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Fort Bend County Texas

Pages: 57 Fee: \$ 235.00

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS**

**FOR**

**TRAILS OF KATY**

TABLE OF CONTENTS

ARTICLE		PAGE
<b>ARTICLE I - DEFINITIONS</b>		1
Section 1.1	Architectural Review Committee.....	1
Section 1.2	Assessments .....	2
Section 1.3	Association .....	2
Section 1.4	Builder .....	2
Section 1.5	Bylaws .....	2
Section 1.6	Certificate of Formation .....	2
Section 1.7	Common Area .....	2
Section 1.8	Declaration .....	2
Section 1.9	Developer .....	2
Section 1.10	Developer Control Period .....	3
Section 1.11	Lienholder .....	3
Section 1.12	Lot.....	3
Section 1.13	Owner .....	3
Section 1.14	Plat .....	3
Section 1.15	Properties .....	3
Section 1.16	Reserve(s).....	3
Section 1.17	Section.....	3
Section 1.18	Sections .....	3
Section 1.19	Subdivision .....	3
Section 1.20	Supplemental Declaration .....	3
<b>ARTICLE II – ARCHITECTURAL CONTROL</b>		4
Section 2.1	Architectural Control .....	4
Section 2.2	Architectural Guidelines.....	6
Section 2.3	No Liability .....	6
Section 2.4	Single-Family Residential Construction .....	7
Section 2.5	Minimum Square Footage within Improvements .....	7
Section 2.6	Exterior Materials.....	7
Section 2.7	New Construction Only.....	8
Section 2.8	Roofs and Roofing Materials .....	9
Section 2.9	Location of the Improvements Upon the Lot.....	10
Section 2.10	Composite Building Site.....	10
Section 2.11	Utility Easements .....	10
Section 2.12	Garages.....	11
Section 2.13	Sidewalks .....	11
Section 2.14	Housing Plan and Elevation Repetition .....	12
Section 2.15	Lot Coverage .....	12
Section 2.16	Landscaping .....	12
Section 2.17	Underground Electric Service .....	15
Section 2.18	Structured In-House Wiring .....	16
Section 2.19	Grading and Drainage .....	16
Section 2.20	Driveways .....	16
Section 2.21	Outdoor Lighting .....	17
Section 2.22	Screening .....	17
Section 2.23	Walls and Fences.....	17

Section 2.24	Fences on Reserve Lots .....	19
Section 2.25	Fence Maintenance .....	19
Section 2.26	Basketball Equipment .....	20
Section 2.27	Rain Barrels and Rain Harvesting Systems.....	21
Section 2.28	Solar Energy Devices .....	22
Section 2.29	Storm and Energy Efficient Shingles .....	24
Section 2.30	Flags .....	25
Section 2.31	Religious Items .....	27
<b>ARTICLE III – USE RESTRICTIONS.....</b>		<b>28</b>
Section 3.1	Prohibition of Offensive Activities .....	28
Section 3.2	Use of Temporary Structures or Outbuildings .....	29
Section 3.3	Automobiles, Boats, Trailers, Recreational Vehicles and Other Vehicles .....	29
Section 3.4	Advertisement and Garage Sales.....	31
Section 3.5	Air Conditioners .....	31
Section 3.6	Window and Door Coverings .....	31
Section 3.7	Unsightly Objects.....	31
Section 3.8	Pools and Playground Equipment .....	31
Section 3.9	Mineral Operation .....	32
Section 3.10	Animal Husbandry .....	32
Section 3.11	Visual Obstruction at the Intersection of Streets.....	32
Section 3.12	Lot and Building Maintenance .....	32
Section 3.13	Signs, Advertisements and Billboards .....	34
Section 3.14	No Business or Commercial Use.....	34
Section 3.15	Holiday Decorations .....	34
Section 3.16	Visual Screening on Lots .....	35
Section 3.17	Antennas, Satellite Dishes and Masts .....	35
Section 3.18	Roads .....	35
Section 3.19	Firearms .....	36
Section 3.20	On-Site Fuel Storage.....	36
Section 3.21	Drainage and Septic Systems .....	36
<b>ARTICLE IV – TRAILS OF KATY OWNERS ASSOCIATION, INC. ....</b>		<b>36</b>
Section 4.1	Purpose .....	36
Section 4.2	Membership and Voting Rights .....	36
Section 4.3	Non-Profit Corporation.....	37
Section 4.4	Bylaws .....	37
Section 4.5	Ownership Information .....	37
Section 4.6	Inspection of Records.....	37
<b>ARTICLE V – MEMBERSHIP AND VOTING RIGHTS FOR TRAILS OF KATY OWNERS ASSOCIATION, INC. ....</b>		<b>37</b>
Section 5.1	Assessment .....	37
Section 5.2	Voting Classes.....	37
<b>ARTICLE VI – ASSESSMENTS .....</b>		<b>38</b>
Section 6.1	The Maintenance Fund.....	38

Section 6.2	Creation of the Lien and Personal Obligation of Assessments .....	39
Section 6.3	Assessments .....	39
Section 6.4	Maximum Annual Assessment .....	39
Section 6.5	Capitalization Fee .....	40
Section 6.6	Transfer Fees .....	40
Section 6.7	Adopt-A-School Assessments .....	40
Section 6.8	Special Assessments .....	41
Section 6.9	Notice and Quorum .....	41
Section 6.10	Rate of Assessment .....	41
Section 6.11	Effect of Nonpayment of Assessments .....	42
Section 6.12	Subordination of the Lien to Mortgages .....	43
Section 6.13	Association Obligation .....	43
Section 6.14	Fines .....	43
<b>ARTICLE VII – INSURANCE AND CASUALTY LOSSES .....</b>		<b>44</b>
Section 7.1	Insurance .....	44
Section 7.2	Individual Insurance .....	46
Section 7.3	Damage and Destruction .....	46
Section 7.4	Disbursement of Proceeds .....	47
Section 7.5	Repair and Reconstruction .....	47
<b>ARTICLE VIII – NO PARTITION .....</b>		<b>48</b>
<b>ARTICLE IX – GENERAL PROVISIONS .....</b>		<b>48</b>
Section 9.1	Enforcement .....	48
Section 9.2	Severability .....	48
Section 9.3	Texas Property Code .....	48
Section 9.4	Owner's Easement of Enjoyment .....	48
Section 9.5	Delegation of Use .....	49
Section 9.6	Amendment .....	49
Section 9.7	Dissolution .....	49
Section 9.8	Common Area Mortgages or Conveyance .....	49
Section 9.9	Interpretation .....	50
Section 9.10	Omissions .....	50
Section 9.11	Additional Requirements .....	50
Section 9.12	No Priority .....	51
Section 9.13	Notice to Association .....	51
Section 9.14	Amendment by Board of Directors of the Association .....	51
Section 9.15	Applicability of Article IX .....	51
Section 9.16	Failure of Mortgagee to Respond .....	51
Section 9.17	Annexation .....	51
<b>EXECUTION AND NOTARIZATION .....</b>		<b>52</b>
<b>CONSENT OF LIENHOLDER .....</b>		<b>53</b>

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
for  
TRAILS OF KATY**

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THE STATE OF TEXAS           §  
  §       KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF FORT BEND       §

This Declaration ("Declaration"), made on the date hereinafter set forth by Ventana Development Katy, Ltd., a Texas limited partnership.

WITNESSETH:

WHEREAS, Ventana Development Katy, Ltd., a Texas limited partnership, (hereinafter called the "Developer") is the owner of that certain real property known as Trails of Katy, Section One (1), a subdivision in Fort Bend County, Texas, according to the map or plat thereof recorded under Film Code No. 20140090 of the Plat Records of Fort Bend County, Texas (the "Section"); and

WHEREAS, Ventana Development Katy, Ltd., a Texas limited partnership, desires to impose upon such Section, the covenants, conditions and restrictions herein set forth.

NOW THEREFORE, Ventana Development Katy, Ltd., a Texas limited partnership, hereby declares that all of the Section shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall constitute covenants running with the Section, which shall be binding on all parties (including their heirs, successors and assigns) having any right, title or interest in the Section or any part thereof, and shall inure to the benefit of each owner thereof and the Trails of Katy Owners Association, Inc.

**ARTICLE I  
DEFINITIONS**

**SECTION 1.1**        **"Architectural Review Committee"** shall mean and refer to the Architectural Review Committee or any person or persons to whom the Architectural Review Committee delegates such responsibility provided for in Article II hereof.

**SECTION 1.2** "Assessments" shall mean and refer to: (1) the assessments, fees and charges referenced in Article VI of this Declaration, including, but not limited to: Annual Assessments; Capitalization Fees; Special Assessments; Adopt a School Assessments referenced in Section 6.7; and Transfer Fees; (2) any charge back for costs, fees, expenses, fines, attorney's fees incurred or authorized by the Declaration or by the Association in connection with enforcement of this Declaration, the Association Bylaws, or rules and regulations or by law; and (3) any other charges authorized by this Declaration or by law.

**SECTION 1.3** "Association" shall mean and refer to Trails of Katy Owners Association, Inc., a Texas non-profit corporation, and its successors and assigns.

**SECTION 1.4** "Builder" shall mean any person, firm or entity, which owns a developed Lot for the purpose of constructing a new dwelling for resale to the public.

**SECTION 1.5** "Bylaws" shall mean the Bylaws of the Association.

**SECTION 1.6** "Certificate of Formation" shall mean the Certificate of Formation of the Association.

**SECTION 1.7** "Common Area" shall mean all property owned by or under the jurisdiction of the Association for the common use and benefit of the Owners, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof, and/or by virtue of the Plat, and/or by virtue of prior grants or dedications. References herein to the "Common Area" shall mean and refer to Common Area as defined respectively in this Declaration and all Supplemental Declarations.

"Common Area" shall also mean and refer to all existing and subsequently provided improvements upon or within the Common Area, except those as may be expressly excluded herein. Common Area may include, but not necessarily be limited to, the following: structures for recreation, swimming pools, playgrounds, structures for storage or protection of equipment, fountains, statuary, sidewalks, gates, streets, fences, landscaping, and other similar and appurtenant improvement.

**SECTION 1.8** "Declaration" shall mean this "Declaration of Covenants, Conditions and Restrictions for Trails of Katy."

**SECTION 1.9** "Developer" shall mean and refer to not only Ventana Development Katy, Ltd., a Texas limited partnership, but also to each of its successors or assigns (whether immediate or remote), as successor developer of all or a substantial portion of the Lots in the undeveloped state, but shall not include any purchaser of one (1) or more developed Lots. For the purposes of this Declaration, "developed Lot" shall mean a Lot with the

street on which it faces opened and improved and with utilities installed and ready to furnish utility service to such Lot, and "undeveloped Lot" is any Lot which is not a developed Lot.

**SECTION 1.10** "Developer Control Period" shall mean the later of the dates when (a) the last vacant Lot in the Property is sold to an Owner, other than the Developer or a Builder, or; (b) December 31, 2033. Developer may also end the Developer Control Period by written notice to the Board notifying the Board of its decision to end the Developer Control Period.

**SECTION 1.11** "Lienholder" shall mean that entity executing this Declaration in such capacity.

**SECTION 1.12** "Lot" shall mean and refer to any subdivided parcel of land designated as a Lot or Lots shown upon the plat of the Section, with the exception of property designed thereon as "Public Streets", "Reserves", "Commercial Reserves", "Unrestricted Reserves", "Lakes", "Common Area", or "Recreational Areas", if any. Lots are to be used for single-family residential purposes only.. The maximum number of Lots that can be created and made subject to this Declaration is two thousand (2,000).

**SECTION 1.13** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 1.14** "Plat" shall mean and refer to the various plat(s) of the Properties recorded in the Plat Records of Fort Bend County, Texas.

**SECTION 1.15** "Properties" shall mean and refer to: (a) the Section, and (b) any other Sections under the jurisdiction of the Association.

**SECTION 1.16** "Reserve(s)" shall mean any property in the Subdivision owned by the Developer or the Association, which is designated for Recreation Area or Common Area or for green space, landscaping or Subdivision identification signage, or as a Restricted Reserve on the Plat.

