

# **ROYAL OAKS**

## **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

<b>ARTICLE I DEFINITIONS</b>	2
Architectural Review Committee.	2
Articles.	2
Assessment.	2
Association.	2
Board.	2
Bylaws.	2
Collection Agent.	2
Common Properties.	3
Contractor.	3
Declarant.	3
Declarant Control.	3
Master Declaration.	3
Dedictory Instrument.	3
Design Guidelines.	4
Development.	4
Development Period.	4
Greenbelt or Amenity Area.	4
Improvement.	4
Lot.	4
Maintenance Charge.	5
Maintenance Fund.	5
Managing Agent.	5
Management Certificate.	5
Member.	5
Mortgage.	5
Mortgagee.	5
Owner.	5
Person.	5
Plans and Specifications.	5
Plat.	5
Property.	6
Royal Oaks Restrictions.	6
Regular Assessment.	6
Rules and Regulations.	6
Special Assessment.	6
Subdivision.	6
Supplemental Declaration.	6
Texas Residential Property Owners Protection Act.	6
Townhome.	7
Transfer Fee.	7
<b>ARTICLE II ADDITIONS TO THE PROPERTY</b>	7
Phased Subdivision.	7
Merger or Consolidation.	7
<b>ARTICLE III GENERAL RESTRICTIONS AND COVENANTS</b>	8
Antennae.	8
Subdividing.	8
General Display Standards.	8
Rubbish and Debris.	10
Noise.	10
Construction of Improvements.	10
Repair and Maintenance.	11
Alteration or Removal of Improvements.	11

Roofing Materials. . . . .	12
Underground Utility Lines. . . . .	12
Drainage. . . . .	12
Hazardous Activities. . . . .	12
Temporary Structures. . . . .	12
Mining and Drilling. . . . .	13
Unightly Articles; Vehicles. . . . .	13
Mobile Homes, Travel Trailers and Recreational Vehicles. . . . .	13
Fences and Party Walls. . . . .	13
Animals - Household Pets. . . . .	14
Maintenance of Lawns and Planting. . . . .	15
Construction Activities. . . . .	15
Compliance with Provisions of the Royal Oaks Restrictions and Royal Oak Rules. . . . .	15
Construction in Place. . . . .	15
Set-back Requirements. . . . .	15
Rentals. . . . .	15
Solar Energy Devices. . . . .	16
Rain Barrels and Rain Harvesting Systems. . . . .	16
No Warranty of Enforceability. . . . .	17
Commencement of Construction. . . . .	17
Completion of Improvements. . . . .	17
Specific Remedies for Breach of Section 3.28 and 3.29. . . . .	17
Law and Ordinances. . . . .	18
ARC Approval not Required; Declarant's ARC Authority to Initial Development of Lots. . . . .	18
<b>ARTICLE IV USE RESTRICTIONS . . . . .</b>	<b>18</b>
General. . . . .	18
Common Properties. . . . .	19
Recreational Improvements. . . . .	19
Prohibited Vehicles on Common Properties. . . . .	19
<b>ARTICLE V . . . . .</b>	<b>20</b>
Organization. . . . .	20
Membership. . . . .	20
Voting Rights. . . . .	20
Powers and Authority of the Association. . . . .	21
Maintenance and Landscape Authority. . . . .	25
Lighting. . . . .	25
Common Properties. . . . .	25
Community Security. . . . .	27
Private Streets. . . . .	27
Townhome Commons. . . . .	28
Rules of the Board of Directors. . . . .	28
Delivery of Subdivision Information to Owner. . . . .	28
Online Subdivision Information Required. . . . .	29
Records. . . . .	30
Indemnification. . . . .	31
<b>ARTICLE VI ARCHITECTURAL REVIEW COMMITTEE . . . . .</b>	<b>32</b>
Approval of Plans and Specifications. . . . .	32
Membership of Architectural Review Committee. . . . .	32
Actions of the Architectural Review Committee. . . . .	32
Advisory Members. . . . .	33
Term. . . . .	33
Declarant's Rights of Appointment. . . . .	33
Adoption of Rules. . . . .	33

Design Guidelines. . . . .	33
Review of Proposed Construction. . . . .	33
Variances. . . . .	34
No Waiver of Future Approvals. . . . .	34
Work in Progress. . . . .	34
Address. . . . .	35
Fees. . . . .	35
Certificate of Compliance. . . . .	35
<b>ARTICLE VII FUNDS AND ASSESSMENTS . . . . .</b>	<b>35</b>
Assessments. . . . .	35
Maintenance Fund. . . . .	36
Regular Annual Assessments. . . . .	36
Special Assessments. . . . .	36
Owner's Personal Obligation for Payment of Assessments. . . . .	37
Transfer and Other Fees. . . . .	37
Assessment Lien and Foreclosure. . . . .	37
Alternative Payment Schedule. . . . .	39
Right of Declarant to Set Rate. . . . .	40
Payment of Assessments by Declarant during Development Period. . . . .	40
Reserved for Contractors. . . . .	41
<b>ARTICLE VIII EASEMENTS . . . . .</b>	<b>41</b>
Reserved Easements. . . . .	41
Installation and Maintenance. . . . .	41
Drainage Easements. . . . .	42
Surface Areas. . . . .	42
Title to Easement and Appurtenances Not Conveyed. . . . .	42
Greenbelt or Amenity Areas. . . . .	42
Owner's Townhome Easement. . . . .	43
<b>ARTICLE IX GENERAL PROVISIONS . . . . .</b>	<b>43</b>
Term. . . . .	43
Nonliability of Board and Architectural Review Committee Members. . . . .	43
Amendment. . . . .	44
Notices. . . . .	45
Interpretation. . . . .	45
Mergers and Consolidations. . . . .	45
Exemption of Declarant. . . . .	45
Assignment by Declarant. . . . .	45
Enforcement and Nonwaiver. . . . .	45
Effects of Violation on Mortgages. . . . .	46
Construction. . . . .	46
Disclaimer by Declarant. . . . .	46
Not a Condominium. . . . .	47
Governing Law. . . . .	47
Defined Terms. . . . .	47
Agreement to Resolve Certain Disputes Without Litigation. . . . .	48
Notice of Claim. . . . .	48
Mediation. . . . .	48
Binding Arbitration. . . . .	49
Final Award. . . . .	51
Right to Enter, Inspect, Repair and/or Replace. . . . .	51
Use of Funds. . . . .	51
Approval of Litigation. . . . .	51
Statute of Limitations. . . . .	52

Conflicts. ....	52
Acceptance. ....	52
Certification. ....	52

## ROYAL OAKS

### AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS           §  
  §  
COUNTY OF ARANSAS       §

WHEREAS, Royal Oaks Partners at Fulton Beach, L.P., a Texas limited partnership, hereinafter called "Declarant", owns a tract of land containing 16.112 acres, more or less, which is further described and shown on the Plat (as herein defined); and

WHEREAS, by that certain Declaration of Covenants, Conditions and Restrictions dated June 29, 2006, recorded under Document No. 284012 and in Volume 80, Page 332, of the Official Public Records of Aransas County, Texas, Declarant imposed on the Property (as hereinafter defined) all of those certain covenants, conditions, restrictions, easement, charges and liens therein set forth (the "Initial Declaration"); and

WHEREAS, Section 9.3 of the Initial Declaration provides that the Initial Declaration can be amended at any time by an instrument certifying that such amendment has been approved by Members (as hereinafter defined) of the Association (as hereinafter defined) having at least sixty-seven percent (67%) of the votes entitled to be cast pursuant to the Initial Declaration; and

WHEREAS, the Declarant is the sole Member of the Association, and desires to amend and restate the Initial Declaration to comport with applicable law and to specifically authorize and address Townhome (as hereinafter defined) and other residential development on the Property, among other things; and

WHEREAS, Declarant intends that this Declaration (as hereinafter defined), together with all covenants, conditions, restrictions, easements, charges and liens set forth herein, supersede and take the place of the Initial Declaration, as hereinafter provided;

WHEREAS, Declarant desires to hold, develop, subdivide and from time to time convey the Property, or any portion thereof, subject to those certain protective covenants, conditions, restrictions, liens and charges hereinafter set forth; and

WHEREAS, Declarant desires to create and carry out a plan for the improvement, development and sale of the Property, as a mixed-use residential development, for the benefit of the present and future owners of the Property, which plan currently provides for the development of estate Lots (as hereinafter defined) and Townhome Lots, but also contemplates further division of the Property for higher density residential purposes.

NOW, THEREFORE, it is hereby declared that (i) all of the Property shall be held, sold, conveyed and occupied subject to the ROYAL OAKS Restrictions (as herein defined), including, but not limited to, the following easements, restrictions, covenants, conditions, charges and liens, which are for the purpose of protecting the value and desirability of, and which shall run with the Property, and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof; and (ii) each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the ROYAL OAKS Restrictions, including the following easements, covenants, conditions and restrictions, regardless of whether or not the same are set out or referred to in said contract or deed.

## **ARTICLE I** **DEFINITIONS**

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

1.1 **Architectural Review Committee.** "Architectural Review Committee", or "ARC", shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property.

1.2 **Articles.** "Articles" shall mean the Certificate of Formation of ROYAL OAKS Property Owners Association, Inc., which have been filed in the office of the Secretary of State of the State of Texas, as from time to time amended.

1.3 **Assessment.** "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

1.4 **Association.** "Association" shall mean and refer to ROYAL OAKS at Fulton Beach Homeowners Association, a Texas non-profit corporation, its successors and assigns, which is designated as the representative of the Owners of the Subdivision, whose membership consists of such Owners, and which manages and regulates the Subdivision for the benefit of the Owners.

1.5 **Board.** "Board" shall mean the Board of Directors of the Association, which is the governing body of the Association.

1.6 **Bylaws.** "Bylaws" shall mean the Amended and Restated Bylaws of the Association adopted by the Board contemporaneously herewith, and as from time to time amended. The current Bylaws are attached to the Management Certificate (as hereinafter defined), and are fully incorporated herein.

1.7 **Collection Agent.** "Collection Agent" shall mean a debt collector, as defined by Section 803 of the Federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).

1.8 **Common Properties.** "Common Properties" shall mean that portion of the Property owned by the Association for the common use and enjoyment of the Owners and Members of the Association, including, but not limited to, all private streets, signs, gates, fountains, statuary, parkways, medians, islands, security guardhouse, walls, bridges, piers, boat slips, docks, marina, safety lanes, trails, parks, lakes, greenbelts, swimming pools, tennis courts, putting greens and other recreational facilities, community facilities, pumps, landscaping, sprinkler systems, pavement (to the extent not owned by appropriate governmental authorities), walkways, pipes, wires, conduits and other public utility lines situated thereon or therein (to the extent not owned by appropriate governmental authorities or by local utility companies). The Common Properties to be owned by the Association shall include: (i) those areas of land shown on any recorded plat or its equivalent of the Property or any portion thereof, filed or approved by Declarant, and identified thereon held as open space for passive or recreational purposes for the benefit of all Owners, (ii) the streets within the Subdivision, (iii) those areas of land and improvements thereon deeded to the Association by Declarant, and any lease, permit, license, easement or any other item of personal property subsequently assigned to the Association by Declarant or by a third party at the direction of Declarant, and (iv) all Greenbelt and Amenity Areas. Declarant reserves the right to effect redesigns or reconfigurations or deletions of the Common Properties by any means including, without limitation, any amendatory plat of all or any portion of ROYAL OAKS. The reference to a particular amenity in this Section 1.8 or in any other part of this Declaration does not constitute a representation or warranty that such amenity will actually be constructed or assigned or deeded to the Association for the common benefit of all Owners.

1.9 **Contractor.** "Contractor" shall mean the person or entity with whom Declarant or an Owner contracts to construct a residential dwelling and/or other Improvements on a Lot.

1.10 **Declarant.** "Declarant" shall mean Royal Oaks Partners at Fulton Beach, L.P., a Texas limited partnership, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Royal Oaks Partners at Fulton Beach, L.P. as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.11 **Declarant Control Period.** "Declarant Control Period" shall mean and refer to the period of time during which the Class "B" Member (as defined in Section 5.3) is entitled to appoint and remove the members of the Board of Directors and the officers of the Association, other than Board members or officers elected by Members of the Association pursuant to the Bylaws.

1.12 **Declaration.** "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

1.13 **Dedicatory Instrument.** "Dedicatory Instrument" shall mean each governing instrument covering the establishment, maintenance, and operation of the Subdivision. The term includes the Declaration, Bylaws, Design Control Guidelines, Rules and Regulations, Open



Records and Records Retention Policies, and Alternative Payment Schedule, and all lawful amendments. No Dedicatory Instrument shall have effect until filed in the Official Records of each county in which the Subdivision is located.

1.14        **Design Guidelines.** "Design Guidelines" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to architecture design, construction, placement, location, alteration and maintenance of Improvements, landscaping and vegetation, namely those certain Amended and Restated ROYAL OAKS Design Guidelines, as the same may be amended from time to time, and any additional criteria and guidelines established by the Architectural Review Committee. The current Amended and Restated ROYAL OAKS Design Guidelines are attached to the Management Certificate, and are fully incorporated herein by reference. However, it shall not be necessary to amend or re-record this Declaration in order to amend the Design Guidelines. The Design Guidelines may be amended from time to time by the Architectural Review Committee by simply amending the Design Guidelines themselves and, if necessary or advisable, recording the amended Design Guidelines in the Official Records of Aransas County, Texas.

1.15        **Development.** "Development" shall mean the real property more particularly described on the Plat, which Declarant proposes to develop for residential purposes, including, without limitation, residential estates and higher density residential townhomes sharing common boundaries and/or lot lines, walls, roofs and/or other amenities, and to be known as ROYAL OAKS SUBDIVISION, a subdivision in Aransas County, Texas.

1.16        **Development Period.** "Development Period" shall mean the period in which Declarant reserves a right to facilitate the development, construction, and marketing of the Subdivision.

