



# PROVIDENCE

## Declaration of Covenants, Conditions & Restrictions

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PROVIDENCE

STATE OF TEXAS
COUNTY OF DENTON

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KNOW ALL PERSONS BY THESE PRESENTS:

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (as may be amended from time to time, the "Declaration") is made by Valerian Properties Associates, L.P., a Delaware limited partnership ("Declarant").

WITNESSETH:

Declarant, as the owner of the real property described in Exhibit A, intends by recording this Declaration in the Public Real Estate Records of Denton County, Texas, to create a general plan of development for the planned community known as Providence. This Declaration provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the Property (as hereinafter defined). An integral part of the development plan is the creation of the Providence Homeowners Association, Inc., an association comprised of all owners of real property in the Property, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce the covenants, conditions, restrictions, and easements set forth in this Declaration.

This document does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code Ann., Section 81.001, et seq. (Vernon 1984).

NOW, THEREFORE, Declarant hereby declares that the property described in Exhibit A, and any additional property which is subjected to this Declaration in the future in accordance with Article XIV of this Declaration, shall be owned, conveyed, used, and otherwise encumbered subject to this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

ARTICLE I DEFINITIONS

The following words, when used in this Declaration (unless the context shall otherwise clearly indicate or prohibit) shall have the following meanings:

- (a) "Architectural Control Committee" and/or "ACC" shall mean and refer to the architectural review body for the Property, as described in Article III.
(b) "Association" shall mean and refer to Providence Homeowners Association, Inc., the association to be formed by Declarant and which shall have the right to enforce this Declaration.

(c) "Board of Directors" or "Board" shall mean and refer to the Association's board of directors, selected as provided in the Bylaws, and being the body responsible for the general governance and administration of the Association and this Declaration.

(d) "Bylaws" shall mean and refer to the Bylaws of the Providence Homeowners Association, Inc., as may be amended from time to time. The initial Bylaws are attached hereto as **Exhibit B**.

(e) "Common Properties" shall mean all real property (including improvements thereon) now or hereafter owned, leased or controlled by the Association for the common use and enjoyment of the Owners (hereinafter defined) which may be: (i) conveyed to the Association in fee simple title, (ii) leased to the Association, and/or (iii) granted to the Association by an easement.

(f) "County" shall mean and refer to Denton County, Texas.

(g) "Declarant" shall mean and refer to Valerian Properties Associates, L.P., a Delaware limited partnership, and any successor and/or assign which receives an explicit assignment from Declarant conveying all or part of its rights hereunder as Declarant, by an instrument expressly purporting to do so.

(h) "Design Guidelines" shall mean and refer to the design standards and guidelines adopted by the Association, as may be amended, representing the minimum specifications for the construction of all residences, additions to such residences, and other improvements associated with each residence including, without limitation, other structures or improvements located on a residential Lot, and the minimum requirements for landscaping to be installed and maintained on each Lot.

(i) "Final Plat" shall mean the map or plat of Providence Addition, recorded in Cabinet U, Page 402 of the Plat Records of Denton County, Texas, and any future recorded subdivision maps or plats covering additional real property made subject to this Declaration, as such Final Plats may be amended from time to time.

(j) "Lot" shall mean and refer to any one (1) of the enumerated plots or tracts of land shown upon a Final Plat, and "Lots" shall mean and refer to more than one (1) of same.

(k) "Member" shall mean and refer to a member of the Association, as described in Article VIII.

(l) "Owner" shall mean and refer to each and every person or business entity (whether one or more), including Declarant (so long as applicable), that is a record owner of a fee or undivided fee interest in any Lot; provided, however, that (i) the term "Owner" and "Owners" shall not include any person or entity who holds a bona fide lien or interest in a Lot as security merely for the performance of an obligation (specifically including, but not limited to, any mortgagee or trustee under a mortgage or deed of trust) unless and until such mortgagee, beneficiary or trustee has acquired title to such Lot pursuant to foreclosure or any proceeding in lieu thereof; and (ii) with respect to any matter requiring the vote, consent, approval or other action of an Owner, each Lot shall be entitled to only one (1) vote.

(m) "Providence" or "Property" shall mean and refer the real property described on **Exhibit A**, any improvements now or hereafter situated thereon, and any and all additional real property (and the improvements thereon) which Declarant hereafter subjects to this Declaration, in accordance with Article XIV hereof.

(n) "Supplemental Declaration" shall mean a recorded instrument which accomplishes one or more of the following purposes: (i) subjects additional real property to this Declaration, or (ii) imposes, expressly or by reference, additional restrictions, covenants, easements and/or obligations on the land described.

## ARTICLE II CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

### Section 2.1 Residential Use.

The Property shall be used for single-family residential purposes and home office only. No building or other structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family residence per Lot, which residence may not exceed three (3) stories in height, and a private garage as provided below. Any building or structure to be placed or constructed on a Lot is subject to approval in writing by the Reviewer under Article III.

### Section 2.2 Single-Family Use.

Each residence may be occupied only by persons living and cooking together as a single housekeeping unit, together with any household employees. Except for families consisting of persons related by blood, adoption, or marriage, no more than two persons per bedroom may occupy the same dwelling on a regular and consistent basis.

### Section 2.3 Garage Required.

Each residence shall have an enclosed garage and shall conform to the requirements set forth in the Design Guidelines. The garage shall conform in design and materials with the main structure, and at least one overhead garage door shall be equipped with a remote-operated automatic door opener which shall remain functional at all times.

### Section 2.4 Driveways.

All driveways shall be surfaced with concrete.

### Section 2.5 Uses Specifically Prohibited.

(a) No temporary dwelling, shop, trailer or mobile home of any kind or any improvement of a temporary character shall be permitted on any Lot except (i) children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, which may be placed on a Lot subject to approval in accordance with Article III and provided no part of any such structure is visible from any front or side street, and (ii) the builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a given Lot during construction of the residence on that Lot or on a different Lot as agreed to between the builder or contractor and Declarant and/or as otherwise set out in the Design Guidelines. No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected.

(b) Except as otherwise provided in this Section, no vehicle may be parked or left upon any portion of a Lot except in a garage or on a driveway. Except as provided below, the following vehicles may not be parked on any street within Providence and may be parked only in an enclosed garage or on a driveway which is accessed by an alley (provided there is at least one (1) additional space outside of the garage for parking in the rear of the Lot and provided such vehicles are twenty feet (20') or less in length): recreational vehicles, mobile homes, trailers, campers, stored vehicles, trucks with tonnage in excess of one (1) ton, commercial vehicles (including all vehicles with commercial lettering or logos), and unlicensed or inoperable vehicles. "Sports utility vehicles" and "mini-vans" (as such vehicles are commonly referred to, as determined in the Board's discretion) and pick-up trucks without commercial writing or logos shall be treated as automobiles and may be parked outside of enclosed garages. Boats may be kept or stored in a side or rear yard on a Lot if completely concealed from the view of any street (other than an alley). This Section shall not apply to parking for purposes of emergency vehicle repairs or to construction, service, and delivery vehicles for periods necessary to perform the services or make a delivery.

Notwithstanding the above, for purposes of cleaning, loading, unloading, and short-term and visitor parking, any vehicle may be parked outside of an enclosed garage temporarily and irregularly to accommodate such use. The Board, in its discretion, may enact rules governing such temporary, irregular use or, in the absence of specific rules, shall have discretion in determining what constitutes permissible parking under such circumstances.

As used in this Section, the term "vehicles" includes, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

(c) No vehicle of any size which transports inflammatory or explosive cargo may be kept or parked on the Property at any time, except for use by or on behalf of Declarant in connection with the development of the Property or by a builder or contractor in connection with the construction of improvements on a Lot.

(d) No animals or livestock shall be raised, bred or kept on the Property for commercial purposes or for food. Dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove or otherwise provide for the removal of the pet. Pets shall be kept on a leash or otherwise confined inside a fenced area whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law and must be properly tagged for identification. It is the Owner's responsibility to keep the front of their Lot clean and free of pet debris and to pick up and properly dispose of their pet's waste wherever deposited. Notwithstanding anything seemingly herein to the contrary, no more than four (4) household pets will be permitted on each Lot.

(e) No Lot or other area on the Property shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment, disassembled or inoperative cars, other vehicles or discarded appliances and furniture. Trash, garbage or other waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or other disposal of such material shall be kept in clean and sanitary condition. Materials incident to construction of improvements may be stored on Lots during construction so long as construction progresses without undue delay.

(f) No air-conditioning apparatus shall be installed on the ground in front of a residence or on the side of the residence in view of any public street. No air-conditioning apparatus shall be attached to any wall or window of a residence. All air-conditioning equipment must be installed in the rear yard or on the side yard completely screened by a fence.

(g) No antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the dwelling on a Lot, except those devices whose installation and use is protected under federal law or regulations (generally, certain antennae under one meter in diameter). Notwithstanding such protection, an application for such an antenna or other device must be submitted to the Reviewer for approval and approval will be granted only if:

(i) First, the antenna or other device is designed for minimal visual intrusion (*i.e.*, is located in a manner that minimizes visibility from the street or an adjacent Lot and is consistent with the Design Guidelines); and

(ii) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (*i.e.*, without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

The Reviewer shall consider any such application on an expedited basis.

(h) No Lot or improvement thereon shall be used for commercial or manufacturing purposes of any kind other than a small home office. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit a builder's use of a residence as a sales office until such builder's last residence on the Property is sold. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as a small home office, tutoring or giving lessons such as art or music, so long as such activities are consistent with the residential character of the Property, do not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Property, as determined in the Board's discretion, and do not materially increase the number of cars parked on the street.

