

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
WHISPERING WILLOWS**

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WHISPERING WILLOWS (the "**Declaration**") is made effective as of the ___ day of March, 2026, by **B/CS LEASING, LLC**, a Texas limited liability company (hereinafter sometimes referred to as "**Declarant**").

WHEREAS the Declarant desires to convey the Property subject to certain protective covenants, conditions, restrictions, liens, and charges as hereinafter set forth;

WHEREAS the Declarant desires to create and carry out a uniform plan for the improvement, development, and sale of the Property for the benefit of the present and future owners of the Property;

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

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF
WHISPERING WILLOWS**

ARTICLE I DEFINITIONS

ARTICLE II DEVELOPMENT OF PROPERTY

ARTICLE III THE HOMEOWNERS' ASSOCIATION

SECTION 1. ORGANIZATION

SECTION 2. DUTIES

SECTION 3. ASSESSMENTS AND FUNDS

SECTION 4. RULES AND GUIDELINES

SECTION 5. BY-LAWS OF THE PROPERTY OWNERS' ASSOCIATION

ARTICLE IV THE ARCHITECTURAL CONTROL COMMITTEE

SECTION 1. ORGANIZATION AND DUTIES

SECTION 2. REVIEW PROCESS

ARTICLE V RESIDENTIAL RESTRICTIONS

SECTION 1. GENERAL RESTRICTIONS

SECTION 2. BUILDING CODE

ARTICLE VI MISCELLANEOUS

EXHIBIT A PLAT, PHASE ONE OF WHISPERING WILLOWS

EXHIBIT B ACC APPROVAL FORM

EXHIBIT C NEW HOME CONSTRUCTION SUBMITTAL FORM

ARTICLE I DEFINITIONS

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

- 1.01 **Architectural Control Committee (ACC).** "Architectural Control Committee" or "ACC" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements on the Property.
- 1.02 **Assessment.** "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of the Declaration.
- 1.03 **Association.** "Association" shall mean WHISPERING WILLOWS HOA, a Texas non-profit corporation, which shall have authority and responsibility for all of the communities and subdivisions of WHISPERING WILLOWS.
- 1.04 **Board.** "Board" shall mean the Board of Directors of the Association. Board members may, but need not, be Members of the Association.
- 1.05 **Common Areas.** "Common Areas" shall mean any land conveyed, leased, dedicated or assigned by Declarant, or a third party with the Association's consent, to the Association for maintenance and operation, including, but not limited to, easements, roads, entryways, roadways, rights-of-ways, parkways, median strips, sidewalks, parks, trails, paths, ponds, creeks, and lakes within the Property.
- 1.06 **Declarant.** "Declarant" shall mean B/CS LEASING, LLC ("Willows"), its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Willows as Declarant, must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignments of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.
- 1.07 **Declaration.** "Declaration" shall mean this instrument as it may be amended from time to time.
- 1.08 **Lot.** Any of lots 1 – 25R4 of WHISPERING WILLOWS Phase One as reflected on plat recorded in Volume _____, Page ____, Official Records of Brazos County, Texas, as shown in Exhibit A and any future maps or plats for any future phases filed in the Official Records of Brazos County, Texas.
- 1.09 **Member.** "Member" or "Members" shall mean any person(s), entity, or entities holding membership rights to the Association.
- 1.10 **Owner.** "Owner" or "Owners" shall mean a person or persons, entity, or entities, including Declarant, holding a fee simple interest in any Lot on the Property, but shall not include a Mortgagee.
- 1.11 **Property.** "Property" shall mean the real property in Brazos County, Texas, described in Exhibit A, which is attached hereto and incorporated by reference into the Declaration

and/or any future maps or plats for any future phases filed in the Official Records of Brazos County, Texas.

- 1.12 **Natural Habitat.** "Natural Habitat" shall be an easement as defined by the Declarant of property intended to be maintained in its most natural and original state.
- 1.13 **Transition Date.** "Transition Date" shall be the date at which the Association shall become governed by the owners as opposed to the Declarant.

ARTICLE II DEVELOPMENT OF PROPERTY

- 2.01 **Development or Sale by Declarant.** Declarant may divide or subdivide the Property into several areas, develop some of the Property, and, at Declarant's option, sell any portion of the Property free of the restrictions set forth in this Declaration.
- 2.02 **Addition of Land.** Declarant may, at any time and from time to time, add any other lands to the Property and, upon such addition, this Declaration and the covenants, conditions, restrictions, and obligations set forth herein shall apply to the added land, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as they are with respect to the lands originally covered by the Declaration. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a Notice of Addition of Land containing the following provisions:
 - a) A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
 - b) A statement that the provisions of this Declaration shall apply to the added land; and
 - c) A legal description of the added land.
- 2.03 **Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw areas from the Property, and upon such withdrawal, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to those lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a Notice of Withdrawal of Land containing the following provisions:
 - a) A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
 - b) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
 - c) A legal description of the withdrawn land.

**ARTICLE III
THE HOMEOWNERS' ASSOCIATION**

SECTION 1 – ORGANIZATION

- 3.01 **Organization.** The Declarant will cause the formation and incorporation of the Association as a non-profit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- 3.02 **Membership.** Any Person or entity upon becoming an Owner in WHISPERING WILLOWS shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest, which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with title to the said property interest.
- 3.03 **Voting Rights.** The right to cast votes and the number of votes which may be cast, for election of directors to the Board and on all other matters to be voted on by the Members shall be calculated as follows:
- a) The Owner, whether one or more (including Declarant), of each Lot within the Property shall have one vote for each Lot so owned. In addition, Declarant shall have one vote for each lot reflected on the preliminary plats of the portions of the Property which have not been platted.
 - b) In addition to the votes to which Declarant is entitled by reason of Subparagraph (a) of this section, for every such vote, Declarant shall have three (3) additional votes until such time as the votes described in this section, owned by Owners other than Declarant, total in the aggregate (67%) of the total number of votes outstanding under Subparagraph (a) (the "**Transition Date**"). Thereafter Declarant shall only have votes if any, to which it is entitled under Subparagraph (a) of this section.
- 3.04 **Powers and Authority of the Association.** The Association shall have the powers of a Texas non-profit corporation, subject only to any limitations upon the exercise of its power as are expressly set forth in this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the following powers at all times:
- a) **WHISPERING WILLOWS Rules and Bylaws.** Owners of WHISPERING WILLOWS are to be subject to and bound by such WHISPERING WILLOWS Rules and Bylaws incorporated herein, not in conflict with this Declaration. The Association shall have the authority to establish committees pertaining only to specific sections of WHISPERING WILLOWS. Any committee, which elects to oversee a particular section, shall have the power to establish section rules, which shall apply only to sections over which the committee has oversight. Any such section rules may be more restrictive than the provisions hereof, but shall not be less restrictive.
 - b) **Insurance.** To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.

- c) **Records.** To keep books and records of the Association's affairs.
- d) **Assessments.** To levy Assessments as provided in Section 3, Assessments and Funds.
- e) **Right of Entry and Enforcement.** To enter at any time in an emergency, or in a non-emergency, after ten (10) days' written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the WHISPERING WILLOWS Residential Restrictions or for the purpose of erecting, maintaining or repairing any Improvement to conform to the WHISPERING WILLOWS Residential Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon (i) shall be a personal obligation of the Owner of the Lot entered upon, (ii) shall be a lien upon the Lot entered on and Improvements thereon, and (iii) shall be enforced in the same manner and to the same extent as provided in Section 3 hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the names of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the WHISPERING WILLOWS Residential Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the WHISPERING WILLOWS Residential Association funds for the purpose of bringing suit against Declarant, its successors, or assigns.
- f) **Legal and Accounting Services.** To retain and pay for legal and accounting services necessary or proper for the operation of the Association.
- g) **Delegation to Committees.** To set up one or more committees as authorized by the Texas Non-Profit Corporation Act, as the same is amended from time to time.
- h) **Employees.** To engage such employees as may be reasonably necessary in the management of the Association and the performance of its duties.