**SECTION 1.17** "Section" shall mean and refer to Trails of Katy, Section One (1).

**SECTION 1.18** "Sections" shall mean and refer to the individual Sections or subdivisions (according to the Plats thereof) that are defined as a part of the Property in this Declaration or any Supplemental Declaration that make the Section subject to the jurisdiction of the Association.

**SECTION 1.19** "Subdivision" shall mean and refer to the Properties.

**SECTION 1.20** "Supplemental Declaration" shall mean and refer to the instruments filed of record and used to annex additional Sections into the jurisdiction of the

Association, which Supplemental Declarations may contain additional different restrictions applicable to the Section referenced in the Supplemental Declaration.

## ARTICLE II

### ARCHITECTURAL CONTROL

**SECTION 2.1**      **ARCHITECTURAL CONTROL**. Any construction plans, detailed specifications, survey (or original plat plan) for any of the following must be submitted to and approved in writing by the Architectural Review Committee, or its duly authorized representative: the erection of any buildings or improvements of any character; changes to the exterior of any improvement on any Lot which would modify the design, color, materials, or size; any change to the exterior of any Lot which would include additions, remodeling, renovations and redecorations; and any substantial change in landscaping or irrigation after original construction. All construction shall be in accordance with the Architectural Review Committee design guidelines promulgated from time to time, if any, and this Declaration.

The Architectural Review Committee shall initially be comprised of three (3) members. The initial members of the Architectural Review Committee shall be appointed by the Developer. If the Association's Board of Directors becomes responsible for architectural control, the entire Board of Directors of the Association shall comprise the Architectural Review Committee. If there exists at any time one (1) or more vacancies in the Architectural Review Committee, the remaining member or members of such Committee may designate successor member(s) to fill such vacancy or vacancies provided that the Developer, may, from time to time, without liability of any character for so doing, remove and replace any such members of the Architectural Review Committee as it may in its sole discretion determine. THE ARCHITECTURAL REVIEW COMMITTEE AND THE INDIVIDUAL MEMBERS THEREOF SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION IN PERFORMING OR PURPORTING TO PERFORM THE FUNCTIONS DELEGATED HEREUNDER. THE ASSOCIATION SHALL INDEMNIFY AND HOLD THE MEMBERS OF THE ARCHITECTURAL REVIEW COMMITTEE HARMLESS FOR ANY CLAIMS AND SHALL INSURE THEM UNDER THE ASSOCIATION DIRECTORS' AND OFFICERS' LIABILITY INSURANCE POLICY. In the event the Architectural Review Committee fails to indicate its approval or disapproval within forty-five (45) days after the receipt of the required documents, the request shall be deemed denied. The Architectural Review Committee's affirmative approval must be obtained. Approval by Architectural Review Committee shall not apply to any request which would (1) violate any setback or easement set out in this Declaration or recorded Plat, or (2) violate any express

provision of this Declaration, and such requests shall be deemed to be automatically disapproved without the specific approval of the Architectural Review Committee. The Developer shall retain architectural control rights to all new construction until all Lots have completed construction and have been sold to Owners; thereafter, all Architectural Review Committee functions shall belong to the Board of Directors of the Association.

Developer hereby retains its rights to assign all or part of the duties, powers and responsibilities of the Architectural Review Committee to the Association and its Board of Directors, and the term "Architectural Review Committee" herein shall include the Association, as such assignee. At the end of the Developer Control Period, all of the duties, powers and responsibilities of the Architectural Review Committee shall automatically be assigned to the Board of Directors without the need of any action on the part of the Developer. Anything contained in this paragraph or elsewhere in this Declaration to the contrary notwithstanding, the Architectural Review Committee, and its duly authorized representatives, are hereby authorized and empowered, at its sole and absolute discretion, to make and permit reasonable modifications of and deviations from any of the architectural requirements of this Declaration, including, but not limited to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Lot and of the size and location of any such building or improvement when, in the sole and final judgment and opinion of the Architectural Review Committee, or its duly authorized representatives, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Subdivision and its improvements as a whole.

The Architectural Review Committee may require the submission to it of such documents and items (including as examples, but without limitation, written request for and description of the construction modification or variance requested, plans, specifications, plot plans, surveys, and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for an approval, modification, or a variance. If the Architectural Review Committee shall approve such request, the Architectural Review Committee may evidence such approval, and grant its permission, only by written instrument, addressed to the Owner of the Lot(s), expressing the decision of the Architectural Review Committee describing (when applicable) the conditions on which the application has been approved (including as examples, but without limitation, the type of alternate materials to be permitted, and alternate fence height approved, or specifying the location, plans and specifications applicable to an approved out building), and signed by a majority of the then members of the Architectural Review Committee (or by its duly authorized representative).

Any request for a variance from the express provisions of this Declaration shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval from the Architectural Review Committee; or (b) failure by the Architectural Review Committee to respond to the request for variance. In the event the Architectural Review Committee or any successor to the authority thereof shall not then be functioning, and/or the term of the Architectural Review Committee shall have expired, and the Board of Directors of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the covenants of this Declaration shall be permitted because it is the intention of the Developer that no variances be available except at the discretion of the Architectural Review Committee, or if it shall have succeeded to the authority of the Architectural Review Committee in the manner provided herein, the Board of Directors of the Association. The Architectural Review Committee shall have no authority to approve any variance except as expressly provided in this Declaration.

**SECTION 2.2**      **ARCHITECTURAL GUIDELINES**. The Architectural Review Committee may from time to time promulgate architectural guidelines; provided, however, that such architectural guidelines will serve as minimum guidelines, and the Architectural Review Committee shall not be bound thereby.

**SECTION 2.3**      **NO LIABILITY**. NEITHER THE ARCHITECTURAL REVIEW COMMITTEE OR THE ASSOCIATION, NOR THE RESPECTIVE AGENTS, EMPLOYEES AND ARCHITECTS OF EACH, SHALL BE LIABLE TO ANY OWNER OR ANY OTHER PARTY FOR ANY LOSS, CLAIM OR DEMAND ASSERTED ON ACCOUNT OF THE ADMINISTRATION OF THIS DECLARATION OR THE PERFORMANCE OF THE DUTIES HEREUNDER, OR ANY FAILURE OR DEFECT IN SUCH ADMINISTRATION AND PERFORMANCE. THIS DECLARATION CAN BE ALTERED OR AMENDED ONLY AS PROVIDED HEREIN AND NO PERSON IS AUTHORIZED TO GRANT EXCEPTIONS OR MAKE REPRESENTATIONS CONTRARY TO THE INTENT OF THIS DECLARATION. NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF MINIMUM CONSTRUCTION STANDARDS SHALL EVER BE CONSTRUED AS REPRESENTING THAT SUCH PLANS, SPECIFICATIONS OR STANDARDS WILL, IF FOLLOWED, RESULT IN A PROPERLY DESIGNED RESIDENTIAL DWELLING. SUCH APPROVALS AND STANDARDS SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING ANY RESIDENCE WILL BE BUILT IN A GOOD, WORKMANLIKE MANNER. THE APPROVAL OR LACK OF DISAPPROVAL BY THE ARCHITECTURAL REVIEW COMMITTEE SHALL NOT BE DEEMED TO CONSTITUTE ANY WARRANTY OR REPRESENTATION BY THE ARCHITECTURAL REVIEW COMMITTEE INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION RELATING TO

FITNESS, DESIGN OR ADEQUACY OF THE PROPOSED CONSTRUCTION OR COMPLIANCE WITH APPLICABLE STATUTES, CODES AND REGULATIONS. THE ACCEPTANCE OF A DEED TO A RESIDENTIAL LOT BY THE OWNER IN THE SUBDIVISION SHALL BE DEEMED A COVENANT AND AGREEMENT ON THE PART OF THE OWNER, AND THE OWNER'S HEIRS, SUCCESSORS AND ASSIGNS, THAT THE BOARD OF DIRECTORS OF THE ASSOCIATION, AS WELL AS THEIR AGENTS, EMPLOYEES AND ARCHITECTS, SHALL HAVE NO LIABILITY UNDER THIS DECLARATION EXCEPT FOR WILLFUL MISDEEDS.

**SECTION 2.4**      **SINGLE-FAMILY RESIDENTIAL CONSTRUCTION.** No building shall be erected, altered or permitted to remain on any Lot other than one (1) detached single-family residential dwelling not to exceed two and one-half (2½) stories in height, with a private garage for not more than three (3) cars and bona fide servants' quarters, which structures shall not exceed the main dwelling in height and which structures may be occupied only by (i) a member of the family occupying the main residence on the building site, or (ii) domestic servants employed on the premise. No room(s) in the dwelling and no space in any other structure shall be let or rented. This shall not preclude the main residential dwelling from being leased or rented in its entirety as a single residence to one (1) family or person.

**SECTION 2.5**      **MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS.** The living area on the ground floor of the main residential dwelling for a one-story dwelling (exclusive of porches, garages and servants' quarters) shall be not less than twelve hundred (1,200) square feet for one-story dwellings. The total living area of the main residential dwelling for a multi-story dwelling shall be not less than sixteen hundred (1,600) square feet. The Architectural Review Committee, at its sole discretion, is hereby permitted to approve deviations in any building area herein prescribed in instances, which in its sole judgment such deviation would result in a more common beneficial use. Such approvals must be granted in writing and, when given, will become part of this Declaration to the extent of the particular Lot involved.

**SECTION 2.6**      **EXTERIOR MATERIALS.** The variety and number of primary exterior materials should be held to a minimum. The maximum number of exterior materials allowed is three (3). All exterior walls on the first floor must be brick, stone or stucco excluding box-out windows. On two-story residential dwellings, the front elevation must be predominantly brick, stone or stucco. On the second story, exterior walls on Lots 65' and larger, brick, stone or stucco is on the front elevation, then a corner wrap of not less than 15' is required. The Architectural Review Committee may require additional brick, stone or stucco on residential dwellings that are in public view of the Properties entrance and community access boulevards.

(a) Brick

Brick shall be hard fired and have an overall appearance of relative evenness in color and texture. Painted brick may be permitted where deemed appropriate for a particular architectural style. However, such applications must be approved by the Architectural Review Committee prior to initiation.

(b) Wood/Hardboard

Siding: Material shall be fiber-cement (e.g. "Hardiplank<sup>®</sup>") and must be of a horizontal, lap type. Diagonal siding, board and batten, and particleboard siding, and vinyl siding are prohibited. Siding shall be painted or stained with medium range colors that do not drastically contrast adjacent brick or other material. Naturally weathered wood is not permitted.

Trim: All trim shall be smooth/semi-smooth, high quality finish grade stock wood or Fiber-Cement (e.g. "Hardiplank<sup>®</sup>"). Trim shall be stained or painted as approved by the Architectural Review Committee.

(c) Stucco

Stucco, as a building material, is permitted given an appropriate style of architecture. Stucco may be used as a major building material with the approval of the Architectural Review Committee.

(d) Stone

If stone is to be incorporated, it should be a natural limestone, or other regional stone color which is deemed appropriate with the project character as approved by the Architectural Review Committee.

(e) Synthetic Materials

Synthetic material such as metal siding, vinyl siding, and other materials which have the appearance of wood, or stone must be reviewed to ensure a quality appearance for approval by the Architectural Review Committee.

(f) Material Changes

Changes in exterior wall material should have a logical relationship to the massing of the residential dwelling. Material changes on a common wall plane that occur along a vertical line should be avoided wherever possible.

(g) Awnings

Awnings over entrances or windows are prohibited.

**SECTION 2.7**      **NEW CONSTRUCTION ONLY**. Because it is the intention that only new construction shall be placed and erected on the Lots, no building of any kind (with the

exception of lawn storage or children's playhouses) shall ever be moved onto any Lot within said Subdivision, except with the prior written consent of the Architectural Review Committee.

**SECTION 2.8**      **ROOFS AND ROOFING MATERIALS.**

(a) Materials

Approved roof materials shall have the following minimum qualities:

- Dimensional with 30-year warranty.
- Earthtone colors. All shingles within a given neighborhood shall be the same color.