(i) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and six feet (6') above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within ten (10) feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(j) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment which specifically conform with the Design Guidelines, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.

(k) No sign of any kind shall be displayed to the public view on any Lot, except (i) political signs as are permitted by the County, which may be placed on the Lot no earlier than six (6) weeks prior to an election and which must be removed within two (2) weeks after the election

for which such sign is displayed, (ii) one (1) professional security service sign of not more than one square foot, (iii) one (1) sign of not more than five square feet advertising the property for rent or sale during any period that the Lot actually is for rent or sale, or (iv) signs used by a builder to advertise the Property during the construction and sales period, each of which shall, in any event, comply with all statues, laws or ordinances governing same. The Board of Directors or its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or otherwise in connection with such removal.

(l) The drying of clothes in public view is prohibited.

(m) Wood used for fireplace, barbeque, or other use must be stacked neatly and screened from public view. The Owner is responsible for ensuring that such wood stack is kept free of rodents.

(n) No Owner shall perform, fail to perform, or permit anything to be done or not done on such Owner's Lot which would violate any laws, statutes, ordinances or regulations of any kind or character.

#### Section 2.6 Minimum Floor Area.

The total air-conditioned living area of the main residential structure constructed on each Lot, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be not less than nine hundred (900) square feet on the Lots which are platted as 'less than fifty foot (50') wide Lots, and one thousand one hundred (1,100) square feet on the Lots which are platted as fifty foot (50') wide or wider Lots.

#### Section 2.7 Fences and Walls.

Any fence or wall must be constructed of masonry, brick, or other material approved by the Association. No chain link fences are permitted except on the Common Properties or any school property. No fence or wall shall be permitted to extend nearer to any street than the front of any residence. However, all side yard fencing on corner Lots shall run parallel to the curb and may be placed no nearer than five feet (5') inside the side Lot line and shall not extend beyond a point of five feet (5') behind the front of the residence on that side. Fences or walls erected by Declarant shall become the property of the Owner of the Lot on which the same are erected and as such shall be maintained and repaired by such Owner except as is provided in Article IV and Article IX. Any fence or portion thereof that faces a public street shall be so construed so that all structural members and posts will be on the side of the fence facing away from the street so that they are not visible from any street. No portion of any fence shall extend more than five feet (5') in height. All fences on Lots that adjoin Common Properties shall be constructed of flat-top type fencing and shall not extend more than four feet (4') in height. The front fence facing the street must be PVC.

#### Section 2.8 Building Materials.

No vinyl siding or mason board siding shall be allowed on any portion of a residence. The building materials to be used for each residence and other structure must conform to the requirements set out in the Design Guidelines. Roofing shall be of a minimum 30-year 225-weight composition shingle and shall have a minimum six foot (6') to twelve foot (12') roof pitch on the front-to-back portions of each residence and a minimum eight foot (8') to twelve foot (12')

pitch on the side gables of each residence. The color or roofing shall be consistent throughout Providence and shall otherwise conform to the Design Guidelines.

Section 2.9 Mailboxes and Address Blocks.

Mailboxes shall be standardized throughout Providence and shall be constructed with a cast aluminum post and tin metal boxes painted a dark green color consistent throughout Providence which is the specific shade of dark green approved by the Architectural Control Committee. A brass address block shall be installed on the front façade or mailbox of each residence.

Section 2.10 Chimney Flues.

The area of a chimney flue that faces the front street (and the side streets for corner Lots) shall be enclosed and capped with an approved designer chimney cap. Direct vent fireplace flues are not required to be enclosed.

Section 2.11 Windows and Skylights.

Windows, jambs and mullions shall be composed of anodized aluminum or wood. Street-front elevations shall have baked-on painted aluminum divided light windows (*i.e.*, no mill finish). Flashing around the windows shall be painted to match the paint on the trimming on each residence. If architecture dictates, mullions may be eliminated with Reviewer approval.

Section 2.12 Landscaping.

Each builder of a residence upon each Lot shall, upon or before the first occupancy of a house, sod grass in the front and sideyards, plant the minimum size and number of shrubs in the front yard against the foundation of the house as required under the Design Guidelines, and with respect to the Lots platted as fifty foot (50') wide Lots, shall plant in the front yard of each Lot, a minimum of two (2) three-inch (3") caliper trees which are approved trees under the Design Guidelines (unless at least two (2) three-inch (3") caliper trees already exist in the front yard of such Lot), and with respect to the Lots platted as forty foot (40') wide Lots, shall plant in the front yard of each Lot, a minimum of one (1) four-inch (4") caliper tree which is an approved tree under the Design Guidelines (unless at least one (1) four-inch (4") caliper tree already exists in the front yard of such Lot).

Section 2.13 Design Guidelines.

In addition to any requirements set forth in this Declaration, all Owners are required to comply with the Design Guidelines in the construction of improvements within the Property.

**ARTICLE III  
ARCHITECTURAL CONTROL**

Section 3.1 Review Authority.

(a) Declarant. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Property until all planned Lots have been conveyed to persons other



than Declarant or a builder and have been improved with a dwelling for which a certificate of occupancy has been issued, unless Declarant earlier terminates its rights in a recorded instrument. Declarant may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other person. Declarant is not required to hold meetings or keep minutes relating to its review under this Article.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other person or committee, including the Architectural Control Committee. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Control Committee. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ACC, shall assume jurisdiction over architectural matters. The ACC shall consist of at least three persons. Members of the ACC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. The ACC members shall be designated, shall serve, and may be removed and replaced in the Board's discretion.

For so long as Declarant owns any portion of the Property, the ACC shall notify Declarant in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it intends to take under this Article. A copy of the application and any additional information that Declarant may require shall accompany the notice. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any ACC action; provided, Declarant's right to veto must be exercised within 10 business days after it receives notice of the ACC's action. The party submitting the plans for approval shall not be notified of the ACC's action until after Declarant's right to veto has been exercised or has expired.

The Board may create and appoint subcommittees of the ACC. Subcommittees may be established to preside over particular areas of review (*e.g.*, landscape plans) and shall be governed by procedures the Board or the ACC may establish. Any subcommittee's actions are subject to review and approval by Declarant, for as long as Declarant may review the ACC's decisions, and the ACC. Notwithstanding the above, neither the ACC nor Declarant shall be obligated to review all actions of any subcommittee, and the failure to take action in any instance shall not be a waiver of the right to act in the future.

Unless and until such time as Declarant delegates any of its reserved rights to the ACC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

Declarant and the Association may employ architects, engineers, or other persons to perform the review required under this Article.

(c) Reviewer. The entity having jurisdiction in a particular case, whether Declarant or its designee or the ACC, shall be referred to as the "Reviewer."

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board may include the compensation of such persons in the Association's annual operating budget.

### Section 3.2 Review Requirements.

No building, wall or other structure (except fences) shall be commenced, erected, placed, or substantially altered on any Lot, nor shall any exterior painting (other than repainting a structure the same or similar color) of, exterior addition to, or substantial alteration of, such items be made until all plans and specifications and a plot plan have been submitted to and approved in writing by the Reviewer.

The Reviewer is authorized and empowered to consider and review any and all aspects of construction and landscaping which may, in the reasonable opinion of the Reviewer, adversely affect the living enjoyment of one (1) or more Owners or the general value of the Property.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to judicial review so long as they are made in good faith and in accordance with the required procedures.

### Section 3.3 Procedure for Approval.

Final plans and specifications shall be submitted in duplicate by certified mail, return receipt requested or hand delivery to the Reviewer. The plans and specifications shall show the nature, kind, shape, height, materials and location of all landscaping and improvements. The documents shall specify any requested variances from the requirements set forth in this Declaration. The Reviewer is authorized to request the submission of samples of proposed construction materials and such other information as they reasonably deem necessary to make their determination. At such time as the plans and specifications meet the approval of the Reviewer, one complete set of plans and specifications will be retained by the Association, for up to three (3) years only, and the other complete set of plans shall be marked "Approved," signed by a representative of the Reviewer and returned to the Lot Owner or his designated representative. If disapproved by the Reviewer, one set of such plans shall be returned marked "Disapproved" and shall be accompanied by a reasonable statement of the reasons for disapproval, which statement shall be signed by a representative of the Reviewer. Any modification of the approved set of plans and specifications must again be submitted to the Reviewer for its approval. The Reviewer's approval or disapproval, as required herein, shall be in writing. Any reliance upon a verbal approval of any plans by the Reviewer shall be at the risk of the Lot Owner and subject to any subsequent or otherwise conflicting written response by the Reviewer.

If the Reviewer fails to approve or disapprove any such plans and specifications or modification thereto within thirty (30) days after the date of submission of all information the Reviewer requires, written approval of the matters submitted shall not be required and compliance with this Section 3.3 shall be deemed to have been completed. In case of a dispute

about whether the Reviewer responded within such time period, the person submitting the plans shall have the burden of establishing that the Reviewer received the plans. The Reviewer's receipt of the plans may be established by a signed certified mail receipt. Any builder who is constructing residences on multiple Lots shall have the option of submitting a master set of final plans and specifications for all of the residences it intends to construct within the Property to the Reviewer in accordance with the provisions of this paragraph. Once the master set of plans has been approved, the builder shall be allowed to construct residences in accordance with such approved plans and no further submittals shall be required unless material deviations have been made to such approved plans.

