



AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WEST FORK, SECTIONS ONE (1) and TWO (2)

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY § KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the Homeowners Association of West Fork, Inc. (the "Association"), a Texas non-profit corporation, which is governed by its Board of Directors (the "Board"), is the governing entity of the West Fork, Sections One and Two Subdivisions; and

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions and Restrictions for West Fork, Sections One and Two applies to the operation and utilization of property within the West Fork, Sections One and Two Subdivisions, additions in Montgomery County, Texas, according to the maps or plats thereof, recorded in the Map Records of Montgomery County, Texas as follows:

West Fork, Section One at Film Code No. 2002-063277; and

West Fork, Section Two at Film Code No. 2004-014617; and

WHEREAS, the properties within West Fork, Sections One and Two had been subject to the following Restrictions:

Declaration of Covenants, Conditions and Restrictions for West Fork, Section One, filed of record in the Real Property Records of Montgomery County, Texas under Clerk's File Number 2002-064450, along with any amendments or supplements thereto; and

Declaration of Covenants, Conditions and Restrictions for West Fork, Section Two, filed of record in the Real Property Records of Montgomery County, Texas under Clerk's File Number 2004-039677, along with any amendments or supplements thereto; and

Declaration of Covenants, Conditions and Restrictions for West Fork, Section Two, filed of record in the Real Property Records of Montgomery County, Texas under Clerk's File Numbers 2005-069446 and 2005-083030, along with any amendments or supplements thereto; and

WHEREAS, it is the desire of the owners of property within West Fork, Sections One and Two to provide an updated and more functional common plan as to the use, permissible construction, and common amenities of such subdivisions than heretofore existed in the original

Declarations, and to this end to subject the Properties in the Subdivision to these amended and restated covenants, conditions and restrictions hereinafter set forth for the benefit of all present and future owners thereof;

WHEREAS, pursuant to Section 209.0041(h) of the Texas Property Code, the Declaration may be amended by a vote of 67 percent of the total votes allocated to property owners in the Association; and

WHEREAS, pursuant to the Section 204.008(5) of the Texas Property Code, the adoption of this Declaration may be achieved by a combination of methods including written ballot, and petition;

NOW THEREFORE, pursuant to a vote of in excess of 67 percent of the total votes in the Association, the Association hereby adopts the following Amended and Restated Declaration of Covenants, Conditions and Restrictions for West Fork, Sections One and Two restricting the Property and the owners of such Property within the Subdivision so that such Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with said Property and shall be binding upon all parties having any right, title or interest in said Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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## **ARTICLE I DEFINITIONS**

As used in this Declaration, the terms set forth below shall have the following meanings:

### **SECTION 1.1 ANNUAL ASSESSMENT**

The assessments levied pursuant to Article VII hereof for managing, maintaining, operation, repairing, and insuring the Common Area, and other purposes set out in this Declaration.

### **SECTION 1.2 ARCHITECTURAL CONTROL COMMITTEE**

The Architectural Control Committee established and empowered in accordance with Article IV of the Declaration.

### **SECTION 1.3 ARTICLES OF INCORPORATION**

The Articles of Incorporation of the Association.

### **SECTION 1.4 ASSOCIATION**

HOMEOWNERS ASSOCIATION OF WEST FORK, INC., a Texas non-profit corporation, its successors and/or assigns.

### **SECTION 1.5 ASSESSMENT**

An Annual Assessment, a Special Assessment or a Reimbursement Assessment.

### **SECTION 1.6 BOARD OR BOARD OF DIRECTORS**

The Board of Directors of the Association as elected in accordance with the Articles of Incorporation and the Bylaws.

### **SECTION 1.7 BUILDER**

Each Owner who is in the construction business or Person who regularly engages in the construction business who is constructing improvements for an Owner.

### **SECTION 1.8 BYLAWS**

The Bylaws of the Association, as same may be amended from time to time.

### **SECTION 1.9 COMMON AREAS**

All of the Subdivision other than the Lots and the unrestricted reserves shown on the Plat(s), together with any other common areas described on the Plat(s). The Common Area may be owned by the Association for the benefit of and for the common use and enjoyment of the Owners of Lots in the Subdivision.

#### SECTION 1.11. DECLARATION

The covenants, conditions, restrictions, easements, reservations and stipulations that shall be applicable to and govern the improvement, use, occupancy, and conveyance of all the Lots in the Subdivision set out in this instrument or any amendment thereto.

#### SECTION 1.13. DWELLING UNIT

A residential building designed for, and limited and restricted to, occupancy by a single family on a Lot, not including an accessory building or garage.