Shingles shall be composition asphalt. Other materials must be approved by the Architectural Review Committee prior to installation. All materials must meet the minimum qualities specified above.

The shingle material must harmonize with other shingle materials used in the neighborhood. Shingles with an ornate pattern or cut pattern are not acceptable. Earthtone shades are required for all shingle materials.

(b) Form

The form and massing of the roof should have a logical relationship to the style and massing of the residential dwelling. Roof pitches should be applicable codes, but must be a minimum of five (5) in twelve (12) and not steeper than twelve (12) in twelve (12) for the main body of the roof. Patio or shed roofs must be a minimum of three (3) in twelve (12).

The Architectural Review Committee will consider other configurations in roof forms if appropriate to the style of architecture for a particular residential dwelling. However, very steeply pitched roofs, such as Mansards, which create massive roof structures, are strongly discouraged.

The roof height should not exceed three-fourths ( $\frac{3}{4}$ ths) of the total elevation area for single story residential dwellings and one-half ( $\frac{1}{2}$ ) the total elevation area two-story residential dwellings.

Fascia depths should be in scale with the mass of the elevation, but the face of the fascia board must be at least six inches (6") (nominal) in size.

(c) Roof Penetrations

Roof vents, utility penetrations, or other roof protrusions shall not be visible from the front street and must be painted to match the shingles. Skylights should not be visible from the front street.

(d) Gutters & Downspouts

Gutters and downspouts should be strategically placed to minimize their visibility to the front street. Preferably, downspouts should occur only at the rear and sides of a residential dwelling. Placement on the front elevation should be avoided as much as possible, but may be used to avoid water runoff at front entrances. Gutters and downspouts must match or be very similar to the color of the surface to which they are attached.

Downspouts must be installed vertically and in a simple configuration. All gutters and downspouts on standard Lots must be installed so water runoff does not adversely affect adjacent properties.

**SECTION 2.9**      **LOCATION OF THE IMPROVEMENTS UPON THE LOT.** No building, structure, or other improvements shall be located on any Lot nearer to the front Lot line or nearer to the street sideline than the minimum building setback line shown on the recorded Plat. No building, structure, or other improvement shall be located on any Lot nearer than ten feet (10') to any side street line. No building shall be located nearer than five feet (5') to any interior Lot line. The only exception shall be detached garages which can be located no nearer than three feet (3') to any interior Lot line. No Lot adjacent to any Reserve shall have any improvements within twenty feet (20') of the rear property line. For the purposes of this covenant or restriction, eaves, steps and unroofed/unwalled and unfenced terraces shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot.

**SECTION 2.10**      **COMPOSITE BUILDING SITE.** Any Owner of one (1) or more adjoining Lots (or portions thereto) may consolidate such Lots or portions into one single-family residence building site, with the privilege of placing or constructing improvements on such site, in which case setback lines shall be measured from the resulting side property lines rather than from the Lot lines shown on the recorded Plat. Any such proposed composite building site(s) and the improvements thereon must be approved by the Architectural Review Committee.

**SECTION 2.11**      **UTILITY EASEMENTS.** Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded Plat or by separate recorded instrument; and no structure of any land shall be erected upon any of said easements. Utility easements are for the distribution of electrical, telephone, gas and cable television service. In some instances, sanitary sewer lines or storm sewer lines are also placed within the utility easement. Utility easements are typically located along the rear Lot line, although selected Lots may contain a side Lot utility easement for the purpose of completing circuits or distribution systems. Both the Plat

and the individual Lot survey should be consulted to determine the size and location of utility easements on a specific Lot. Interior Lots typically contain a utility easement along the rear line. Perimeter Lots or Lots that back up to drainage facilities, pipeline easements, property boundaries and non-residential tracts typically contain a utility easement along the rear line. Encroachment of structures upon the utility easement is prohibited.

NEITHER THE DEVELOPER NOR ANY UTILITY COMPANY USING THE EASEMENTS SHALL BE LIABLE FOR ANY DAMAGE DONE BY EITHER OF THEM OR THEIR ASSIGNS, THEIR AGENTS, EMPLOYEES OR SERVANTS TO SHRUBBERY, TREES, FLOWERS OR IMPROVEMENTS OF THE OWNER LOCATED ON THE LAND WITHIN OR AFFECTED BY SAID EASEMENTS.

**SECTION 2.12**      **GARAGES**. All residential dwellings in the Properties must have a minimum two-car garage and a maximum of four-car garage. The garages may be detached or attached. Detached garages must be set back a minimum of sixty feet (60') from the front property line. A breezeway or covered patio must connect the main residential dwelling to the detached garage. Three-car garages detached and oversized garages are permissible, subject to Architectural Review Committee approval.

No garage shall ever be changed, altered or otherwise converted for any purpose inconsistent with the housing of a minimum of two (2) automobiles at all times. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them. When a Lot sides onto a neighborhood entry street or collector/hoop street, driveways and garages are to be placed near the property line farthest from the entry street. When the side of a Lot is exposed to a Reserve, a detached garage may be allowed provided that the garage is on the side of the Lot opposite the Reserve. Lots that back onto or have a side exposed to a Reserve may have detached garages positioned on either side of the Lot. On corner Lots, detached and attached garages may not face the side street and must be placed on the opposite Lot side from the side street. Front loaded garages may protrude no more than fifteen feet (15') from the front plane of the main residence.

**SECTION 2.13**      **SIDEWALKS**. Sidewalks, four feet (4') in width, will be required in public street areas of the Properties. They shall be located six feet (6') from back of curb where the front building line is twenty-five feet (25'). They shall be located four feet (4') from back of curb where the front building line is twenty feet (20'). Sidewalks shall conform to the Fort Bend County construction standard and shall continue uninterrupted visually through both front walk paving areas and driveways. Fort Bend County requires a five foot (5') wide sidewalk through the driveway. No sidewalk shall exceed a two percent (2%) cross slope. A picture-frame finish

must be applied to driveway and walkway areas that intersect the sidewalk in order to achieve a continuous look.

**SECTION 2.14 HOUSING PLAN AND ELEVATION REPETITION.** The following three (3) scenarios represent the guidelines for determining when a plan and elevation can be repeated within the Subdivision:

- (a) when building the same plan, different elevation, on the same side of the street, two (2) full Lots must be skipped;
- (b) when building same plan, different elevation, on both sides of the street, one (1) full Lot must be skipped; and
- (c) when building the same plan, same elevation, on the same side of the street or on both sides of the street, four (4) full Lots must be skipped.

**SECTION 2.15 LOT COVERAGE.** Total Lot coverage of buildings, driveways, walks and other structures shall not exceed eighty percent (80%) of the total Lot area for standard single-family residential developments. Pools, spas and decks are not considered structures for the purpose of calculating the Lot coverage.

**SECTION 2.16 LANDSCAPING.** The Builder is responsible for landscaping all front yards, including the portion of the street right-of-way between the property line and the street curb. Installation of all landscaping must occur immediately upon occupancy of the house or within thirty (30) days after completion of construction, whichever occurs first. Installation of landscaping, including materials and workmanship, must be in conformance with acceptable industry standards. Any dead landscaping, which landscaping is required by this section must be removed and replaced within thirty (30) days of written notice from the Association.

(a) Yard Trees

**All natural trees are to be saved in the front yard. If there are no trees in the front yard,** the Builder is required to install trees in the front yard of each residential dwelling. The specific number of yard trees required for each Lot depends on Lot width. The following standards should be adhered to for the appropriate Lot widths specified.

## YARD TREE REQUIREMENTS

Lot Width	# of Yard Trees Required	# of Street Trees Required
60'	3 Hardwoods	0
65'	3 Hardwoods	0
75 – 100'	4 Hardwoods	0
All Corner Lots	Add a Minimum of 2 trees on side yards	0

The yard trees installed, or if existing, must be a minimum of four inches (4") in caliper (50 gallon) for hardwoods when measured twelve inches (12") above grade. Additionally, trees must have a minimum height of ten feet (10') and a minimum spread of five feet (5'). However, larger trees are encouraged.

(b) Other Vegetation

In addition to the tree requirements above, individual Lots must meet the following minimum landscaping requirements:

- (1) At least fifteen (15) foundation shrubs per Lot should be installed in the front yard with a minimum container size of five (5) gallons.
- (2) At least two (2) vertical foundation accent shrubs per Lot should be installed in the front yard with a minimum container size of ten (10) gallons.
- (3) Primary shrub treatment in the front yard shall be within the back third of the front of the residential dwelling. This is not to preclude additional landscaping in other areas of the front yard.
- (4) At least two (2) shrubs, five (5) gallon size are required in front of air conditioners visible from the street. Air conditioners on corner Lots must be enclosed by the fence on the street side of the Lot.

Planting bed edging is not required, but is encouraged for maintenance purposes and to define the shape of planting beds. Loose brick, plastic, concrete scallop,

corrugated aluminum, wire picket, vertical timbers and railroad ties are not in character with the desired landscape effect and are prohibited. Acceptable edging is ryerson steel, brick set in mortar, stone laid horizontally and continuous and concrete bands.

All planting beds are to be mulched with shredded pine bark or shredded hardwood.

The use of gravel or rock in front yard planting beds is prohibited, except as a border when set in and laid horizontally as quarried or utilized for drainage purposes. Specimen boulders are permitted.

Tree stakes must be made of wood or steel. Wood stakes must be two inches (2") in diameter by six feet (6') long.

All lawn ornaments, statues, or other similar items must be approved by the Association. The Association shall have the sole and exclusive discretion to determine what is acceptable.

(c) Grass Coverage

All areas exposed to public view (public right of ways, greenbelt views, public streets) shall be sodded with Saint Augustine Grass.

(d) Irrigation

Irrigation must be installed by Builder in front yards of all Lots. Irrigation, when installed, must cover all landscape areas in front and side yards of corner Lots.

All landscaping is required to be maintained in a healthy and attractive appearance. Proper maintenance includes:

1. adequate irrigation, automatic irrigation systems are encouraged;
2. appropriate fertilization;
3. pruning;
4. mowing;
5. weed control in lawns and planting beds;
6. seasonal mulching of planting beds;

7. insect and disease control; and
8. replacement of diseased or dead plant materials.

**SECTION 2.17 UNDERGROUND ELECTRIC SERVICE.** An underground electric distribution system will be installed in that part of the Subdivision designated "Underground Residential Subdivision," which underground service area shall embrace all Lots in the Subdivision. The Owner of each Lot in the Underground Residential Subdivision shall at his own cost, furnish, install, own and maintain (all in accordance with the requirement of local governing authorities and the National Electrical Code [N.E.C.]) the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each such Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot for so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 110/220 volt, three wire, 60 cycle, alternating current.

The electric company has installed the underground electric distribution system in the Underground Residential Subdivision at no cost to Developer (except for certain conduits, where applicable) upon Developer's representation that the Underground Residential Subdivision is being developed for single-family dwellings of the usual and customary type, constructed upon the premises, designed to be permanently located upon the Lot where originally constructed and built for sale to bona fide purchasers (such category of dwelling expressly excludes, without limitation, mobile homes and duplexes). Therefore, should the plans of Lot Owners in the Underground Residential Subdivision be changed so that dwellings of a different type will be permitted in such Subdivision, the company shall not be obligated to provide electric service to a Lot where a dwelling of a different type is located unless (a) Developer has paid to the company (1) an amount representing the excess in cost, for the entire Underground Residential Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision, or (b) the Owner of such Lot, or the applicant for service, shall pay to the electric company for the additional service, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such Lot, plus (2) the cost of

rearranging and adding any electric facilities serving such Lot, which rearrangement and/or addition is determined by the company to be necessary.

**SECTION 2.18      STRUCTURED IN-HOUSE WIRING.** Each house built in the Section shall include among its components structured in-house wiring and cabling to support multiple telephone lines, internet/modem connections, satellite and cable TV service and in-house local area networks. In each residential dwelling, a central location or Main Distribution Facility ("MDF") must be identified to which ALL wiring must be run. The MDF is the location where all wiring is terminated and interconnected, and where the electrical controllers, shall be mounted.

The MDF will be the central location for all wiring of all types including security, data, video, and telephone wiring. The wiring room must be a clean interior space, preferably temperature controlled and secure.