1.17        **Greenbelt or Amenity Area.** "Greenbelt or Amenity Area" shall mean all areas designated by Declarant as Common Properties to be held as open space or for passive or active recreational purposes for the benefit of all Owners, including, but not limited, to areas described as a park, pier or trail areas, or any other easement, lease or property subsequently designated as Common Properties and assigned, conveyed or deeded to the Association for the common benefit of all Owners.

1.18        **Improvement.** "Improvement" shall mean every structure and all appurtenances thereto of every type and kind located on the Property, including but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, basketball goals, swimming pools, garages, storage buildings, fences, trash enclosures, animal enclosures, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.19        **Lot.** "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot, with the exception of any lots described as Common Properties, on the Plat of the Property, together with all Improvements located thereon.

1.20 **Maintenance Charge.** "Maintenance Charge" shall mean assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, as hereinafter provided, which shall be a charge on the Lots and shall be a continuing lien upon the Lot against which each such Maintenance Charge and other charges and assessments are made.

1.21 **Maintenance Fund.** "Maintenance Fund" shall mean the Association's accumulation of funds from regular and special Assessments, as well as income and revenue from other legitimate sources, as prescribed in this Declaration.

1.22 **Managing Agent.** "Managing Agent" or "Manager" shall mean the Association's designated representative as it appears on the Management Certificate.

1.23 **Management Certificate.** "Management Certificate" shall mean the instrument required to be recorded pursuant to Section 209.004 of the Texas Residential Property Owners Protection Act.

1.24 **Member.** "Member" or "Members" shall mean any person, persons, entity, or entities holding membership rights in the Association by virtue of ownership of a Lot.

1.25 **Mortgage.** "Mortgage" shall mean any mortgage or deed of trust covering a Lot, or all or any portion of the Property given to secure the payment of a debt.

1.26 **Mortgagee.** "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.27 **Owner.** "Owner" or "Owners" shall mean and refer to a person or persons, entity or entities, excluding Declarant, holding a fee simple interest in a Lot, but shall not include a Mortgagee.

1.28 **Person.** "Person" or "Persons" shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.

1.29 **Plans and Specifications.** "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, water well plans, drainage plans, clearing plans, septic system plans or other sewage disposal system plans, landscaping and fencing plans, signage, lighting, elevation drawings, floor plans, specifications on all building products and construction techniques, samples or exterior colors, plans for utility services, all other documentation or information relevant to such Improvement.

1.30 **Plat.** "Plat" shall mean, collectively, (i) the amended plat of ROYAL OAKS SUBDIVISION, recorded in Volume 5, Page 218, of the Map Records of Aransas County, Texas, and (ii) the replat of a portion of Lot 14, all of Lot 15, and a portion of Lot 21, Block 1, ROYAL

OAKS SUBDIVISION, recorded in Volume 6, Page 182 of the Map Records of Aransas County, Texas, and any subsequent amending plats or replats of all or any portion of the Property. The current Plat is attached to this Declaration as Exhibit "A", and is fully incorporated herein.

File No. **341635**  
County Clerk, Aransas County, Texas

1.31 **Property.** "Property" shall mean that real property which is subject to the terms of this Declaration initially described as that certain 16.112 acre, more or less, tract of land known as ROYAL OAKS SUBDIVISION, as shown and described on the Plat, and any additional real property which may be hereafter incorporated or annexed under the terms of this Declaration.

1.32 **ROYAL OAKS Restrictions.** "ROYAL OAKS Restrictions" shall mean, collectively (i) this Declaration, together with the Design Guidelines, and any and all Supplemental Declarations, as the same may be amended from time to time, (ii) the Certificate of Formation and Bylaws of the Association from time to time in effect, as the same may be amended from time to time, and (iii) any other applicable Dedicatory Instrument from time to time in effect, as the same may be amended from time to time.

1.33 **Regular Assessment.** "Regular Assessment" shall mean an assessment, charge, fee, or dues that each Owner is required to pay to the Association on a regular basis and that is designated for use by the Association for the benefit of the Subdivision, as provided herein.

1.34 **Rules and Regulations.** "Rules and Regulations" or "Rules" shall mean the Rules and Regulations of the Association as may be amended from time to time.

1.35 **Special Assessment.** "Special Assessment" shall mean an assessment, charge, fee, or dues, other than a regular Assessment, that each Owner is required to pay to the Association for defraying, in whole or in part, the cost, whether incurred before or after the Assessment, of any construction or reconstruction, unexpected repair or replacement of a capital improvement in the Common Properties, maintenance and improvement of Common Properties, maintenance and improvement of Townhome Commons (as hereinafter defined), or other purposes of the Association as provided in its Certificate of Formation or Dedicatory Instruments of the Subdivision.

1.36 **Subdivision.** "Subdivision" shall mean and refer to that portion of the Development that has been subdivided and shown on a map or plat of record in the Official Records of Aransas County, Texas, and brought within the scheme of this Declaration in accordance with the provisions of Article II of this Declaration.

1.37 **Supplemental Declaration.** "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded hereafter in order to (i) subject any area of the Property to further covenants, conditions or restrictions, (ii) withdraw land from the Property, or (iii) annex additional land into the Development.

1.38 **Texas Residential Property Owners Protection Act.** "Texas Residential Property Owners Protection Act" or "Act" shall mean the Texas Property Code Chapter 209, as

the same may be amended or repealed in whole or in part, and/or other similar provisions of the Texas Property code referenced in this Declaration.

1.39 **Townhome.** "Townhome" shall mean the multi-family structure designed and constructed by Declarant, a Contractor or Owner on a Lot or Lots for single family residential habitation on a Lot.

1.40 **Transfer Fee.** "Transfer Fee" shall mean dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment under this Declaration, other Dedicatory Instrument, or under law, including a fee or charge payable for a change of ownership entered in the records of the Association.

## **ARTICLE II**

### **ADDITIONS TO THE PROPERTY**

#### **2.1 Additions to Subdivision.**

(A) **Incorporation.** Declarant, its successors and assigns, shall have the right at any time prior to January 1, 2025, to incorporate within the scheme of this Declaration additional properties in future phases of the Development, following the acquisition of such property, or with the consent of the record owner, without the consent or approval of any party, including the Owners of any Lots (other than Declarant).

(B) **Annexation.** Additional properties may be annexed into the Development at any time with the consent of Members representing sixty-seven percent (67%) of all votes entitled to be cast pursuant to Section 5.3 of this Declaration and the written approval of Declarant. As additional properties are annexed hereto, Declarant shall, with respect to said properties, record Supplemental Declarations which may incorporate this Declaration therein by reference, and which may supplement or modify this Declaration with such additional covenants, restrictions and conditions which may be appropriate for those properties.

(C) **Filing Supplemental Declarations.** To evidence the incorporation or annexation of additional property, Declarant shall record a Supplemental Declaration which shall incorporate this Declaration by reference. Following such incorporation or annexation and the recordation of such additional plat or maps, then and thereafter the Owners of all Lots in the Subdivision shall have the rights, privileges and obligations set forth in this Declaration and each applicable Supplemental Declaration.

2.2 **Merger or Consolidation.** Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions

established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration pertaining to the Property except as hereinafter provided.

**ARTICLE III**  
**GENERAL RESTRICTIONS AND COVENANTS**

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations, restrictions, covenants and obligations. The Association, acting through the Board and the Architectural Review Committee, shall have the right and power to enforce the restrictions, covenants and obligations contained in this Declaration and in all other Dedicatory Instruments, except that any such restrictions, covenants and obligations that ever conflict with any applicable laws shall be null and void and unenforceable.

3.1 **Antennae.** No exterior radio or television antenna or aerial or satellite dish receiver, or other devices designed to receive telecommunication signals, including but not limited to, radio, television, or microwave signals which are intended for cable television, network television reception, communications or entertainment purposes shall be erected or maintained, except by Declarant, without the prior written approval of the Architectural Review Committee. Notwithstanding the foregoing, the Architectural Review Committee shall not unreasonably withhold its consent to an antennae or satellite dish receiver designed to receive satellite television or wireless internet signals provided such dish or antennae is less than twenty-four (24) inches in diameter and hidden from view from any street within the Subdivision.

3.2 **Subdividing.** No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Review Committee or any Owner.

3.3 **General Display Standards (Including Signs, Flag Poles and Religious Items).**

(A) **Signs.** All signs visible from the roadway (both temporary and permanent) shall be constructed for low maintenance and shall be approved in advance by the Architectural Review Committee. Notwithstanding the foregoing, Owners may display on the Owner's Lot one or more signs advertising a political candidate or ballot item for an election on or after the ninetieth (90<sup>th</sup>) day before the date of the election to which the sign relates and for ten (10) days after that election date, provided that any such signs shall be ground-mounted and display only one sign for each candidate or ballot item. In the event a sign is not properly maintained, the Architectural Review Committee may give the sign owner written notice thereof. Required repairs must be made within five (5) business days of notification by the Architectural Review Committee. The Architectural Review Committee shall have the right, but not the obligation, to have repairs made and charged to the sign owner. Further notwithstanding the foregoing, the following signs are prohibited: Any sign that (i) contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard

decorative components; (ii) is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object; (iii) includes the painting of architectural surfaces; (iv) threatens the public health or safety; (v) is larger than four (4) feet by six (6) feet; (vi) violates a law; (vii) contains language, graphics or any display that would be offensive to the ordinary person, or (viii) is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists. The Association may remove a sign displayed in violation of this section. An easement on, over and across the Common Properties is hereby retained by Declarant for placement of project signs, project monuments, directional signs, and marketing signs.

(B) Flags and Flag Poles. Subject to this section and approval by the ARC, Owners may display the flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States armed forces. The flag of the United States shall only be displayed in accordance with 4 U.S.C. Sections 5-10, which qualify the times and occasions for the flag's display, the position of the flag, and respect for the flag. The flag of the State of Texas shall only be displayed in accordance with Chapter 31 of the Texas Government Code. A flagpole attached to a dwelling or a freestanding pole is to be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling on the Lot. The display of the flag, and its location, and the construction of the supporting flagpole shall comply with appropriate ordinances, easements and setbacks of record, and a displayed flag and flagpole on which it is flown shall be maintained in good condition. Any deteriorated flag or structurally unsafe flagpole shall be repaired, replaced or removed. A flagpole attached to the dwelling on a Lot may not exceed six (6) feet in height. A freestanding flagpole shall not exceed twenty (20) feet in height, measured from the ground base to the top of the flagpole. Illumination of permitted flags must be sub-surface and not exceed 200 watts, and positioned in a manner not directed toward an adjacent Lot. A flag displayed on a freestanding flagpole shall not be more than ten (10) feet in height, and a flag displayed on a flagpole attached to a dwelling shall be no more than three (3) by five (5) feet. No more than one of each permitted flags may be displayed on a flagpole at any time. Owners may not install flagpoles or display flags in the Common Properties without the express written consent of the Association.

(C) Religious Items Displays. Subject to this section and approval by the ARC, Owners may display or affix on the entry to the Owner's dwelling one or more religious items, the display of which is motivated by the Owner's or resident's sincere religious belief. No religious item may individually or in combination exceed twenty-five (25) square inches, and shall not extend past the outer edge of the door frame of the dwelling. Notwithstanding the foregoing, the display or affixation of a religious item on an Owner's dwelling that threatens public health or safety, violates a law, or contains language, graphics or any display that is patently offensive to a passerby is prohibited. This section does not authorize an Owner to use a material or color for an entry door or door frame, or make an alteration to the door or door frame, of the Owner's dwelling that is not authorized by the ARC and the Design Guidelines. The Association may remove an item displayed in violation of this section.

3.4 **Rubbish and Debris.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom, so as to render such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. All refuse, garbage and trash shall be collected, at the expense of Owner, by the service provider chosen by the Association. In the event the Owner shall fail or refuse to keep, or cause to be kept, such Owner's Property or any Improvements thereon free from rubbish or debris or any kind, and such failure or refusal shall continue for fifteen (15) days after delivery of written notice thereof, then the Association may enter upon such Property and remove or correct the same at the expense of the Owner and such entry shall not be deemed a trespass.

3.5 **Noise.** No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security or public safety purposes) shall be located, used or placed on any of the Property such that it becomes or will become excessively loud at the property line of adjoining Lot Owners. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants. The purposes of this restriction is to permit outside speakers for audio transmission only at a volume that can be heard within close proximity of such speakers but also to prohibit excessively loud noise to interfere with the use and enjoyment of adjoining Lots.

3.6 **Construction of Improvements.** No Improvements shall hereafter be constructed upon any of the Property without the prior written approval of the Plans and Specifications for the Improvement(s) by the Architectural Review Committee, including any landscaping plan, drainage or grading plan and/or review of foundation specifications. Anything herein to the contrary notwithstanding, in the case of single family residences constructed on any Lot, the Architectural Review Committee, in its sole discretion, may limit its review to a review of specific floor plans, and elevations, and upon the Architectural Review Committee's approval of such specific floor plans and elevations, residences may be constructed consistent with the approved floor plans and elevations without the requirement of further review or approval by the Architectural Review Committee. The Architectural Review Committee may require strict compliance with the Design Guidelines and any landscaping plans, drainage or grading plans, or requirements for engineered foundations or slabs promulgated thereunder. The Architectural Review Committee may adopt fines or special assessments in the event any Owner does not strictly comply with any such requirements imposed by the Architectural Review Committee pursuant to the Design Guidelines within the time specified therein, including the failure to timely complete and strictly comply with any landscaping plan approved. The Architectural Review Committee may also require the execution of a landscaping deposit agreement whereby an Owner, prior to the commencement of construction, deposits a reasonable sum determined by the Architectural Review Committee which will be held by it to insure the satisfaction of any landscaping plan or requirements. In the event a landscaping or other type of deposit is required, the Architectural Review Committee may, after reasonable notice to an Owner of non-compliance with an approved landscaping or other plan, use such sums to complete the Plans and Specifications for which it is being held.