#### SECTION 1.14. ELECTION DATE

December 8, 2006. (The date of the land transfer from Taylor/Brown LLP to Franklin Bank)

#### SECTION 1.15. GOLF COURSE

Any golf course that adjoins, abuts or is adjacent to any Lot within the Subdivision.

#### SECTION 1.16. IMPROVEMENT TO PROPERTY

Includes, without limitation: (a) the construction, installation or erection of any building, structure, fence, or other Improvement, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure, fence, or other Improvements; (c) the grading, excavation, filling, or similar disturbance to the surface of any Lot, including, without limitation, change of grade, change of ground level, change of drainage pattern, or change of stream bed; (d) installation or changes to the landscaping on any Lot; and (e) any exterior modification, expansion, change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture not expressly permitted by this Declaration, Minimum Construction Standards, or the Rules and Regulations of the City of Conroe or Montgomery County.

#### SECTION 1.17. IMPROVEMENTS

All structures and any appurtenances thereto of every type or kind, which are visible on a Lot, including, but not limited to: buildings, outbuildings, swimming pools, spas, hot tubs, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, sidewalks, walkways, sprinkler pipes, garages, roads, driveways, parking areas, fences, screening, walls, retaining walls, stairs, decks, fixtures, windbreaks, poles, signs, exterior tanks, exterior air conditioning fixtures and equipment, water softener fixtures, exterior lighting, recreational equipment or facilities, radio, conventional or cable or television antenna or dish, microwave television antenna, and landscaping that is placed on and/or visible from any Lot.

#### SECTION 1.18. INGRESS AND EGRESS

The act or right of property Owners, developers and/or builders, the guests of each hereinbefore mentioned and the public in general, to enter, access, go upon and return

from the Common Areas and/or their respectively owned Lots located in the Subdivision.

#### SECTION 1.19. LOT

Each of the Lots shown on the map or plat of the Subdivision.

#### SECTION 1.20. MAINTENANCE FUND

Any accumulation of the annual maintenance assessments collected by the Association in accordance with the provisions of the Declaration and any Supplementary Declaration annexing additional residential property to the Subdivision and interest and other sums and revenues collected by the Association pursuant to this Declaration and any such Supplementary Declaration.

#### SECTION 1.21. MEMBER OR MEMBERS

All Owners of Lots who are members of the Association as provided in Article III of this Declaration and any Supplementary Declaration annexing residential property to the Subdivision.

#### SECTION 1.22. MINIMUM CONSTRUCTION STANDARDS

Minimum Construction Standards are those standards as approved from time to time by the Architectural Control Committee concerning Improvement to the properties.

#### SECTION 1.23. MORTGAGE

A Deed of Trust or other security instrument given by an Owner to secure payment of a loan duly recorded in the Montgomery County Clerk's office.

#### SECTION 1.24. MORTGAGEE

Beneficiary under Mortgage.

#### SECTION 1.25. OWNER

Any Person, as herein defined having record fee simple title to a Lot.

#### SECTION 1.26. OTHER LOTS

A single Lot or multiple Lots located in the Subdivision that are owned by Owners different from the Owner asserting the rights and/or protections set forth in the Declaration of Covenants, Conditions and Restrictions.

#### SECTION 1.27. PERSON

A natural person, corporation, partnership, or any other legal entity.

#### SECTION 1.28. PLAT

The official plats of West Fork, Section One, filed for record in Film Code No. 2002-063277; and, Section Two, filed for record in Film Code No. 2004-014617 of the Map

Records of Montgomery County, Texas.

**SECTION 1.29. PLANS**

The final construction plans and specifications for any dwelling unit or improvement of any kind to be erected, placed, constructed, or planted on any portion of the Property.

**SECTION 1.30. PROPERTY**

All that certain property known as West Fork, Sections One and Two per the Plats thereof.

**SECTION 1.31. REIMBURSEMENT ASSESSMENT**

A charge against an Owner for the purposes of reimbursing the Association for expenditures and costs incurred in curing any violation of these Restrictions or Rules or Regulations, or otherwise pursuant to Section 7.8 hereof.

**SECTION 1.32. RULES AND REGULATIONS**

Such rules and regulations as the Association may promulgate from time to time with respect to the Subdivision, which may include reasonable provisions for fines for violation of such Rules and Regulations.

**SECTION 1.33. SPECIAL ASSESSMENT**

A charge against each Owner and his Lot representing a portion of the cost to the Association for the purpose of funding major capital repairs, maintenance, and replacement of Improvements, imposed pursuant to Section 7.4 hereof.