DO NOT install the components in a garage, crawl space, or exterior enclosure. These are not approved installation locations. DO NOT install the components in a fire rated wall.

The volume and ventilation characteristics of the MDF must allow for 70W heat dissipation without exceeding the ambient temperature and humidity requirements.

The specific requirements, specifications, and locations for wiring, cabling and MDF installation shall be in accordance with rules promulgated by the Architectural Review Committee from time to time.

**SECTION 2.19      GRADING AND DRAINAGE.** Each Lot shall be graded so that storm water will drain to the abutting street(s) and not across adjacent Lots. Minimum grade shall meet Federal Housing Administration ("FHA") requirements. Exceptions will be made in those instances when existing topography dictates an alternate Lot grading plan. The Architectural Review Committee must approve all exceptions.

**SECTION 2.20      DRIVEWAYS.** Builders are required to build driveways out to the street curb. Where six inch (6") barrier curbs exist, the Builders are required to saw-cut the street and curb, and tie into the street and curb in accordance with city or county standards. It is the Builders' responsibility to realign the grade in the flow line of the gutter in accordance with applicable regulations. Builders shall be responsible for repairing any ponding water ("bird baths") resulting from their construction activities. Where four inch (4") mountable curbs exist, no saw cuts will be required or permitted.

The driveway shall be constructed perpendicular to the street and shall be tied in to the street with a five foot (5') radius. The joint will be constructed in conformance to city or county standards and shall be doveled at the point of curvature.

Where the driveway intersects the sidewalk and front walks, the driveway finish may not continue through the sidewalk.

Driveways may be paved with concrete or other masonry materials, which relate to the architecture of the residential dwelling. This masonry material must be compatible, not only with the residential dwelling, but also with any other walkways or terraces on the Lot.

Materials such as textured concrete, stamped concrete, colored concrete, interlocking pavers, and brick borders are acceptable, but must be submitted to the Architectural Review Committee for color and design approval prior to the construction.

The maximum allowable driveway width for detached garages is twelve feet (12') from the front property line to at least the front building line where it may then transition to a wider width. The minimum driveway width allowed is ten feet (10') except where applicable county and city codes require otherwise.

All detached garage driveways shall have a minimum three foot (3') side Lot setback between the driveway and the adjacent side property line.

Where side-by-side driveways occur, a minimum four feet (4') side Lot setback shall be required between the driveway and the side property line to allow for adequate landscape treatment.

All driveway designs are subject to review by the Architectural Review Committee.

**SECTION 2.21**      **OUTDOOR LIGHTING**. All outdoor lighting must conform to the following standards and be approved by the Architectural Review Committee. Floodlighting fixtures shall be attached to the house or an architectural extension. Floodlighting shall not illuminate areas beyond the limits of the property line. Ornamental or accent lighting is allowed, but should be used in moderation and compliment the associated architectural elements. Moonlighting or uplighting of trees is allowed, but the light source must be hidden. Colored lenses on low voltage lights, colored light bulbs, fluorescent and neon lighting is prohibited. Mercury vapor security lights, when the fixture is visible from public view or from other Lots, is prohibited. Mercury vapor lights, when used for special landscape lighting affect (such as hung in trees as up and down lights) is permissible.

**SECTION 2.22**      **SCREENING**. Mechanical and electrical devices, garbage containers and other similar objects (i) visible from a street, Reserve, or Common Area, or (ii) located on property boundaries, must be screened from view by either fences, walls, plantings, or a combination thereof. Screening with plants is to be accomplished with initial installation, not assumed growth at maturity.

**SECTION 2.23**      **WALLS AND FENCES**.

(a) Wood Fencing Guidelines:

## (1) Height:

Typically limited to six feet (6') nominal measurement above natural grade. Builder may be required to construct eight foot (8') high fences where perimeter conditions warrant.

## (2) Materials:

All wood fences are to be constructed with Right Wood only or similar product.

## (3) Construction:

Interior Lots: Fence must be set back at least five feet (5') from the front of the home. A "good neighbor" fence policy is required. Alternating sections are to occur at regular fence post intervals only, so that an entire panel is dedicated to one Lot and the following panel is dedicated to the adjacent Lot and so forth. In this manner, both Lots receive approximately the same exposure to finished sides of a picket fence structure.

Corner Lots: Fence must be located halfway between the property line and the building line. The fence must be set back five feet (5') from the front of the home. The finished, or "picket" side of the fence should face the side street. On corner Lots of a Subdivision entrance where wood fencing is utilized, the fence must be a capped.

## (4) Special conditions:

The finished side of a fence should always face the exterior or public side. Any exposures to public streets, greenbelts, ditches, or detention basins will be considered public view and must be constructed with an ornamental cap and 1"x 5" running board located half way from the cap and the ground.

The breezeway fencing between a detached side-out garage and the home may be four feet (4') high to allow for visibility.

Where residential Lots are located adjacent to either a commercial, institutional, or other more public use, the finished side of a fence should always face the non-residential use.

(b) Ornamental Steel Fencing Guidelines:

Ornamental metal fencing must be approved for Lots adjacent to water bodies, nature preserves and greenbelts.

## (1) Height:

Nominally four feet (4'), measured from natural ground.

## (2) Dimensions:

Posts: one and one-half inches (1½") square, nominally six feet (6') on center.

Rails: Two (2) rails, one and one fourth inches (1¼") square. Located top and bottom.

Bottom rail is to be two inches (2") above natural grade.

Pickets: Flat topped, one half inch (½") square, four and one-half inches (4½") on center.

## (3) Materials.

All steel construction. Posts shall be sixteen (16) gauge wall thickness, rails shall be eighteen (18) gauge wall thickness. Weld solid all exposed ends.

Paint system: One (1) coat of primer, finished off with two (2) coats of a flat, black, non-fade paint system.

## (4) Uniformity. Builder shall use every effort to maintain uniformity of the installed product throughout the community and with other Builders' installation.

(c) Gates

## (1) Gates shall be constructed with the same materials and quality as the adjoining fence.

If the adjoining fence is ornamental steel, all hardware shall be painted the same color as the fence.

## (2) Pedestrian gates may not exceed forty-two inches (42") in width.

## (3) Gates are not required but may be constructed for resident access to the adjoining public areas (e.g. greenbelts and public rights of way).

**SECTION 2.24**      **FENCES ON RESERVE LOTS.** Fences are to be constructed and maintained on all Reserve Lots by the Owner of the residential dwelling constructed thereon. The fences shall enclose the rear Lot yard and/or side Lot as specified by the Architectural Review Committee, shall be built on the property line as otherwise herein required, in such materials as may be designated, including without limitation ornamental iron fences on a concrete panel, or a masonry or brick wall as specified by the Developer.

**SECTION 2.25**      **FENCE MAINTENANCE.** All fences (except boulevard masonry/brick/wood/wrought iron fences adjacent to streets) erected by the Developer specifically required elsewhere herein to be maintained by the Association, shall be maintained in good condition at all times by the Owner of the Lot. The Association is granted an easement for the purpose of maintenance or replacement over and across any Lot (i) upon which a fence owned by

the Developer or the Association is constructed, or (ii) upon which a fence is constructed by Developer that is maintained by the Association.

**SECTION 2.26 BASKETBALL EQUIPMENT.** The following are rules and regulations regarding basketball equipment:

- (a) No basketball goals shall be installed without prior approval of the Architectural Review Committee.
- (b) Removable basketball poles are permitted, but must be installed on the "interior" side of the driveway. Backboards are not allowed to face the street. Architectural approval requests must include a site plan of the exact location of where the goal will be placed. Permanent basketball poles are not permitted.
- (c) Basketball backboards must be pole mounted and shall not be installed structurally on a building or structure.
- (d) Backboards must be professionally manufactured, of neutral color (clear, white, gray, or tan) and free of brightly colored decals or graphics.
- (e) Poles and support brackets must be black in color.
- (f) All equipment, including poles, support brackets, and netting shall be maintained in good condition. Broken equipment, including backboards, bent poles, supports, rims, netting, and peeled or chipped paint are prohibited. Netting is limited to nylon or similar cord netting. Metal or other chain nets are prohibited.
- (g) Portable basketball goals are permitted only so long as they are maintained in good condition and stored when not in use so as not to be visible from neighboring properties.
- (h) Overnight storage of such equipment in a location visible from neighboring properties is prohibited.
- (i) However, placement on the side of the house, laying the goal on its side, is an acceptable location, when not in use.
- (j) Spotlights or other lighting for the purpose of illuminating the area of play is prohibited.
- (k) The Owner and all occupants of the residential dwelling are fully responsible for ball containment on their individual property as not to cause damage to a neighboring Lot or property. Balls must be kept out of the streets. Painting of the driveway for a basketball court layout or any other similar purpose is prohibited.
- (l) All rear yard basketball goals must receive prior approval by the Architectural Review Committee and must conform to all the above listed specifications.

**SECTION 2.27      RAIN BARRELS AND RAIN HARVESTING SYSTEMS.** Section

202.007 of the Texas Property Code provides that a property owners' association may not enforce a provision in a dedicatory instrument that prohibits or restricts a property Owner from installing rain barrels or a rain harvesting system on the property Owner's Lot. However, Section 202.007 of the Texas Property Code further provides that a property owners' association is not required to permit a rain barrel or rainwater harvesting system to be installed on a Lot in particular circumstances or restricted from regulating rain barrels and rain harvesting devices in specified manners. The following provisions shall be applicable to rain barrels and rain harvesting systems in the Properties:

- (a) Architectural Review Committee Approval. In order to confirm the proposed rain barrel or rain harvesting device is in compliance with these Architectural Guidelines, Owners are encouraged to apply to the Architectural Review Committee for prior approval. The Association may require an Owner to remove a rain barrel or rain harvesting device that does not comply with requirements of these Architectural Guidelines.
- (b) Location. A rain barrel or rain harvesting system is not permitted on a Lot between the front of the residential dwelling on the Lot and an adjacent street.
- (c) Color and Display. A rain barrel or rain harvesting system is not permitted:
  - (i) unless the color of the rain barrel or rain harvesting system is consistent with the color scheme of the residential dwelling on the Owner's Lot; or
  - (ii) if the rain barrel or rain harvesting system displays any language or other content that is not typically displayed by the rain barrel or rain harvesting system as it is manufactured.
- (d) Regulations if Visible. If a rain barrel or rain harvesting system is located on the side of the residential dwelling on the Lot or at any other location on the Lot that is visible from a street, another Lot, or a Common Area, the rain barrel or rain harvesting system must comply with the following regulations:
  - (i) Rain Barrel:
    - (1) Size: A maximum height of forty-two inches (42") and a maximum capacity of fifty (50) gallons.
    - (2) Type: A rain barrel that has the appearance of an authentic barrel and is either entirely round or has a flat back to fit flush against a wall. A rain barrel must have a

manufactured top or cap to prevent or deter the breeding of mosquitoes.

- (3) Materials: Wood, metal, polyethylene or plastic resin designed to look like an authentic barrel in brown or other earthtone color.
- (4) Screening: The rain barrel must be screened with evergreen landscaping to minimize its visibility from a street, another Lot, and Common Area, unless otherwise approved in writing by the Architectural Review Committee.
- (5) Downspout: The downspout which provides water to the rain barrel must be the same color and material as the gutters on the residential dwelling. Further, the downspout must be vertical and attached to the wall against which the rain barrel is located.

- (ii) Rain Harvesting System: A rain harvesting system must collect and store the water underground. The portion of a rain harvesting system that is above-ground must appear to be a landscape or water feature. The above-ground portion of the rain harvesting system shall not extend above the surface of the ground by more than thirty-six inches (36"). The above-ground portion of the rain harvesting system must be screened with evergreen landscaping to minimize visibility from a street, another Lot, and Common Area, unless otherwise approved in writing by the Architectural Review Committee.

Provided that, the regulations in this Section 2.27 shall be applicable only to the extent that they do not prohibit the economic installation of the rain barrel or rain harvesting system on the Lot and there is a reasonably sufficient area on the Lot in which to install the rain barrel or rain harvesting system.