3.7 **Repair and Maintenance.** All Improvements upon any of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof, except as otherwise provided in Section 5.10. Specifically, each Owner has the following responsibilities and obligations for the maintenance, repair and replacement of his Lot and all Improvements thereon as follows:

(A) **Lot Maintenance.** At the Owner's sole expense, the Owner must maintain all aspects of his Lot and Improvements, except an area or component designated as a "Townhome Commons" (as defined in Section 5.10). Maintenance includes preventative maintenance and repair and replacement as needed. Each Owner is expected to maintain his Lot and Improvements at a level and to a standard and with an appearance that is commensurate with the neighborhood. Specifically, with respect to a Townhome, each Owner shall maintain and keep in good repair the interior of his Townhome, as well as all: enclosed porches; interiors of chimneys; glass surfaces and doors, including all fixtures, framing and related hardware; air conditioning equipment; utility company meters; circuit breakers and switch panels; sanitary sewer lines; gas and electric power service lines; structural supports for roofs and walls; fixtures and equipment installed on the Lot for the exclusive use of the Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Lot; and enclosed yards.

(B) **Damage Avoidance.** An Owner may not do any work fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

(C) **Damage Responsibility.** An Owner is responsible for his own willful or negligence acts and those of his or any occupant's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair or replacement to the Common Properties, the Townhome Commons, or the property of another Owner.

(D) **Townhome Foundation.** Each owner is solely responsible for the maintenance and repair of the foundation of his Townhome on his Lot. However, if a licensed structural engineer determines that the failure to repair the foundation under a Townhome may adversely affect one or more other Townhomes in the building, then the cost of the foundation repair will be divided by the number of Townhomes in the building, and the Owners of each of the Townhomes will pay an equal share. The right of an Owner to contribution from another Owner under this section is appurtenant to the land and passes to the Owner's successors in title.

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



3.9 **Roofing Materials.** All roofing material shall be subject to the approval of the Architectural Review Committee. Owners, who are otherwise authorized to install shingles on the roof, may install shingles that are designed to (i) be more wind and hail resistant, (ii) provide greater heating and cooling efficiencies, and (iii) be more durable, than customary composition shingles, and/or provide solar generation capabilities; however, when installed, they must resemble and be of equal or superior quality to the shingles used or otherwise authorized for use on Improvements on Lots in the Subdivision, and match the aesthetics of the Subdivision.

3.10 **Underground Utility Lines.** No utility lines, including but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Improvements as approved in writing by the Architectural Review Committee; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements which have been previously approved in writing by the Architectural Review Committee or model homes or construction trailers; and further provided that this provision shall not apply to existing utilities installed along the perimeters of the Property or utilities installed by Declarant offsite as may be necessary to serve the Property. The duration of any temporary overhead use otherwise allowed hereunder shall not exceed one (1) year without the consent of the Architectural Review Committee. The installation method, including but not limited to, location, type of installation, equipment, trenching method and other aspects of installation, for both temporary and permanent utilities shall be subject to review and approval by the Architectural Review Committee.

3.11 **Drainage.** There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage to a private street or to Common Properties and approved by the Architectural Review Committee.

3.12 **Hazardous Activities.** No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property unless the firearm is discharged lawfully in the protection of persons or property. No open fires shall be lighted or permitted except (i) within safe, contained, and well-protected fireplaces, firepits or chimineas; (ii) within contained barbecue units while attended and in use for cooking purposes; or (iii) in compliance with ordinances, regulations and permit requirements of local governmental authorities. Hunting, whether with firearms or cross bows, shall be prohibited on the Property.

3.13 **Temporary Structures.** No tent, shack or other temporary building, Improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Review Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration and location of such structure.

3.14        **Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth. Declarant reserves the right to designate one or more drilling sites on the Property including any Lot or Lots owned by Declarant or any portion of the Common Properties for exploration and removal of oil, gas and other minerals. No water wells shall be drilled, completed or permitted to remain on any portion of the Property except for Declarant and the Association.

3.15        **Unightly Articles; Vehicles.** No article deemed to be unsightly by the Architectural Review Committee shall be permitted to remain on any Lot so as to be visible from any other portion of the Property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, busses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have garage space sufficient to house two (2) automobiles. Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Property for any period in excess of forty-eight (48) hours unless approved in advance by the Architectural Review Committee. No automobiles or other vehicles may be parked overnight on any roadway within the Property. Service area, storage area, loading area and compost piles shall be appropriately screened from view from public or private thoroughfares and other properties and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view from public or private thoroughfares and adjacent properties.

3.16        **Mobile Homes, Travel Trailers and Recreational Vehicles.** No mobile homes or manufactured housing will be parked, placed or allowed to remain on any Lot at any time. Travel trailers, watercraft or other recreational vehicles may be stored on a Lot only within an enclosed garage which has been integrated into the design of the home and stored to the extent that they are not visible from any Lot or any street.

3.17        **Fences and Party Walls.**

(A)        **Fences.** The design, construction, materials and specifications of fences shall be subject to the prior written consent of the Architectural Review Committee. The Architectural Review Committee may, in its discretion, prohibit the construction of any proposed fence, or specify the materials of which any proposed fence must be constructed, or require that any proposed fence be partially screened by vegetation. Chain link fences are specifically prohibited. Fence maintenance shall be the responsibility of the Owner and all damage shall be repaired within thirty (30) days of written notification by the Association. It shall be a violation of this Declaration to maintain a fence in such a manner as to allow (i) any portion of a fence to lean so that the fence's axis is more than five (5) degrees out of vertical alignment, (ii) missing, loose, or damaged stone or wood

rails in the fence, (iii) symbols, writings, and other graffiti on the fence, and (iv) broken or loose wires.

(B) Party Walls. Each wall which is built as a part of the original construction of a Townhome on a Lot and placed on the dividing line between Lots, and all reconstruction or extensions of such walls, shall constitute a "party wall". To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls, lateral support, and/or liability for property damage due to negligence or willful acts or omissions, shall apply thereto. The midpoint of the party wall, if intended to be on the Lot line, is deemed to be on the Lot line, and each adjoining Lot is subject to an easement for the existence and continuance of any encroachment by the party wall as a result of construction, repair, shifting, settlement or movement in any portion of the party wall, so that the encroachment may remain undisturbed as long as the party wall stands. Each adjoining Lot is subject to a reciprocal easement for the maintenance, repair, replacement or reconstruction of the party wall. The Owner of either adjoining Lot may repair or rebuild the party wall to its previous condition, and the Owners of both adjoining Lots have the right to the full use of the repaired or rebuilt party wall. Generally, the right and obligation to repair and maintain, and the cost of reasonable repair and maintenance, of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. If, however, a party wall is destroyed or damaged through the fault of an Owner, then that Owner will bear the entire cost of repair, reconstruction or replacement. The Owner of an adjoining Lot sharing a party wall may not cut openings in the party wall or alter or change the party wall in any manner that affects the use, condition or appearance of the party wall to the adjoining Lot. The interior walls between the Townhomes are designed to be two independent wall systems, each of which must be maintained by the Owner of the Townhome it serves solely at his expense. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successor in title.

3.18 Animals - Household Pets. No animals, including pigs, pot bellied pigs, hogs, swine, pigeons, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. All other animals shall require the prior written consent of the Architectural Review Committee. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on any portion of the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed or fenced areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed or fenced area shall be constructed in accordance with plans approved by the Architectural Review Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof. All animal waste within Common Properties shall be the responsibility of the Owner of the animal for immediate pick up and disposal.

3.24. **Rentals.** Nothing in the Declaration shall prevent the rental of any entire Lot and the Improvements thereon by the Owner thereof for a rental term of one (1) calendar month or less. An Owner who enters into a lease agreement which automatically renews on a monthly basis, resulting in an effective lease term longer than one (1) month, shall provide a copy of such rental agreement to the Architectural Review Committee and the Association, and shall obtain the prior approval of the Association for each monthly renewal, which such approval may be withheld or delayed in the Association's sole discretion. Any lease, regardless of its term, shall contain a provision that the tenant shall comply at all times with the terms, provisions and

conditions set forth in this Declaration and the Design Guidelines and any other rule or regulation established by the Board or otherwise applicable to the Property.

3.25        **Solar Energy Devices.** Subject to this section and approval by the ARC, Owners may install solar energy devices on the roof of the Townhome or other permitted Improvement on a Lot, or in a fenced yard or patio not taller than the fence line. As used in Section 202.010 of the Act, "solar energy device" has the meaning assigned by Section 171.107 of the Tax Code, which defines the term as "a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar generated power". The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. A solar energy device is not permitted anywhere on a Lot except on the roof of the residential dwelling or other permitted structure on the Lot or in a fenced yard or patio within the Lot. A solar energy device may not extend higher than the dwelling's or other permitted Improvement's roofline, and shall conform to the slope of the roofline, and shall have a frame, support bracket, or visible piping that is a silver, bronze, or black tone commonly available in the marketplace, and shall be located on a roof as designated by the ARC, unless an alternate location increases the estimated annual energy production of the device by more than ten percent (10%) above the energy production of the device if located in the area designated by the ARC. For determining estimated annual energy production, the parties shall use a publicly available modeling tool provided by the National Renewable Energy Laboratory. A solar energy device located in a fenced yard or patio shall not be taller than or extend above the fence enclosing the yard or patio. A solar energy device shall not be installed on a Lot in a manner that voids material warranties. A solar energy device that, as adjudicated by a court, threatens the public health or safety, violates a law, or is located in the Common Properties is prohibited. The ARC may not withhold approval if the guidelines of this section are met or exceeded, unless the ARC determines in writing that placement of the device as proposed constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The written approval of the proposed placement of the device by all Owners of property adjoining the Lot in question constitutes prima facie evidence that substantial interference does not exist. During the Development Period, Declarant may prohibit or restrict an Owner from installing a solar energy device.

3.26        **Rain Barrels and Rain Harvesting Systems.** Section 202.007 of the Act prohibits the Association and ARC from enforcing a provision that prohibits or restricts an Owner from installing rain barrels or a rain harvesting system on the Owner's Lot. However, Section 202.007 of the Act further provides that the Association is not required to permit a rain barrel or rainwater harvesting system to be installed on a Lot in particular circumstances, and is not restricted from regulating rain barrels and rain harvesting devices in specified manners, as follows: No rain barrel or rainwater harvesting system shall (i) be permitted in the Common Properties or located on a Lot between the front of the dwelling and an adjoining or adjacent street, (ii) be of a color inconsistent with the color scheme of the Owner's dwelling, or (iii) display any language or other content that is not typically displayed by a barrel or system as it is manufactured. The Design Guidelines may regulate the size, type and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a dwelling or any other location that is visible from a

street, another Lot, or the Common Properties, if it does not prohibit the economic installation of the device or appurtenance on the Owner's Lot. There must be a reasonably sufficient area on a Lot, meeting the foregoing conditions, to enable an Owner to install these devices and appurtenances.

3.27 **No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article III or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

3.28 **Commencement of Construction.** Each Owner shall commence construction of the primary residence on his, her or its Lot in accordance with the Plans and Specifications approved by the Architectural Review Committee.

3.29 **Completion of Improvements.** All Improvements (including the primary residence, driveways, approved outbuildings, landscaping, fences or any structure subject of an approved submission of Plans and Specifications) shall be completed in accordance with the approved Plans and Specifications not later than eighteen (18) months from the commencement of construction as defined in Section 3.28 hereof. An Owner may request an extension of the time period for completion of Improvements from the Architectural Review Committee who may, in its sole discretion, grant such extension due to unforeseen circumstances or factors beyond the reasonable control of an Owner.

3.30 **Specific Remedies for Breach of Section 3.28 and 3.29.** Owner is advised that strict compliance with Section 3.28 and 3.29 hereof is required unless the Architectural Review Committee, in its sole discretion, grants an extinction of such time periods prior to the expiration of the same. In addition to the other remedies available in this Declaration or at law or in equity, the Architectural Review Committee and the Declarant, independently, shall have the following rights and remedies:

(A) **Section 3.28 Breach.** With respect to a breach or default in the provisions of Section 3.28 hereof, Owner hereof irrevocably grants to Declarant the option to repurchase the subject Lot in accordance with the terms hereof. Declarant, at any time after such breach, may give the Owner of the Lot in question written notice that it intends to exercise its option to repurchase the Lot. The closing shall occur within sixty (60) days from the date of such notice by Declarant. The purchase price shall be eighty percent (80%) of the purchase price paid for the Lot in question less any outstanding assessments or amounts due hereunder with respect to any prior Owner of such Lot. At closing, the then Owner of such Lot, at his or her own expense, shall provide Declarant with an Owner's Title Policy of Insurance containing only the exceptions set forth in the original deed to such Lot. At closing, the then Owner of the Lot in question shall execute a general warranty deed to Declarant containing only those exceptions to which the original

deed from Declarant to the first Owner was made subject to and free and clear of all liens, security interests and unpaid assessments and taxes. Ad valorem taxes and annual assessments will be prorated to the date of closing. Except as otherwise set forth herein, if Declarant exercises such option, the closing and sale of the purchase of such Lot by Declarant shall occur in accordance with the terms and provisions of the original contract for the purchase of such Lot. Each Owner hereby grants Declarant the right of specific performance to enforce the terms and provisions of the repurchase option granted to Declarant pursuant to this Section 3.30.

(B) **Section 3.29 Breach.** In the event an Owner defaults under the provisions of Section 3.29 hereof, such Owner agrees to pay the sum of Five Hundred and No/100 Dollars (\$500.00) for each day such Owner is not in compliance with Section 3.29 as stipulated liquidated damages, and not as a penalty. Each Owner hereby grants to the Declarant and the Association a lien to secure any sums due pursuant to this Section 3.30(B) which may be foreclosed in the same manner as the liens for assessments granted pursuant to Section 7.7 hereof. Such grant of lien is accompanied by a grant of the power of sale to Declarant.

The remedies set forth herein are cumulative and not exclusive and the Declarant or the Association may pursue any other right or remedy set forth herein or otherwise available at law or in equity.

3.31 **Laws and Ordinances.** Owners, and their lessees, guests, and invitees, for whom the Owner shall be responsible, shall comply with all laws, ordinances, and statutes applicable to their Lot and the Subdivision, and any violation may be considered a violation of this Declaration or other Dedicatory Instrument.