The Reviewer may, but is not obligated to, permit or require that plans be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage.

As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified time period. If construction does not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action.

Also as a part of the review process, the Reviewer may require that the construction of any improvement be inspected on a periodic basis prior to completion for compliance with the plans and other matters relating to the quality or method of construction. The Association may conduct such inspections or, in the alternative, it may contract with third parties for such purposes. The Owner on whose Lot the construction is taking place shall be responsible for the payment of costs relating to any such inspection.

#### Section 3.4 Standards.

The Reviewer shall have sole discretion with respect to taste, design and all standards specified herein. One objective of the Reviewer is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built on the Property. The Reviewer shall have the authority to interpret and amend the Design Guidelines, subject to Declarant's approval for so long as Declarant or any builder owns any portion of the Property. The Reviewer may from time to time publish and promulgate bulletins regarding architectural standards, which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration.

#### Section 3.5 Liability of Reviewer.

Neither Declarant, the Board of Directors, the Architectural Control Committee, or any of their respective members, officers, employees and agents, shall have any liability whatsoever for decisions made in accordance with this Article so long as such decisions are made in good faith and are not arbitrary or capricious. The plans or the site plan submitted to the Reviewer shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Reviewer shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, or any codes, ordinances, regulations or other laws, whether

statutory or not, and whether the same relate to Lot lines, building lines, easements or any other issue. Review and approval of any plans pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every dwelling is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

**THE ASSOCIATION HEREBY UNCONDITIONALLY AND PERPETUALLY INDEMNIFIES AND HOLDS DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, AND THEIR RESPECTIVE MEMBERS, EMPLOYEES, CONTRACTORS, AND AGENTS HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, LOSS, DAMAGE, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, IN CONNECTION WITH OR ARISING OUT OF ANY ACTIONS OR INACTIONS TAKEN HEREUNDER BY THE REVIEWER, IRRESPECTIVE OF WHETHER OR NOT THE REVIEWER, ITS EMPLOYEES, CONTRACTORS, AGENTS AND OTHER INDIVIDUALS OR ENTITIES RELATED TO OR EMPLOYED BY THE REVIEWER ACTED IN NEGLIGENCE OR WITH WILLFUL MISCONDUCT.**

Section 3.6 Special Rights of Declarant.

Notwithstanding anything to the contrary contained herein, any Lot owned by Declarant or its successor or assign, shall not be subject to the provisions of this Article III and Declarant shall not be required to submit plans and specifications, etc. to the Architectural Control Committee nor obtain the consent, permission or approval of the Architectural Control Committee for the matters otherwise required pursuant to this Article III, and the consent, permission or approval of the Architectural Control Committee shall be deemed given for plans and specifications, plot plans and the like to be used by Declarant, or Declarant's assigns, in the construction of any residence on any Lot owned or sold to a homebuilder by Declarant. **DECLARANT ALSO RETAINS SPECIAL AND UNIQUE RIGHTS AND PRIVILEGES IN ARTICLE XII THAT TAKE PRECEDENCE OVER ALL OTHER ARTICLES OR SECTIONS IN THIS DECLARATION.**

**ARTICLE IV  
SPECIAL FENCING AND LANDSCAPING**

Section 4.1 Fences, Walls and Screening Landscaping.

Declarant and/or the Association shall have the right, but not the obligation, to erect, install, maintain, repair and/or replace fences, walls and/or screening landscaping within (a) that portion of any Lot situated along the perimeter of the Addition, as shown on a Final Plat, or (b) on any portion of Providence not comprising any portion of a Lot or dedicated street or alley. Any fence, wall or sprinkler system shall be the property of the Owner of the Lot on which such fence, wall or sprinkler system is erected or installed, subject to the easements and rights of Declarant and the Association set forth below.

Section 4.2 Landscaping.

Declarant and/or the Association shall have the right to grade, plant and/or landscape and maintain, repair, replace and/or change such grading, planting and landscaping on any portion of the Property not comprising any portion of a Lot.

Section 4.3 Easement.

Declarant and the Association shall have, and hereby reserve, the right and easement to enter upon the Common Properties and those Lots which are situated along the perimeter of the Property and/or the Common Properties, as shown on a Final Plat, for the purpose of exercising the discretionary rights set forth in this Article IV.

Section 4.4 Declarant's and the Association's Discretion.

Notwithstanding any provisions herein to the contrary, neither Declarant nor the Association shall ever be obligated to erect, install, maintain, repair or replace any fences, walls, sprinkler systems, grading, planting or landscaping on the Property.

Section 4.5 Fifteen (15) Year Limitation.

The provisions of this Article IV regarding Declarant's rights shall terminate and be of no further force and effect from and after that date which is fifteen (15) years after the recording of this Declaration. The rights of the Association shall continue throughout the term hereof.

## ARTICLE V LOT MAINTENANCE BY OWNERS

Section 5.1 Lot Maintenance.

After the installation of the landscaping on a Lot by a builder, the Owner of the Lot shall thereafter maintain the yard in a sanitary and attractive manner, including adequate watering and immediate replacement of dead vegetation, and shall edge the street curbs that run along the Lot boundary lines. **Yards must be kept mowed and trimmed at regular intervals so as to maintain the Lot in a neat and attractive manner.** No vegetables shall be grown in any portion of a Lot yard that faces a street or is not screened by fencing built in accordance with the terms hereof. Grass shall not be permitted to grow to a height of greater than six inches (6") upon any Lot.

Section 5.2 Maintenance of Improvements.

**Each Owner shall maintain the exterior of all buildings, fences, walls and other improvements on his Lot in good condition and repair, and shall replace worn and rotten parts, and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate in an unattractive manner. All fences shall be kept neat, clean and in good repair. Any fence which is damaged, leaning, or otherwise not in good repair shall be immediately repaired.**

**ARTICLE VI  
ENFORCEMENT**

Section 6.1 Special Enforcement Rights of the Board of the Association.

In the event that an Owner fails to comply with any provision of this Declaration, including but not limited to any provision in Article V, then, prior to the Board or the Association enforcing the compliance of such failure or seeking against such Owner remedies in accordance with this Declaration (or such other remedies as may be available to the Board and/or the Association at law or in equity), the Board shall first be obligated to give such Owner notice of such failure and thirty (30) days after the date of such notice in which to cure such violation or failure. If the Owner shall not have corrected such failure within thirty (30) days after the giving of such notice, the Board of Directors shall have the right but not the obligation, to enter the Lot and to bring the Lot, and any improvements thereon, into full compliance with this Declaration. All costs and expenses incurred by the Association in connection with correcting any such failure shall be borne by the Owner. If any Owner does not promptly reimburse the Association for all such costs and expenses after receipt of written request for same, the Board shall have the right to assess the Owner for same plus interest and fines, such assessment, interest and fines being a special individual assessment under the provisions of Section 10.5 below.

Section 6.2 Enforcement.

In addition to the enforcement rights set forth in Section 6.1, the Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with the applicable procedures set forth in the Bylaws. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

(a) Fines. The Board of Directors may impose reasonable monetary fines which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest, or invitee of the Owner of such Lot.

(b) Suspension of Voting Rights. The Board of Directors may suspend an Owner's right to vote.

(c) Suspension of Rights to Use the Common Properties. The Board of Directors may suspend any person's or entity's right to use any recreational facilities within the Common Properties; provided, however, nothing herein shall authorize the Board of Directors to limit ingress or egress to or from a Lot.

(d) Right of Self-Help. The Board of Directors may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration;

(e) Right to Require Removal. The Board of Directors may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the Lot, remove the violation, and restore the property to substantially the same condition as previously existed, without such action being deemed a trespass.

(f) Levy Special Individual Assessment. The Board of Directors may levy a special individual assessment in accordance with Section 10.5 to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration.

(g) Lawsuit; Injunction or Damages. The Board of Directors may bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

Failure by Declarant, or the Board of Directors, to enforce any covenant, condition, agreement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to the Association's enforcement rights, this Declaration may be enforced by any aggrieved Owner.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

## ARTICLE VII AMENDMENT AND TERMINATION

### Section 7.1 Amendment.

Except as provided in Article XII below, at any time, this Declaration may be amended by an instrument containing such amendment(s) and recording same in the Public Real Estate Records of the County, provided, that (i) for the period which Declarant owns at least one Lot, no such amendment shall be valid or effective without the joinder and consent of Declarant and (ii) such amendment shall first be approved by the affirmative vote or written consent of the Association's Members representing at least 67% of the votes in the Association. In addition, Declarant, at its sole discretion and without a vote or the consent of any other party, may modify, amend, or repeal this Declaration: (i) at any time prior to the conveyance of the first Lot; (ii) as necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (iii) as necessary to comply with the requirements of VA, or HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency or secondary mortgage market entity; or (iv) as necessary for clarification or to correct technical, typographical or scrivener's errors; provided, however, any amendment pursuant to clause (ii), (iii) and/or (iv) immediately above must not have a material adverse effect upon any right of any Owner. Any amendment to this Declaration must be recorded in the Real Property Records of the County.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class B Member without the written consent of Declarant or the Class B Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Section 7.2 Termination.

Except as provided in Article XII below, at any time, the Owners may terminate and extinguish this Declaration in its entirety by executing an instrument terminating this Declaration and recording same in the Public Real Estate Records of the County, provided, however, that (i) for the period in which Declarant owns at least one Lot, no such termination shall be valid or effective without the joinder and consent of Declarant and (ii) except as provided in Article XII below, such termination and extinguishments shall first be approved by the affirmative vote or written consent of the Association's Members representing at least 67% of the votes in the Association'.