**SECTION 2.28**      **SOLAR ENERGY DEVICES.** Section 202.010 of the Texas Property Code provides that a property owners' association may not enforce a provision in a dedicatory instrument that prohibits or restricts a property Owner from installing a solar energy device except as otherwise provided therein. As used in Section 202.010 of the Texas Property Code, "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. The following provisions shall be applicable to solar energy devices in Properties:

- (a) Developer Approval. During the development period the Developer (as defined in this Declaration) must approve in writing the installation of a solar energy device. If the Developer does not approve the installation the solar energy device cannot be installed.
- (b) Architectural Review Committee Approval. The installation of a solar energy device requires the prior written approval of the Architectural Review Committee Approval. Provided that, the Architectural Review Committee Approval may not withhold approval if these Guidelines are met or exceeded, unless the Architectural Review Committee Approval 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. Provided further, the Architectural Review Committee need not approve any such device during the Developer Control Period.
- (c) Location. 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.
- (d) Devices Mounted on a Roof. A solar energy device mounted on the roof of the residential dwelling or other permitted structure on a Lot:
  - (i) shall not extend higher than or beyond the roofline;
  - (ii) shall conform to the slope of the roof and have a top edge that is parallel to the roofline;
  - (iii) shall have frames, support brackets and/or visible piping or wiring that are silver, bronze or black tone, as commonly available in the marketplace; and

- (iv) shall be located on the roof as designated by the Architectural Review Committee 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 Architectural Review Committee. For determining estimated annual energy production, the parties shall use a publicly available modeling tool provided by the National Renewable Energy Laboratory.
- (e) **Visibility.** 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.
- (f) **Warranties.** A solar energy device shall not be installed on a Lot in a manner that voids material warranties.
- (g) **Limitations.** A solar energy device is not permitted on a Lot if, as adjudicated by a court, it threatens the public health or safety or violates a law.

**SECTION 2.29**      **STORM AND ENERGY EFFICIENT SHINGLES.** Section 202.011 of the Texas Property Code provides that a property owners' association may not enforce a provision in a dedicatory instrument that prohibits or restricts a property Owner from installing shingles that are designed to:

- be wind and hail resistant; provide heating and cooling efficiencies greater than those provided by customary composition shingles; or provide solar generation capabilities; and
  - when installed: resemble the shingles used or otherwise authorized for use on Lot in the Subdivision; are more durable than and are of equal or superior quality to the shingles described below; and match the aesthetics of the property surrounding the Owner's Lot.
- (a) **Architectural Review Committee Approval.** In order to confirm the proposed shingles conform to the foregoing Guidelines, Owners are encouraged to apply to the Architectural Review Committee for prior approval. The Association may require an Owner to remove shingles that do not comply with these Guidelines.
- (b) **Appearance.** When installed, storm and energy efficient shingles must resemble, be more durable than, and be of equal or superior quality to the

types of shingles otherwise required or authorized for use in Properties as set forth above. In addition, the storm or energy efficient shingles must match the aesthetics of the Lots surrounding the Lot in question.

**SECTION 2.30**      **FLAGS**. Section 202.011 of the Texas Property Code provides that a property owners' association may not enforce a provision in a dedicatory instrument that prohibits, restricts, or has the effect of prohibiting or restricting a 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, except as otherwise provided therein.

- (a) The following provisions shall be applicable to flagpoles and the three (3) types of flags listed in Section 202.011 of the Texas Property Code:
  - (i) Architectural Review Committee Approval. Above-ground flagpoles, flagpole stands and/or footings and illumination proposed to be placed in front of the front building setback line for a Lot or outside of any other recorded setbacks must be approved by the Architectural Review Committee. In order to confirm a proposed flagpole conforms to the following standards, Owners are encouraged to apply to the Architectural Review Committee for prior approval for all other flagpoles (freestanding or attached). The Association may require an Owner to remove flagpoles, flagpole footings, or flags that do not comply with these Guidelines.
  - (ii) Flag of the United States. The flag of the United States must be displayed in Architectural Review Committee in accordance with applicable provisions of 4 U.S.C. Sections 5-10, which address, among other things, the time and occasions for display, the position and manner of display, and respect for the flag.
  - (iii) Flag of the State of Texas. The flag of the State of Texas must be displayed in accordance with applicable provisions of Chapter 3100 of the Texas Government Code, which address, among other things, the orientation of the flag on a flagpole or flagstaff, the display of the flag with the flag of the United States, and the display of the flag outdoors.
- (b) Flagpoles.

- (i) Not more than one (1) freestanding flagpole or flagpole attached to the residential dwelling or garage (on a permanent or temporary basis) is permitted on a Lot.
  - (ii) A freestanding flagpole shall not exceed twenty (20) feet in height, measured from the ground to the highest point of the flagpole.
  - (iii) A flagpole attached to the residential dwelling or garage shall not exceed six (6) feet in length.
  - (iv) A flagpole, whether freestanding or attached to the residential dwelling or garage, must be constructed of permanent, long-lasting materials with a finish appropriate to materials used in the construction of the flagpole and harmonious with the residential dwelling on the Lot on which it is located.
  - (v) A flagpole shall not be located in an easement or encroach into an easement.
  - (vi) Without the prior approval of the Architectural Review Committee, a freestanding flagpole shall not be located nearer to a property line of the Lot than the applicable setbacks as either shown on the recorded plat or as set forth in this Declaration.
  - (vii) A flagpole must be maintained in good condition; a deteriorated or structurally unsafe flagpole must be repaired, replaced or removed.
  - (viii) An Owner is prohibited from locating a flagpole on property owned or maintained by the Association.
  - (ix) A freestanding flagpole must be installed in accordance with the manufacturer's guidelines and specifications.
  - (x) If the footing and/or stand for a freestanding flagpole extends above the surface of the ground, the Architectural Review Committee may require the installation of landscaping to screen the stand and/or footing from view.
  - (xi) A flagpole may not be attached to a tree.
- (c) Flags.
- (i) Only the three (3) types of flags addressed in this section shall be displayed on a freestanding flagpole. Other types of flags may be displayed on a wall-mounted flagpole as otherwise provided in

architectural guidelines adopted by the Association or as otherwise permitted by the Association.

- (ii) Not more than two (2) of the permitted types of flags shall be displayed on a flagpole at any given time.
  - (iii) The maximum dimensions of a displayed flag on a freestanding flagpole that is less than fifteen (15) feet in height or on a flagpole attached to the residential dwelling or garage shall be three (3) feet by five (5) feet.
  - (iv) The maximum dimensions of a displayed flag on a freestanding flagpole that is fifteen (15) feet in height or greater is four (4) feet by six (6) feet.
  - (v) A displayed flag must be maintained in good condition; a deteriorated flag must be replaced or removed.
  - (vi) A flag must be displayed on a flagpole. A flag shall not be attached to the wall of the residential dwelling or other structure on a Lot or a tree, or be displayed in a window of the residential dwelling or other structure on a Lot.
- (d) **Illumination.** Illumination of a flag is permitted but the lighting must be in-ground and have a maximum of 150 watts, unless otherwise approved by the Architectural Review Committee. High intensity lighting such as mercury vapor, high pressure sodium, or metal halide is not permitted. The lighting is required to be compatible with exterior lighting within the Subdivision and appropriate for a residential neighborhood. Lighting used to illuminate a flag shall be positioned in a manner so that the lighting is not directed toward an adjacent Lot or a street adjacent to the Lot and does not otherwise unreasonably affect an adjacent Lot.
- (e) **Noise.** An external halyard on a flagpole is required to be securely affixed to the flagpole so that it is not moved by the wind and thereby permitted to clang against the flagpole.

### **SECTION 2.31**

### **RELIGIOUS ITEMS.**

Section 202.018 of the Texas Property Code provides that a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property Owner or resident from displaying or affixing on the entry to the Owner's or resident's dwelling one or more religious items, the display of which is motivated by the Owner's or resident's sincere religious belief, except as otherwise provided therein. Section 202.001(4) of the

Texas Property Code defines "restrictive covenant" to mean any covenant, condition, or restriction contained in a dedicatory instrument. The following provisions shall be applicable to the display of religious items on a Lot:

- (a) Architectural Review Committee Approval. As authorized by this Declaration and, therefore, allowed by Section 202.018(c) of the Texas Property Code any alteration to the entry door or door frame must first be approved by the Architectural Review Committee.
- (b) Location. Except as otherwise provided in this section, a religious item is not permitted anywhere on a Lot except on the entry door or door frame of the residential dwelling. A religious item shall not extend past the outer edge of the door frame.
- (c) Size. The religious item(s), individually or in combination with each other religious item displayed or affixed on the entry door or door frame, shall not have a total size of greater than twenty-five (25) square inches.
- (d) Content. A religious item shall not contain language, graphics, or any display that is patently offensive to persons of ordinary sensibilities.
- (f) Limitation. A religious item shall not be displayed or affixed on an entry door or door frame if it threatens the public health or safety or violates a law.
- (g) Color of Entry Door and Door Frame. An Owner or resident is not permitted to use a color for an entry door or door frame of the Owner's or resident's residential dwelling or change the color of an entry door or door frame that is not authorized by the Board.
- (h) Other. Notwithstanding the above provisions: (i) the Board shall have the authority to allow a religious statue, such as by way of example and not in limitation, a statue of St. Francis of Assisi or other religious item in a landscape bed or other portion of a Lot, and (ii) these Guidelines shall not prohibit or apply to temporary seasonal decorations related to religious holidays.

### ARTICLE III

#### USE RESTRICTIONS

##### SECTION 3.1

##### PROHIBITION OF OFFENSIVE ACTIVITIES.

No activity which is not related to single-family residential purposes, whether for profit or not, shall be carried on any

Lot. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot, which may be, or may become, an annoyance or a nuisance to the neighborhood. No loud noises or noxious odors shall be permitted on the Property, and the Board of Directors of the Association shall have the right to determine if any such noise, odor or activity constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Lot Owner in the Property, shall be located, used or placed on any portion of the Property or exposed to the view of other Lot Owners without the prior written approval of the Board of Directors of the Association. No television, sound or amplification system or other such equipment shall be operated at a level that can be heard outside of the building in which it is housed. This restriction is waived in regard to the normal sales activities by Builders required to sell residential dwellings in the Subdivision and the lighting effects utilized to display the model homes.

**SECTION 3.2      USE OF TEMPORARY STRUCTURES OR OUTBUILDINGS.**

No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding, shall be maintained or used on any Lot at any time as a residence, or for any other purpose, with the exception of lawn storage or children's playhouses which have received the prior written approval of the Architectural Review Committee, except that sales trailers and construction trailers are permitted during the initial construction phase and sales phase of the Subdivision development.

Provided the express written consent of the Architectural Review Committee is secured prior to installation and placement on a Lot, one (1) lawn storage building and/or one (1) children's playhouse, each limited in maximum height to eight feet (8') from ground to highest point of structure and not exceeding one-hundred (100) square feet at its base, may be placed on a Lot behind the main residential dwelling. In no case can the outbuilding be placed in a utility easement; within five feet (5') of side Lot line; or within ten feet (10') of the back Lot line. Additionally, no outbuilding structure of any type is permitted unless the specific Lot involved is completely enclosed by fencing. Otherwise, no outbuilding or temporary structure of any kind shall ever be moved onto or erected on any Lot. It is intended hereby that, unless otherwise specifically approved, only new construction shall be placed and erected on any Lot within the Property.

**SECTION 3.3      AUTOMOBILES, BOATS, TRAILERS, RECREATIONAL VEHICLES AND OTHER VEHICLES.** No motor vehicle may be parked or stored on any part of

any Lot, easement, street right-of-way or Common Area or in the street adjacent to any Lot, easement, right-of-way or Common Area unless:

- (a) such vehicle does not exceed either eight feet (8') in height, and/or seven feet six inches (7' 6") in width, and/or twenty-one feet (21') in length ("Permitted Vehicle"); and
- (b) such Permitted Vehicle
  - (i) is in good and operating condition (including no flat tires); and
  - (ii) has current license plates and inspection stickers.

No Permitted Vehicle parked on a driveway may be covered with tarps or other coverings. No vehicle of any type may ever be parked on an unpaved portion of a Lot.