3.32 **ARC Approval not Required; Declarant's ARC Authority as to Initial Development of Lots.** Declarant and any Contractor so designated by Declarant are not required to obtain ARC approval or otherwise comply with any provisions of this Article until completion of the initial sale of each Lot, and Declarant hereby reserves and retains full and exclusive authority of the ARC as to each Lot until completion of the initial sale. The foregoing applies notwithstanding any other provisions of this Declaration or any other Dedicatory Instruments until completion of the initial sale of all Lots within the Subdivision. As to each Lot, "completion of the initial sale" occurs upon substantial completion of the construction of a single-family Townhome residence and related Improvements upon the Lot and the sale of the Lot to a person other than Declarant or a builder for use and occupancy of the Lot for a single-family dwelling.

#### **ARTICLE IV** **USE RESTRICTIONS**

4.1 **General.** Each Lot shall be improved and used for single family residential use, or "residential purposes" (as hereinafter defined) only, except for Common Properties including Greenbelt or Amenity Areas. Greenbelt or Amenity Areas may, subject to the approval of Declarant, be improved and used for active and passive recreational purposes for the primary

benefit of Owners and occupants of portions of the Property; provided, however that, as to any specific area, Declarant may, in its sole and absolute discretion, permit other improvements and uses. "Residential purposes" shall mean that an Owner's Lot which is adjacent to the Owner's Lot upon which his home is located may use such adjacent Lot for the construction of buildings, structures or other Improvements customarily related or appurtenant to a residence, such as a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line and water well. All of the foregoing are subject to the reasonable rules, restrictions and Design Guidelines imposed by the Architectural Review Committee with respect to size, location, shielding, aesthetics and other items covered by the Design Guidelines.

4.2 **Common Properties.** No land within the Common Properties shall be improved, used or occupied, except in such manner as shall have been approved by Declarant, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and Improvement. Declarant may, by written instrument, delegate its right to grant such approval to the Board. Access to any of the Common Properties may be limited to persons currently paying Assessment fees and other charges, or otherwise conditioned or restricted, or made available to Owners, all on such terms and conditions as Declarant may determine, in its sole discretion. The Architectural Review Committee and Declarant reserve the right to promulgate use restrictions and rules for the Common Properties, to lease the Common Properties for private events and establish such rules, regulations, terms, conditions and provisions and fees as the Declarant and the Architectural Review Committee determine in their sole discretion. In the event of such lease, the rights of tenant thereunder shall be subordinate to the rights of all Owners to use the Common Properties for the term of such lease or license. No portion of the Common Properties shall be used for parties, weddings, rallies or other large gatherings without the prior written consent of the Architectural Review Committee or the Association. The Association and the Architectural Review Committee reserve the right to charge reasonable fees and impose reasonable conditions upon such use of the Common Properties.

4.3 **Recreational Improvements.** Any proposed construction of recreational improvements within the Common Properties shall be subject to approval by the Architectural Review Committee and Declarant.

4.4 **Prohibited Vehicles on Common Properties.** No motorcycles, motorbikes or other motorized vehicles (except those used for maintenance, repairs and upkeep of the Common Properties) shall be permitted on any pier, marina, park, open space or trail areas of the Common Properties owned by the Association or Declarant. No unlicensed vehicles of any type shall be permitted on any roads within the Common Properties, other than golf carts (golf cart type of vehicles) owned by Lot Owners. Notwithstanding the foregoing, motorized wheelchairs or personal scooters used for persons with a handicap condition may be used on the Common Properties and within the private streets of the Subdivision.



**ARTICLE V**  
**ASSOCIATION**

File No. **341635**  
County Clerk, Aransas County, Texas

5.1       **Organization.**     Declarant has caused the formation and incorporation of the Association as a non-profit corporation under the laws of the State of Texas. The Association was created for the purposes, charged with the duties, governed by the provisions and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Nothing in this Declaration shall prevent the creation, by provision therefor in Supplemental Declaration(s) executed and recorded by Declarant or any person or persons authorized by Declarant, of Associations to own, develop, assess, regulate, operate, maintain or manage the Property subject to such Supplemental Declarations.

5.2       **Membership.**     Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject, by covenants or record, to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from any ownership of any Lot which is subject to Assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Any Mortgagee or lienholder who acquired title to any Lot which is a part of the Property through judicial or non-judicial foreclosure, shall be a Member of the Association. It is understood that the Development may be developed in phases or sections, and such completed sections or phases or any part thereof shall, at the option and election of Declarant, be incorporated within the scheme of this Declaration and become bound hereby and a part hereof, which incorporation shall be evidenced by the filing of the Supplemental Declaration; provided, however, in the event that Declarant shall sell all or a portion of the Development to an unrelated third party purchaser without having first developed the same, such third party shall have the right to elect whether or not it desires such land to be incorporated herein pursuant to the terms of Section 2.1.

5.3       **Voting Rights.**     The Association shall have two (2) classes of voting memberships:

      (A)   **Class A.**   Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each one thousand (1,000) square feet of land contained within a Lot, rounded to the nearest 1,000 feet (the "Voting Formula"). When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine as provided by the Bylaws, but in no event shall more than the number of votes calculated pursuant to the Voting Formula be cast with respect to any Lot.

      (B)   **Class B.**   The Class B Member(s) shall be Declarant, and its successors and assigns, and shall be entitled to twenty (20) votes (i) for each one thousand (1,000) square feet of land contained within a Lot, rounded to the nearest 1,000 feet, for each Lot owned by it, and (ii) for each five (5) acres of the Development not then subject to a

recorded plat ("Future Lot"); provided that the Class B membership shall cease and be converted to Class A membership (subject to reversion back to Class B membership upon the annexation of additional land) on the happening of either of the following events, whichever occurs earlier:

1. the complete development of the Development and sale of all developed Lots;
2. on or before the 120<sup>th</sup> day after the date seventy-five percent (75%) of the Lots that may be made subject to this Declaration are conveyed to Class "A" Members; or
3. January 1, 2025.

From and after the occurrence of one of the above events, the Class B Member shall be deemed to be a Class A Member entitled to vote according to the Voting Formula for each Lot and for each Future Lot then owned by such Class B Member. The Class B membership shall be immediately reinstated upon annexation of any additional land. Such reinstatement of the Class B Member shall in any event cease in accordance with the limitations set forth on January 1, 2025.

5.4 **Powers and Authority of the Association.** The Association shall have the powers of the Texas non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of the State of Texas or of the two preceding sentences. The Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

(A) **ROYAL OAKS Rules and ROYAL OAKS Bylaws.** To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such ROYAL OAKS Rules, including but not limited to traffic rules, parking rules and a schedule of fines and penalties for violations, and ROYAL OAKS Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

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

(C) **Records.** To keep books and records of the Association's affairs.

(D) **Assessments.** To levy Assessments as provided in Article VII below. An Assessment is defined as that sum which must be levied in the manner and against the Property set forth in Article VII hereof in order to raise the total amount for which the levy in question is being made.

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

1. Duty to Provide Notice Before Enforcement Action. Before the Association may (i) suspend an Owner's right to use the Common Properties, (ii) file a suit against an Owner, other than a suit to collect a Maintenance Charge or a regular or special Assessment, including a suit to foreclose under the Association's lien, (iii) charge an Owner for property damage, or (iv) levy a fine for a violation of the Declaration, Bylaws, Design Guidelines, or Rules and Regulations, the Association or its Manager must give written notice to the Owner by certified mail, return receipt requested. The notice must describe the violation or property damage that is the basis for the suspension or other action, charge or fine, and state any amount due the Association from the Owner. Additionally, the notice must inform the Owner that the Owner (i) is entitled to a reasonable period of time to cure the violation and avoid the fine or suspension (unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months), (ii) may request a hearing under Section 209.007 of the Act on or before the thirtieth (30<sup>th</sup>) day after the date the Owner receives the notice, and (iii) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the Owner is serving on active military duty.

2. Hearing Before Board; Alternative Dispute Resolution. If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board or before the Board if a

committee is not appointed. If a hearing is to be held before a committee, the notice prescribed by Section 209.006 of the Act must state that the Owner has the right to appeal the committee's decision to the Board by written notice. The Association shall hold a hearing under this section not later than the thirtieth (30<sup>th</sup>) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10<sup>th</sup>) day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting, and may use alternative dispute resolution services. The Owner's presence is not required to hold a hearing.

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

(F) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(G) Collection for Association. To collect on behalf of and for the accounting of any Association any assessment made by the Association created pursuant to this Declaration.

(H) Conveyances. To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way, or mortgages out of, in, on, over, or under any Common Properties for the purpose of constructing, erecting, operating or maintaining the following:

1. Parks, parkways, piers, docks, marinas, trails, lakes, greenbelts or other recreational facilities or structures;

File No. 341635  
Colony Court, Address County, Texas

2. Fountains, statuary, water features, ponds, guard houses, controlled access facilities, signs, monuments, gates, walls, bridges, fences and other facilities and structures;
3. Roads, streets, walks, driveways, trails and paths;
4. Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
5. Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
6. Any similar public, quasi-public or private improvements or facilities;

provided, however, that the Association shall not convey fee simple title in and to any portion of any Common Properties without the consent of Owners/Members having at least sixty-seven percent (67%) of the votes entitled to be cast pursuant to Section 5.3 of this Declaration, except as may otherwise be permitted hereunder to effect redesigns, reconfigurations or deletions of the Common Properties by Declarant.

Nothing above contained, however, shall be construed to permit use or occupancy of any Improvement or other facility in a way which would violate applicable use and occupancy restrictions imposed thereon by other provisions of this Declaration.

(I) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

(J) Association Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for all Common Properties; to maintain and repair easements, roads, roadways, rights-of-way, parks, parkways, greenbelts, median strips, sidewalks, piers, boat slips, docks, marina, paths, trails, ponds, lakes and other areas of the Property, as appropriate and the maintenance of which has not been accepted by the appropriate governmental entity; and to own and operate any and all types of facilities for both active and passive recreation.

(K) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles of Bylaws of the Association.

(L) Construction on Association Property. To construct new improvements or additions to Common Properties, subject to the approval of the Architectural Review Committee as provided in this Declaration.

(M) Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Greenbelt or Amenity Area or to provide any service or perform any function on behalf of Declarant or any Person. Provided, however, that the Association shall not enter into any contract with any Board member, or any Person related to a current Board member, unless and until: (i) the Association has received at least two (2) other competitive bids from unrelated Parties; (ii) the affected Board member is not given access to the other bids, does not participate in any discussion regarding the contract, and does not vote on the award of the contract; (iii) the relationship concerning the applicable Board member is disclosed to or known by the Board and the Board, in good faith and with ordinary care, authorizes the contract by affirmative vote of a majority of the Board members who do not have a conflict of interest; and (iv) the Board certifies by resolution that the requirements of Section 209.0052 of the Act have been met.

(N) Property Ownership. To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

(O) Loans. To borrow funds (including without limitation the borrowing of funds from the Declarant and/or its affiliates) to pay the costs of operation, secured by such assets of the Association as deemed appropriate by the Board.

5.5 Maintenance and Landscape Authority. The Association shall maintain all streets and roadways within the Property, which have been completed but not accepted by the appropriate governmental entity for maintenance. In addition, the Association shall be authorized to landscape, maintain and repair all access easements, rights-of-way, median strips, sidewalks, paths, trails, lakes, detention ponds and other areas of the Property, as appropriate. The Association shall maintain all Greenbelt or Amenity Areas dedicated to the Association for maintenance, by or with the consent of Declarant. The Association shall also maintain any landscaped medians and boulevard areas, not fronting lots, located on private roads within the Property. All signage, plant materials and Improvements, except Declarant's, used in said median or boulevard areas must be approved by the Architectural Review Committee.

5.6 Lighting. The Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain the lighting, including street lights within street rights-of-way and Greenbelt and Amenity Areas and on Common Properties.

5.7 Common Properties. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties and powers:

(A) Ownership and Maintenance. To accept, own, operate and maintain all Greenbelt, Amenity Areas or other Common Properties which may be conveyed or leased

to it by Declarant, together with all Improvements of whatever kind and for whatever purpose which may be located in said area; and to accept, own, operate and maintain all other Common Properties, real and personal, conveyed or leased to the Association by Declarant and to maintain in good repair and condition all lands, improvements and other Association property owned by or leased to the Association. The Association shall also renew and/or maintain any and all permits and/or licenses for the operation, maintenance and repair of all Greenbelt or Amenity Areas and on Common Properties. Such maintenance shall include but not be limited to mowing and removal of rubbish or debris of any kind.

(B) Construction. To construct, maintain, repair and replace landscape improvements and irrigation systems within rights-of-way pursuant to agreement(s) with the local governmental authorities and any recorded plat.

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

(D) Mortgage. To execute mortgages, both construction and permanent, for construction of facilities, including Improvements on property owned by or leased to the Association. Additionally, the Association may accept lands in Greenbelt or Amenity Areas, whether or not improved, from Declarant subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien as shall be deemed appropriate by borrower, whether Declarant or the Association, on the Improvement or other facility to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees or Assessment paid by the Members of the Association, as the case may be, but subject to the limitations imposed by this Declaration.

(E) Insurance. To take out and maintain current a policy of liability insurance coverage insuring Declarant and the Association and covering accidental bodily injury and/or death caused by the use and enjoyment of the Common Properties, as well as casualty coverage on all real and personal property owned by the Association, if and in such amounts as the Board shall deem appropriate.

(F) Rules and Regulations. To promulgate rules and regulations regarding the use of the Common Properties, including, but not limited to, prohibiting certain uses, setting rental fees for other uses and proposing a reservation or scheduling process for certain uses of the Common Properties.

FILE NO  
341635  
COUNTY CLERK, HARRIS COUNTY, TEXAS

5.8 **Community Security.** Declarant and the Association hope that the security gates and private streets concept will discourage undesired and unauthorized vehicular and pedestrian traffic within the Property and foster a higher degree of peace and tranquility. Although Declarant and the Association reasonably believe that the existence of a controlled access point may discourage the commission of criminal acts (e.g., burglary, theft, etc.) within the Property, nevertheless, neither Declarant nor the Association warrant or guarantee that such acts will not be attempted or actually occur within the Property.