**SECTION 1.34. SUBDIVISION**

All the certain real property located within Montgomery County, Texas, as reflected on the Plats for Sections One (1) and Two (2).

**ARTICLE II**  
**ESTABLISHMENT OF GENERAL PLAN**

**SECTION 2.1. GENERAL PLAN AND DECLARATION**

This Declaration is hereby established pursuant to and in furtherance of a common and general plan for the improvement and sale of Lots within the Subdivision and for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Subdivision. The Lots and Common Area in the Subdivision shall be subject to the jurisdiction of the Association.

**SECTION 2.2. EQUITABLE SERVITUDE**

The covenants, conditions, restrictions, limitations, reservations, easements, and exceptions of this Declaration hereby are imposed as equitable servitude upon each Lot,



and the Common Area within the Subdivision, as a servient estate, for the benefit of each and every other Lot and parcel of Common Area within the Subdivision, as the dominant estate.

### SECTION 2.3. COVENANTS APPURTENANT

The covenants, conditions, restrictions, limitations, reservations, easements, exceptions, equitable servitude, and other provisions set forth in this Declaration shall run with, and shall inure to the benefit of and shall be binding upon, all of the Subdivision, and each Lot therein, and shall be binding upon and inure to the benefit of: (a) the Subdivision; (b) the Association and its successors and assigns; and (c) all Persons having, or hereafter acquiring, any right, title, or interest in all or any portion of the Subdivision and their heirs, executors, successors, and assigns.

## **ARTICLE III MANAGEMENT AND OPERATION OF SUBDIVISION**

### SECTION 3.1. MANAGEMENT BY ASSOCIATION

The affairs of the Subdivision shall be administered by the Association. The Association shall have the right, power and obligation to provide for the management, acquisition, construction, maintenance, repair, replacement, administration, and operation of the Subdivision as herein provided for and as provided for in the Articles of Incorporation, Bylaws, and the Rules and Regulations. In the event of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control; and in the event of a conflict between the Articles of Incorporation or the Bylaws and the provisions of the Declaration, the provisions of the Declaration shall control. The business and affairs of the Association shall be managed by its Board of Directors, unless otherwise reserved to the Members of the Association by law, the terms of the Declaration, or the Bylaws. It shall be the responsibility of each Owner or occupant of a Dwelling Unit to obtain copies of and become familiar with the terms of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations and Minimum Construction Standards.

The Association, acting through the Board, shall be entitled to enter into such contracts and agreements concerning the Subdivision as the Board deems reasonably necessary or appropriate to maintain and operate the Subdivision in accordance with the Declaration, including without limitation, the right to enter into agreements with adjoining or nearby land Owners or governmental entities on matters of maintenance, trash pick-up, repair, administration, security, traffic, operation of recreational facilities, or other matters of mutual interest. In addition to other powers granted by the Board of Directors herein or in the Articles of Incorporation, the Board of Directors of the Association shall also have the power to create procedures for resolving disputes between Owners or occupants of Dwelling Units, including appointment of committees to consider or reconsider resolutions of any disputes.

### SECTION 3.2. BOARD OF DIRECTORS

The number, term, and qualifications of the members of the Board of Directors shall be governed by the Articles of Incorporation and the Bylaws.

### SECTION 3.3. MEMBERSHIP IN ASSOCIATION

Each Owner of a Lot, whether one Person or more, shall, upon and by virtue of becoming such Owner, automatically become and shall remain a Member of the Association until ownership of the Lot ceases for any reason, at which time the membership in the Association shall also automatically cease. Membership in the Association shall be inherent to and shall automatically follow the ownership of each Lot and may not be separated from such ownership. Provided, however, prior to changing the name of the Owner of any Lot on the membership rolls of the Association, the Association or its managing agent (if authorized by the Board of Directors) may charge a transfer fee or processing fee when ownership to any Lot changes or the Mortgage on the Lot is refinanced. Membership in the Association shall not include persons having an investment merely as a security for the performance of an obligation.

### SECTION 3.4. VOTING OF MEMBERS

The Association shall have (ONE) class of membership for voting purposes:

Class A. Class A members shall be all those Owners as defined in Section 3.3. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership in Section 3.3. When more than one person holds interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to one Lot.