No non-motorized vehicle, trailer, boat, marine craft, jet ski, all terrain vehicle (ATV), hovercraft, aircraft, machinery or equipment of any kind or any type of vehicle of any type other than a Permitted Vehicle may be parked or stored on any part of any Lot, easement, street right-of-way, or Common Area or in the street adjacent to such Lot, driveway, easement, street right-of-way, or Common Area on in the street adjacent to such Lot, easement, street right-of-way, or Common Area unless such object is concealed from public view inside a garage or other approved enclosure (on the Owner's Lot). No one shall park, store or keep within or adjoining the Property any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck, tractor or tractor trailer, boat trailer and any other vehicle equipment, mobile or otherwise, deemed to be a nuisance by the Board of Directors of the Association), or any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle deemed to be a nuisance by the Board of Directors of the Association). Provided, however, recreational vehicles may be temporarily parked on a Lot for the purposes of loading and unloading; for the purposes of this section the allowed "temporary parking" cannot exceed twenty-four (24) hours in any seven (7) day period of time.

No one shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any street, driveway, Lot or portion of the Common Area, except for repairs to the personal vehicles of the residents conducted exclusively in the enclosed garage (and provided such personal vehicle repairs do not cause excessive noise or disturb the neighbors at unreasonable hours of the night).

This restriction shall not apply to any vehicle, machinery, or maintenance equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity.

No vehicle shall be parked on streets or driveways so as to obstruct ingress or egress by other Owners, their families, guests and invitees or the general public using the streets for ingress and egress in the Subdivision. The Association may designate areas as fire zones, or no parking zones, or guest parking only zones. The Association shall have the authority to tow any vehicle parked or situated in the Common Area or on streets in violation of this Declaration or the Association rules, the cost to be at the vehicle owner's expense.

No motor bikes, motorcycles, motor scooters, "go-carts" or other similar vehicles shall be permitted to be operated in the Subdivision, if, in the sole judgment of the Association, such operation, by reason of noise or fumes emitted or by reason of manner of use, shall constitute a nuisance or jeopardize the safety of any Owner, the tenants, and their families. The Association may adopt rules for the regulation of the admission and parking of vehicles within the Subdivision, the Common Areas, and adjacent street right-of-ways, including the right to grant temporary variances and the assessment of charges and fines to Owners who violate, or whose invitees violate, such rules after notice and hearing. If a complaint is received by or issued by the Association about a violation of any part of this section, the Board of Directors of the Association will be the final authority on the matter.

**SECTION 3.4**      **ADVERTISEMENT AND GARAGE SALES.** The Board of Directors of the Association shall have the right to prohibit or to make rules and regulations governing and limiting the advertisement of and holding of garage sales.

**SECTION 3.5**      **AIR CONDITIONERS.** No window or wall type air conditioner shall be installed, erected, placed, or maintained on or in any building without prior written consent of the Architectural Review Committee.

**SECTION 3.6**      **WINDOW AND DOOR COVERINGS.** No aluminum foil or other reflective material shall be used or placed over doors or on windows.

**SECTION 3.7**      **UNSIGHTLY OBJECTS.** No unsightly objects which might reasonably be considered to give annoyance to neighbors of ordinary sensibility shall be placed or allowed to remain on any yard, street or driveway. The Association shall have the sole and exclusive discretion to determine what constitutes an unsightly object.

**SECTION 3.8**      **POOLS AND PLAYGROUND EQUIPMENT.** Playground equipment, including playforts, playstructures and similar style structures (but excluding playhouses addressed under Article III, Section 3.2 of this Declaration) are limited to (i) a maximum overall height of eleven feet (11') excluding a canopy or twelve and one-half feet (12½') including a canopy, and (ii) an above ground grade platform maximum height of sixty-two inches (62"). Decks of pool ancillary structures are limited to twenty-four inches (24").

Additionally, playground and equipment of any type or amenity structures of any type are permitted only when the specific Lot involved is completely enclosed by fences. The intent of this provision is to offer optimum private enjoyment of adjacent properties.

**SECTION 3.9**      **MINERAL OPERATION**. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot or Common Areas, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot or Common Area. No derrick or other structures designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or Common Area.

**SECTION 3.10**      **ANIMAL HUSBANDRY**. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other common household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No Owner shall allow any pets to become a nuisance by virtue of noise, odor, dangerous proclivities, excessive pet debris or unreasonable numbers of animals. If common household pets are kept, they must be confined to a fenced backyard (such fence shall encompass the entire backyard) or within the house. When away from Lot, pets must be on a leash at all times. It is the pet owner's responsibility to keep the Lot clean and free of pet debris and to keep pets from making noise, which disturbs neighbors. Pet owners shall not permit their pets to defecate on other Owners' Lots, on the Common Areas, recreational areas or on the streets, curbs, or sidewalks.

**SECTION 3.11**      **VISUAL OBSTRUCTION AT THE INTERSECTION OF STREETS**. No object or thing which obstructs site lines at elevations between two feet (2') and six feet (6') above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street property lines or extension thereof shall be placed, planted or permitted to remain on any corner Lots.

**SECTION 3.12**      **LOT AND BUILDING MAINTENANCE**. The Owners or occupants of all Lots shall at all times keep all weeds and grass thereof cut in a sanitary, healthful and attractive manner, edge curbs that run along the property lines, and shall in no event use a Lot for storage of materials and equipment except for normal residential requirements or incident to construction of any improvements thereon as herein permitted. All fences and buildings (including but not limited to the main residence and garage, if any, which have been erected on any Lot) shall be maintained in good repair and condition by Owner, and Owner shall promptly repair or replace the same in the event of partial or total destruction or ordinary deterioration, wear and tear. Each Owner shall maintain in good condition and repair all improvements on the Lot including, but not limited to, all windows, doors, garage doors, roofs, siding, brickwork, stucco, masonry, concrete, driveways and walks, fences, trim, plumbing, gas and electrical. By way of example, not of

limitation, wood rot, damaged brick, fading, peeling or aged paint or stain, mildew, broken doors or windows, and rotting or falling fences shall be considered violations of these Declarations, which the Owner of a Lot shall repair or replace upon Association demand. The drying of clothes, within public view is prohibited. All walks, driveways, carports and other areas shall be kept clean and free of debris, oil or other unsightly matter. The Board of Directors of the Association shall be the final authority of the need for maintenance or repair.

No Lot shall be used or maintained as a dumping ground for rubbish or trash, nor will the accumulation of garbage, trash or rubbish of any kind thereon be permitted. Trash, garbage or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Containers for the storage of trash, garbage and other waste materials must be stored out of public view, except on trash collection days when they may be placed at the curb not earlier than 6:00 p.m. of the night prior to the day of scheduled collections. No Lot shall be used or maintained as a dumping ground for the burning of trash, garbage, leaves, grass or anything else will not be permitted. Equipment for storage or disposal of such waste materials shall be kept in a clean and sanitary condition and shall be stored out of public view.

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

In the event of default on the part of the Owner or Occupant of any Lot in observing the above requirements or any other maintenance requirement imposed by this Declaration, such default continuing after the Association has served ten (10) days written notice thereof, which notice shall be placed in the U.S. Mail without the requirement of certification, then the Association, by and through its duly authorized agent may, without liability to the Owner or Occupant in trespass or otherwise, enter upon said Lot and cut the weeds and grass, edge the lawn around the curb, cause to be removed garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration so as to place said Lot in a neat, attractive, healthful and sanitary condition. The Association may charge the Owner or Occupant of such Lot for the cost of such work. The Owner or Occupant, as the case may be, agrees by the purchase or occupancy of a Lot to pay for such work immediately upon receipt of a statement thereof. In the event of failure by the Owner or Occupant to pay such statement within fifteen (15) days from the date mailed, the

amount thereof may be added to the Annual Assessment provided for herein, and the collection of such additional maintenance charge shall be governed by Article VI of this Declaration.

**SECTION 3.13**      **SIGNS, ADVERTISEMENTS AND BILLBOARDS.** Except for signs owned by Builders advertising their model homes during the period of original construction and home sales, no sign, poster, advertisement, billboard or advertising structure of any kind other than a normal "For Sale" sign, which shall not exceed five (5) square feet in total size, may be erected or maintained on any Lot in said Subdivision. Owner shall also have the right to maintain on their Lot not more than two (2) signs not to exceed five (5) square feet each advertising a political candidate in any local, state, or federal election. These political advertisement signs may be maintained for three (3) weeks prior to the election and must be removed within two (2) days after the election. The Association shall have the right to remove any sign, advertisement, billboard, or advertising structure that does not comply with the above and, in so doing, shall not be subject to any liability of trespass or other tort in the connection therewith or arising with such removal.

**SECTION 3.14**      **NO BUSINESS OR COMMERCIAL USE.** Subject to the provisions of this Declaration and the Association Bylaws, no Lot or any other part of the property subject to this Declaration, except for Reserves and as otherwise specifically provided to the contrary on the Plat, may be used for purposes other than single-family residential housing and the related common purposes for which the Property was designed. Each Lot and structure shall be used for single-family residential purposes or such other uses permitted by this Declaration and for no other purposes. No Lot or structure shall be used or occupied for any business, commercial, trade or professional purpose (or as a church) either apart from, or in connection with, the use thereof as a residence, whether for profit or not. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit an Owner from:

- (a) maintaining a personal professional library;
- (b) keeping personal business or professional records or accounts; or
- (c) handling personal business or professional telephone calls or correspondence, which uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions, provided such activity is not apparent in sight, sound, smell or that such permitted use does not attract business traffic or invitees to the residence or allow business employees to work at the residence.

**SECTION 3.15**      **HOLIDAY DECORATIONS.** Exterior Thanksgiving decorations may be installed November 10 of each year and must be removed by December 1 of each year. Exterior Christmas decorations may be installed the day after Thanksgiving each year and must be

removed by January 5 of the new year. Easter and Halloween decorations may be installed three (3) weeks prior to and must be removed by one (1) week after each respective holiday. Holiday decorations shall not be so excessive as to cause a nuisance to neighboring residential dwellings. The Board of Directors of the Association shall have the sole and absolute authority to decide if holiday decorations are causing a nuisance.

**SECTION 3.16**      **VISUAL SCREENING ON LOTS**. The drying of clothes in public view is prohibited, and the Owner or occupant of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Lot is visible to the public shall construct and maintain a drying yard or other suitable enclosure to screen clothes from public view. Similarly, all yard equipment, woodpiles or storage piles shall be kept screened by a service yard or other similar facility so as to conceal them from view of neighboring Lots, streets or other property.

**SECTION 3.17**      **ANTENNAS, SATELLITE DISHES AND MASTS**. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any Lot, which are visible from any street, Common Area or another Lot, unless it is impossible to receive an acceptable quality signal from any other location. In that event, the receiving device may be placed in the least visible location where reception of an acceptable quality signal is possible. The Board of Directors of the Association may require painting or screening of the receiving device, which painting or screening does not substantially interfere with an acceptable quality signal. In no event are the following devices permitted: (i) satellite dishes, which are larger than one (1) meter in diameter; (ii) broadcast antenna masts, which exceed the height of the center ridge of the roofline; or (iii) MMDS antenna masts, which exceed the height of twelve feet (12') above the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted, placed, allowed or maintained upon any Lot, which transmit television, radio, satellite or other signals of any kind. This section is intended to be in compliance with the Telecommunications Act of 1996 (the "Act"), as the Act may be amended from time to time; this section shall be interpreted to be as restrictive as possible, while not violating the Act. The Board of Directors of the Association may promulgate Architectural Guidelines, which further define, restrict or elaborate on the placement and screening of receiving devices and masts, provided such Architectural Guidelines are in compliance with the Telecommunications Act.

**SECTION 3.18**      **ROADS**. All roads and esplanades within the Subdivision are public roads and esplanades and shall be maintained and regulated by the County. The Association shall have the right to establish rules and regulations concerning all such streets and roads including,

but not limited to, speed limits, curb parking, fire lanes, alleys, stop signs, traffic directional signals and signs, speed bumps, crosswalks, traffic directional flow, striping, signage, curb requirements, street cleaning, and other matters regarding the roads, streets, curbs, esplanades and their usage by Lot Owners, guests, and invitees.