Each Owner, Member and resident of the Property expressly understands, covenants and agrees with Declarant and the Association as follows:

(A) **No Liability.** Neither Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner, Member and resident of the Property.

(B) **Maintain Insurance.** Each Owner, Member and resident of the Property shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Member's and resident's own selection to select, purchase, obtain, and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner, Member and resident covering his or her real and personal property.

(C) **Release of Claims.** Each Owner, Member and resident of the Property releases Declarant and the Association and their respective agents, attorneys, employees, officers, Directors, and partners from any liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all aspects of the Property.

5.9 **Private Streets.** The entry gates, streets, esplanades, and sidewalks within the Property are private and constitute a portion of the Common Properties which are subject to the jurisdiction of and administration by the Association. In addition to the incorporation of any applicable Texas state traffic law regarding said private streets, the Board is specifically authorized to recommend, adopt, implement, and enforce rules, regulations, mechanisms, and procedures governing use of the entry gates and streets, covering items such as (but not necessarily limited to):

(A) identification and entry programs for Members, their respective immediate families, their guests, and vehicles owned or driven by any of them;

(B) speed limits, designated parking areas, restricted parking areas, and no-parking areas;

(C) signs and graphics to provide announcements to unauthorized persons concerning potential criminal trespass matters;



(D) a "fines" system through which the Association can levy and collect fines from its Members and its Members' guests, invitees and contractors for violations of the applicable rules and regulations;

(E) disclaimers of liability for any and all matters or occurrences on or related to the Common Properties; and

(F) restriction of commercial moving vehicles to a maximum of 55' in length.

5.10 **Townhome Commons.** The Association hereby reserves the right, and the Owners, by a vote of not less than Owners/Members representing sixty-seven percent (67%) of the votes entitled to be cast pursuant to Section 5.3 of this Declaration may require the Association, to designate from time to time portions of the Townhomes, that are the general maintenance responsibility of the Owners, for maintenance by the Association as a common Townhome expense (the "Townhome Commons"). The cost of maintaining the Townhome Commons shall be added to the annual budget and assessed (i) uniformly against Townhome Lots as a regular Assessment or (ii) as a special Assessment in a manner deemed fair and reasonable by the Association. The Association, or the Owners by said 67% vote, may from time to time change or eliminate the designation of Townhome Commons. Accordingly, the Association will maintain at all times a current list of the Townhome Commons for distribution to the Owners. Examples of Townhome Commons include, but are not limited to: (i) exterior Townhome surfaces, gutters, down spouts and roofs; (ii) driveways, sidewalks and walkways; (iii) visible trees, shrubs, grass, and other landscaping; and (iv) fencing and walls.

5.11 **Rules of the Board of Directors.** All Members, residents and their families and guests shall abide by any reasonable rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies.

5.12 **Delivery of Subdivision Information to Owner.** Not later than the tenth (10<sup>th</sup>) business day after the date a written request for Subdivision information is received from an Owner or the Owner's agent, a purchaser of a Lot or Lots in the Subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the Owner or purchaser, and the evidence of the requestor's authority to order a resale certificate is received and verified, the Association shall deliver to the Owner or the Owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent a current copy of the Declaration, Bylaws and Rules of the Association and a resale certificate prepared not earlier than the sixtieth (60<sup>th</sup>) day before the date of delivery that complies with Section 207.003 of the Act. For a request from a purchaser of property in the Subdivision or the purchaser's agent, the Association may require the purchaser or purchaser's agent to provide to the Association, before the Association begins the process of preparing or delivering the items listed, reasonable evidence that the purchaser has a contractual or other right to acquire property in the Subdivision. A resale certificate must contain a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any other restraint contained in the Dedicatory Instruments that restricts the Owner's right to transfer the Owner's Lot, the frequency and amount of any Maintenance Charge and regular Assessments, the amount and purpose of any special Assessment that has been approved

before and is due after the resale certificate is delivered, the total of all amounts due and unpaid to the Association that are attributable to the Owner's Lot, capital expenditures, if any, approved by the Association for the current fiscal year, the amount of reserves, if any, for capital expenditures, the Association's current operating budget and balance sheet, the total of any unsatisfied judgments against the Association, the style and cause number of any pending lawsuit in which the Association is a party, other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the Association, a copy of a certificate of insurance showing the Association's property and liability insurance relating to the Common Properties and common facilities, a description of any conditions on the Owner's Lot that the Board has actual knowledge are in violation of the Declaration or Bylaws or Rules, a summary or copy of notices received by the Association from any governmental authority regarding health or housing code violations existing on the preparation date of the resale certificate relating to the Owner's Lot or any Common Properties, the amount of any administrative or Transfer Fee charged by the Association or its Manager for a change of ownership of Lots in the Subdivision, the name, mailing address, and telephone number of the Association's Manager, a statement indicating whether the restrictions allow foreclosure of the Association's lien on the Owner's Lot for failure to pay Assessments, and a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee. The Association may charge a reasonable fee to assemble, copy, and deliver the information required by this section and may charge a reasonable fee to prepare and deliver an update of a resale certificate. The Association may require payment before beginning the process of providing a resale certificate but may not process a payment until the resale certificate is available for delivery. The Association may not charge a fee if the resale certificate is not provided in the time prescribed. The Association shall deliver the information required to the person specified in the written request. A written request that does not specify the name and location to which the information is to be sent is not effective. The Association may deliver the information required and any update to the resale certificate by mail, hand delivery, or alternative delivery means specified in the written request. Neither the Association nor its Manager is required to inspect a Lot before issuing a resale certificate or an update. Not later than the seventh (7<sup>th</sup>) business day after the date a written request for an update of a resale certificate is received from an Owner, Owner's agent, or a title insurance company, the Association shall deliver to the Owner, Owner's agent, or title insurance company or its agent, an updated resale certificate that contains the following information: if a right of first refusal or other restraint on sale is contained in the Dedicatory Instruments, a statement of whether the Association waives the restraint on sale; the status of any unpaid regular or special Assessments, Maintenance Charges, dues, or other payments attributable to the Owner's Lot(s); and any changes to the information provided in the resale certificate issued previously. Requests for an updated resale certificate must be made within one hundred eighty (180) days of the date the original resale certificate was issued. The updated request may be made only by the party requesting the original resale certificate.

5.13 **Online Subdivision Information Required.** The Association shall make the Dedicatory Instruments relating to the Subdivision and filed in the Official Records of Aransas County, Texas available on its website if the Association has, or its Manager on behalf of the Association maintains, a publicly accessible website.

(A) Records Retention. The Association shall use its best efforts to keep the following records for the stated periods of time, being the stated minimum requirements of the Act:

1. Minutes or a similar record of the proceedings of the meetings of the Board shall be retained for at least seven (7) years.
2. Names and mailing addresses of the Members, the currency and accuracy of the information being the responsibility of the Members, and other account records of current Owners, shall be retained for at least five (5) years.
3. Financial records and books of account for the Association, kept in a manner consistent with generally accepted accounting principles, shall be retained for at least seven (7) years.
4. Copies of income tax returns prepared for the Internal Revenue Service, and audit records, shall be retained for at least seven (7) years.
5. Copies of the governing documents, other than the documents specifically listed in (A) 7 below, and all amendments to any of these, shall be retained for at least seven (7) years, including a record of all votes or written consents by which amendments to these governing documents were approved.
6. Contracts with a term of one (1) year or more shall be retained for at least four (4) years after the expiration of the contract term.
7. Certificate of Formation, Bylaws, and the Declaration shall be retained permanently.

(B) Records Inspection. Books and records of the Association shall be made available for inspection and copying pursuant to Sections 22.351 and 22.353 of the Texas Business Organizations Code and Section 209.005 of the Texas Property Code, and as follows:

1. Proper Purpose. The Board may require a Member to submit a written demand for inspection, stating the purpose for which the Member will inspect the books and records. The Board has the following rights: (a) to determine whether the Member's purpose for inspection is proper; (b) to deny the request if the Board determines that the Member's purpose is not proper; (c) if granting the request, to identify which books and records are relevant to the Member's stated purpose for inspection.

2. Copies. A Member, at the Member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the Member, and to charge the member a reasonable fee for copying. The Board has adopted a Records Production and Copying Policy that prescribes the costs the Association will charge for the compilation, production, and reproduction of information requested under this Section, which Policy is recorded in the Official Public Records of Real Property of Aransas County, Texas, pursuant to Section 209.005 of the Act. The prescribed charges may include all reasonable costs of materials, and labor. The Association may not charge an Owner for the compilation, production, or reproduction of information requested under this Section unless the policy prescribing those costs has been recorded as required by this subsection. An Owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the Policy adopted under this Section. The Association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the Association shall submit a final invoice to the Owner on or before the thirtieth (30th) business day after the date the information is delivered. If the final invoice includes additional amounts due from the Owner, the additional amounts, if not reimbursed to the Association before the thirtieth (30th) business day after the date the invoice is sent to the Owner, may be added to the Owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the Owner is entitled to a refund, and the refund shall be issued to the Owner not later than the thirtieth (30th) business day after the date the invoice is sent to the Owner.

3. Member's Agent. A Member's inspection of the books and records may be assisted or performed by the Member's agent, accountant, or attorney.

4. Records of Attorneys and Accountants. The files and records of an attorney or accountant who performs services for the Association are not records of the Association, are not subject to inspection by members, and are not subject to production in a legal proceeding.

5.15 Indemnification. THE ASSOCIATION SHALL INDEMNIFY ANY PERSON WHO WAS OR IS A PARTY, OR IS THREATENED TO BE MADE A PARTY TO ANY THREATENED, PENDING OR COMPLETED ACTION, SUIT OR PROCEEDING, WHETHER CIVIL, CRIMINAL, ADMINISTRATIVE OR INVESTIGATIVE BY REASON OF THE FACT THAT HE IS OR WAS THE DECLARANT HEREIN OR A DIRECTOR, OFFICER, COMMITTEE MEMBER, EMPLOYEE, SERVANT OR AGENT OF THE ASSOCIATION AGAINST EXPENSES, INCLUDING ATTORNEYS' FEES, REASONABLY INCURRED BY HIM IN CONNECTION WITH SUCH ACTION, SUIT OR PROCEEDING UNLESS IT IS FOUND AND DETERMINED BY THE BOARD OR A COURT THAT HE (1) ACTED IN BAD FAITH AND IN A MANNER HE REASONABLY BELIEVED NOT TO BE IN, OR OPPOSED TO, THE BEST INTERESTS OF THE ASSOCIATION, AND (2) WITH

RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE HIS CONDUCT WAS UNLAWFUL. THE TERMINATION OF ANY ACTION, SUIT OR PROCEEDING BY SETTLEMENT, OR UPON A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT, SHALL NOT OF ITSELF CREATE A PRESUMPTION THAT THE PERSON DID NOT ACT IN GOOD FAITH OR IN A MANNER WHICH HE REASONABLY BELIEVED TO BE IN, OR NOT OPPOSED TO, THE BEST INTERESTS OF THE ASSOCIATION, AND WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE THAT HIS CONDUCT WAS UNLAWFUL. THE BOARD MAY PURCHASE AND MAINTAIN INSURANCE ON BEHALF OF ANY PERSON WHO IS OR WAS THE DECLARANT HEREIN OR A DIRECTOR, OFFICER, COMMITTEE MEMBER, EMPLOYEE, SERVANT OR AGENT OF THE ASSOCIATION, AGAINST ANY LIABILITY ASSERTED AGAINST HIM OR INCURRED BY HIM IN ANY SUCH CAPACITY, OR ARISING OUT OF HIS STATUS AS SUCH, WHETHER OR NOT THE ASSOCIATION WOULD HAVE THE POWER TO INDEMNIFY HIM AGAINST SUCH LIABILITY HEREUNDER OR OTHERWISE. ADDITIONALLY, THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DECLARANT AND ITS PARTNERS, AGENTS AND EMPLOYEES AGAINST ANY EXPENSE OR LIABILITY, INCLUDING REASONABLE ATTORNEYS' FEES, EXPERT WITNESS OR OTHER FEES AND COSTS OF COURT INCURRED BY ANY OF THEM IN CONNECTION WITH OR ARISING OUT OF (I) THE USE OF THE PRIVATE ROADWAYS WITHIN THE PROPERTY OR ANY OTHER PORTION OF THE COMMON PROPERTY BY ANY PARTY PRIOR TO ITS CONVEYANCE OR DEDICATION TO THE ASSOCIATION AND (II) ANY CLAIM RELATED TO THE DESIGN, MANNER OR TYPE OF CONSTRUCTION OR MAINTENANCE OF THE ROADWAYS OR OTHER IMPROVEMENTS ON OR WITHIN THE PROPERTY.

**ARTICLE VI**  
**ARCHITECTURAL REVIEW COMMITTEE**

6.1 **Approval of Plans and Specifications.** No Improvement shall be commenced, erected, constructed, placed or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the Plans and Specifications therefore shall have been submitted to and approved by the Architectural Review Committee in accordance herewith.

6.2 **Membership of Architectural Review Committee.** The Architectural Review Committee shall consist of not less than one (1) nor more than five (5) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as Declarant or its successors or assigns deems appropriate.

6.3 **Actions of the Architectural Review Committee.** The Architectural Review Committee may, by resolution, unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Review Committee. In the absence of such designation, the vote of a majority of all of the members of the Architectural Review Committee taken without a meeting, shall constitute an act of the Architectural Review Committee.

6.4 **Advisory Members.** The Voting Members may from time to time designate Advisory Members.

6.5 **Term.** Each member of the Architectural Review Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein.

6.6 **Declarant's Rights of Appointment.** Declarant, its successors or assigns shall have the right to appoint and remove all members of the Architectural Review Committee. Declarant may delegate this right to the Board by written instrument. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Review Committee.

6.7 **Adoption of Rules.** The Architectural Review Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, landscaping code and other similar codes as it may deem necessary and desirable.