### SECTION 3.5. POWER TO ADOPT RULES AND REGULATIONS

The Association, through its Board of Directors, may adopt, amend, repeal, and enforce Rules and Regulations, fines, levies, and enforcement provisions as it deems necessary or desirable with respect to the interpretation and implementation of the Declaration, the operation of the Association, the use and enjoyment of the Common Areas, and the use of any other property within the Subdivision, including Lots. Any such Rules and Regulations shall be reasonable and uniformly applied to all Members and their families, tenants, and guests. Such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Written Notice of the adoption, amendment, or repeal of any Rule and Regulation shall be given by depositing same in the regular mail to each Member at the last known address of such Member according to the records of the Association. Copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member as a tenant, guest or otherwise shall comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this

Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

### SECTION 3.6. POWER TO ENFORCE DECLARATION AND RULES AND REGULATIONS

The Association shall have the power to enforce the provisions of this Declaration and any Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause compliance by each Member and each Member's family, guests, or tenants. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of the Rules and Regulations of the Association by any one or more of the following means: (a) by entry upon any Lot within the Subdivision after notice (unless a bona fide emergency exists in which event this right of entry may be exercised without notice [written or oral] to the Owner, but in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use, or enjoyment of the Improvements situated thereon by the Owner or any other Person), without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or Rules and Regulations, by mandatory injunction or otherwise; (b) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (c) by exclusion, after notice, of any Member or Member's family, guests or tenants from use of any recreational facilities in the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or Member's family, guest, or tenants, unless the breach is a continuing breach in which case, such exclusion shall continue for so long as such breach continues; (d) by suspension, after notice, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or Member's family, guests, or tenants, of this Declaration or such Rules and Regulations unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (e) by levying and collecting after notice, a Reimbursement Assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or Member's family, guests, or tenants; and (f) by levying and collecting, after notice, reasonable and uniformly applied fines as established in advance in the Rules and Regulations of the Association, from any Member, and such Member's family, guests, or tenants, for the breach of this Declaration or such Rules and Regulations.

### SECTION 3.7. POWER TO GRANT EASEMENTS

The Association, shall have the power to grant access, utility, drainage, water, facility, cable television, and other such easements in, on, over, or under the Common Areas.

## **ARTICLE IV** **ARCHITECTURAL APPROVAL**

#### SECTION 4.1. ARCHITECTURAL CONTROL COMMITTEE

As used in this Declaration, the term "Architectural Control Committee" shall mean a committee of three (3) members, all of whom shall be appointed by the Board of Directors, except as otherwise set forth herein. Members of the Architectural Control Committee may, but need not be, Members of the Association. Members of the Architectural Control Committee appointed by the Board may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board. The Architectural Control Committee shall have the right to designate a Committee Representative by recordation or a notice of appointment in the Official Public Records of Real Property of Montgomery County, Texas, which notice must contain the name, address, and telephone number of the Committee Representative. All third parties shall be entitled conclusively to rely upon such person's actions as the actions of the Architectural Control Committee itself until such time as the Architectural Control Committee shall record a notice of revocation of such appointment in the Official Public Records of Real property of Montgomery County, Texas.

#### SECTION 4.2. APPROVAL OF IMPROVEMENTS REQUIRED

The approval of a majority of the members of the Architectural Control Committee or the approval of the "Committee Representative" shall be required for any Improvement to Property before commencement of construction of such Improvement to Property.

#### SECTION 4.3. ADDRESS OF COMMITTEE

The address of the Architectural Control Committee shall be at the principal office of the Association.

#### SECTION 4.4. SUBMISSION OF PLANS

Before commencement of work to accomplish any proposed Improvements to Property, the Applicant proposing to make such Improvement to Property shall submit to the Architectural Control Committee at its offices copies of such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Architectural Control Committee reasonably shall request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property, as may be more particularly described from time to time in any Minimum Construction Standards adopted by the Architectural Control Committee. The Architectural Control Committee may require submission of additional plans, specifications, or other information before approving or disapproving the proposed Improvement to Property. Until receipt by the Architectural Control Committee of all required materials in connection with the proposed Improvement to Property, the Architectural Control Committee may postpone review of any materials submitted for approval. Notwithstanding the above, a Builder's plan for Improvements, once approved, shall not be required to be resubmitted for approval unless such plans are modified or changed. In such event, the Architectural Control Committee will not unreasonably withhold or delay its approval of any plans submitted as provided under this Declaration.



#### SECTION 4.5. CRITERIA FOR APPROVAL

The Architectural Control Committee shall approve any proposed Improvement to Property only if it determines in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Subdivision as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Subdivision, including, without limitation, quality and color of materials and location with respect to topography and finished grade elevation; that the Improvement to Property will comply with the provisions of this Declaration and any applicable plat, ordinance, governmental rule, or regulation; that the Improvements to Property will not detract from the beauty and attractiveness of the Subdivision or the enjoyment thereof by Owners; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association. The Architectural Control Committee is specifically granted the authority to disapprove proposed Improvements because of the unique characteristics or configuration of the Lot on which the proposed Improvement would otherwise be constructed, even though the same or a similar type of Improvement might or would be approved for construction on another Lot. The Architectural Control Committee may condition its approval of any proposed Improvement to Property upon the making of such changes thereto as the Architectural Control Committee may deem appropriate.