**SECTION 3.19**      **FIREARMS**. The discharge of firearms within the Subdivision is prohibited. The terms "firearms" includes B-B guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this section.

**SECTION 3.20**      **ON-SITE FUEL STORAGE**. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Subdivision except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment and that the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

**SECTION 3.21**      **DRAINAGE AND SEPTIC SYSTEMS**. Basins and drainage areas are for the purposes of natural flow of water only, and no obstructions or debris shall be placed in these areas. No person other than Developer may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow, provided that the exercise of such easement shall not materially diminish the value or interfere with the use of any adjacent property without the consent of the Owner thereof. Septic tanks and drain fields, other than those installed by or with the consent of the Developer are prohibited within the Subdivision. No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any drainage ditch, storm sewer or storm drain within the Subdivision.

#### ARTICLE IV

#### **TRAILS OF KATY OWNERS ASSOCIATION, INC.**

**SECTION 4.1**      **PURPOSE**. The purpose of the Trails of Katy Owners Association, Inc. shall be to provide for maintenance, preservation and architectural control of the residential Lots within the Subdivision and the Common Area, if any.

**SECTION 4.2**      **MEMBERSHIP AND VOTING RIGHTS**. Every Owner of a Lot in the Properties whose Lot is subject to a maintenance charge assessment by the Association shall be a member of the Association. Membership shall be appurtenant to and may not be separated from

ownership of any Lot, which is subject to Assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership.

**SECTION 4.3**      **NON-PROFIT CORPORATION.** Trails of Katy Owners Association, Inc., a non-profit corporation, has been duly organized, and it shall be governed by the Certificate of Formation of said Association, and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

**SECTION 4.4**      **BYLAWS.** The Association may make whatever rules or Bylaws it may choose to govern the organization; provided, however, that same are not in conflict with the terms and provisions hereof.

**SECTION 4.5**      **OWNERSHIP INFORMATION.** The Owner is required at all times to provide the Association with written notice of proper mailing information should it differ from the property address relative to ownership. Further, when an alternate address exists, Owner is required to render notice of tenant, if any, or agency, if any, involved in the management of said property. The Owner is required and obligated to maintain current information with the Association or its designated management company at all times.

**SECTION 4.6**      **INSPECTION OF RECORDS.** The members of the Association shall have the right to inspect the books and records of the Association in accordance with the Association's open records policy adopted in accordance with Section 209.005 of the Texas Property Code.

## ARTICLE V

### **MEMBERSHIP AND VOTING RIGHTS FOR TRAILS OF KATY OWNERS ASSOCIATION, INC.**

**SECTION 5.1**      **ASSESSMENT.** Every Owner of a Lot, which is subject to Assessment, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to Assessment.

**SECTION 5.2**      **VOTING CLASSES.** The Association shall have two (2) classes of voting membership.

- **Class A.** Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Lot owned. 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 determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Holders of

future interests not entitled to present possession shall not be considered as Owners for the purposes of voting hereunder.

- Class B. The Class B member(s) shall be Developer, or its successors or assigns so designated in writing by the Developer, and shall be entitled to seven (7) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership at the end of the Developer Control Period.

## ARTICLE VI ASSESSMENTS

**SECTION 6.1**      **THE MAINTENANCE FUND.** All funds collected as hereinafter provided, for the benefit of the Association from the Annual and/or Special Assessments, shall constitute and be known as the "Maintenance Fund". The Assessments levied by the Association shall be used exclusively to promote the recreation, health, and welfare of the residents in the Properties and for the improvement, maintenance and acquisition of Common Areas and Reserves. The responsibilities of the Association may include, by way of example, but without limitation, at its sole discretion, any and all of the following: maintaining, repairing or replacing parkways, perimeter fences, and esplanades; maintaining, repairing or replacing of the walkways, steps, entry gates, or fountain areas; landscaping, if any; maintaining rights-of-way, easements, esplanades and other public areas, if any; construction, installation, and operation of street lights; the expense of purchasing and/or operating recreation areas, pools, playgrounds, clubhouses, tennis courts, jogging tracks and parks, if any; collecting garbage; insecticide services; payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and Assessments, covenants, restrictions, and conditions affecting the Properties to which the Maintenance Fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the Maintenance Fund; contracting for policemen and watchmen; CPAs and property management firms, attorneys, porters, lifeguards, or any type of service deemed necessary or advisable by the Association; caring for vacant Lots and doing any other thing necessary or desirable in the opinion of the Association to keep the Properties in the Subdivision neat and orderly, or to which is considered of general benefit to the Owners or occupants of the Properties. It is understood that the judgment of the Association, when deciding the expenditure of said funds, shall be final and conclusive so long as such judgment is exercised in good faith.

The Board of Directors of the Association shall also prepare annually a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. The Board of Directors of the Association shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to the amount of the Annual Assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board of the Directors of the Association and included within and distributed with the applicable budget and notice of Assessments.

**SECTION 6.2**      **CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS**. Each Lot in the Subdivision is hereby subjected to the Assessments set out in this Article VI and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments; (2) Special Assessments to be established and collected as hereinafter provided; and (3) any charge back for costs, fees, expenses, fines, attorneys' fees or other charges authorized by the Declaration or incurred by the Association in connection with enforcement of this Declaration, the Association Bylaws, or Rules and Regulations. The Annual Assessments and Special Assessments and charge backs, together with the interests, costs, late charges, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which such Assessments are made. All such Assessments as to a particular property, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessments fell due. The personal obligation for delinquent Assessments shall not pass to his successor in title unless expressly assumed by such successor.

**SECTION 6.3**      **ASSESSMENTS**. The Annual Assessments shall be paid by the Owner(s) of each Lot in the Association in annual installments. The annual periods for which Annual Assessments shall be levied shall be January 1 through December 31, with payment being due by January 1 of each year. The rate at which each Lot shall be assessed as to the Annual Assessments shall be determined annually, shall be billed in advance, shall be due and payable in advance and may be adjusted from year to year by the Board of Directors of the Association as the needs of the Subdivision may, in the judgment of the Board of Directors of the Association, require; provided, however, that such Assessments shall be uniform.

**SECTION 6.4**      **MAXIMUM ANNUAL ASSESSMENT**. Until January 1, 2015, the maximum Annual Assessment shall be ONE THOUSAND DOLLARS (\$1,000.00) per Lot per annum. From and after January 1, 2015, the maximum Annual Assessment may be increased

each year not more than twenty percent (20%) above the maximum Annual Assessment for the previous year without a vote of the membership. The maximum Annual Assessment may be increased above the twenty percent (20%) increase described above only by a majority vote of its Members present and voting in person or by proxy, at a meeting duly called for this purpose at which a quorum is present. The Board of Directors of the Association may fix the Annual Assessment at an amount not in excess of the maximum.

**SECTION 6.5**      **CAPITALIZATION FEE**. Each Owner upon acquisition of record title to a Lot, other than Developer or a Builder, will be obligated to pay a fee to the Association in an amount equal to fifty percent (50%) of the Annual Assessment for that year for the purpose of capitalizing the Association. The fifty percent (50%) is based solely on the Annual Assessment and does not apply to any other assessment, fee or charges established in this Declaration, including, but not limited to, Section 6.7 Adopt-A-School Assessments and Section 6.6 Transfer Fees. This amount shall be known as the Capitalization Fee. The Capitalization Fee shall be in addition to, not in lieu of, the Annual Assessment and shall not be considered an advance payment of the Annual Assessment. The Capitalization Fee shall initially be used by the Association to defray its initial operating costs and other expenses and later to ensure the Association has adequate funds to meet its expenses and otherwise, including contributions to the Association's reserve fund all as the Board of Directors in its sole discretion shall determine.

**SECTION 6.6**      **TRANSFER FEES**. The Association may charge a fee for transfer of ownership of a Lot. The fee shall be set by the Board of Directors of the Association, but shall not exceed one-fourth (1/4<sup>th</sup>) of the Annual Assessment.

**SECTION 6.7**      **ADOPT-A-SCHOOL ASSESSMENTS**. In addition to the Annual and Special Assessments required to be paid by an Owner, each purchaser of a Lot upon acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association upon the transfer of title of a Lot to the purchaser: (a) upon the first transfer of a Lot from a Builder to a purchaser, a \$50.00 contribution by the Builder/seller and an additional \$50.00 contribution by the purchaser; and (b) on subsequent transfers, the purchasers shall pay a contribution equal to one-tenth (1/10) of the Annual Assessment for each Lot purchased. The Assessments received by the Association under this section shall be held in a separate account and shall be used by the Association to foster support for local school programs and activities or for such other purpose as the Board of the Directors of the Association in its absolute discretion may approve. This fee is in addition to the transfer fee imposed by Section 6.6 above.

**SECTION 6.8**      **SPECIAL ASSESSMENTS**. In addition to the Annual Assessments authorized above, the Board of Directors of the Association may levy, in any assessment year, a Special Assessment applicable to the current year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, storm sewers, sidewalks, and recreational facilities, including fixtures and personal property related thereto, or for any other purpose approved by the membership, provided any such Assessment shall have the approval of a majority vote of the Members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present.

**SECTION 6.9**      **NOTICE AND QUORUM**. Written notice of any membership meeting called for the purpose of increasing the cap or raising any Annual or Special Assessment shall be mailed (by U.S. first class mail) to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting, the presence of members or of proxies entitled to cast at least ten percent (10%) of all the votes of membership, regardless of class, shall constitute a quorum.

**SECTION 6.10**      **RATE OF ASSESSMENT**. All Lots in the Section shall commence to bear their applicable Annual Assessment simultaneously on the date of substantial completion. For the purposes of this section "the date of substantial completion" shall be the later of (i) the date the Plat is recorded, or (ii) the date the engineer for the Section has been issued a letter certifying all the Lots in the Section have been substantially completed. Lots in the Section owned by the Developer are not exempt from Assessment. Lots, which are occupied by residents, shall be subject to the Annual Assessment determined by the Board of Directors of the Association in accordance with the provisions hereof. Developed Lots in the Subdivision, which are not occupied by a resident and which are owned by the Developer shall be assessed at one-quarter ( $\frac{1}{4}$ ) of the Annual Assessment for a period limited to two (2) years from that date when a Lot is considered "developed" and thereafter shall be assessed the full Assessment. Developed Lots owned by a Builder or a building company for the business purpose of constructing a residential dwelling on the Lot for resale shall be assessed at the rate of one-half ( $\frac{1}{2}$ ) of the Annual Assessment above, the later of, a period limited to two (2) years from the date the Lot is considered "Developed" or from the date the Lot was purchased from the Developer or conditions agreed in the purchase contract between the Builder and Developer and thereafter shall be assessed the full Assessment. The rate of Assessment for an individual Lot, within a calendar year, can change as the character of ownership and the status of occupancy by a resident change, and the applicable Assessment for such Lot shall be prorated according to the rate required during each type of ownership.

**SECTION 6.11 EFFECT OF NONPAYMENT OF ASSESSMENTS.** Any

Assessment not paid within thirty (30) days after the due date shall bear interest at the rate of ten percent (10%) per annum. The Association may in addition charge a late charge for Assessments paid more than fifteen (15) days after the due date. The Association may bring an action at law against the Owner personally obligated to pay same and/or foreclose the liens against the Lot. Interest, costs, late charges and attorneys' fees incurred in any such collection action shall be added to the amount of such Assessment or charge. An Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association and its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for enforcement of such liens, including, specifically, non-judicial foreclosure pursuant to Sections 51.002 and 209.0092 of the Texas Property Code (or any amendment or successor statute), and each such Owner expressly grants to the Association a power of sale in connection with said lien.

The Association shall have the right and power to appoint a Trustee to act for and on behalf of the Association to enforce the lien. The lien provided for in this Article shall be in favor of the Association for the benefit of all Lot Owners. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Official Public Records of Real Property of Fort Bend County, Texas.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any Assessment, the Association may, acting through the Board of Directors of the Association, upon thirty (30) days prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the right of such nonpaying Owner to use the Common Areas, in such manner as the Association deems fit or appropriate so long as such default exists.