6.8 **Design Guidelines.** The Architectural Review Committee hereby adopts the Design Guidelines, which may hereafter be amended from time to time, and shall supply said Design Guidelines to each Owner. All Improvements shall be constructed in accordance with the Design Guidelines, and the Architectural Review Committee shall have the authority to disapprove any proposed Improvements based on the restrictions set forth in the Design Guidelines. Any decision of the Architectural Review Committee pursuant to this Section shall be final and binding so long as it is made in good faith. In the event of a conflict between the Design Guidelines and this Declaration (or any Supplemental Declaration) this Declaration shall control. The Architectural Review Committee may charge Owners a reasonable fee for each set of Design Guidelines supplied to any Owner.

**PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE, AND OWNER IS STRONGLY ENCOURAGED TO CONTACT THE ARCHITECTURAL REVIEW COMMITTEE TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT.**

**THE DESIGN GUIDELINES MAY CONTAIN STANDARDS, REQUIREMENTS, OR LIMITATIONS IN ADDITION TO THOSE EXPRESSLY SET FORTH OR REFERRED TO IN THIS DECLARATION AND MORE STRINGENT STANDARDS, REQUIREMENTS, OR LIMITATIONS THAN ANY SPECIFIC STANDARD, REQUIREMENT OR LIMITATION SET FORTH OR REFERRED TO IN THIS DECLARATION.**

6.9 **Review of Proposed Construction.** Whenever in this Declaration, or in any Supplemental Declaration, the approval of the Architectural Review Committee is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in question and

all other facts and information which, in its sole discretion, it considers relevant, and may require an Owner to provide such other information as it deems relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Review Committee, and construction thereof may not commence unless and until the Architectural Review Committee has approved such Plans and Specifications in writing. The Architectural Review Committee may postpone review of the Plans and Specifications until such time as the Architectural Review Committee has received all information requested. In the event the Architectural Review Committee fails to approve or disapprove such Plans and Specifications within thirty (30) days after the Architectural Review Committee's receipt of all information requested by the Architectural Review Committee, the Plans and Specifications shall be deemed approved without any further action required. The Architectural Review Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Review Committee. The Architectural Review Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes of governmental regulatory authorities.

6.10 **Variances.** The Architectural Review Committee may grant variances from compliance with any of the provisions of this Declaration or any Supplemental Declaration, when, in the opinion of the Architectural Review Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument, and must be approved by a majority of the Voting Members. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof. Notwithstanding the foregoing, such variances shall not vary any local governmental ordinance unless a variance or special exception has been first granted by the respective local governmental authority.

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

6.12 **Work in Progress.** The Architectural Review Committee, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications.

6.13 **Address.** Plans and Specifications shall be submitted to the Architectural Review Committee at the offices as identified within the Design Guidelines, or such other address as may be designated by Declarant, its successors and assigns, from time to time.

6.14 **Submittal and Fees.** The Architectural Review Committee shall have the right to require a reasonable submission fee not to exceed a \$1,000.00 refundable deposit with a \$800 non-refundable review and submission fee, for each set of Plans and Specifications submitted for its review.

6.15 **Notice of Compliance.** Upon completion of any Improvement approved by the Architectural Review Committee and the Owner's submittal of the Notice of Completion to the Architectural Review Committee, the Architectural Review Committee shall issue a Notice of Compliance to the Owner. The Notice shall specify that the Improvements comply with the approved Plans and Specifications on file with the Architectural Review Committee. The Notice shall not be construed to certify the acceptability, sufficiency or approval by the Architectural Review Committee of the actual construction of the Improvements or of the workmanship or material thereof. The Owner is hereby notified that the Notice in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the Architectural Review Committee of the construction workmanship, materials or equipment of the Improvements.

## **ARTICLE VII**

### **FUNDS AND ASSESSMENTS**

7.1 **Assessments.** Each Owner by acceptance of a deed to a Lot, whether or not it shall be expressed in any such deed or any other conveyance, is deemed to covenant and agree to pay the Association the Assessments or charges hereby levied, to wit:

(A) Assessments established by the Board pursuant to the provisions of this Article VII shall be levied on a fair and reasonable basis (considering the purpose of the Assessment, the Owners benefited by the Assessment, and the Owners burdening the Common Properties giving rise to the Assessment, among other things) against each Lot within the Property, except for any Lots owned by Declarant. No Assessment shall be due by Declarant for any Lots owned by Declarant, Future Lots, or any acreage owned or held by Declarant. The Common Properties shall not be subject to Assessments.

(B) Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Property against which the Assessment fell due, and shall become a lien against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

(C) Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose to the duration of the Assessment year or other period remaining after said date. Such proration shall be calculated on a per diem basis.



7.2 **Maintenance Fund.** The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended. Nothing contained herein shall limit, preclude or impair the establishment of other maintenance funds by an Association pursuant to any Supplemental Declaration.

7.3 **Regular Annual Assessments.** Prior to the beginning of each fiscal year, the Board shall estimate (in one or more budgets covering all or portions of the Property for purposes of fairly allocating expenses according to residential uses and densities, among other things) the expenses to be incurred by the Association during such year in performing its functions under the ROYAL OAKS Restrictions and ROYAL OAKS Rules, including, but not limited to, the cost of all maintenance, the cost of providing street lighting, the cost of enforcing the ROYAL OAKS Restrictions and ROYAL OAKS Rules, and a reasonable provision for contingencies, a reserve fund for road maintenance, and appropriate replacement reserves less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level and allocation of Assessments set by the Board shall be final and binding so long as made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, or to the extent otherwise reasonably necessary, the Association may at any time, and from time to time, amend any or all such budgets and levy further Assessments or increase existing Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in either annual or semi-annual installments on or before the due date as set by the Board, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the regular annual Assessment per Lot for years 2015 and 2016 exceed the sum of (i) \$2,500.00 for Townhome Lots and (ii) \$15,000.00 for estate Lots (i.e., non-Townhome Lots). Thereafter, with the majority approval of the Board, the Association shall have the right at any time to adjust the regular Assessment from year to year as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder; provided, however, that the regular annual Assessment permitted hereunder may be increased by no more than the Maximum Allowable Increase (as hereinafter defined).

For all annual Assessments accruing after January 1, 2017, the annual Assessment may be adjusted to the Maximum Allowable Increase by a majority vote of the Board and without the approval of the membership of the Association. The Maximum Allowable Increase is defined as the product of ten multiplied by the number of years since 2017, expressed as a percentage (i.e., divided by 100). Any increase in excess of the Maximum Allowable Increase shall require the approval of Members representing sixty-seven percent (67%) of the votes entitled to be cast pursuant to Section 5.3 of this Declaration and the Bylaws of the Association.

7.4 **Special Assessments.** In addition to the regular annual Assessments provided for above, the Board, with the approval of Members representing sixty-seven percent (67%) of the votes entitled to be cast pursuant to Section 5.3 of this Declaration, may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable

the Board to carry out the functions of the Association under the ROYAL OAKS Restrictions and ROYAL OAKS Rules. The amount and allocation of any special Assessments shall be at the reasonable discretion of the Board, and all such special Assessments shall be due and payable to the Association within thirty (30) days of the date of written notice of such special Assessment. Notwithstanding the foregoing, if an emergency exists such that the Board determines that the repair of a capital improvement upon the Common Properties is necessary to eliminate or reduce the risk of injury to third parties and there is not enough money held by the Association, in reserve or otherwise, to repair the capital improvement to reduce or eliminate this risk, the Board may levy a special Assessment in an amount sufficient to repair the capital improvement to reduce or eliminate such risk without the affirmative vote of Members representing sixty-seven percent (67%) of the votes entitled to be cast pursuant to Section 5.3 of this Declaration.

7.5 **Owner's Personal Obligation for Payment of Assessments.** The regular and special Assessments, and any fines and penalties provided for herein, shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments by the non-use of any Common Properties or by the abandonment of his or her Lot, or otherwise. In the event of default in the payment of any such Assessment, fine or penalty, the Owner of the Lot shall be obligated to pay interest on the amount of the Assessment from the due date at the lesser of a percentage rate of (i) eighteen percent (18%) per annum, or (ii) the maximum rate permitted by law, together with all costs and expenses of collection, including reasonable attorneys' fees.

7.6 **Transfer and Other Fees.** A Transfer Fee may be charged by the Association or its Manager to reflect changes of ownership, tenancy or occupancy on the records of the Association. The right and authority to set the amount of and receive payment of charges for statements of Maintenance Charges, regular Assessments, special Assessments or other indebtedness, resale certificates, and similar responses and Transfer Fees as aforesaid is deemed to be assigned by virtue of contracting with a Managing Agent to provide the associated functions and services for so long as the applicable contract remains in effect, unless the applicable contract expressly provides otherwise.

7.7 **Assessment Lien and Foreclosure.** All sums assessed in the manner provided in this Article but unpaid, shall together with interest as provided in Section 7.5 hereof and the cost of collection, including attorneys' fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. Each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association such a contractual lien on such Lot, which may be foreclosed judicially or by Expedited Foreclosure Proceedings pursuant to the provisions of Section 209.0092 of the Act and the Texas Rules of Civil Procedure Rules 735 and 736 (and any successor statutes) as herein provided; and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for:

(A) All liens for taxes or special assessments levied by the applicable city, county or state government, or any political subdivision or special district thereof;

(B) All liens securing all amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the date any Assessment became due and payable; and

(C) All liens including, but not limited to, vendor's liens, deeds of trust and other security agreements which secure any loan made by any lender to a Member for any part of the purchase price of any Lot when the same are purchased from a builder, or for any part of the cost of constructing, repairing, adding to or remodeling any Improvements utilized for residential purposes.

Notwithstanding the above, no lien shall be deemed or held superior to the lien hereby created unless the Association is made a party to any court proceeding to enforce any of the above listed liens. The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination may be signed by an officer of the Association. To evidence the aforesaid assessment lien, the Association may, through its attorney, prepare a written notice of a claim of assessment lien setting forth the amount of the claimed unpaid indebtedness or delinquency, together with the interest thereon and the accrued costs of collection thereof, the name of the Owner of the Lot covered by such lien, and a legal description of and street address for the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Aransas County, Texas; provided, however, no such written evidence shall be necessary for the creation or attachment of such lien. When all amounts claimed under the notice of lien and all other costs and assessments which may have accrued subsequent to the filing of the notice of lien have been fully paid or satisfied, the Association shall execute and record a notice of satisfaction of the delinquent assessment upon payment by the Owner of a reasonable fee, as fixed by the Board, to cover the preparation and recordation of such instrument. Such lien for payment of Assessment shall attach with the priority above set forth from the date that such payment becomes delinquent, and may be enforced by the Association instituting suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to such Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

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

Association of such assignment or transfer. Notice provided by a transferee or assignee to the Association shall be in writing, shall contain the mailing address of the transferee or assignee, and shall be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the Association according to the mailing address of the Association pursuant to the most recent Management Certificate filed of record. If a recorded instrument does not include an address for the lienholder, the Association does not have a duty to notify the lienholder as provided by this section. For purposes of this section, the Lot Owner is deemed to have given approval for the Association to notify the lienholder. Not later than the thirtieth (30<sup>th</sup>) day after the date the Association sends the notice, the Association must record an affidavit in the Real Property Records, stating the date on which the notice was sent and containing a legal description of the Lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit. The notice requirements of this section also apply to the sale of an Owner's Lot by a sheriff or constable conducted as provided by a judgment obtained by the Association. The Owner of a Lot in the Subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing the Association's Assessment lien not later than the one hundred eightieth (180<sup>th</sup>) day after the date the Association mails written notice of the sale to the Owner and the lienholder under Sections 209.010 and 209.011 of the Act. A lienholder of record may not redeem the Lot as provided herein before ninety (90) days after the date the Association mails written notice of the sale to the Lot Owner and the lienholder under the Act, and only if the Lot Owner has not previously redeemed. A person who purchases a Lot at a sale foreclosing the Association's Assessment lien may not transfer ownership of the Lot to a person other than a redeeming Lot Owner during the redemption period.

The right to foreclose the lien on real property for unpaid amounts due to the Association may be removed by a vote of Owners/Members having at least sixty-seven percent (67%) of the votes entitled to be cast pursuant to Section 5.3 of the Declaration. Owners holding at least ten percent (10%) of all voting interests may petition the Association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section. This section is required pursuant to §209.0093 of the Act, and should this provision be amended or repealed in any form, this section shall be deemed to be automatically amended or repealed in accordance therewith.

**7.8 Alternative Payment Schedule.** Prior to referring an Owner's account to a collection agent and/or instituting suit against the Owner for foreclosure, the Association shall provide written notice, by certified mail, return receipt requested, that (i) specifies each delinquent amount and the total amount of the payment required to make the account current, (ii) describes the options the Owner has to avoid the referral and/or suit, including payment plan options, and provides at least 30 days to cure the delinquency before further action is taken. Further in this regard, pursuant to Section 209.0062 of the Act, the Association hereby adopts reasonable guidelines to establish an alternative payment schedule by which an Owner may make partial payments for delinquent regular or special Assessments or any other amount owed without incurring additional penalties. The Association hereby adopts the following guidelines with regard to alternative payment schedules for delinquent Assessments and other amounts owed by an Owner:

(A) Term. The minimum term for a payment agreement shall be (3) three months and the maximum term shall be (18) eighteen months from the date of the Owner's request for a

payment plan. Subject to such minimum and maximum terms, the Association shall determine the appropriate term of the payment plan in its sole discretion.

(B) Form. Any and all alternative payment agreements shall be in writing and signed by the Owner and a duly authorized member of the Board.

(C) Additional Monetary Expense. So long as an Owner is not in default under the terms of the payment agreement, the Owner shall not incur additional monetary expenses; however, the Owner shall be responsible for all interest accruing during the term of the payment plan as well as reasonable costs associated with administering the payment plan or interest.

(D) Application of Payments. If at the time the Association receives a payment, the Owner is not in default under an alternative payment agreement, the Association shall apply the payment to the owner's debt in the following order of priority: (a) any delinquent assessment; (b) any current assessment; (c) any attorney's fees or third party collection costs incurred by the Association associated solely with Assessments or any other charge that could provide the basis for foreclosure; (d) any attorney's fees incurred by the Association that are not subject to subsection (c); (e) any fines assessed by the Association; and (f) any other amounts owed to the Association.