SECTION 2- DUTIES

Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

- 3.05 **Landscape and Maintenance.** The Association shall be authorized to landscape, maintain and repair easements, rights-of-way, common areas, entryways, paths, trails, detention ponds, lakes, waterfall pumps, irrigation equipment, water wells, entrance buildings, and other areas of the Property, as appropriate.
- 3.06 **Responsibility for All Properties.** To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Declarant, together with any Improvements of any kind or purpose located in said areas; and to accept, own, operate and maintain all other property, real and personal, conveyed or leased to the Association by Declarant; and to maintain in good repair and condition all lands, Improvements, and

other Association property owned by or leased to the Association, whether by Declarant or by other Persons.

- 3.07 **Pay Taxes.** To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon individual Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- 3.08 **Execute Mortgages.** To execute mortgages, both construction and permanent, for construction of Improvements on property owned by or leased to the Association, and to accept lands in Common Areas, whether or not improved, from Declarant subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien, as deemed appropriate by borrower, whether Declarant or the Association, on the Improvements to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of Members, or otherwise, or any combination thereof, as may be deemed appropriate by Declarant or the Association, as the case may be, but subject to the limitations imposed by this Declaration.

In addition to, and not in limitation of, the power and authority of the Association as set forth in Section 3.04 of this Declaration, the Association, acting through the Board, shall have the following power and authority:

- 3.09 **Right to Delegate Property for Specific Purpose Within Reason.** To grant and convey portions of Association property, including fee title, leasehold estates, easements, right-of-way, and/or mortgages, to any person or entity for the purpose of constructing, erecting, operating, or maintaining the following:
- a) Parks, parkways or other recreational facilities or structures;
 - b) Roads, streets, walks, driveways, trails, and paths;
 - c) Lines, cables, wires, conduits, pipelines, or other means of providing utilities;
 - d) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
 - e) Any similar public, quasi-public or private improvements.

Nothing contained in this subparagraph, however, shall be construed to permit use or occupancy of any Common Area or Improvement in a way that would violate applicable use and occupancy restrictions imposed by other provisions of this Declaration, or by any statute, rule, regulation, ordinance or other law of any governmental entity, including but not limited to rules and orders of the Texas Water Development Board, Texas Water Commission, Texas Commission on Environmental Quality ("TCEQ") and any flood plain, industrial waste or other ordinance of the City of College Station.

- 3.10 **Pay Bills.** To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association, or within city- owned parks, parkways, entrance ways, or street rights of way which the Association desires to maintain or pay for, in the best interest of the Association and the aesthetic appearance of the subdivision as a whole.
- 3.11 **Hire Services.** To pay for any other services necessary or proper in the performance of Association functions, and to pay for any other taxes or assessments that the Association or the Board is required to secure or to pay for, pursuant to applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.
- 3.12 **Improvements.** To construct new Improvements or additions to Association properties, subject to the approval of the ACC as required in this Declaration.
- 3.13 **Manage Contracts.** To enter into contracts with Declarant and other persons, with such terms and provisions as the Board shall determine, to operate and maintain any of the Common Areas or to provide any service or perform any function on behalf of Declarant or the Association in connection with the purposes of the Association.
- 3.14 **Public Government.** The Declarant, as the agent of the Association, or the Association, may enter into one or more agreements (i) with the City of Bryan or State of Texas or Brazos County, with respect to (1) the landscaping and maintenance of portions of public streets, highways, or rights of way, or (2) the dedication of any drainage basin, park or other common area within the property for municipal maintenance, or (ii) with the City of Bryan with respect to landscaping and maintenance of portions of utility easements. The Association shall accept, without further requirement or documentation, said agreement and the requirements and benefits associated therewith, for any agreement reached by the Declarant.
- 3.15 **Indemnification.** The Association shall indemnify any director, officer, or member of a committee duly appointed pursuant to the Articles or Bylaws who by reason of the fact that such person is or was a director, officer or member of such a committee of the Association was, is, or is threatened to be made, a named defendant or respondent in (i) any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative, or investigative, (ii) any appeal in such an action, suit, or proceeding, and (iii) any inquiry or investigation that could lead to such an action, suit, or proceeding (hereinafter a "Proceeding any and all judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with any such Proceeding to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time. Such authorization of indemnification shall be deemed to be mandatory and deemed to constitute authorization of Indemnification and advancement of expenses to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time.

SECTION 3- ASSESSMENTS AND FUNDS

- 3.16 (A) **Right to Levy Assessment.** The Association may from time to time levy Assessments against each Lot whether or not improved. The level of Assessments shall be equal

and uniform between all Lots, provided, however, that no Assessments hereunder shall be levied against Declarant.

(B) **Timing of Obligation.** Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

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

3.17 **Fund.** The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

3.18 **Regular Annual Assessments.** Prior to the beginning of each fiscal year, the Board shall have the right to estimate the expenses to be incurred by the Association during such year in performing its functions under the WHISPERING WILLOWS Residential Restrictions, including but not limited to the cost of all entry ways, landscaping, greenbelts, common areas, median strip, and right-of-way maintenance, the cost of enforcing the WHISPERING WILLOWS Residential Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's funds. Assessments sufficient to pay such estimated note expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion.

3.19 **Special Assessments.** In addition to the regular annual Assessments provided for above, the Board may levy special assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under the WHISPERING WILLOWS Residential Restrictions. The amount and due date of any special Assessments shall be at the reasonable discretion of the Board.

3.20 **Owner's Personal Obligation to Pay and Prescribed Course of Action for Non-Payment.** The regular and special Assessments provided for herein shall be the personal and individual debt of the owner of the Lot covered by such assessments. Except as otherwise provided in Section 3.16(A) hereof, no Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from due date thereof (or if

there is no such highest rate, then at the rate of 1-1/2% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

- 3.21 **Power of Association to Assess Lien and Foreclosure.** All sums assessed in the manner provided in this Article but not paid by the Owner, shall, together with interest as provided in 3.16(c) hereof and the cost of collection, including attorney's fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors, or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust filed of record, securing in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and an officer of the Association, duly authorized by the Board, shall effectuate such subordination. To evidence an Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, and a description of the Lot. Such notice shall be signed by an officer of the Association, duly authorized by the Board, and shall be recorded in the office of the County Clerk of Brazos County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth from the date such payment becomes delinquent, and may be enforced subsequent to the recording of a notice of Assessment lien as provided above, by judicial foreclosure. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee the status of any Assessments relating to the Mortgagee's mortgage and remaining unpaid for longer than thirty (30) days after due.

SECTION 4 - RULES AND GUIDELINES

- 3.22 **Duty of Maintenance.** Owners and occupants (including lessees) of any part of the Property shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that part of the Property so owned or occupied by them, including buildings, improvements, and grounds in connection therewith, in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to, the following:
- a) Prompt removal of all litter, trash, refuse, and wastes.
 - b) Lawn mowing.
 - c) Tree and shrub pruning.
 - d) Watering.
 - e) Keeping exterior lighting and mechanical facilities in working order.
 - f) Keeping lawn and garden areas alive, free of weeds, and attractive.
 - g) Keeping parking areas, walkways, and driveways in good repair.