It is the intent of the provisions of this section to comply with the provisions of said Sections 51.002 and 209.0092 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Sections 51.002 and 209.0092 of the Texas Property Code hereafter, the President or Vice President of the Association, acting without joinder of any other Owner, mortgagee or other person may, by amendment to this Declaration filed in the Official

Public Records of Real Property of Fort Bend County, Texas, amend the provisions hereof so as to comply with said amendments to Sections 51.002 and 209.0092 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the Assessments provided herein by the non-use of the facilities or services provided by the Association or by abandonment of his Lot.

**SECTION 6.12**      **SUBORDINATION OF THE LIEN TO MORTGAGES.** To secure the payment of the Maintenance Fund, all Annual and Special Assessments established hereby and to be levied on individual residential Lots, there is hereby reserved in each Deed (whether specifically stated therein or not) a Vendor's Lien and a Contract Lien for benefit of the Association, said liens to be enforceable as set forth in Article VI hereof by the Association on behalf of such beneficiary; provided, however, that each such lien shall be secondary, subordinate and inferior to all liens, present and future given, granted and created by or at the request of the Owner of any such Lot to secure the payment of monies advanced on account of the purchase price and/or the construction of improvements on any such Lot to the extent of any such maintenance fund charge or annual or Special Assessments accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien; and further provided that as a condition precedent to any proceeding by the Association to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessment as to payment which became due prior to such sale or transfer. Mortgages are not required to collect Assessments. Failure to pay Assessments does not constitute a default under an insured mortgage.

**SECTION 6.13**      **ASSOCIATION OBLIGATION.** The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the Annual Assessment shall be mailed (by U.S. First Class Mail) to every Owner subject thereto. The payment dates shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.

**SECTION 6.14**      **FINES.** Sanctions for violations of the provisions of this Declaration, any Supplemental Declaration(s), the Bylaws of the Association and any rules and regulations

promulgated and published by the Association (including but not limited to minimum construction standards or architectural guidelines) may, in addition to all other remedies provided for in this Declaration or by law, include monetary fines. The procedure for imposing monetary fines shall be in accordance with notice and other requirements imposed by law. Any monetary fine levied against an Owner and the Owner's Lot, shall be added to the Owner's assessment account and secured by the lien created in Section 6.2.

## ARTICLE VII

### INSURANCE AND CASUALTY LOSSES

**SECTION 7.1**      **INSURANCE**. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for an insurable improvements to the Common Area. If blanket "all-risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. The Association shall have no insurance responsibility for any part of any Lot or private amenity. The Board of Directors of the Association shall also obtain a general liability policy covering the Common Areas, insuring the Association and its Members for all damage or injury caused by the negligence of the Association or any person for whose acts the Association is held responsible. The public liability policy shall have at least a one million dollar (\$1,000,000.00) single person limit with respect to bodily injury and property damage, at least a two million dollar (\$2,000,000.00) input per occurrence, if reasonably available, and at least a five hundred thousand dollar (\$500,000.00) minimum property damage limit. Premiums for all insurance on the Common Areas shall be common expenses, subject to the right of the Association to seek reimbursement for all or a portion of such expenses pursuant to the landscape restrictions or other covenants or agreements relating thereto. Insurance policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance, and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total. All insurance coverage obtained by the Board of Directors of the Association shall be governed by the following provisions:

- (a) all policies shall be written with a company authorized to do business in Texas which holds a Best's rating of "A" or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available;
- (b) all policies on the Common Areas shall be for the benefit of the Association and its Members and shall be written in the name of the Association;
- (c) exclusive authority to adjust losses under policies obtained on the Common Area shall be vested in the Association's Board of Directors;
- (d) in no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgages;
- (e) all property insurance policies shall have an inflation guard endorsement, if reasonably available, and, if the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Fort Bend County, Texas area; and
- (f) the Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:
  - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, employees and manager, to the Owner and occupants of Lots and their respective tenants, servants, agents, and guests;
  - (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
  - (iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of anyone or more individual Owners;
  - (iv) a statement that no policy may be canceled, invalidated suspended, or subject to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of reasonable time

thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

- (v) a statement that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and
- (vi) a statement that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board of Directors of the Association shall obtain, as a common expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, and flood insurance, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment, but, if reasonably available, may not be less than one-sixth (1/6) of the annual Base Assessments on all Lots, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

**SECTION 7.2**      **INDIVIDUAL INSURANCE.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry homeowners insurance on the Lot(s) and structures constructed thereon. Each Owner further covenants and agrees that in the event of loss or damage to the structures comprising his Lot, the Owner shall either: (a) proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved by the Architectural Review Committee; or (b) clear the Lot of all damaged structures, debris and ruins and thereafter maintain the Lot in a neat and attractive landscaped condition consistent with the requirements of the Architectural Review Committee and the Association's Board of Directors.

**SECTION 7.3**      **DAMAGE AND DESTRUCTION.**

a. Immediately after damage or destruction by fire or other casualty to all or any part of the Subdivision covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment for all claims arising under such insurance and obtain reliable and detailed estimates of the cost or repair or reconstruction of the damaged or destroyed Subdivision. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Subdivision to substantially the same condition in which they existed prior

to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

b. Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five percent (75%) of the total Class "A" vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however such extension shall not exceed sixty (60) additional days. Except as expressly provided herein, no Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area or common property of the Association shall be repaired or reconstructed.

c. In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized then and in that event the affected portion of the Subdivision shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive landscaped condition.

**SECTION 7.4**      **DISBURSEMENT OF PROCEEDS**. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds shall be retained by and for the benefit of the Association.

**SECTION 7.5**      **REPAIR AND RECONSTRUCTION**. If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors of the Association shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owners of Lots sufficient to raise the additional funds necessary to restore the Common Area amenity. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

**ARTICLE VIII**  
**NO PARTITION**

Except as is permitted in this Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Subdivision or any part thereof seek any judicial partition unless the Subdivision have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors of the Association from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

**ARTICLE IX**  
**GENERAL PROVISIONS**

**SECTION 9.1**      **ENFORCEMENT**. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**SECTION 9.2**      **SEVERABILITY**. Invalidation of any one of these covenants or restrictions by judgment or court order shall not otherwise affect any other provisions, which shall remain in full force and effect.

**SECTION 9.3**      **TEXAS PROPERTY CODE**. The Association shall have all of the rights provided under Chapter 204 of the Texas Property Code or any amended or successor statute and shall comply with all requirements set forth in Chapter 209 of the Texas Property Code.

**SECTION 9.4**      **OWNER'S EASEMENT OF ENJOYMENT**. Every Owner shall have a right of easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas.
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations.

- (c) The right of the Association or the Developer to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members.
- (d) The right of the Association to collect and disburse those funds as set forth in Article VI.

**SECTION 9.5**      **DELEGATION OF USE**. Any Owner may delegate in accordance with the Bylaws of the Trails of Katy Owners Association, Inc. his/her right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot.

**SECTION 9.6**      **AMENDMENT**. Until the end of the Developer Control Period, Developer shall have the authority to amend this Declaration without the joinder or consent of any other party, so long as an amendment is not in contradiction of the residential character of the Subdivision. In addition, the provisions of this Declaration may be amended at any time by an instrument in writing signed by the President and Secretary of the Association certifying that Owners representing not less than sixty-seven percent (67%) of the votes in the Association have approved an amendment ("Owners Consent") which such amendment, Owner Consents and the affirmation of the President and Secretary of the Association must be duly recorded in the Official Public Records of Real Property of Fort Bend County, Texas. Provided, however, prior to the end of the Developer Control Period an amendment of this Declaration must also be approved in writing by Developer. Provided further that, without the joinder of Developer, no amendment may diminish the rights of or increase the liability of Developer under this Declaration. In the event that there are multiple Owners of a Lot, the written approval of an amendment to this Declaration may be reflected by the signature or vote of a single Co-Owner. Any legal challenge to the validity of an amendment to this Declaration must be initiated by filing a suit not later than one (1) year after the date the amendment document is recorded in the Official Public Records of Real Property of Fort Bend County, Texas.

**SECTION 9.7**      **DISSOLUTION**. If the Association is dissolved, the assets shall be dedicated to a public body, or conveyed to a nonprofit organization with similar purposes.

**SECTION 9.8**      **COMMON AREA MORTGAGES OR CONVEYANCE**. The Common Area cannot be mortgaged or conveyed without the consent of seventy-five percent (75%) of the Lot Owners (excluding the Developer).

If the ingress or egress to any residence is through the Common Area, any conveyance or encumbrance of such area shall be subject to the Lot Owner's easement.

**SECTION 9.9**      **INTERPRETATION**. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

**SECTION 9.10**      **OMISSIONS**. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provisions shall be supplied by inference.

**SECTION 9.11**      **ADDITIONAL REQUIREMENTS**. So long as required by the Federal Home Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or Members representing at least sixty-seven percent (67%) of the total Association vote entitled to be cast thereon consent, the Association shall not:

- a. by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);
- b. change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner of a Lot (a decision, including contracts, by the Board of Directors of the Association or provisions of any declaration subsequently recorded on any portion of the Subdivision regarding Assessments annexed or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);
- c. by act or omission change, waive, or abandon any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Areas (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);
- d. fail to maintain insurance, as required by this Declaration; or

- e. use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property, or to add to Reserves.

First Mortgagees may, jointly or singly, after thirty (30) days written notice to the Association, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**SECTION 9.12**      **NO PRIORITY.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

**SECTION 9.13**      **NOTICE TO ASSOCIATION.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**SECTION 9.14**      **AMENDMENT BY BOARD OF DIRECTORS OF THE ASSOCIATION.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board of Directors of the Association, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**SECTION 9.15**      **APPLICABILITY OF ARTICLE IX.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, Bylaws, or Texas law for any of the acts set out in this Article.

**SECTION 9.16**      **FAILURE OF MORTGAGEE TO RESPOND.** Any Mortgagee who receives a written request from the Board of Directors of the Association to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

**SECTION 9.17**      **ANNEXATION.** ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA MAY BE ANNEXED TO THE PROPERTIES OR INCORPORATED INTO THE ASSOCIATION WITH THE CONSENT OF TRAILS OF KATY OWNERS ASSOCIATION, INC.,

BOARD OF DIRECTORS OR BY THE DEVELOPER WITHOUT APPROVAL BY THE MEMBERSHIP.

EXECUTED this the 15 day of May, 2014.

DEVELOPER:

VENTANA DEVELOPMENT KATY, LTD.  
A TEXAS LIMITED PARTNERSHIP

By: Trails of Katy, L.L.C.  
General Partner

By:   
Paul Grover, General Partner

THE STATE OF TEXAS §  
  §  
COUNTY OF Fort Bend §

BEFORE ME, the undersigned notary public, on this 15 day of May, 2014 personally appeared Paul Grover, General Partner of Trails of Katy, L.L.C., General Partner to Ventana Development Katy, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and in the capacity therein expressed.

  
Notary Public in and for the State of Texas



CONSENT OF LIENHOLDER  
to  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
for  
TRAILS OF KATY

The undersigned, being a lienholder against Trails of Katy, Section One (1) A Subdivision in Fort Bend County, Texas, does hereby consent and agree to the foregoing "Declaration of Covenants, Conditions, and Restrictions for Trails of Katy" to which this instrument is attached.

FIRST CONTINENTAL INVESTMENT CO., LTD.,  
a Texas limited partnership

MAY 22, 2014

Date

By: *John M. Bonner*

Printed: JOHN M. BONNER

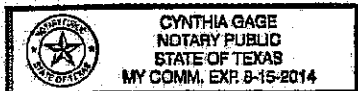
Its: PRESIDENT

THE STATE OF TEXAS

COUNTY OF HARRIS

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§  
§

BEFORE ME, the undersigned notary public, on this 22nd day of MAY, 2014 personally appeared JOHN M. BONNER, PRESIDENT of First Continental Investment Co., Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purpose and in the capacity therein expressed.



*Cynthia Gage*  
Notary Public in and for the State of Texas