**ARTICLE VIII  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 8.1 Membership.

Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to each Lot and may not be separated from ownership of any Lot which is subject to assessment hereunder.

Section 8.2 Classes of Membership.

The Association shall have two (2) classes of voting membership:

**CLASS A.** Class A Members shall all be Members with the exception of the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership; provided, however, that in the event that more than one (1) person holds such interest or interests in any Lot, even though all such persons shall be Members, there shall be only one (1) vote for such Lot, which shall be exercised as they, among themselves, determine (but in no event shall more than one (1) vote be cast with respect to any such Lot).

**CLASS B.** The Class B Member(s) shall be Declarant. Until such time as 75% of the maximum number of Lots planned or approved for the Property has been conveyed to Class A Members other than builders who purchase Lots for development and sale, the Class B Member shall have the sole right to elect the Board of Directors of the Association. Control of the Association shall be vested in the Class A Members only after title to 75% of the maximum number of Lots planned or approved for the Property has been transferred to Class A Members other than builders who purchase Lots for development and sale. The Class B Member shall have three (3) votes for each Lot it owns until such time as control of the Association vests in the Class A Members. After such time, the Class B Member shall be a Class A Member entitled to one (1) vote for each Lot it owns.

Section 8.3 Quorum and Notice Requirements.

8.3.1. Except as expressly provided herein to the contrary, any action of the Members shall require the assent of a majority of the votes of those Association Members who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members not less than ten (10) days nor more than fifty (50) days in advance and shall set forth the purpose of such meeting.



8.3.2. A quorum is required for any action referred to in Section 8.3.1 and, unless otherwise provided, for any action for which a percentage vote at a meeting is required. A quorum shall be determined as set forth in this Section 8.3.2. The first time a meeting is called, whether regular or special, the presence at the meeting of Members, or of proxies, entitled to cast at least twenty-five percent (25%) of all of the votes of the Association's Members, without regard to class, shall constitute a quorum. If the required quorum is not present at the meeting, additional meetings may be called, subject to the notice requirement hereinabove set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such second meeting shall be held more than sixty (60) days following the first meeting, or the process must then be repeated.

8.3.3. Except as specifically set forth in this Declaration, notice, voting and quorum requirements of any action to be taken by the Association shall be set forth in its Articles of Incorporation (herein so called) and Bylaws (, as same may be amended from time to time.

#### Section 8.4 Right of Inspection.

Each Owner shall have the right to inspect the financial records and books of the Association, during normal business hours and at the place where such books are kept, and upon reasonable prior notice to the Association.

#### Section 8.5 FHA/VA Approval.

As long as there is a Class B membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the mortgage on any Lot: merger, consolidation, or dissolution of the Association; annexation of additional property; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Properties; or material amendment of this Declaration or the Bylaws. In addition, so long as HUD or VA insures or guarantees the Mortgage on any Lot, any mortgage on the Common Properties or transfer or dedication of the Common Properties also shall require the prior approval of at least two-thirds (2/3) of the Class A Members (excluding Declarant).

If no written response from HUD or VA is received within 30 days of the date of the written request for approval of any of the above actions, then HUD or VA, as applicable, shall be deemed to have approved such action.

Notwithstanding anything to the contrary in this Section, the Association, acting through the Board, may grant easements over the Common Properties for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Properties, without the approval of the membership or HUD or VA.

### ARTICLE IX THE COMMON PROPERTIES

#### Section 9.1 Initial Common Properties.

The Common Properties shall initially include all aspects of the entry features including, without limitation, entry monuments and walls, landscaping, irrigation for same and the land on

which such entry features are situated, lake and lake area, screening walls, pocket parks, playing fields, a clubhouse and associated recreational amenity, gates, fences, fountains and other structures as shown on a Final Plat, each as may be leased or owned by the Association. The Common Properties may hereafter include any neighborhood parks or other improvements or land conveyed to or leased by the Association for the use and benefit of the Owners. It shall be the sole responsibility of the Association to maintain the Common Properties.

Section 9.2 Additional Common Properties.

Additional property may be added to the Common Properties hereunder upon the sole discretion of Declarant during such time as Declarant owns at least one (1) Lot. Thereafter, additional property may be added to the Common Properties hereunder upon the affirmative vote of sixty percent (60%) of the votes of those Association Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 9.3 Acceptance and Control of Common Properties.

Declarant or its designees may transfer to the Association, and the Association shall accept, personal property and/or fee title or other property interests in any improved or unimproved real property included within the property described in **Exhibit A** or any other real property made subject to this Declaration in the future. Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved real property originally conveyed to the Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

Section 9.4 Extent of Members' Easement in the Common Properties.

Each Member shall have a right and easement of access, use and enjoyment in and to the Common Properties which is subject to the following:

9.4.1 The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties;

9.4.2 Subject to the affirmative vote of sixty percent (60%) of the votes of those Association Members who are voting in person or by proxy at a meeting duly called for such purpose, the right of the Association to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof (subject to Section 8.5) to mortgage the Common Properties, and the rights of such mortgagee in the Common Properties shall be subordinate to the rights of the Owners hereunder;

9.4.3 The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

9.4.4 The right of the Association, as provided in its Bylaws, to suspend the voting rights of any Member and to suspend the right of any individual to use any of the Common Properties and/or common facilities for any period during which any assessment against a Lot resided upon by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;

9.4.5 The right of the Association to charge reasonable admission and other fees for the use of recreational facilities on the Common Properties, if any such recreational facilities are ever constructed; and

Section 9.5 Dedication of the Common Properties.

Subject to Section 8.5, the Board of Directors shall have the right at any time to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and upon such conditions as the Board of Directors may determine.

Section 9.6 Use of Common Properties by Donald and Phillip Huffines and Families.

Donald and Phillip Huffines, and their respective family members and descendants (the "Huffines' Family"), shall have an easement of access to and use and enjoyment of the Common Properties at no charge during the term (as may be extended) of this Declaration. Such easement and use right shall be subject to the same rules and regulations governing such use as apply to generally to Association Members. The Association may not enact or enforce any rules the intent or actual effect of which are to prohibit, discourage, or limit the use of the Common Properties by the Huffines' Family. This Section 9.6 may not be amended without the written consent of Donald Huffines and Phillip Huffines. Upon death, such consent requirement shall be satisfied by obtaining the written consent of the oldest living descendent of the deceased.

**ARTICLE X  
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 10.1 Creation of the Lien and Personal Obligation of Assessments.

Each Owner hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance instrument, shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association): the following (a) annual assessments or charges; (b) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (c) individual special assessments (including, without limitation interest and fines) levied against individual Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner, his tenant(s) occupying his Lot, if applicable, and their respective family, agents, guests and invitees, or for costs incurred by the Association resulting from any Owner failing to comply with the terms and provisions hereof, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The regular annual assessments collected by the Association shall constitute the maintenance fund of the Association. The annual, special capital, and special individual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The annual assessment shall be payable as provided in this Article X.

Fines, not to exceed \$100.00 per day, shall be assessed commencing on the date which is fourteen (14) days after the date of the violating Owner's receipt of written notice of such violation. In all instances of violations, the Owner shall be responsible for correcting such violation within fourteen (14) days after the date of such notice, regardless as to whether the residence is occupied by the Owner or a tenant. Liens may be placed upon the Lots for fines not timely paid and the Owner shall also have personal liability for the payment of same.

### Section 10.2 Purpose of Assessments.

The assessments levied by the Association shall be used as follows: (a) for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property, and in particular for the improvement and maintenance of the entry ways or any other properties, services and facilities devoted to this purpose and comprising or directly relating to the use and enjoyment of the Common Properties, including, but not limited, to the payment of taxes on and insurance in connection with the Common Properties, and the repair, replacement and additions thereto; (b) for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article XI hereafter including, but not limited to, the payment by the Association of all assessments and charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting (if any) of the Common Properties; (d) for paying the cost of maintenance of the monument sign for the Property in the event the appropriate governmental authority refuses to maintain the same; (e) for paying any charges levied by the District with respect to the lease, purchase, maintenance, and/or operation of the District Facilities (as such capitalized terms are defined in Section 15.10); and (f) for carrying out the purposes of the Association as stated in its Articles of Incorporation.

### Section 10.3 Basis and Amount of Annual Assessments.

10.3.1 The Board of Directors may fix the annual assessment at any amount equal to or less than the maximum annual assessment for that year, as hereinbelow provided. The maximum annual assessment for each Lot for the years 2002, 2003, and 2004 shall be \$550. Commencing with the year 2005 and each year thereafter, the Board of Directors may set the amount of the maximum annual assessment for that year (and for following years) for each Lot provided that the maximum annual assessment may not be increased more than ten percent (10%) above the maximum annual assessment for the previous year without a vote of the membership taken in accordance with the provisions of Section 10.3.2.

10.3.2 Commencing with the year 2005, and in each year thereafter, the Board of Directors may set the maximum annual assessment for the following year for each Lot at an amount more than ten percent (10%) above the maximum annual assessment for the previous year; PROVIDED THAT any such increased assessment shall be approved by the affirmative vote of sixty percent (60%) of the votes of those Association Members who are voting in person or by proxy at a meeting duly called for such purpose.

### Section 10.4 Special Assessments.

In addition to the annual assessments authorized by Section 10.3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, maintenance, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto; PROVIDED THAT any such assessment shall be approved by the affirmative vote of sixty percent (60%) of the votes of those Association Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 10.5 Special Individual Assessments, Interest and Fines.