- h) Complying with all government health and policy requirements.
 - i) Repainting of improvements.
 - j) Repair of exterior damage to improvements.
 - k) Repair and maintenance of Owner's fencing.
 - l) Repair and maintenance of platted interior roadways.
 - m) Repair and maintenance of electronic entry system.
- 3.23 **Enforcement falls to Association.** If in the opinion of the Association any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and occupants (including lessees) of any part of the Property on which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all of said persons jointly and severally, and shall constitute a lien against the Lot or Lots on which said work was performed. Such lien shall have the same attributes as the lien for annual assessments and special assessments set forth in this Declaration, which provisions are incorporated herein by reference, and the Association shall have identical powers and rights in all respects, including but not limited to, the right of non-judicial foreclosure.
- 3.24 **Easements of Enjoyment.** Subject to the provisions of 3.26 below, every member of the Association shall have a right and easement of enjoyment in and to the Common Properties, and such right and easement shall be appurtenant to and shall pass with the title to each Lot in the Subdivision.
- 3.25 **Title to Common Properties.** Declarant may retain legal ownership of the Common Properties until such time as, in its sole opinion, the Association is able to operate and maintain same. Until title to such Common Properties has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges relating to such Common Properties granted to the Association in the Declaration and all Supplemental Declarations.
- 3.26 **Rights and Duties of Association/Declarant Regarding Protection of Common Properties.** The rights and easements of enjoyment created hereby shall be subject to the following:
- a) Right to Prescribe Rules. The right of the Association to prescribe rules and regulations for the use, enjoyment and maintenance of the Common Properties, or any part thereof.

- b) **Right to Sell.** The right of the Association to sell and convey the Common Properties, or any part thereof, provided such sale or conveyance is approved by a majority of the total eligible votes of the membership of the Association as defined in Section I hereof, voting in person or by proxy, at a meeting duly called for such purpose, at least thirty (30) days in advance and shall set forth the purpose of the meeting.
- c) **Ability to Finance Projects.** The right of the Association to borrow money for the purpose of improving the Common Properties, or any part thereof, and to mortgage the Common Properties, or any part thereof.
- d) **Right to Protect.** The right of the Association to take such steps as are reasonably necessary to protect the Common Properties, or any part thereof, against foreclosure.
- e) **Right to Grant Easement.** The right of the Association to grant or dedicate easements in, on, under or above such Common Properties or any part thereof, to any public or governmental agency or authority or to any utility company for any service to the Subdivision or any part thereof.
- f) **Right to Suspend Easement of Enjoyment to Any Member.** The right of the Association to suspend the easements of enjoyment of any Member of the Association during which time any assessment levied under this Declaration remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and the aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in the Declaration and Supplemental Declarations or in its bylaws or at law or in equity on account of any such default or infraction.

3.27 **Reserved Easements.** All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the Property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most effectively, efficiently, and economically developing and marketing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, common areas, rights-of-way and easements for public utility purposes (including, without limitation, gas, cable, water, electricity, telephone, and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, any such easement having a maximum width of ten feet (10') on each side of such Lot line.

3.28 **Installation and Maintenance.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, if any, no structure, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the

case of drainage easements, which may change the direction or flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all Improvements in such area shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements herein or referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants to shrubbery, trees, lawns or flowers or other property of the Owners situated on the land covered by said easements.

- 3.29 **Surface Areas.** The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity reasonably relating to the construction, maintenance, operation or repair of any facility in any such easement area.
- 3.30 **Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the ACC thereon require. Each Owner further covenants not to disturb any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the ACC.
- 3.31 **Blanket Easement.** An easement is hereby retained in favor of the Association over all Lots and the Common Areas for the purpose of enforcing the WHISPERING WILLOWS Residential Restrictions, and for the maintenance of landscaping, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot or the Common Areas to effectuate the foregoing purposes shall not be deemed as trespass.

SECTION 5 - BYLAWS OF THE ASSOCIATION

BYLAWS OF WHISPERING WILLOWS HOA

DEFINITIONS

- 3.32 **WHISPERING WILLOWS Defined.** "WHISPERING WILLOWS" shall mean all of the real property located in Brazos County, Texas, including the land, all improvements and structures on the land, and all easements, rights, and appurtenances to the land, more particularly described as follows:

All that tract or parcel and being situated in Brazos County, Texas and being a 71.04 acre of platted into twenty-eight (28) lots as reflected on the Plat attached hereto as Exhibit A and any future maps or plats for any future phases filed in the Official Records of Brazos County, Texas.

WHISPERING WILLOWS will consist of one (1) subdivision or community, platted or unplatted, all of which shall be subject to the authority of the Association. It shall consist

of WHISPERING WILLOWS or such other additional or substitute communities or subdivisions as the developer might create.

- 3.33 **Declaration Defined.** "Declarations" shall mean all of the Declarations of Covenants, Conditions and Restrictions, now or hereafter filed in the County Clerk's office in Brazos County, Texas, and affecting WHISPERING WILLOWS or any portions thereof, including any amendments to the Declarations as may be made from time to time in accordance with the terms of the Declarations.
- 3.34 **Other Terms Defined.** Other terms used in these Bylaws shall have the meaning given them in the Declarations, incorporated by reference and made a part of these Bylaws.

APPLICABILITY OF BYLAWS

- 3.35 **Corporation.** The provisions of these Bylaws constitute the Bylaws of the non-profit corporation known as WHISPERING WILLOWS HOA, referred to as the "Association."
- 3.36 **Applicability.** All present or future Owners, their employees, guests, or other persons that use the facilities of the Association or its Common Areas in any manner are subject to the regulations set forth in these Bylaws. The mere acquisition of any of the Lots of WHISPERING WILLOWS or the mere act of occupancy of any of the Lots or Common Areas will signify that these Bylaws are accepted and ratified and will be complied with by the purchaser or occupant.

OFFICES

- 3.37 **Principal Office.** The initial office of the Association shall be located at 1061 Innovation Drive, Bryan, TX 77808.
- 3.38 **Registered Office and Registered Agent.** The Association shall have and shall continuously maintain in the State of Texas a registered office and a registered agent, whose office is identical with the registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office of the corporation, and the address of the registered office may be changed from time to time by the Board of Directors.

QUALIFICATIONS FOR MEMBERSHIP

- 3.39 **Membership.** The membership of the Association shall consist of all of the Owners of the Lots within WHISPERING WILLOWS.
- 3.40 **Proof of Membership.** The rights of membership shall not be exercised by any person until satisfactory proof has been furnished to the Secretary of the Association that the person is qualified as a Member. Such proof may consist of a copy of a duly executed and acknowledged deed or title insurance policy evidencing ownership of a Lot in WHISPERING WILLOWS.
- 3.41 **No Additional Qualifications.** The sole qualification for membership shall be ownership of a Lot in WHISPERING WILLOWS. No initiation fees, costs, or dues shall be assessed against any person as a condition of membership except such assessments, levies, and charges as are authorized or permitted under the Articles of Incorporation or the

Declarations.

- 3.42 **Certificates of Membership.** The Board of Directors may provide for the issuance of certificates evidencing membership in the Association that shall be in such form as may be determined by the Board. All certificates evidencing membership, if issued by the Board of Directors, shall be consecutively numbered. The name and address of each Member and the date of issuance of the certificate shall be entered on the records of the Association and maintained by the Secretary at the registered office of the Association.

VOTING RIGHTS

- 3.43 **Voting.** Voting shall be on a Lot basis. The Owner of each Lot is entitled to one vote. If a Lot has more than one Owner, the aggregate vote of the Owners of the Lot may not exceed the one vote assigned to the Lot. The developer's votes shall also be increased, after calculating the number of votes provided above, by the formula set forth in the Declarations regarding Voting Rights.
- 3.44 **Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease on conveyance by the Member of the Member's Lot, or on receipt of notice by the Secretary of the death or judicially declared incompetence of such Member. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise specifically provided in the proxy.
- 3.45 **Quorum.** The presence, either in person or by proxy, at any meeting, of Members entitled to cast at least 51% of the total voting power of the Association shall constitute a quorum for any action, except as otherwise provided in the Governing Instruments. In the absence of a quorum at a meeting of Members, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the meeting date.
- 3.46 **Required Vote.** The vote of the majority of the votes entitled to be cast by the Members present, or represented by proxy, at a meeting at which a quorum is present shall be the act of the meeting of Members, unless the vote of a greater number is required by statute or by the Governing Instruments.