(E) Default. If, the Owner defaults under a payment plan agreement, the account may immediately be turned over to the Association's attorney for collection. The Association shall not be required to enter into an alternative payment agreement with an Owner who failed to honor the terms of a previous payment agreement during the two (2) years following the Owner's default under the previous alternative payment agreement. At the discretion of the Association, an Owner who failed to honor the terms of a previous payment agreement may be required to waive Expedited Foreclosure Proceedings under Section 209.0092 of the Act as a condition to an additional alternative payment agreement. If, at any time the Association receives a payment from an Owner who is in default of an alternative payment agreement, the Association is not required to apply the payment in the order of priority specified by paragraph D, subparagraphs (a) through (f) above.

The Association may reduce or waive some or all of the charges addressed by this policy on an ad hoc basis without waiving the right to charge such fees on future requests.

7.9 Right of Declarant to Set Rate. During the Development Period, Declarant is entitled to change the annual rate and/or allocation of a regular or special Assessment as set forth in this section without the joinder, vote, consent or consideration of any Owner and without further formality than giving notice.

7.10 Payment of Assessments by Declarant During Development Period. Notwithstanding any provision herein to the contrary, so long as a Class "B" membership exists, Declarant shall pay twenty-five percent (25%) of the regular Assessment Declarant would owe pursuant to this Declaration as a Class "A" Member; and, as long as Declarant is a Class "B" Member, Declarant, or any assigns of Declarant, shall pay any deficiency in the operating budget,

less capital contributions and reserves for the common expenses of the Subdivision, which deficiency shall be reimbursed to Declarant by the Association as funds become available.

7.11 **Assessments for Contractors.** From the date a Contractor acquires a Lot until the earlier of (a) the date a residence is constructed thereon and sold to another person or (b) the date which is eighteen (18) months thereafter, each Contractor shall pay fifty percent (50%) of the Assessments such Contractor would owe pursuant to this Declaration as a Class "A" Member.

## **ARTICLE VIII** **EASEMENTS**

8.1 **Reserved Easements.** All dedications, limitations, restrictions and reservations shown on a Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights, made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property and other property in the Development. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for access, ingress and egress for public utility purposes (including, without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of fifteen (15) feet on each side of such Lot line. Further, Declarant, for the benefit of the Subdivision hereby reserves a general utility easement and drainage easements over, under or across any side, front or rear setback line, all streets and the Common Properties (as the same may change from time to time). Each such drainage easement shall be in favor of each of the Lots and the Common Properties within the Subdivision to accommodate the drainage of storm water runoff caused by the construction and maintenance of Improvements within the Subdivision. An easement over the Common Properties shown on any recorded plat is hereby retained by Declarant, its successors and assigns or designees, for the benefit of the Subdivision. Declarant reserves the right to drill water wells on any portion of the Common Properties to provide for irrigation of the Common Properties or for use in connection with a community water system.

8.2 **Installation and Maintenance.** There is hereby created an easement upon, across, over and under all of the easement areas affecting the Property for ingress and egress in connection with installing, replacing, repairing, maintaining and extending all utilities, including, but not limited to, water, sewer, gas, cable, television, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no sewer, electrical lines, water lines or other utilities or appurtenances

thereto may be relocated on the Property until approved by Declarant or the Architectural Review Committee. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

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

8.4 **Surface Areas.** Each Owner shall maintain the surface area of all easements located within his Lot and all Improvements located therein except for such improvements for which a public authority or utility company is responsible. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

8.5 **Title to Easement and Appurtenances Not Conveyed.** Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or Common Properties or any drainage, water, gas, sewer, storm sewer, electrical light, electrical power, telegraph or telephone way, or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Property, and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

8.6 **Greenbelt or Amenity Areas.** Each Owner shall have an easement of use and enjoyment in and to all Greenbelt or Amenity Areas which shall be appurtenant to and shall pass with title to such Owner's Lot, subject to the following provisions:

(A) The right of the Association to suspend the Owner's voting rights and right to use the Greenbelt or Amenity Areas for any period, during which any Assessment against such Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Association;

(B) The right of the Association to dedicate or transfer all or any part of the Greenbelt or Amenity Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a majority vote of the Members;

(C) The right of the Association to borrow money for the purpose of improving the Greenbelt or Amenity Areas and, in furtherance thereof, to mortgage the Greenbelt or Amenity Areas, all in accordance with the Articles and Bylaws;

(D) The right of the Association to make reasonable rules and regulations regarding the use of the Greenbelt or Amenity Areas and any facilities thereon; and

(E) The right of the Association to contract for services with third parties on such terms as the Association may determine.

8.7 **Owner's Townhome Easement.** Each Owner of a Townhome Lot is granted an easement over, under and through every other Lot that contains the same building in which his Townhome is located for the limited purpose of installing, maintain and replacing wires, cables, conduit, pipes and meters that serve his Townhome, but only to the extent that such use is reasonable and necessary. Reciprocally, the Owner of a Lot that contains wires, cables, conduit, pipes or meters that serve one or more other Townhomes has a duty to refrain from interfering with or damaging those items. Additionally, each Owner is granted an access easement over adjoining Lots and Common Properties for the maintenance or reconstruction of his Townhome and other Improvements on his Lot, provided that the exercise of the easement does not damage or materially interfere with the use of the adjoining Lot or Common Properties. Request for entry to an adjoining Lot or Common Properties for this purpose must be made to the Owner of the adjoining Lot, or to the Association in the case of Common Properties, sufficiently in advance to schedule access reasonably convenient to the adjoining Owner. If an Owner damages an adjoining Lot or the Common Properties in exercising rights under this easement, the Owner is obligated to restore the damaged Property to its original condition, at his sole expense, within a reasonable period of time.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

9.1 **Term.** This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until January 1, 2025 unless amended as herein provided. After January 1, 2025, this Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless extinguished by a written instrument executed by the Owners/Members, excluding Declarant, representing at least sixty-seven percent (67%) of the votes entitled to be cast pursuant to Section 5.3 of this Declaration.

9.2 **Nonliability of Board and Architectural Review Committee Members.** Neither Declarant, the Architectural Review Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of Declarant's, the Architectural Review Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of Declarant, the Architectural Review Committee or its members or the Board or its members, as the case may



be. Neither Declarant, the Architectural Review Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

9.3 **Amendment.**

(A) By Declarant. This Declaration or any Supplemental Declaration may be amended by Declarant acting alone without the necessity of notice to or the approval of the Association or any Members, (i) to correct typographical and grammatical errors, and ambiguities, (ii) to amend, restate, modify or repeal, this Declaration and/or any other Dedicatory Instruments during the Declarant Control Period; (ii) to amend, revise, modify, or vacate any Plat during the Declarant Control Period; and (iii) to annex and subject any other property to the scheme of this Declaration during the Declarant Control Period, provided that any annexation is not inconsistent with the scheme of the Subdivision.

(B) By Owners. In addition to the method in Section 9.3A, this Declaration may be amended by the recording in the Official Records of Aransas County, Texas an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by the Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast pursuant to Section 5.3 hereof.

(C) By the Association. The Board has the right in its sole judgment, from time to time and at any time, to amend this Declaration without joinder of any Owner or Member for the following purposes:

1. to resolve or clarify any ambiguity or conflicts herein, or to correct any inadvertent misstatements, errors, or omissions herein; or
2. to conform this Declaration to the requirements of any lending institution; provided, the Board has no obligation whatsoever to amend this Declaration in accordance with any such lending institution requirements, and the Board may not so amend this Declaration if, in the sole opinion of the Board, any substantive and substantial rights of Owners would be adversely affected thereby; or
3. to conform this Declaration to the requirements of any governmental agency, including the Federal Home Loan Mortgage Corporation, Federal National Mortgage Agency, Veterans Administration, or Federal Housing Administration, and, in this respect, the Board shall so amend this Declaration to the extent required by law upon receipt of written notice of such requirements and request for compliance; or
4. to amend the Rules and Regulations of the Association if the Board deems appropriate to comply with the scheme of the Declaration and the Subdivision; or
5. to amend the alternative payment schedule for certain Assessments, Open Records Policy, Records Retention Policy, and/or other policies, to comply with the Act.

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

9.5 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

9.6 **Mergers and Consolidations.** The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger, consolidation or annexation shall have the consent (in writing or at a meeting duly called for such purpose) of those Members entitled to cast not less than sixty-seven percent (67%) of the votes of the Association.

9.7 **Exemption of Declarant.** Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Review Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities to construct any and all other types of improvements anywhere within the Property, however, the construction of sales and leasing offices and the posting of signs advertising the sale and leasing of Lots by Declarant shall be limited to Lots owned by Declarant and the Common Properties.

9.8 **Assignment by Declarant.** Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

9.9 **Enforcement and Nonwaiver.**

(A) **Right of Enforcement.** Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce all of the provisions of the ROYAL OAKS Restrictions and the ROYAL OAKS Rules. All claims, demands, disputes, differences, controversies and misunderstandings arising under, out of, in connection with or in relation to this Declaration shall be submitted to, and shall be determined by binding arbitration in accordance with, the provisions of the Texas Uniform Arbitration Act, V.T.C.A., Civ. Prac. & Rem. Code §§171.001 to 171.020.

(B) Nonwaiver. The failure to enforce any provision of the ROYAL OAKS Restrictions and the ROYAL OAKS Rules at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

(C) Liens. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

9.10 Effects of Violation on Mortgages. No violation of the provisions herein contained, or any portion hereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record, or otherwise shall affect the rights of the mortgagee under any such mortgage, the holder of any such lien or the beneficiary of any such deed of trust; and any such mortgage, lien or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

9.11 Construction.

(A) Restrictions Severable. The provisions of the ROYAL OAKS Restrictions and the ROYAL OAKS Rules shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

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

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

9.12 Disclaimer by Declarant. **EXCEPT AS SPECIFICALLY STATED HEREIN, DECLARANT HAS NOT MADE, DOES NOT MAKE AND DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, OR CONCERNING (I) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING BUT NOT BY WAY OF LIMITATION, THE WATER, SOIL, GEOLOGY AND THE SUITABILITY THEREOF, AND OF THE PROPERTY, FOR ANY AND ALL ACTIVITIES AND USES WHICH OWNER MAY ELECT TO CONDUCT THEREON OR ANY IMPROVEMENTS ANY OWNER MAY ELECT TO CONSTRUCT THEREON, EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ANY OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME; (II) THE MANNER OF CONSTRUCTION AND CONDITION OF ANY OF THE IMPROVEMENTS ON COMMON AREAS CONSTRUCTED BY DECLARANT; AND (III) THE DESIGNATION OR LOCATION OF GREENBELT OR COMMON AREAS OR THE TYPE OR NATURE OF ANY AMENITIES OR IMPROVEMENTS THAT COULD BE CONSTRUCTED THEREON OTHER THAN ANY AMENITIES OR IMPROVEMENTS**

SHOWN ON ANY RECORDED PLAT. DECLARANT SPECIFICALLY RETAINS THE RIGHT, BUT NOT THE OBLIGATION, TO USE OTHER PHASES OF THE DEVELOPMENT FOR COMMERCIAL USES, HIGHER DENSITY RESIDENTIAL USES, A GOLF COURSE, AN EQUESTRIAN CENTER AND/OR A COUNTRY CLUB. DECLARANT FURTHER RESERVES THE RIGHT TO DESIGNATE WHICH OWNERS HAVE THE RIGHT TO USE ANY AMENITIES OR IMPROVEMENTS CONSTRUCTED IN OTHER PHASES OF THE DEVELOPMENT.

9.13 **Not a Condominium.** This Declaration is not, and is not intended to create, a condominium within the meaning of the Texas Condominium Act.

9.14 **Governing Law.** The Declaration shall be construed and governed under the laws of the State of Texas.

## **ARTICLE X**

### **DISPUTE RESOLUTION**

10.1 **Defined Terms.** As used in this Article X, the following terms shall have the meaning set forth below:

(A) "Alleged Defect" means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Properties or of any Lot.

(B) "Bound Parties" means: (i) the Declarant, (ii) the Association, (iii) all Owners, or lessees of Owner, and (iv) any contractor or subcontractor, architect, engineer, consultant or other person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of the Common Properties or the Lots and who agrees in writing to be bound by the provisions of this Article X.

(C) "Claim" means: (i) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Properties, the Lots, the Improvements, or any other part of the Property, including, without limitation, any claim or cause of action that the Common Properties or the Lots are defective or that the Declarant, its limited partners, agents, contractors, employees, subcontractors, architects, attorneys, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof, or (ii) any claim or cause of action against the Declarant or any employee, agent, attorney, director, member, limited partner, or officer of Declarant arising out of or in any way related to the development of the Property or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty, or (iii) any claim or cause of action against the Association or the Board or any employee, agent, attorney, or officer of the Association or the Board arising out of or in any way related to the management or operation of the Association or the Property, including, without limitation, any claim for negligence,

fraud, intentional misconduct or breach of fiduciary duty. The award of the arbitrator issued pursuant hereto shall be final, binding, and non-appealable. A Claim shall not include any breach, violation or default in any term or provision of this Declaration or any of the other Royal Oaks Restrictions by any Owner, any tenant or lessee of Owner, or any contractor, subcontractor, agent, representative of any Owner.

10.2 **Agreement to Resolve Certain Disputes Without Litigation.** All Bound Parties agree that all Claims shall be resolved in accordance with the dispute resolution procedures set forth in this Article X.

10.3 **Notice of Claim.** Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (c) a certification from a professional engineer licensed in the State of Texas that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Texas under applicable Texas Statutes (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to the Texas Rules of Civil Procedure, particularly Rule 194 and its subparagraphs, as amended.

10.4 **Mediation.** The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within ninety (90) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty

(30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determine reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

10.5 **Binding Arbitration.** In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) dates after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 10.5. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 10.5. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 10.5, the arbitration shall be conducted in accordance with the following rules:

(A) **Initiation of Arbitration.** The arbitration shall be limited by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other rules as the AAA may determine to be applicable (the "AAA Rules").

