and Lot 15 said Block 1A, being in the north northwest line said 59.32 acre tract (Gully) and said Iron Horse I, also being in the east line of a 55.4 acre tract recorded in Tom Green County Clerk, Official Public Records, Instrument No. 606952, Tom Green County, Texas;

Thence N 01° 19' 16" E with west line said Block 2, said Lot 15, Block 1A, said north northwest line 59.32 acre tract (Gully), said Iron Horse I and said east line 55.4 acre tract **280.40 feet** to a ½" iron rod with cap found for the Northwest corner this tract, said Block 2, said Lot 15, Block 1A, said north Northwest corner 59.32 acre tract (Gully) and said Iron Horse I, the Southwest corner said 59.32 acre tract (Exhibit G, Tract 7), from which

a 1" iron pipe found for the Northeast corner said 55.4 acre tract bears N 01° 19' 16" E 429.04 feet;

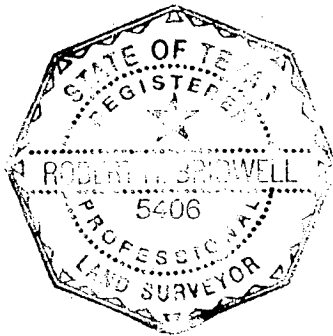
Thence S 88° 41' 01" E with north line said Block 2, said Block 1A, said 59.32 acre tract (Gully), said Iron Horse I and the south line said 59.32 acre tract (Exhibit G, Tract 7), crossing Avery Lane, continuing with said north line **2385.79 feet** to the point of beginning and containing 15.36 acres of land.

Bearings and Coordinates are Texas Coordinate System Central Zone NAD 83  
Distances are Surface values to convert to Grid divide distance by CSF 1.000181972

Surveyed on the ground July 24, 2006

*Robert H. Bridwell* 7/24/06

Robert H. Bridwell R.P.L.S. 5406



**CERTIFIED FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Elizabeth McGill*

Elizabeth McGill, County Clerk

Tom Green County TEXAS

August 01, 2006 02:51:56 PM

FEE: \$152.00

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