MEETINGS OF MEMBERS

- 3.47 **Annual Meetings.** The first meeting of the Association shall be the meeting at which the Bylaws are adopted by the initial Board of Directors named in the Articles of Incorporation. The second meeting of the Members of the Association shall be held within twenty-four (24) months after the first meeting, at a time and place to be designated by the Board. After the second meeting, the annual meeting of the Members of the Association shall be held on the second Monday of September of each succeeding calendar year at the hour of 7:00 p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting shall be held at the same hour on the first day following that is not a legal holiday, excluding Saturdays and Sundays.
- 3.48 **Special Meetings.** Special meetings of the Members may be called by the President, the Board of Directors, or by Members representing at least 51% of the total voting power of the Association.

- 3.49 **Place.** Meetings of the Members shall be held within WHISPERING WILLOWS or at a convenient meeting place, as the Board may specify in writing in its sole discretion.
- 3.50 **Notice of Meetings.** Written notice of all Members' meetings shall be given by or at the direction of the Secretary of the Association (or other persons authorized to call the meeting) by mailing or personally delivering a copy of such notice at least ten (10) but not more than sixty (60) days before the meeting to each Member entitled to vote at the meeting. The notice must be addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. The notice shall specify the place, day, and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken.
- 3.51 **Order of Business.** The order of business at all meetings of the Members shall be as follows:
- a) Roll call.
 - b) Proof of notice of meetings or waiver of notice.
 - c) Reading of Minutes of preceding meeting.
 - d) Reports of officers.
 - e) Reports of committees.
 - f) Election of directors.
 - g) Unfinished business.
 - h) New business.
- 3.52 **Action Without Meeting.** Any action required by law to be taken at a meeting of the Members or any action that may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members and filed with the Secretary of the Association.

BOARD OF DIRECTORS

- 3.53 **Number.** The affairs of this Association shall be managed by a Board of Directors consisting of not less than three, nor more than nine persons, all of whom may be, but need not be, Members of the Association. The Directors shall determine the exact number of Directors to be elected. Until amended by board resolution, the number of Directors shall be three (3).

At the first meeting of the Association, the Members shall elect Directors who shall hold office until the second meeting, which shall include the election of Directors by the Members. After the transition date, Directors shall be elected at the annual meeting of the Members and shall hold office for a term of two (2) years. When this provision takes effect, two of the Directors shall serve two (2) year terms and three Directors shall serve one (1) year terms, in order to create staggered terms.

3.54 **Removal.** Directors may be removed from office without cause by a two-thirds majority vote of the Members of the Association.

3.55 **Vacancies.** In the event of a vacancy on the Board caused by the death, resignation, or removal of a Director, the remaining Directors shall, by majority vote, elect a successor who shall serve for the unexpired term of the predecessor.

Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting of Members or at a special meeting of Members called for that purpose.

3.56 **Compensation.** With the prior approval of a majority of the voting power of the Association, a Director may receive compensation in a reasonable amount for services rendered to the Association. A Director may be reimbursed by the Board for actual expenses incurred by the Director in the performance of the Director's duties.

3.57 **Powers and Duties.** The Board shall have the powers and duties, and shall be subject to limitations on such powers and duties, as enumerated in the Declarations of WHISPERING WILLOWS.

NOMINATION AND ELECTION OF DIRECTORS

3.58 **Nomination.** Nomination for election to the Board of Directors shall be made from the floor at the annual meeting of the Members.

3.59 **Election.** Directors are elected at the annual meeting of Members of the Association. Members, or their proxies, may cast, in respect to each vacant directorship, as many votes as they are entitled to exercise under the provisions of the Declaration. The nominees receiving the highest number of votes shall be elected.

MEETINGS OF DIRECTORS

3.60 **Regular Meetings.** Regular meetings of the Board of Directors shall be held semi-annually at a place and at a time as may be fixed from time to time by resolution of the Board. Notice of the time and place of regular meetings shall be posted on small signs (2' X 3') at the entryways to WHISPERING WILLOWS.

3.61 **Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association or by any two Directors other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of a special meeting must be given to each Director not less than two (2) days or more than ten (10) days prior to the date fixed for such meeting by written notice either delivered personally, sent by mail, electronic mail (email), telecopy, or telegram to each Director at the Director's address as shown in the records of the Association.

3.62 **Quorum.** A quorum for the transaction of business by the Board of Directors shall be a majority of the number of Directors constituting the Board of Directors.

- 3.63 **Voting Requirement.** The act of the majority of Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless any provision of the Governing Instruments requires the vote of a greater number.
- 3.64 **Open Meetings.** Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Association Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of a majority of a quorum of the Board.
- 3.65 **Executive Session.** The Board may, with the approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Association is or may become involved, and other business of a confidential nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

OFFICERS

- 3.66 **Enumeration of Officers.** The Officers of this Association shall be a President, Vice-President, Secretary, Treasurer, and ACC Chairman. The Board of Directors may, by resolution, create such other offices as it deems necessary or desirable.

The Officers of this Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year unless the Officer shall sooner resign, be removed, or be otherwise disqualified to serve.

- 3.67 **Resignation and Removal.** Any Officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect at the date of receipt of the notice or at any later time specified in the notice. Any Officer may be removed from office by the Board whenever, in the Board's judgment, the best interests of the Association would be served by such removal.

ARTICLE IV THE ARCHITECTURAL CONTROL COMMITTEE (ACC)

SECTION 1 - ORGANIZATION AND DUTIES

- 4.01 **Function of the Committee.** No improvement shall be erected, constructed, placed, altered (by addition or deletion), maintained or permitted to remain on any portion of the Property until plans and specifications, in such form and detail as the Committee may deem necessary, shall have been submitted to and approved in writing by such committee.
- 4.02 **Membership.** The ACC shall consist of not more than three (3) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate.
- 4.03 **Ruled by Majority Vote.** Items presented to the ACC shall be decided by a majority vote of the Voting Members.
- 4.04 **Advisory Members.** The Voting Members may from time to time designate Advisory Members.

- 4.05 **Term.** Each member of the ACC shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed as provided herein.
- 4.06 **Date and Right of Developer Prior to Transition.** Until the Transition Date, Declarant, its successors, or assigns shall have the right to appoint and remove all Voting Members of the ACC, which persons need not be drawn from Association Members. Notwithstanding the preceding sentence, Declarant may delegate its right of appointment, or any portion thereof, to the Board by written instrument before such date. Whenever the Transition Date occurs, thereafter, the Board shall have the right to appoint all Voting Members. At such time as the Board gains the right to appoint and remove Voting Members of the ACC, or any portion of this right, a majority of the Voting Members so appointed shall be drawn from Members of the Association. Advisory Members shall, when reasonably possible, be drawn from Members of the Association.
- 4.07 **Right to Promulgate and Adopt Rules.** The ACC may adopt such procedural and substantive rules, not in conflict with this Declaration, as it deems necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, and other similar codes.
- 4.08 **Variances.** Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any individual Lot or Lots upon the Property, variance from any restrictions set out in this Declaration may be granted by a unanimous decision of the ACC in a written instrument to be duly acknowledged, if and when such a variance shall ever be granted.
- 4.09 **Can Adopt Agent to Act.** The ACC may, by resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf or employ a professional agent in its discharge to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of a majority of all the members of the ACC taken without a meeting shall constitute an act of the ACC.
- 4.10 **All Decisions Final and Binding.** The decision of the ACC shall be final, conclusive, and binding upon the applicant.
- 4.11 **No Waiver of Future Approvals.** The approval or consent of the ACC of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any other Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.
- 4.12 **Right of Inspection Not Deemed Trespass.** A member or agent of the ACC may enter on and inspect any Lot and any Improvements thereon during regular business hours and following reasonable notice for the purpose of ascertaining whether such Lot and the Improvements thereon are in compliance with these restrictive covenants. Neither the Association, the ACC, nor the agent of any of them shall be deemed to have committed a trespass by reason of such entry for inspection, provided such inspection is carried out in accordance with the terms of this Section.