(B) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and all disputes between the parties shall be resolved by a binding arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules and pursuant to the Federal Arbitration Act, 9 U.S.C. Sections 1-14. In the event of a conflict between the AAA Rules, the Federal Arbitration Act, and this Section 10.5, the provisions of this Section 10.5 shall govern.

(C) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 10.5 as the "Arbitrator".

(D) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession,

knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator, provided they qualify under existing Texas law and the existing rules of the AAA. "Existing rules" shall be interpreted as the rules of the referenced entities at the time the Claim is made.

(E) Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 10.5C.

(F) Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(G) Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement or experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(H) Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(I) Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(J) Hearings. Hearings may be held at any place within the State of Texas designated by the Arbitrator and, in the case of particular witnesses not subject to

subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

10.6 **Final Award.** The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

10.7 **Right to Enter, Inspect, Repair and/or Replace.** Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Properties and any Lot for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take *any* actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 20.7 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Lots. The right of a Bound Party and its employees, agents, attorneys, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Bound Party. In no event shall any statutes of limitation be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

10.8 **Use of Funds.** Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. Any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

10.9 **Approval of Litigation.** The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with



monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of their Lot of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.3.

10.10 **Statute of Limitations.** All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 10.5. If the arbitration proceedings are not initiated within the time period provided by Texas law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

10.11 **Conflicts.** In the event of any conflict between this Article X and any other provision of the Declaration or Design Guidelines, this Article X shall control, except for the provisions of Section 10.8 above, in which the other terms and provisions of the Declaration shall be deemed controlling in all respects. Any provision conflicting with the statements in the foregoing sentence of this Section 10.11, shall be deemed to be amended and altered and brought into compliance with such sentence.

10.12 **Acceptance.** BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER, FOR HIMSELF, HIS HEIRS, TENANTS, CONTRACTORS, INVITEES, GUESTS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM (AS DEFINED HEREIN) RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE X AND WAIVES THE RIGHT TO PURSUE DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE X. THE ASSOCIATION, EACH LOT OWNER, AND DECLARANT, ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE X, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH LOT OWNER, AND DECLARANT, FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH LOT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE, SHE OR IT IS GIVING UP ANY RIGHTS HE, SHE OR IT MAY POSSESS TO PUNITIVE, EXEMPLARY, AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

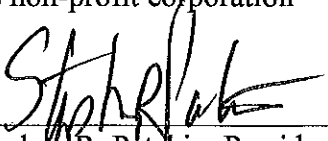
10.13 **Certification.** The undersigned President and Secretary of the Association HEREBY CERTIFY that the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Royal Oaks has been approved by Members of the Association entitled to cast at least sixty-seven percent (67%) of the votes entitled to be cast pursuant to this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 1st day of May, 2015.

Association:

Royal Oaks at Fulton Beach  
Homeowners Association,  
a Texas non-profit corporation

By:


  
Stephen R. Patchin, President

Declarant:

Royal Oaks Partners at Fulton Beach, L.P.,  
a Texas limited partnership

By: Royal Golf Development, Inc.,  
a Delaware corporation, its General Partner

By:

  
Stephen R. Patchin, Vice-President

and

By:

  
Daniel A. Pedrotti, Jr., Secretary

File No. **341635**  
County Clerk, Aransas County, Texas

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF Aransas     §

File No. **341635**  
~~County Clerk, Aransas County, Texas~~

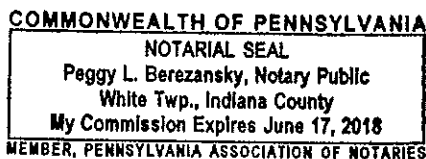
This instrument was acknowledged before me on the 7<sup>th</sup> day of May, 2015, by Stephen R. Patchin, as Vice-President of Royal Golf Development, Inc., a Delaware corporation, the General Partner of Royal Oaks Partners at Fulton Beach, L.P., a Texas limited partnership, for and on behalf of said limited partnership, and as President of Royal Oaks at Fulton Beach Homeowners Association, a Texas non-profit corporation, for and on behalf of said corporation.



Martha Leah Hellums  
Notary Public, State of Texas

~~THE STATE OF PENNSYLVANIA~~  
§  
§  
COUNTY OF INDIANA §

This instrument was acknowledged before me on the 5<sup>th</sup> day of May, 2015, by Daniel A. Pedrotti, Jr., as Secretary of Royal Oaks at Fulton Beach Homeowners Association, a Texas non-profit corporation, for and on behalf of said corporation.



Peggy L. Berezansky  
Notary Public, State of Texas

(Subdivision Plat)

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RECEIVED BY THE U.S. MARSHAL SERVICE

10-11-2014

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AMENDING FLAT

ROYAL OAKS SUBDIVISION

STATE OF TEXAS  
COUNTY OF TARRANT  
I, \_\_\_\_\_, Clerk of the County of Tarrant, Texas, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the records of the County of Tarrant, Texas.

WITNESSE MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Clerk of the County of Tarrant, Texas

[illegible][illegible]

STATE OF TEXAS  
County of Jeff Davis

James M. Smith Clerk of the County Court in and for said County.


Know all men by these presents, that I, the undersigned, Clerk of the County Court in and for said County, do hereby certify that the foregoing is a true and correct copy of the original of the same as the same appears from the records of said County Court.

Witness my hand and the seal of said County Court at the City of El Paso, Texas, this 1st day of March, 1934.

James M. Smith  
Clerk of the County Court in and for said County.

Notary Public in and for the State of Texas, my commission expires the 1st day of March, 1935.

PREPARED BY  
 J. M. [Signature]  
 DATE  
 1964



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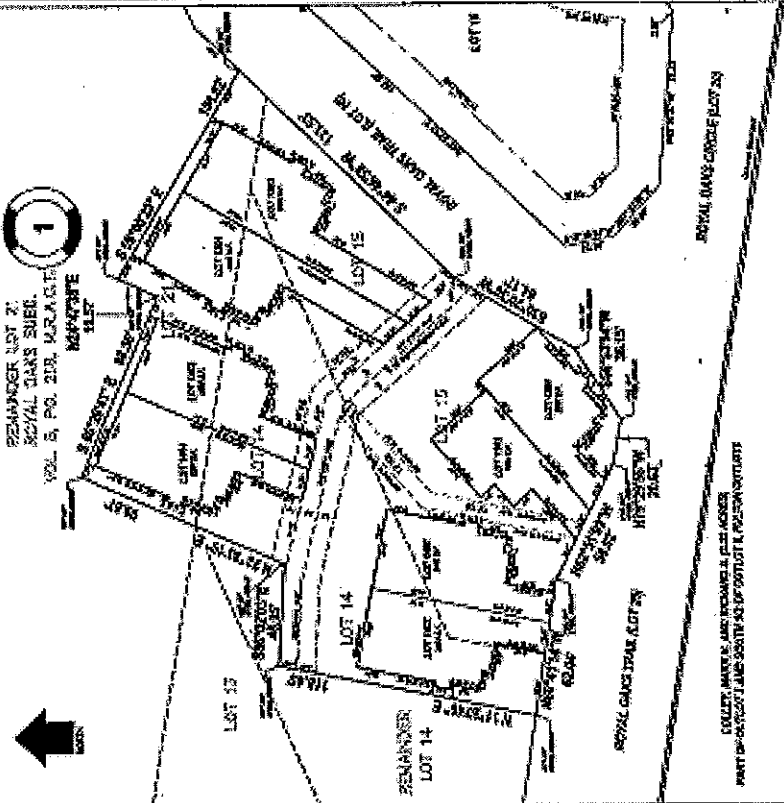

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Exhibit "A"

(Replat)

Vol. 6 Page 183

 <p><b>Survey Certificate</b></p> <p>ALL persons claiming an interest in the land described in this survey are hereby notified that they must appear at the office of the County Clerk, Arkansas County, Texas, on or before the 10th day of May, 1963, to file their claims.</p> <p>Surveyed by: <u>John R. Smith</u></p> <p>Witness: <u>John R. Smith</u></p>		<p><b>Original Certificate</b></p> <p>Surveyed by: <u>John R. Smith</u></p> <p>Witness: <u>John R. Smith</u></p>		<p><b>Land Certificate</b></p> <p>Surveyed by: <u>John R. Smith</u></p> <p>Witness: <u>John R. Smith</u></p>		<p><b>Public City Building Inspector</b></p> <p>Surveyed by: <u>John R. Smith</u></p> <p>Witness: <u>John R. Smith</u></p>		<p><b>County Clerk's Certificate</b></p> <p>Surveyed by: <u>John R. Smith</u></p> <p>Witness: <u>John R. Smith</u></p>																																																																																																																																																																																																																																																																																																																
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BEARING	DISTANCE	1	N 89° 15' E	1.00	2	S 89° 15' E	1.00	3	S 89° 15' E	1.00	4	S 89° 15' E	1.00	5	S 89° 15' E	1.00	6	S 89° 15' E	1.00	7	S 89° 15' E	1.00	8	S 89° 15' E	1.00	9	S 89° 15' E	1.00	10	S 89° 15' E	1.00	11	S 89° 15' E	1.00	12	S 89° 15' E	1.00	13	S 89° 15' E	1.00	14	S 89° 15' E	1.00	15	S 89° 15' E	1.00	16	S 89° 15' E	1.00	17	S 89° 15' E	1.00	18	S 89° 15' E	1.00	19	S 89° 15' E	1.00	20	S 89° 15' E	1.00	21	S 89° 15' E	1.00	22	S 89° 15' E	1.00	23	S 89° 15' E	1.00	24	S 89° 15' E	1.00	25	S 89° 15' E	1.00	26	S 89° 15' E	1.00	27	S 89° 15' E	1.00	28	S 89° 15' E	1.00	29	S 89° 15' E	1.00	30	S 89° 15' E	1.00	31	S 89° 15' E	1.00	32	S 89° 15' E	1.00	33	S 89° 15' E	1.00	34	S 89° 15' E	1.00	35	S 89° 15' E	1.00	36	S 89° 15' E	1.00	37	S 89° 15' E	1.00	38	S 89° 15' E	1.00	39	S 89° 15' E	1.00	40	S 89° 15' E	1.00	41	S 89° 15' E	1.00	42	S 89° 15' E	1.00	43	S 89° 15' E	1.00	44	S 89° 15' E	1.00	45	S 89° 15' E	1.00	46	S 89° 15' E	1.00	47	S 89° 15' E	1.00	48	S 89° 15' E	1.00	49	S 89° 15' E	1.00	50	S 89° 15' E	1.00	51	S 89° 15' E	1.00	52	S 89° 15' E	1.00	53	S 89° 15' E	1.00	54	S 89° 15' E	1.00	55	S 89° 15' E	1.00	56	S 89° 15' E	1.00	57	S 89° 15' E	1.00	58	S 89° 15' E	1.00	59	S 89° 15' E	1.00	60	S 89° 15' E	1.00	61	S 89° 15' E	1.00	62	S 89° 15' E	1.00	63	S 89° 15' E	1.00	64	S 89° 15' E	1.00	65	S 89° 15' E	1.00	66	S 89° 15' E	1.00	67	S 89° 15' E	1.00	68	S 89° 15' E	1.00	69	S 89° 15' E	1.00	70	S 89° 15' E	1.00	71	S 89° 15' E	1.00	72	S 89° 15' E	1.00	73	S 89° 15' E	1.00	74	S 89° 15' E	1.00	75	S 89° 15' E	1.00	76	S 89° 15' E	1.00	77	S 89° 15' E	1.00	78	S 89° 15' E	1.00	79	S 89° 15' E	1.00	80	S 89° 15' E	1.00	81	S 89° 15' E	1.00	82	S 89° 15' E	1.00	83	S 89° 15' E	1.00	84	S 89° 15' E	1.00	85	S 89° 15' E	1.00	86	S 89° 15' E	1.00	87	S 89° 15' E	1.00	88	S 89° 15' E	1.00	89	S 89° 15' E	1.00	90	S 89° 15' E	1.00	91	S 89° 15' E	1.00	92	S 89° 15' E	1.00	93	S 89° 15' E	1.00	94	S 89° 15' E	1.00	95	S 89° 15' E	1.00	96	S 89° 15' E	1.00	97	S 89° 15' E	1.00	98	S 89° 15' E	1.00	99	S 89° 15' E	1.00	100	S 89° 15' E	1.00
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<p><b>LOTS 1401 THRU 1404 &amp; 1501 THRU 1504, BLOCK 1</b></p> <p><b>VILLAS AT ROYAL OAKS PHASE 1</b></p> <p><b>TOWN OF FULTON</b></p> <p><b>ARKANSAS COUNTY, TEXAS</b></p> <p>THIS A REPLAT OF A PORTION OF LOT 14, LOT 15, AND A PORTION OF LOT 16, BLOCK 1, ROYAL OAKS SUBDIVISION, ARKANSAS COUNTY, TEXAS, INCLUDING THE LANDS SHOWN IN VOLUMES 5, PAGE 218, AND VOLUMES 6, PAGE 218, OF THE PUBLIC RECORDS OF ARKANSAS COUNTY, TEXAS.</p>																																																																																																																																																																																																																																																																																																																								

RECORDER'S MEMORANDUM:  
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this page was not clearly legible.

FILED FOR RECORD IN  
OFFICIAL PUBLIC RECORDS

AT 2:51 P.M.

SCANNED

62/205

INDEXED

MAY 11 2015

STATE OF TEXAS - COUNTY OF ARANSAS  
I hereby certify that this instrument was FILED on the date and at the time affixed  
hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS of  
ARANSAS COUNTY, TEXAS, as stamped hereon by me.



*Valerie K. Amason*  
VALERIE K. AMASON, COUNTY CLERK,  
ARANSAS COUNTY, TEXAS

MARY JANE YBARBO  
FROST BANK PLAZA  
800 N. CARANCAHUA ST.  
SUITE 1500  
CORPUS CHRISTI, TX 78401