In the event that any Owner fails to comply with the provisions hereof and the Association incurs any cost or expense in either enforcing the provisions hereof against any such Owner or in carrying out the obligations of any such Owner, the Association shall have the right to assess against such Owner a special individual assessment in the amount of all such costs incurred by the Association plus interest and a fine, such special individual assessment, interest and fine to be paid by the applicable Owner upon demand by the Association.

Section 10.6 Uniform Rate of Assessments.

Both annual and special assessments (excepting therefrom special individual assessments) shall be fixed at a uniform rate for all Lots.

Section 10.7 Date of Commencement and Due Dates of Assessments.

The obligation to pay assessments commences as to each Lot: (a) upon acquisition of record title to a Lot by the first Owner thereof other than Declarant; or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The initial annual assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot. Annual assessments shall be payable in advance on the first (1<sup>st</sup>) business day of each January; provided, if the Board so elects, annual assessments may be paid in monthly, quarterly, or semi-annual installments. The Board may require advance payment of all or any portion of the annual assessment at closing of the transfer of title to a Lot. The due date or dates, if it is to be paid in installments, of any special assessment under Section 10.4 or of any special individual assessment under Section 10.5, shall be fixed in the respective resolution authorizing such assessment.

Section 10.8 Duties of the Board of Directors with Respect to Assessments.

10.8.1 The Board of Directors shall fix the amount of the assessment against each Lot at least thirty (30) days in advance of each annual assessment period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

10.8.2 Only if such assessment is an amount different from that charged for the previous year, written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto (according the Association's then current records).

10.8.3 The Board of Directors shall, upon demand, at any time furnish to any Owner liable for said assessments a certificate in writing signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

Section 10.9 Deed of Trust Assessment Lien to Secure Charges and Assessments.

All regular and special maintenance charges or assessments, and the special individual assessments, as hereinabove provided for, shall constitute and be secured by a separate and valid

and subsisting deed of trust assessment lien, hereby created and fixed, and which shall exist upon and against each Lot and all improvements and fixtures thereon, for the benefit of the Association, and all Members thereof. Notwithstanding any other provision hereof, the lien to secure the payment of assessments or any other sums due hereunder and any other lien which the Association may have on any Lot pursuant to this Declaration shall be subordinated to the lien or equivalent security interest of any first lien mortgage or deed of trust on any Lot. Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the liens securing maintenance charges or assessments or any other sums due hereunder which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future assessments or charges be affected in any manner.

#### Section 10.10 Effect of Nonpayment of Assessment.

If any regular or special charge or assessment or special individual assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the highest nonusurious rate allowed under the laws of the State of Texas, or other applicable law, or if no such limitation imposed then at the rate of fifteen percent (15%) per annum, and if placed in the hands of an attorney for collection or if collected through probate or other judicial proceedings, there shall be reimbursed to the Association its reasonable attorneys' fees. The Association, in the Board's discretion, shall have the right to waive any part of or all of such interest and/or fees.

#### Section 10.11 Collection and Enforcement.

The Association shall have a lien on each Lot against the Owner of said Lot, securing payment of any regular or special charge or assessment, together with interest thereon as provided herein and reasonable attorneys' fees and costs incurred in the collection of same and the enforcement of said lien. The Board of Directors shall take such action as it deems necessary to collect assessments and may settle and compromise the same if deemed appropriate in the exercise of the Board's business judgment. Such liens shall be effective as and in the manner provided for herein and shall have the priorities established in this Declaration.

The Board of Directors may bring an action at law against any Owner personally obligated to pay an assessment or foreclose the lien against such Owner's Lot, or both, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Board of Directors of the Association or its agent the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including, but not limited to, nonjudicial foreclosure pursuant to Texas Property Code Section 51.002 in force and effect on the date of this Declaration, or in accordance with the prescribed manner for foreclosure of deed of trust liens provided by any future amendment to such Section 51.002 or any other statute or article enacted in substitution therefor, and such Owner hereby expressly grants to the Board of Directors a power of sale in connection with said lien. The Association is hereby appointed trustee, unless and until the Board of Directors shall designate a substitute or successor trustee, as hereinafter provided, to post the required notices as provided by law and conduct such foreclosure sale. The lien provided for in this Section shall be in favor of the Association and shall be for the common benefit of all Owners and shall have the same effect as though each

Owner had expressly granted to the Association for the benefit of the Owners a deed of trust lien as well as a security interest in said Lot to secure the payment of the assessments provided for herein. In addition to such notices as required by the aforesaid statute, the trustee shall mail to the Owner or Owners and mortgagee of a Lot for which the assessment has not been paid, a copy of the notice of trustee sale at or before the time of posting same by U.S. Postal Service, postage prepaid, certified, return receipt requested, at the Lot or such other address as the Board has been advised in writing for receipt of notices under this Declaration.

At any foreclosure, judicial or nonjudicial, the Association shall be entitled to bid up to the amount of its lien, together with costs and attorneys' fees, and to apply as a cash credit against its bid all sums due the Association covered by the lien foreclosed. From and after any such foreclosure, the former Owner or Owners, their heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the purchaser at such sale, and in the event of their failure to surrender possession of said property upon demand, the purchaser, or his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such Lot, or any part thereof, is situated. The Board of Directors in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act in the place of the trustee who posted the original notices without any formality other than the designation in writing of a substitute or successor trustee; and the authority hereby conferred by the Board of Directors shall extend to the appointment of other successor and substitute trustees successively until the delinquent assessment or assessments have been paid in full, or until said property is sold, and each substitute and successor trustee shall succeed to all the rights and powers of the original trustee appointed by the Board of Directors or its agents.

#### Section 10.12 Omission of Assessments.

The omission of the Board of Directors, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment filed for the preceding year shall continue until a new assessment is filed.

#### Section 10.13 Maintenance Fund; Working Capital Fund.

10.13.1 The Association may, but is not obligated to, establish and maintain a maintenance fund for the periodic maintenance of the Common Properties. Subject to the provisions of Section 10.3 above, the Board may at any time ratably increase or decrease the amounts of regular annual assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including provisions of reasonable reserves. So long as the Board exercises business judgment in determining the amount or necessity of the reserve fund, the amount held in reserves shall be considered adequate.

10.13.2 The Association may establish a working capital fund for the initial operation of the Common Properties in such amount as the Board shall determine.

#### Section 10.14 Exempt Property.

The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

10.14.1 All properties dedicated and accepted by the local public authority and devoted to public use; and

10.14.2 All Common Properties.

Section 10.15 Loans by Declarant.

Declarant may (but is not required to) loan funds to the Association on such terms as Declarant and the Association may agree.

**ARTICLE XI  
GENERAL POWERS OF THE  
BOARD OF DIRECTORS OF THE ASSOCIATION**

Section 11.1 Power and Duties.

Except as provided in Article XII below, the Board, for the benefit of the Property and the Owners, shall have the right to do all things which are necessary or advisable in connection with enforcing the provisions of this Declaration. Such powers shall include, but shall not be limited to, the following:

11.1.1 Paying assessments and charges for sewer, water and garbage pickup services for the Properties, installation and maintenance charges for street lighting for the Property, and taxes, assessments and other charges which shall properly be assessed or charged against the Common Properties.

11.1.2 Performing maintenance on the Common Properties which may include, without limitation, the following: (a) maintenance of any driveways, private roadways, jogging paths, walkways and sidewalks; (b) maintenance of grounds, including care of trees, shrubs and grass, lighting systems, sprinkler systems (if installed) and similar facilities on the Common Properties; and (c) maintenance of the entry monument(s) and any screening walls or fences constructed around the perimeter of the Property; PROVIDED, FURTHER, that in the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family, his guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

11.1.3 Managing and maintaining the Common Properties and full maintenance of a utility service for the Common Properties; the furnishing and upkeep of any desired personal property for use in the Common Properties.

11.1.4 Purchasing a policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association, in an amount not less than \$250,000.00 to indemnify against the claim of one person, \$500,000.00 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$50,000.00 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insureds; provided, that under no circumstances shall the Board be authorized to provide or pay for fire, casualty, or other insurance insuring the interest of any Owner in his Lot.



11.1.5 Executing all replats of the Property and all declarations of ownership for tax assessment purposes with regard to the Common Properties on behalf of all Owners.

11.1.6 Borrowing funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

11.1.7 Entering into contracts, maintaining one or more bank accounts, and generally exercising all the powers necessary or incidental to the operation and management of the Association, expressly including the power to enter into management and maintenance contracts.

11.1.8 Protecting or defending the Common Properties from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

11.1.9 Making reasonable rules and regulations for the operation of the Common Properties and amend them from time to time, provided that any rule or regulation may be amended or repealed by the vote of at least sixty percent (60%) of those Members present in person or by proxy at a meeting called for such purpose, or, with respect to a rule applicable to less than all of the Property, by the vote of sixty percent (60%) of the Members in the portions affected (without limiting the generality of the foregoing language, the rules and regulations may provide for limitations on use of the Common Properties during certain periods by youthful persons, visitors or otherwise).

11.1.10 Adjusting the amount, collecting and using any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, assessing the Members in proportionate amounts to cover the deficiency.

11.1.11 Enforcing the provisions of this Declaration and any rules made hereunder and to enjoining and seeking damages from any Owner for violation of such provisions or rules.