- 4.13 **Failure to Act.** In the event the ACC or its designated representative fails to approve or disapprove any Plans and Specifications within ten (10) days after the same have been submitted to it, complete with all other information requested by the ACC in connection with such submission, approval shall be assumed.
- 4.14 **Relationship with Association.** Perform certain functions specified herein relating to the review and approval of Plans and Specifications for Improvements built on the Property. The ACC does not exercise the authority of the Board, and shall not do so unless and until (i) the Board shall have duly appointed a majority of Board members to the ACC, and (ii) the Board shall by unanimous resolution, duly recorded in the records of the Association, make the ACC a committee of the Board in accordance with the Texas Non-Profit Corporation Act.
- 4.15 **Address.** Plans and Specifications shall be submitted to the ACC in care of WHISPERING WILLOWS ACC, 1061 Innovation Drive, Bryan, TX 77808, or in care of such other person at such other address as may be designated by Declarant or the Board, as the case may be, from time to time.
- 4.16 **Disclaimer Regarding Government.** Nothing in this Declaration shall be construed to relieve any Owner from securing such approvals, certificates and/or permits as may be required by law in connection with the construction of any Improvements on any Lot.
- 4.17 **No Liability.** Neither the ACC nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the ACC's duties under this Declaration unless due to the willful misconduct or bad faith of the ACC or Its members, as the case may be. Neither the ACC nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots.

SECTION 2 - REVIEW PROCESS

- 4.18 **Definition of Improvement.** "Improvement" shall mean and refer to any thing or device, the placement of which upon any Lot may affect the appearance of such Lot, including, but not be limited to, all buildings, and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, sidewalks, driveways, ponds, lakes, swimming pools, tennis courts, signs, changes in any exterior color or shape, glazing or reglazing of exterior windows with mirrored or reflective glass, and any new exterior construction or exterior improvement exceeding \$500.00 in cost which may not be included in any of the foregoing. It also includes both original improvements and all later changes and improvements.
- 4.19 **Content of "Plans."** The plans and specifications of any Improvement to be so submitted and approved shall include the following:
- a) A topographical plat showing existing contour grades and showing the location of all improvements, structures, walks, patios, driveways, fences, and walls. Existing and finished grades shall be shown at Lot corners. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the Lot contours is contemplated.
 - b) Exterior elevations.

- c) Exterior materials and colors.
- d) Structural design.
- e) Landscaping plan, including walkways, fences, and walls (if permitted), elevation changes, watering systems, lighting, vegetation, and ground cover.
- f) Parking area and driveway plan.
- g) Screening, including size, location, and method.
- h) Utility connections and septic system location.
- i) Exterior illumination, if any, including location and method.
- j) Design and materials for construction of interconnect (including any culvert [size and type] or related facility) between driveways and any walkway, and the street or roadway.

4.20 **Right to See Plans.** Whenever in this Declaration the approval of the ACC is required, the ACC shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts that, in its sole and absolute discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefore shall be submitted to the ACC, and construction thereof may not commence unless and until the ACC has approved such Plans and specifications. Until receipt by the ACC of any information or document deemed necessary by the ACC, it may postpone review of any Plans and Specifications submitted for its approval pursuant to this Declaration, including at its option inspection of construction in progress to assure its conformance with previously approved Plans and Specifications. The ACC shall have the express authority to perform fact-finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one construction. The ACC may, in its review of Plans and Specifications and such other information as it deems proper, consider whether any proposed Improvement upon a Lot would unreasonably obstruct the view from other portions of the Property. The ACC may, but shall not be required to, disapprove any Improvement upon any Lot that would unreasonably obstruct the view from any other portion of the Property. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property and the surrounding area. The ACC shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the ACC shall be final and binding so long as it is made in good faith. The ACC shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans and Specifications be deemed an endorsement, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes not of its authorship.

**ARTICLE V
RESIDENTIAL RESTRICTIONS**

SECTION 1 - GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

- 5.01 **Construction of Improvements.** No Improvements shall hereafter be constructed upon any of the Property without the prior approval of the ACC.
- 5.02 **Repair of Improvements.** All Improvements upon the Property, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof.
- 5.03 **Alteration or Removal of Improvements.** Exclusive of normal maintenance, any construction or removal in connection with any Improvement, which in any way alters the exterior appearance of said Improvement, shall be performed only with the prior written approval of the ACC.
- 5.04 **Insurance Rates.** Nothing shall be done or kept on the Property that would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon without the prior written approval of the ACC.
- 5.05 **Subdividing.** No Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ACC; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole all without the approval of the ACC.
- 5.06 **Use Restrictions.** No Lot shall be used for any purpose except for single family residential purposes; provided that until Declarant, its successors, and assigns, has sold all of the Property, any unsold Lot may be used by Declarant for the location and operation of a sales office. The term "residential purposes as used herein shall be held and construed to exclude hospitals, clinics, duplex houses, apartment houses, multiple family dwellings, boarding houses and hotels, and to exclude the conduct of or operation of any commercial business or trade or professional activity and the foregoing enumerated uses are hereby expressly prohibited, either apart from or in connection with the use thereof as a private residence, whether for profit or not, except with the specific prior written approval of the ACC. No residence can be leased for a period of time that is less than twelve (12) months. The foregoing listings of prohibited and excluded uses shall not be deemed exclusive listings of uses which are residential.
- 5.07 **Mother-In-Law.** All Lots within the Property shall be used and improved for single-family residential purposes, with no more than one (1) attached residential dwelling unit per Lot, such as a mother-in-law or guest quarter.
- 5.08 **Nothing Else Allowed.** Buildings which do not comply with the land use and building type restrictions contained herein are prohibited.

5.09 **Protect the View.** The ACC may consider the effect the Improvement will have on the Property as a whole, it being expressly understood that neither the ACC nor the members thereof shall be liable to any Owner in monetary damages or otherwise due to the construction of any Improvement within the Property or the creating thereby of an obstruction to the view from such Owner's Lot or Lots.

5.10 **Antennas.**

(A) Antennas may be installed and maintained in an Approved Location unless installation in the Approved Location results in Unreasonable Delay, Unreasonable Cost Increase or Signal Impairment. If installation in an Approved Location results in Unreasonable Delay, Unreasonable Cost Increase or Signal Impairment, the Antenna may be installed and maintained elsewhere on the Lot and the ACC may require screening that does not result in Unreasonable Delay, Unreasonable Cost Increase or Signal Impairment.

(B) Within five (5) days after installation of an Antenna, Owner shall notify the Association in writing that an Antenna has been installed. If Owner has not installed the Antenna in an Approved Location and the Association can demonstrate that no Unreasonable Delay, Unreasonable Cost Increase or Signal Impairment would have resulted from installation of the Antenna in an Approved Location, the Association may require the Owner, at the Owner's cost, to move the Antenna to an Approved Location. If the Antenna could have been located in Approved Location without Unreasonable Delay or Signal Impairment but with Unreasonable Cost Increase, the Association may, at its expense, using an installer selected by the Association and after reasonable notice to Owner, move the Antenna to an Approved Location.

"Antenna" means any exterior antenna, aerials, satellite dished or other apparatus (a) of one meter or less in diameter that is used to receive direct broadcast satellite service or to receive or transmit fixed wireless signals via satellite; (b) of one meter or less in diameter that is used to receive video programming services via multipoint distribution services or to receive or transmit fixed wireless signals via other than satellite; or (c) that is used to receive television broadcasting signals.

"Approved Location" means that portion of a Lot which is not visible from any street, Common Area or other Lot and preferably: (a) in the rear or side yard of the Lot; (b) mounted on a pole, the dwelling unit or other structure below the fence line or otherwise screened by a fence; and (c) preferably not located on the roof of the dwelling unit or other improvement. See (1) above for other criteria requiring location in an Approved Location.

"Signal Impairment" means that the ability of an Antenna to receive or transmit acceptable quality signals from an Approved Location is precluded.

"Unreasonable Cost Increase" means the cost of installation, maintenance or use of an Antenna are unreasonably increased in light of the cost of the antenna and related equipment.

"Unreasonable Delay" means the installation, maintenance, and use of the apparatus in the Approved Location is unreasonably delayed, such as by a preapproval or permit requirement.

- 5.11 **Solar Equipment.** In the event an Owner desires to use solar panels or other solar equipment in connection with the use of any Lot, the location and installation design thereof shall be submitted to the ACC and approval of such design, including the aesthetics thereof, shall be required before construction may begin.
- 5.12 **Garage Conversions.** No garage or any portion thereof, may be constructed into enclosed living space unless an alternative garage of at least equal size is constructed, and the ACC first approves the Plans and Specifications for conversion and construction in writing.
- 5.13 **Signs.** No sign of any kind may be erected or maintained on any Lot without the consent in writing of the ACC except the following permitted signs:
- a) Signs advertising the Lot for sale;
 - b) Not more than two (2) political signs;
 - c) School spirit signs;
 - d) Security signs.
 - e) Address signs - All homes must have a numbered address sign visible from the street.

No permitted signs shall exceed five (5) square feet without the prior written approval of the ACC. Declarant or the ACC shall have the right to enter and remove any unapproved sign, advertisement, billboard, or structure which is placed on any Lot without the Declarant or the ACC's consent, and in so doing, shall not be liable and is expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal.

- 5.14 **Mailboxes.** No mailbox or any other receptacle for receiving mail shall be erected or maintained on any Lot. Developer will install a cluster mailbox at the entrance to the Subdivision.
- 5.15 **Rubbish and Debris.** No rubbish or debris of any kind shall be allowed or permitted to accumulate upon the property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view so that it is not visible from any street, Common Area or Lot. Trash containers must be promptly returned to their enclosed structures or screening following trash pick-up and in no event shall a trash container remain visible from any street, Common Area or other Lot overnight. If rubbish or debris accumulates upon any Lot violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the lot for the cost of removal. This shall in no way restrict the owners' right to have a compost pile.
- 5.16 **Tanks.** The ACC shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil, or LPG and including swimming pool filter tanks. No elevated tanks of any kind shall be erected, placed, or permitted on any Lot. All tanks shall be screened so as not to

be visible from any other portion of the Property. All LPG tanks shall be located underground. Pre-approved rainwater harvesting systems are not prohibited.

- 5.17 **Underground Utility Lines.** No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on improvements as approved in writing by the ACC; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the ACC. The installation method, including but not limited to location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities, shall be subject to review and approval by the ACC.
- 5.18 **Drainage.** There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the ACC.
- 5.19 **Sight Lines.** No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot within the area defined by a line drawn between two points located forty feet (40') from the point of intersection of the street right-of-way property lines immediately adjacent to the Lot, as reasonably located by the ACC. Measurements shall be by chord, and not arc. No tree shall be permitted to remain within such areas unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.
- 5.20 **Temporary Structures.** No tent, shack or other temporary building, improvement or structure shall be placed upon a Lot without the prior written approval of the ACC; provided, however, that the Declarant may maintain or authorize temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen on a Lot during any period of actual construction, which authorization, if given, shall include the nature, size, duration and location of such structure or structures.
- 5.21 **Unightly Articles; Vehicles; Garage Doors.** No trailer, semi-truck (tractor or trailer), commercial vehicle, recreational vehicle, tent, boat, or stripped down, wrecked, junked, or wholly inoperable vehicle shall be kept, parked, stored, or maintained on any portion of the driveway or front yard, in front of the building line of the permanent structure, and same shall be kept, parked, stored, or maintained on other portions of a Lot only within an enclosed structure or a screened area which prevents the view thereof from adjacent Lots or streets. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. Garage doors shall be kept closed at all times except for reasonable time periods when such doors are in use. The Association may establish rules and regulations regarding the definition of "reasonable time periods." Overnight parking of vehicles on the curb of any street is prohibited. No vehicle may be parked in the street in front of any Lot for a period of more than twelve (12) consecutive hours. No vehicle may be parked in a non-driveway area for an extended period.
- 5.22 **Mobile Homes; Travel Trailers; Recreational Vehicles.** No mobile homes shall be parked or placed on any Lot at any time. No travel trailers or recreational vehicles may be

kept on any Lot unless enclosed in a garage or parked so as not to be visible from adjoining property or public or private thoroughfares. In the event a travel trailer or recreational vehicle is not enclosed in a garage, the ACC must approve the location of its storage site. This restriction regarding travel trailers and recreational vehicles shall not apply to guests staying at any Lot for less than forty-eight (48) hours. One commercial vehicle is allowed to be parked nightly in the driveway so long as it is used daily and not parked or stored. Multiple commercial vehicles are prohibited to be parked or stored on the street or driveway. No semi-trucks may be parked overnight.

- 5.23 **Noxious Activities Prohibited.** No noxious or offensive trade, work or activity shall be permitted upon any Lot, or any other part of the Property, nor shall anything be done thereon which is or may become an annoyance or a nuisance to the neighborhood, is illegal, dangerous, or immoral, or which, in the sole judgment of the ACC, shall have the effect of degrading the residential environment of the Property.
- 5.24 **Noise.** No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.
- 5.25 **Lighting.** No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable security or landscape lighting that has the approval of the ACC.
- 5.26 **Mining and Drilling.** No oil drilling, oil development operations, oil refining, quarrying, or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot. No well, pump, shaft, casing, or other facilities for the removal of subsurface water shall be placed or maintained on any Lot, and no boring, drilling, removal or exploration for subsurface water or the injection of water or waste water shall be conducted on any Lot.
- 5.27 **Machinery and Equipment.** Without the approval of the Association or Declarant, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Brazos County, Texas, in connection with the use, maintenance, or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association; provided, however, such machinery or equipment may be placed, operated or maintained by any governmental or quasi-governmental agency, or by any public utility, in the performance of its legitimate functions.
- 5.28 **Fences.**
- (A) No fence, wall, or hedge shall be built or maintained forward of the front wall line of the main structure, not including decorative walls or fences, which are part of the ACC approved architectural design of the main structure, and which are not to be built or maintained nearer than the building setback line of any Lot. An exception shall be made in the case of retaining walls not to exceed twenty-four inches (24") above the ground. Notwithstanding the foregoing, the ACC is empowered to waive the aforesaid height or setback limitation in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique,

attractive or advanced building concept design or material and the resulting decorative wall and/or retaining wall will not detract from the general appearance of the neighborhood, or in the case where a Lot has a side yard which is adjacent to the back yard of an adjacent Lot. No chain-link fences or solid stockade-style fence may be built or maintained on any Lot with the exception of a privacy fence around a swimming pool, only as approved by the ACC. All fencing must be approved by the ACC.

(B) Owner of the Lot shall be responsible for maintenance and repair of the fence once erected. On any Lot where Declarant erects such a fence, all fencing on that Lot installed by Declarant shall be maintained by the Association. Any such fencing may not be altered by Owner. Each Owner shall, at his sole cost and expense, maintain and keep in a good state of repair any fencing constructed by Owner. Notwithstanding the foregoing, prior to the installation or construction, or any substantial modification or addition, to any fence or wall, the plans and specifications therefor shall be submitted to the ACC for approval.