11.1.12 Exercising the rights granted to the Association in this Declaration, including, without limitation, all rights of the Board, the Association, and the ACC relating to architecture, design, and construction review and inspections under Article III.

The Association may exercise any right or privilege given to it expressly or by reasonable implication by this Declaration, the Bylaws, or the Articles of Incorporation, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in such documents or by law, all of the Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Properties, enforcement of this Declaration, or any other civil claim or action. **However, the Board shall exercise business judgment in determining whether to take any such action under particular circumstance and shall have no legal duty to institute litigation under any circumstances on behalf of or in the name of the Association or the Members.**

Section 11.2 Board Power, Exclusive.

The Board shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the maintenance fund, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

Section 11.3 Owner's Obligations to Repair.

Except for those portions of each Lot constituting the Common Properties, each Owner shall at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair. In the event that any Owner shall fail to maintain and repair his Lot and such improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, subject to the notice and cure provisions of Section 6.1 above, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessments hereunder when due.

Section 11.4 Maintenance Contracts with Owners.

The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by or for the Association of services pursuant to the terms hereof (including, but not limited to, the maintenance and repair of fences owned by any such Owner), such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and to the best interest of the Association; provided, however, that same must be commercially reasonable in all circumstances.

Section 11.5 Liability of the Board of Directors.

The Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding if approved by the Board of Directors at the time of such settlement) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

**OFFICERS, DIRECTORS, AND COMMITTEE MEMBERS SHALL NOT BE LIABLE FOR ANY MISTAKE OF JUDGMENT, NEGLIGENT OR OTHERWISE, EXCEPT FOR THEIR OWN INDIVIDUAL WILLFUL MISFEASANCE, MALFEASANCE, MISCONDUCT, OR BAD FAITH.** The Association's officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association. The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as an Association expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 11.6 Initiation of Litigation.

The Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Members representing at least 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the period that Declarant appoints the members of the Board of Directors;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

Prior to the Association or any Member commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect within the Property or any improvement constructed upon any property within the Property, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of the Property, including any improvement as to which a defect is alleged. In addition, the Association or the Member shall notify the builder who constructed the subject improvement prior to retaining any other expert as an expert witness or for other litigation purposes.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

**ARTICLE XII  
AUTHORITY AND CONTROL BY DECLARANT**

Section 12.1 Declarant Rights.

Notwithstanding anything herein to the contrary, so long as Declarant, its successors or assigns, owns at least one (1) Lot, Declarant shall have the sole right, but not the obligation, in its sole discretion, at any time, effective as of the date hereof, to control, perform and/or conduct the following:

- (1) amend the Design Guidelines, in whole or in part;
- (2) enforce the provisions of this Declaration;
- (3) review, determine and enforce the architectural control of the Lots; and
- (4) assigns its rights and obligations under this Declaration to any entity at any time, in whole or in part.

Declarant's rights set forth above are absolute in its sole discretion and do not require the approval, consent, or joinder of (i) any Owner, (ii) the Association, (iii) the Board of Directors,

or (iv) any committees or other parties which may be established with respect hereto. At such time as Declarant no longer owns a Lot within the Property, all of such rights of enforcement shall revert to the Board of Directors of the Association.

In the event any provision herein is in contradiction to this Article XII, in whole or in part, this Article XII shall prevail.

Section 12.2 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, including Lots, and a nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned, or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repairs or damages relating to defective workmanship or materials.

Section 12.3 Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Property for the purpose of making, constructing, and installing such improvements to the Property, as Declarant deems appropriate in its discretion.

Section 12.4 Construction Activities.

All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, and/or its agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, shall conduct development and construction activities within the Property and that such activities shall be conducted in phases and may cause disturbance and disruption which impact the use and enjoyment of a Lot.

By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Property generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant and all of its agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of Lots within the Property.

Section 12.5 Changes in Master Plan.

Each Owner acknowledges that the Property is a planned community, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses or density of property within the Property, or (b) changes in the Master Plan, including, without limitation, the enlargement of the Master Plan and the acquisition or revision of regulatory approvals to reflect the annexation of real property, without Declarant's prior written consent, which consent may be granted or withheld in Declarant's discretion.

Each Owner acknowledges and agrees that the present plans and themes for the Property' development may change and that it has not relied on any representation, warranty, or assurance by any person (a) that any Lots, or other property or facilities will or will not be added, modified, or eliminated within the Property; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to: (a) the design, construction, completion, development, use, benefits, or value of the Property; or (b) the number, types, sizes, prices, or designs of any residential structures or improvements built or to be built in any part of the Property.

**ARTICLE XIII  
OBLIGATIONS OF BOARD OF DIRECTORS**

Section 13.1 Obligations of Board of Directors.

Notwithstanding anything herein to the contrary, and so long as Declarant is acting on behalf of the Board of Directors as further described in Section 13.2 below, the sole responsibility and obligation of the Board of Directors shall be to maintain the corporation books of the Association and maintain the Association in good corporate standing with Secretary of State of the State of Texas and in good standing with the Office of the Comptroller of Public Accounts of the State of Texas.

Section 13.2 Liability for Association Operations.

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant (including its successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Properties and the collection of assessments.

Section 13.3 No Liability For Third Party Acts.

Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property within the Property. The Association may but is not obligated to maintain or support certain activities within the Property which promote or enhance safety or security within the Property. However, the

Association, and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Property, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including fire protection, burglar alarm, or other security monitoring systems, or any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot that the Association, the Board and its committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Property assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

#### ARTICLE XIV EXPANSION OF THE PROPERTY

##### Section 14.1 Expansion of the Property.

Declarant, in its sole discretion and without the approval of any other party, may from time to time subject this Declaration to additional real property by recording in the Public Real Estate Records of the County, a Supplemental Declaration describing the additional real property to be subjected to this Declaration. It is the current intent of Declarant that this Declaration shall hereafter include two (2) or more phases of residential additions. Any such Supplemental Declaration which is executed by Declarant and recorded in the Public Real Estate Records of the County shall not require the consent or approval of any other Owner or other person (subject to Section 8.5) in order to be fully enforceable and effective to cause such additional real property to be incorporated herein. Nothing in this Declaration shall be construed to require Declarant or any successor of Declarant to subject additional real property to this Declaration.

##### Section 14.2 Additional Covenants and Easements.

Declarant, in its sole discretion and without the approval of any other party, may from time to time subject any portion of the Property, whether now or hereafter a part of this Declaration, to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through the assessments, as described in Article X hereof. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the Property, whether now or hereafter a part of this Declaration, in order to reflect the different character and intended use of such Property. Any such Supplemental Declaration which is executed by Declarant and recorded in the Public Real Estate Records of the County shall not require the consent or approval of any other Owner or other person in order to be fully enforceable and effective to cause such additional covenants and easements to be incorporated herein.

Section 14.3 Effect of Recording Supplemental Declaration.

A Supplemental Declaration shall be effective upon the recording of same in the Public Real Estate Records of the County unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

**ARTICLE XV  
GENERAL PROVISIONS**

Section 15.1 Mortgages.

It is expressly provided that the breach of any of the conditions contained herein shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, as to the same premises or any part thereof encumbered by such mortgage or deed of trust, but said conditions shall be binding thereto as to Lots acquired by foreclosure, trustee's sale or otherwise, as to any breach occurring after such acquisition of title.

Section 15.2 Term.

This Declaration shall be enforceable by Declarant, the Association, any aggrieved Owner, and their respective legal representatives, heirs, successors, and assigns until December 31, 2050, after which time this Declaration shall extend automatically for successive 10-year periods unless at least sixty-seven percent (67%) of the then Owners have signed, within a six month period preceding the end of the initial term or any extension, an instrument which terminates this Declaration and such instrument is recorded in the Public Real Estate Records of the County prior to the end of the term.

Section 15.3 Severability.

If any provision herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final (*i.e.*, non-appealable) judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

Section 15.4 Binding Effect.

This Declaration is for the mutual benefit of, and shall be binding upon, each and every person acquiring any part of the Property, it being understood that the covenants, conditions, restrictions, easements, and other provisions contained in this Declaration are not for the benefit of the owner of any land except that which is a part of the Property. This Declaration, when executed, shall be filed of record in the Public Real Estate Records of the County, so that each and every Owner or purchaser of any portion of the Property is on notice of the covenants, conditions, restrictions, easements, and other provisions herein contained.

Section 15.5 Notices.

Any notices or correspondence to an Owner shall be addressed to the street address of the Lot or to such other address as is specified by any such Owner in writing to the Association. Any notices or correspondence to the Association shall be addressed to the address shown

opposite the signature of Declarant below or to such other address as is specified by the Association in writing to the Owners.

Except as this Declaration or the Bylaws otherwise provide, all notices, demands, bills, statements, or other communications under this Declaration or the Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or by private carrier; if sent by United States mail; or, if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

Notices sent in accordance with this Declaration shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation.

#### Section 15.6 Transfer Under Deed of Trust.

Upon any transfer of Declarant's interest in and to the Property, or any part thereof, under the terms of any deed of trust lien upon the Property, whether voluntary or involuntary, by foreclosure, deed in lieu of foreclosure or otherwise, all rights, title and interests of Declarant under this Declaration, shall be transferred to and devolve upon the party to whom the Property or any part thereof, is thereby conveyed.

#### Section 15.7 NOTICE OF TRANSFER.

**If at any time a Lot is sold, the new Owner shall promptly notify the Association of the name and address of the new Owner.**

#### Section 15.8 No Liability for Trespass.

Whenever the Association, the Board of Directors or Declarant exercises any right hereunder and in connection therewith enters upon any Lot, such parties shall not be liable for trespass upon such Lot.