- 5.29 **Maintenance of Lawns and Plantings.** Each Owner shall keep all shrubs, trees, grass, and plantings of every kind on such Owner's Lot cultivated, pruned, and free of trash and other unsightly material. Trees, shrubs, vines, and plants that die shall be promptly removed. Declarant, the Association and the ACC shall have the right at any reasonable time after giving not less than ten days' notice to Owner to cure any violation of this provision, to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass, or other plantings located thereon, and to charge the cost thereof to the Owner of the Lot.
- 5.30 **Cutting the Trees.** No live or living tree in excess of six inches (6") in diameter measured one foot (1') above the ground surface shall be cut, removed, or transplanted without the prior approval of the ACC.
- 5.31 **Excavations.** No excavation shall be made except in conjunction with construction of an improvement. When such improvement is completed, all exposed openings shall be back filled and graded within 72 hours.
- 5.32 **Hunting Prohibited.** Absolutely no hunting shall be allowed in, on or from any part of the Property. Absolutely no handgun, rifle, shotgun or other firearm, or pellet or air gun, bow or crossbow, or other weapon or projectile firing device, shall be discharged in, on or from any of the Property.
- 5.33 **Water.** (1) Water for each lot shall be provided through a central water system, subject to certain tap and use fees. (2) No water well may be drilled without the prior written consent of the ACC as to the type of water well and location and manner of drilling of same. (3) All wells must comply with all requirements of governmental authorities having jurisdiction. Nothing contained herein shall prohibit or restrict the right of an Owner to drill for water on a Lot.
- 5.34 **Use of Common Properties.** There shall be no obstruction of any part of the Common Properties, which are intended to remain unobstructed for the reasonable use and enjoyment thereof. No Owner shall appropriate any part of the Common Properties to his exclusive use, nor shall any Owner do anything which would violate the easements, rights, and privileges of any Owner in regard to any portion of the Common Properties which is intended for the Common Use and benefit of all owners.

- 5.35 **Completion of Construction.** Construction must commence within eighteen (18) months from the date of purchase, and construction shall be diligently pursued to the end that it may not be left in a partly finished condition any longer than reasonably necessary, and in no event longer than twelve (12) months. Variance subject to approval by the ACC.
- 5.36 **Construction in Place.** The use of prefabricated materials, including antique homes moved from other locations, shall not be allowed.
- 5.37 **Occupancy Only on Completion.** Written approval of the ACC shall be required before any single family dwelling may be occupied prior to the entire completion of the exterior of such dwelling, including all additions or expansions. Entire completion additionally shall include, but not be limited to, removal from the construction site of all unused construction materials and cleaning of the construction site so that the general appearance of the Lot meets the standards set by the ACC.
- 5.38 **Construction and Sales Activities.** Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property, or the sale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to commence The Improvements, and then the material shall be placed within the property lines of the Lot upon which the Improvements are to be erected and shall not be placed on the street or on any other part of the Property. In the event of any dispute regarding such matters, the ACC may grant a temporary waiver of the applicable provisions, for a period of time to be determined by the ACC in its sole and absolute discretion. At such time as the Declarant ceases using any portion of the Property as a model home or sales office, the affected Property shall be altered and/or remodeled, if necessary or desirable, to comply with the covenants and restrictions contained herein.
- 5.39 **Compliance with Provisions of WHISPERING WILLOWS Residential Restrictions.** Each Owner shall comply strictly with the provisions of the WHISPERING WILLOWS Residential Restrictions as the same may be amended from time to time. Failure to comply with any of the WHISPERING WILLOWS Residential Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggravated Owner. Declarant, for itself, its successor or assigns, reserves the right to enforce these restrictive covenants, though ii may have previously sold and conveyed all subdivided Lots controlled by these covenants within the Property. The reservation of this right of enforcement shall not create an obligation of any kind to enforce the same.
- 5.40 **No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions of this Declaration may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance upon one or more such restrictive covenants, terms or provisions shall assume all the risk of the validity and

enforceability thereof and, by acquiring the Lot, agrees to hold the Declarant harmless therefrom.

- 5.41 **Animals and Household Pets.** No animals, including pigs, hogs, swine, poultry, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on any Lot, unless they are animals specifically held by children for participation in a local 4H, FFA or similar youth projects. No domestic household pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets shall be allowed on the Property other than on the Lot of its Owner, except when confined to a leash. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No domestic household pet shall be allowed to run at large and all of such pets shall be kept within enclosed areas which must be clean, sanitary and free of refuse, insects and waste at all times. There shall be no tying or chaining of any animals in lieu of use of an acceptable enclosed area, run, or fenced yard. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the ACC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof. Kennel areas shall be screened so as not to be visible from any other portion of the Property. No more than four (4) adult dogs and four (4) adult cats may be kept on a single Lot. All domestic household pets shall be kept in strict accordance with all local laws and ordinances.
- 5.42 **Christmas Lights.** All seasonal yard ornamentation and decoration shall be removed in a timely fashion. No Christmas lights will be allowed to remain as visible from any roadway beyond January 31.
- 5.43 **Garage Sales.** Annual or semi-annual neighborhood-wide garage sales may be organized by the Association. Individual garage sales are not allowed.
- 5.44 **Tanks.** The COMMITTEE shall have the right to approve the location of any tank used or proposed in connection with a single-family residential structure, including tanks for storage of fuel, water, oil or Liquid Petroleum Gas "LPG" and including swimming pool filter tanks. (No elevated tanks of any kind shall be erected, placed or permitted on any LOT.) Tanks installed on any Lot shall be installed underground so as not to be visible from any other portion of the Property; Above-ground tanks are specifically prohibited with the exception of above-ground components necessary for operations (including but not limited to access lids, fill connections, regulators, and vents). Above-ground components must be reasonably screened from public view and not visible from any other portion of the Property.
- 5.45 **Swimming Pools.** All swimming pools must be below ground. Above ground swimming pools are specifically prohibited.

SECTION 2 - BUILDING CODE

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

- 5.46 **Construction of Improvements.** No Improvements shall hereafter be constructed upon any of the Property without the prior approval of the ACC.

- 5.47 **Size Restriction.** The minimum heated square footage is 2,700 square feet.
- 5.48 **Garages.** No front entry garages will be allowed without specific approval of the ACC. Each garage will be a minimum two-car garage.
- 5.49 **Driveways.** All driveways shall be constructed of concrete. All concrete driveways must have expansion joints, three feet (3') on either side of the culvert in order to allow for easier removal of the culvert by Brazos County in the event it needs to be replaced in the future. If Brazos County has any requirements regarding the construction of driveways, Owners shall comply with all Brazos County regulations. No gravel rock, limestone, dirt or other forms of materials shall be permitted on any Lot. All driveways must connect to streets within WHISPERING WILLOWS.
- 5.50 **Setbacks.** No building or structure, except fences, shall be located on any parcel nearer to the front property line than fifty feet (50'), or nearer to either side of the property line than twenty feet (20'), or nearer to any side/street of the property line than twenty-five feet (25'), or nearer to the back property line than twenty feet (20'); unless approved by the architectural control committee for an irregular shaped lot.
- 5.51 **Fencing.** No chain link or stockade style fencing shall be allowed with the exception of a privacy fence around a swimming pool, only as approved by the ACC. Reference 5.28 in General Restrictions.
- 5.52 **Exterior Materials.** All single-family dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows, and similar openings) shall be constructed of at least seventy percent (70%) masonry or other material specifically approved in writing by the Committee. Masonry includes ceramic tile, brick, rock, stucco, fiber cement siding, and all other materials commonly referred to in the Bryan/College Station, Texas area as masonry. Notwithstanding the foregoing, no home shall be more than thirty (30%) fiber cement. The use of prefabricated materials, including antique homes moved from other locations, shall not be allowed.
- 5.53 **Wall Construction.** All interior and exterior walls shall be constructed with 16" maximum centers for studs.
- 5.54 **Exterior Colors.** All exterior color choices must be approved by the ACC. Application for approval will be made via the provided HLM form.
- 5.55 **Landscape Design.** All landscaping shall be designed so as to protect and promote, as far as practical, the natural local landscape environment through the use of native materials, natural drainage, indigenous plant selection, and site design. All landscaping designs shall install live growing sod in front, side and back yards within thirty (30) days of occupancy of any newly constructed residence. Owners shall maintain sod in a healthy and growing condition. All front, side and back yards must be irrigated with automatic sprinkler systems and have landscaping acceptable to the ACC within 30 days of occupancy. All Lots shall keep (and/or plant) and maintain at least two (2) living trees with diameters of at least two inches (2") in the front yard of the lot. Owners shall maintain such trees in a healthy and growing condition. Any new trees or replacement trees planted in the front yard of a lot to maintain required number of trees per lot shall be hardwoods or species pre-approved by the ACC. Nothing in this section shall be deemed to prohibit

additional trees of preapproved species.