#### Section 15.9 Lien Priority.

Notwithstanding any other provision of the Declaration, the lien to secure the payment of assessments and any other lien which the Association may have on any Lot pursuant to the Declaration for (a) assessments or other charges becoming payable on or after the date of recordation of the first mortgage or deed of trust on any Lot, or (b) any fees, late charges, fines or interest that may be levied by the Association in connection with unpaid assessments, shall be subordinated to the lien or equivalent security interest of any legitimate third-party first lien mortgage or deed of trust on any Lot, if any. Any foreclosure of any such superior lien under the



power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Owner personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future assessments or charges be affected in any manner. Any such maintenance charges or assessments which are extinguished pursuant to the foregoing provision shall be reallocated and assessed to all Lots as a common expense.

Section 15.10 Utility District.

The Property is located within the Denton County Fresh Water Supply District No. 9, a political subdivision of the State of Texas, operating under the provisions of Article XVI, Section 59 of the Texas Constitution and chapters 49, 51, and, for limited purposes, 53, Texas Water Code, as amended. The District was created for the purpose of developing and maintaining recreational facilities and other infrastructure, improvements, and facilities ("District Facilities") to serve the Owners and other residents of Lots within the Property and the District. The District may issue bonds to reimburse Declarant for its costs associated with the construction of the District Facilities and impose and levy ad valorem taxes and charges against the Association and individual Owners in order to repay the bond obligations. Such charges are in addition to Association assessments (if charged directly to Owners), Denton County and other local governmental taxes and assessments, and all other taxes and assessments provided for by law. If the District charges the Association for the District Facilities, the Association shall include such charges in the annual assessment charged to each Owner under Article X of this Declaration.

The Association may own or lease all or any of the recreational facilities comprising the District Facilities. Declarant or the District may convey or lease the recreational facilities to the Association. The Association's obligation for payment to the District may be set forth in a promissory note or a lease, as appropriate, and the Association is specifically authorized to enter into such an arrangement with the District.

Section 15.11 Use of Recreational Facilities and Other Common Properties.

The property made subject to this Declaration will contain common recreational facilities available for the use and enjoyment of Owners of property, including lots and homes, within Providence, their families, tenants and other occupants of their property, and the guests of any such persons. **EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY PORTION OF THE PROPERTY MADE SUBJECT TO THIS DECLARATION, ACKNOWLEDGES THAT THE USE AND ENJOYMENT OF ANY RECREATIONAL FACILITY OR ANY OTHER PORTION OF THE COMMON PROPERTIES INVOLVES RISK OF PERSONAL INJURY OR DAMAGE TO PROPERTY.**

Each Owner acknowledges, understands, and covenants to inform his or her family members, and tenants and other occupants of Owner's property that Declarant, the Association, the Board and any committees, and builders constructing homes and other improvements within Providence are not insurers of personal safety. **EACH PERSON USING SUCH RECREATIONAL FACILITIES OR ANY OTHER PORTION OF THE COMMON PROPERTIES ASSUMES ALL RISKS OF PERSONAL INJURY, DEATH, AND LOSS OR DAMAGE TO PROPERTY, RESULTING FROM THE USE AND ENJOYMENT OF ANY RECREATIONAL FACILITY OR OTHER PORTION OF THE**

**COMMON PROPERTIES.** Each Owner agrees that Declarant, the Association, the Board and committees, and builders within the community shall not be liable to any person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury or death, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the use of any recreational facility or other portions of the Common Properties, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the Association, or any builder within the community. **THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.**

**EACH OWNER ACKNOWLEDGES AND AGREES THAT THE ABOVE RELEASE FROM LIABILITY IS CONSIDERATION FOR, AND A CONDITION TO, THE USE AND ENJOYMENT OF THE RECREATIONAL FACILITIES AND OTHER COMMON PROPERTIES WITHIN PROVIDENCE AND THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT AND BUILDERS TO SELL, CONVEY, LEASE, AND/OR ALLOW THE USE OF LOTS WITHIN PROVIDENCE. ANY VIOLATION OF THIS RELEASE AGREEMENT BY AN OWNER, OR ANY OF OWNER'S FAMILY MEMBERS, TENANTS AND OTHER OCCUPANTS OF OWNER'S PROPERTY, OR THEIR RESPECTIVE GUESTS SHALL BE GROUNDS FOR THE SUSPENSION OR TERMINATION OF ALL OF SUCH PERSONS' USE PRIVILEGES IN SUCH FACILITIES.**

Section 15.12 Reservation of Mineral Rights.

This Declaration shall apply to the Owners of the surface estate in the Units and other portions of the Property only. This Declaration shall not apply to prevent the owners of rights to oil, gas, coal, lignite and other minerals ("mineral rights") beneath the surface of Providence from drilling, mining, and other activities associated with such mineral rights.

[Signature continued on the following page]

EXECUTED this 10 day of June, 2002.

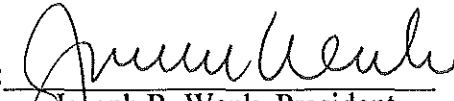
ADDRESS

8222 Douglas Avenue  
Suite 660  
Dallas, Texas 75225

DECLARANT:

**Valerian Properties Associates, L.P.**, a  
Delaware limited partnership


By: First Regency Enterprises, Inc., its  
General Partner

By:   
Joseph R. Wenk, President

STATE OF NEW YORK §

COUNTY OF New York §

This instrument was acknowledged before me on this 10<sup>th</sup> day of June, 2002, by Joseph R. Wenk, President of First Regency Enterprises, Inc., general partner of Valerian Properties Associates, L.P., a Delaware limited partnership, for the purposes and consideration therein expressed and in the capacities therein stated, on behalf of such limited partnership.

  
Notary Public, State of New York

AFTER RECORDING, PLEASE RETURN TO:  
Valerian Properties Associates, L.P.  
8222 Douglas Avenue, Suite 660  
Dallas, Texas 75225

MARIA V. SANTORO  
Notary Public, State of New York  
No. 01SA4901903  
Qualified in Bronx County  
Commission Expires Aug. 17, 2005

**EXHIBIT A****LEGAL DESCRIPTION  
122.74 ACRES  
DENTON COUNTY, TEXAS**

Being 122.74 acres of land situated in the Marsella Jones Survey, Abstract No.662, Denton County, Texas and being part of that tract described in a deed from Enidan/440 Ranch, L.P., a Texas limited partnership to Valerian Properties Associates, L.P., a Delaware limited partnership dated May 24, 2000, as recorded in County Clerk's Document No. 048674 and Volume 4597, Page 2308 of the Deed Records, Denton County, Texas and being more particularly described as follows;

BEGINNING at a aluminum TxDOT monument found in the north right-of-way of State Highway No. 380 (a variable width right-of-way), said point the southwest corner of said Valerian tract and the southeast corner of the James Chambers tract as described in Volume 693, Page 596, of said Deed records;

THENCE North 01°27'10" East, leaving the north line of said State Highway No. 380 and along the common line of said Valerian and Chambers tracts, a distance of 1043.97 feet to a 5/8-inch iron rod with cap (stamped PETITT-RPLS 4087) set for corner, said point being an ell corner of said Valerian tract and the northeast corner of said Chambers tract;

THENCE North 88°39'53" West, along a south line of said Valerian tract and the north line of said Chambers tract a distance of 735.53 feet to a 1/2-inch iron rod found for corner, said point being the southwest corner of said Valerian tract and the northwest corner of said Chambers tract, said point also being in the east right-of-way line of F.M. 2931 (a 100 foot right-of-way);

THENCE North 01°14'05" East, along the east line of said F.M. 2931 and the west line of said Valerian tract a distance of 2402.39 feet to a steel fence post found for the most westerly northwest corner of said Valerian tract, said point being the southwest corner of the Ben Adkisson tract as described in Volume 621, Page 137, of said Deed records;

THENCE South 88°27'43" East, leaving the east line of said F.M. No. 2931 and along the common line of said Valerian and Adkisson tracts, passing at a distance of 680.29 the southeast corner of said Adkisson tract, said point being the southwest corner of another Ben Adkisson tract as described in Volume 2248, Page 264, of said Deed records, continuing along said common line a total distance of 1,122.16 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South 01°32'17" West, leaving the common line of said Valerian and Adkisson tracts a distance of 169.97 feet to a 5/8-inch iron rod with cap set for corner, said point being in a non-tangent curve to the left having a radius of 875.00 feet and a chord that bears South 88°13'32" East a distance of 7.22 feet;

THENCE in a southeasterly direction along said curve to the left through a central angle of 00°28'23", an arc distance of 7.22 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $88^{\circ}27'43''$  East, a distance of 118.46 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $01^{\circ}32'17''$  West, a distance of 50.00 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North  $88^{\circ}27'43''$  West, a distance of 10.00 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $01^{\circ}32'17''$  West, a distance of 115.00 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $88^{\circ}27'43''$  East, a distance of 121.59 feet to a 5/8-inch iron rod with cap set for corner, said point being in the west line of an Upper Trinity Regional Water District tract as recorded in Volume 4719, Page 740 and County Clerk's Document No. 2000-R0111428 of said Deed records;