- 5.56 **Concrete Cleanout.** Concrete trucks may only clean out on a pre-approved cleanout location or by pre-approved process.
- 5.57 **Outbuildings.** Every building, inclusive of such structures as a detached garage, storage building, barn or greenhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. A metal outbuilding shall be allowed so long as it is located behind the residence and the front of the building matches the building materials used on the residence. All such buildings shall be subject to approval by the ACC.
- 5.58 **Air Conditioning and Heating.** Each single family residence must only use central air conditioning and heating. Under no circumstances shall any single family residence or outbuilding contain a window unit.
- 5.59 **Chimneys.** All chimneys on any residence or structure must be constructed of ceramic tile, brick, rock, stucco or other materials commonly referred to in the Bryan/College Station, Texas area as masonry, but specifically excluding fiber cement siding.

ARTICLE VI MISCELLANEOUS

- 6.01 **Term.** This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until April 1, 2035, unless amended as herein provided. After such date, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of five (5) years each, unless amended as provided in 6.03 below or terminated by a written instrument executed by the Owners of at least sixty-seven percent (67%) of the Lots within the Property then subject to this Declaration, and filed of record in the Official Records of Brazos County, Texas.
- 6.02 **Dissolution.** Upon termination of this Declaration in accordance with 6.01 above, the Association shall be dissolved. In the event of any such dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to any appropriate public agency to be used for purposes similar to those of the Association with respect to the Common Areas. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.
- 6.03 **Amendment.**
- (A) By Declarant. This Declaration may be amended by the Declarant, acting alone, until April 1, 2035, and thereafter for so long as Declarant holds a majority of the votes of the Association. No amendment by Declarant shall be effective until there has been recorded in the Official Records of Brazos County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and, if amended after April 1, 2035, an instrument executed and acknowledged by the Secretary of the Association, certifying that the Declarant had the requisite number of votes.
- (B) By Owners. In addition to the method in 6.03(A), after April 1, 2035, this Declaration

may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledges by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast pursuant to Sections 3.43-3.46 hereof.

- 6.04 **Notices.** Any notice permitted or required by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices.
- 6.05 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed, governed, and enforced under the laws of the State of Texas.
- 6.06 **Exemption of Declarant.** Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of the Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the ACC. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to (i) excavate and grade, (ii) construct and alter drainage patterns and facilities, (iii) construct any and all other types of improvements, sales and leasing offices, and similar facilities, and (iv) post signs incidental to construction, sales, and leasing anywhere within the Property.
- 6.07 **Assignment of Declarant.** Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other person, or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.
- 6.08 **Enforcement and Nonwaiver.**
- (A) **Right of Enforcement.** Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce any and all of the provisions of the WHISPERING WILLOWS Residential Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.
- (B) **Nonwaiver.** The failure to enforce any provision of the WHISPERING WILLOWS Residential Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.
- (C) **Liens.** The Association shall have the right, when appropriate in this judgment, to claim or impose a lien upon any Lot or Improvement construction whereon in order to enforce any right or effect compliance with this Declaration.
- 6.09 **Construction.**

- (A) Restrictions Servable. The provisions of the WHISPERING WILLOWS Residential Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability or any other provision or portion thereof.
- (B) Singular Includes Plural. Unless the context required a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.
- (C) Sole and Absolute Discretion. Notwithstanding anything herein to the contrary, whenever a party to this Declaration is entitled to exercise its "sole and absolute discretion", such discretion may be exercised by that party for any reason or for no reason, whether such discretion is arbitrary, uncontrolled, or unreasonable. Any parties' exercise of its "sole and absolute discretion" shall be final and shall not be subject to appeal or be subject to adjunction by a court of law, arbitration, mediation, or otherwise.
- (D) Captions. All captions and titles used in this Declaration are intended solely for convenience or reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles.
- (E) Deadlines on Business Day. If any deadline in this Declaration should fall on a Saturday, Sunday or a Texas or Federal holiday, such deadline shall automatically be extended to the next business day.
- (F) Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective as of the date first above written.

B/CS LEASING, LLC,
a Texas limited liability company

By: _____
Carey D. Smith, Manager

STATE OF TEXAS

COUNTY OF BRAZOS

This instrument was acknowledged before me this _____ day of _____, 2026, by Carey D. Smith, Manager, Manager of B/CS LEASING, LLC, a Texas limited liability company, on behalf of said entity.

Notary Public, State of Texas

EXHIBIT A

[The PLAT OF PHASE ONE OF WHISPERING WILLOWS follows this cover page.]

EXHIBIT B

**WHISPERING WILLOWS
ARCHITECTURAL CONTROL
COMMITTEE APPROVAL REQUEST FOR
HOME CONSTRUCTION OR PROPERTY
MODIFICATION**

Return Address: _____, TX _____

OWNER'S NAME: _____ PHONE: _____

PROPERTY ADDRESS: _____

OWNER'S MAILING ADDRESS: _____

It is required that any property owner considering improvements to their property must make application to the ACC for approval, as per the residential restrictions. Any modifications which alter the existing architectural plan of the property must be submitted to the committee. The request must be made prior to commencing the modifications/construction and receipt of approval.

PLEASE FILL OUT THIS FORM IN COMPLETE DETAIL

Describe the improvements/modification to be made: (Attach sketch/plans/samples)

Who will perform the work? _____

Approximate start date? _____

Location of improvements (front of house, back, patio, side, garage, etc.) _____

Please list here, or complete the attached Exhibit C for exterior list, materials proposed to be used, including paint colors, etc.

I understand that WHISPERING WILLOWS ARCHITECTURAL CONTROL COMMITTEE will act upon this request as quickly as possible. I agree not to begin until the committee notifies me.

Signature of Homeowner: _____

Printed Name of Homeowner: _____

UNLESS OTHERWISE STATED, ALL WORK MUST BE COMPLETED WITHIN NINETY (90) DAYS.

APPROVAL PAGE

This request has been reviewed for acceptance by the WHISPERING WILLOWS ARCHITECTURAL CONTROL COMMITTEE.

Approved/Disapproved _____
Chairman ACC Date

Your request has been (Approved/Disapproved).

You (**May/May Not**) commence construction.

EXHIBIT C

**ARCHITECTURAL CONTROL COMMITTEE APPROVAL REQUEST
NEW HOME CONSTRUCTION/EXTERIOR SELECTION SUBMITTAL**

Date: _____

Builder Company Name: _____

Contact Person: _____

Builder Phone: _____ Builder Fax: _____

Builder E-mail Address _____

Address of Home: _____ Lot: _____

Please complete the following information:

Description	Type	Color	Other Information
Shingles			
Brick			
Rock			
Siding – Front			
Siding – Back			
Siding – Sides			
Mortar			
Stucco Paint			
Chimney			
Trim Paint			

Other Information: _____