THENCE South  $02^{\circ}28'55''$  West, along the west line of said Upper Trinity tract and passing at a distance of 275.22 feet the southwest corner of said Upper Trinity tract and continuing in all a distance of 443.22 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North  $88^{\circ}05'21''$  West, a distance of 15.30 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $01^{\circ}54'39''$  West, a distance of 108.00 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $88^{\circ}05'21''$  East, a distance of 440.22 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $01^{\circ}54'39''$  West, a distance of 123.00 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a curve to the left having a radius of 155.00 feet and a chord that bears South  $42^{\circ}04'06''$  East a distance of 215.26 feet;

THENCE in a southwesterly direction along said curve to the left through a central angle of  $87^{\circ}57'31''$  an arc distance of 237.95 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $86^{\circ}02'52''$  East, a distance of 46.85 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $08^{\circ}09'59''$  East, a distance of 150.00 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $12^{\circ}34'42''$  East, a distance of 244.83 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a curve to the left having a radius of 475.00 feet and a chord that bears South  $10^{\circ}28'41''$  East a distance of 34.81 feet;

THENCE in a southeasterly direction along said curve to the left through a central angle of  $04^{\circ}12'01''$  an arc distance of 34.82 feet to a 5/8-inch iron rod with cap set for corner, said point being in a non-tangent curve to the left having a radius of 1135.00 feet and a chord that bears South  $74^{\circ}37'27''$  West a distance of 239.85 feet;

THENCE in a southwesterly direction along said curve to the left through a central angle of  $12^{\circ}07'50''$  an arc distance of 240.30 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $21^{\circ}26'28''$  East, a distance of 70.00 feet to a 5/8-inch iron rod with cap set for corner said point being the beginning of a non-tangent curve to the right having a radius of 1065.00 feet and a chord that bears North  $71^{\circ}16'27''$  East a distance of 100.90 feet;

THENCE in a southeasterly direction along said curve to the right through a central angle of  $05^{\circ}25'50''$  an arc distance of 100.94 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $16^{\circ}00'38''$  East, a distance of 110.00 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a non-tangent curve to the right having a radius of 955.00 feet and a chord that bears North  $82^{\circ}59'23''$  East a distance of 298.80 feet;

THENCE in a northeasterly direction along said curve to the right through a central angle of  $18^{\circ}00'03''$  an arc distance of 300.03 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $88^{\circ}00'35''$  East, a distance of 200.00 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a curve to the right having a radius of 955.00 feet and a chord that bears South  $77^{\circ}31'22''$  East a distance of 347.65 feet;

THENCE in a southeasterly direction along said curve to the right through a central angle of  $20^{\circ}58'28''$  an arc distance of 349.60 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $01^{\circ}59'25''$  West, a distance of 59.13 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North  $88^{\circ}00'35''$  West, a distance of 171.90 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a curve to the left having a radius of 530.00 feet and a chord that bears South  $76^{\circ}01'29''$  West a distance of 291.56 feet;

THENCE in a southwesterly direction along said curve to the left through a central angle of  $31^{\circ}55'50''$  an arc distance of 295.37 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a reverse curve to the right having a radius of 270.00 feet and a chord that bears South  $76^{\circ}08'37''$  West a distance of 149.60 feet;

THENCE in a southwesterly direction along said curve to the right through a central angle of  $32^{\circ}10'05''$  an arc distance of 151.59 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North  $87^{\circ}46'21''$  West, a distance of 337.88 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North  $60^{\circ}50'02''$  West, a distance of 56.09 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North  $43^{\circ}15'11''$  West, a distance of 45.71 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $60^{\circ}22'16''$  West, a distance of 47.44 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $07^{\circ}50'18''$  East, a distance of 16.00 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a non-tangent curve to the left having a radius of 292.00 feet and a chord that bears South  $61^{\circ}25'42''$  West a distance of 206.43 feet;

THENCE in a southwesterly direction along said curve to the left through a central angle of  $41^{\circ}24'01''$  an arc distance of 210.99 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $40^{\circ}43'41''$  West, a distance of 78.62 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a curve to the left having a radius of 484.00 feet and a chord that bears South  $27^{\circ}01'56''$  West a distance of 229.19 feet;

THENCE in a southwesterly direction along said curve to the left through a central angle of  $27^{\circ}23'31''$  an arc distance of 231.39 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $13^{\circ}20'10''$  West, a distance of 5.16 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a non-tangent curve to the left having a radius of 470.00 feet and a chord that bears South  $82^{\circ}42'21''$  East a distance of 83.02 feet;

THENCE in a southeasterly direction along said curve to the left through a central angle of  $10^{\circ}08'00''$  an arc distance of 83.12 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $87^{\circ}46'21''$  East, a distance of 56.41 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North  $02^{\circ}13'39''$  East, a distance of 3.45 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a curve to the right having a radius of 225.00 feet and a chord that bears North  $04^{\circ}01'56''$  East a distance of 14.17 feet;

THENCE in a northeasterly direction along said curve to the right through a central angle of  $03^{\circ}36'34''$  an arc distance of 14.17 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $84^{\circ}09'47''$  East, a distance of 50.00 feet to a 5/8-inch iron rod with cap set for corner, said point being in a non-tangent curve to the left having a radius of 175.00 feet and a chord that bears South  $04^{\circ}01'56''$  West a distance of 11.02 feet;

THENCE in a southeasterly direction along said curve to the left through a central angle of  $03^{\circ}36'34''$  an arc distance of 11.02 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $02^{\circ}13'39''$  West, a distance of 8.45 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $87^{\circ}46'21''$  East, a distance of 15.08 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $02^{\circ}13'39''$  West, a distance of 50.00 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North  $87^{\circ}46'21''$  West, a distance of 15.08 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $02^{\circ}13'39''$  West, a distance of 78.49 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a curve to the right having a radius of 550.00 feet and a chord that bears South  $05^{\circ}23'32''$  West a distance of 84.61 feet;

THENCE in a southwesterly direction along said curve to the right through a central angle of  $08^{\circ}49'23''$  an arc distance of 84.69 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a reverse curve to the left having a radius of 450.00 feet and a chord that bears South  $06^{\circ}05'25''$  West a distance of 58.29 feet;

THENCE in a southwesterly direction along said curve to the left through a central angle of  $07^{\circ}25'37''$  an arc distance of 58.33 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $02^{\circ}22'36''$  West, a distance of 270.87 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $87^{\circ}46'21''$  East, a distance of 47.90 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $02^{\circ}13'39''$  West, a distance of 50.00 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North  $87^{\circ}46'21''$  West, a distance of 21.87 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a curve to the left having a radius of 20.00 feet and a chord that bears South  $76^{\circ}43'34''$  West a distance of 10.69 feet;

THENCE in a southwesterly direction along said curve to the left through a central angle of  $31^{\circ}00'10''$  an arc distance of 10.82 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a reverse curve to the right having a radius of 50.00 feet and a chord that bears North  $72^{\circ}10'01''$  West a distance of 18.98 feet;

THENCE in a northwesterly direction along said curve to the right through a central angle of  $21^{\circ}53'03''$  an arc distance of 19.10 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $02^{\circ}13'39''$  West, a distance of 100.63 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South  $87^{\circ}46'21''$  East, a distance of 819.76 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a curve to the left having a radius of 500.00 feet and a chord that bears North  $80^{\circ}49'06''$  East a distance of 197.81 feet;



THENCE in a northeasterly direction along said curve to the left through a central angle of 22°49'06" an arc distance of 199.13 feet to a 5/8-inch iron rod with cap set for corner, said point being the beginning of a reverse curve to the right having a radius of 500.00 feet and a chord that bears North 80°53'34" East a distance of 199.09 feet;

THENCE in a northeasterly direction along said curve to the right through a central angle of 22°58'03" an arc distance of 200.43 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South 87°37'24" East, a distance of 123.02 feet to a 5/8-inch iron rod with cap set for corner, said point being in the east line of said Valerian tract and the west line of the Robert D. West tract as recorded in Volume 3086, Page 15 of said Deed records;

THENCE South 02°22'37" West, along the common line of said Valerian and West tracts a distance of 160.72 feet to a 5/8-inch iron rod with cap set for corner;

THENCE North 88°14'21" West, along the common line of said Valerian and Little Chapel tracts a distance of 500.00 feet to a 5/8-inch iron rod with cap set for corner;

THENCE South 02°22'36" West, a distance of 116.16 feet to a 5/8-inch iron rod with cap set for corner, said point being in the south line of said Valerian tract and also being in the north line of the Jessie Bishop, Alice Hilliard and Geneva Ritchie tract as recorded in County Clerk's File Document No. 98-008152 of said Deed records;

THENCE North 88°14'21" West, along the common line of said Valerian and Bishop tracts a distance of 11.35 feet to a 5/8-inch iron rod with cap set for an ell corner of said Valerian tract, the northwest corner of said Bishop tract;

THENCE South 02°46'19" East, along the common line of said Valerian and Bishop tracts a distance of 194.43 feet to an aluminum TxDOT monument found for the southeast corner of said Valerian tract, said point being in the north right-of-way line of U. S. Highway No. 380 (a variable width right-of-way);

THENCE North 87°45'48" West, along the south line of said Valerian tract and the north line of said U. S. Highway a distance of 1565.20 feet to an aluminum TxDOT monument found for corner;

THENCE North 84°54'03" West, continuing along the south line of said Valerian tract and the north line of said U. S. Highway a distance of 100.12 feet to an aluminum TxDOT monument found for corner;

THENCE North 87°45'48" West, continuing along the south line of said Valerian tract and the north line of said U. S. Highway a distance of 28.56 feet to the POINT OF BEGINNING and containing 122.74 acres of land more or less.