#### SECTION 4.6. MINIMUM CONSTRUCTION STANDARDS

The Architectural Control Committee from time to time may supplement or amend the Minimum Construction Standards, which provide an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only and the Architectural Control Committee may impose other requirements in connection with its review of any proposed Improvements.

#### SECTION 4.7. DECISION OF COMMITTEE

The decision of the Architectural Control Committee shall be made within thirty (30) days after receipt by the Architectural Control Committee of all materials required by the Architectural Control Committee, or within seven (7) business days of receipt of a Builder's request involving a plan for improvements previously approved. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the Architectural Control Committee promptly shall be transmitted to the Applicant at the address furnished by the Applicant to the Architectural Control Committee. Any request for approval of a proposed Improvement to Property shall be deemed approved the Architectural Control Committee unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Architectural Control Committee within thirty (30) days after the date of receipt by the Architectural Control Committee of all required materials; provided, however, that no such deemed approval shall operate to permit any Owner to construct or maintain any Improvement to Property that violates any provision of this Declaration or the Minimum Construction Standards. The Architectural Control Committee shall at all times retain the right to object to any Improvement to Property that violates any provision of this

Declaration or the Minimum Construction Standards.

#### SECTION 4.8. PROSECUTION OF WORK AFTER APPROVAL

After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in strict conformity with the description of the proposed Improvement to Property within nine (9) months after the date of approval or such other period of time as shall have been authorized in writing by the Architectural Control Committee (unless an extension has been granted by the Architectural Control Committee in writing). No Improvement to Property shall be deemed completed until the exterior fascia and trim on the structure has been applied and finished and all construction materials and debris have been cleaned up and removed from the site and all rooms in the Dwelling Unit, other than attics, have been finished. Removal of materials and debris shall not take in excess of thirty (30) days following completion of the exterior. Failure to so prosecute the approved Improvement will negate such approval.

#### SECTION 4.9. INSPECTION OF WORK

The Architectural Control Committee or its duly authorized representative shall have the right to inspect any Improvement to Property before or after completion.

#### SECTION 4.10. NOTICE OF NONCOMPLIANCE

If, as a result of inspections or otherwise, the Architectural Control Committee finds that any Improvement to Property has been constructed or undertaken without obtaining the approval of the Architectural Control Committee, or has been completed other than in strict conformity with the description and materials furnished by the Applicant to the Architectural Control Committee, or has not been completed within the required time period after the date of approval by the Architectural Control Committee, the Architectural Control Committee shall notify the Applicant in writing of the noncompliance ("Notice of Noncompliance"). The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such actions as may be necessary to remedy the noncompliance within the reasonable period of time set forth therein.

#### SECTION 4.11. CORRECTION OF NONCOMPLIANCE

If the Architectural Control Committee determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the determination of the Architectural Control Committee. If the Applicant does not comply with the Architectural Control Committee ruling within such period, the Architectural Control Committee may, at its option but with no obligation to do so, (a) record a Noncompliance against the real property on which the noncompliance exists in the Official Public Records of Real Property of Montgomery County, Texas; (b) remove the non-complying Improvement to Property; and/or (c) otherwise remedy the noncompliance (including, if applicable, completion of the Improvement in question), and, if the Architectural Control Committee elects to take any



action with respect to such violation, the Applicant shall reimburse the Association upon demand for all expenses incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Association, the Architectural Control Committee may levy a Reimbursement Assessment for such costs and expenses against the Owner of the Lot in question. The permissive (but not mandatory) right of the Association to remedy or remove any noncompliance (it being understood that no Owner may require the Architectural Control Committee to take such Actions) shall be in addition to all other rights and remedies that the Association may have at law, in equity, under this Declaration, or otherwise.

#### SECTION 4.12. NO IMPLIED WAIVER OR ESTOPPEL

No action or failure to act by the Architectural Control Committee shall constitute a waiver or estoppel with respect to future action by the Architectural Control Committee, with respect to any Improvement to Property. Specifically, the approval by the Architectural Control Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel against withholding approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement to Property by such Person or otherwise.

#### SECTION 4.13. POWER TO GRANT VARIANCES

The Architectural Control Committee may authorize variances from compliance with any of the provisions of Article V of this Declaration (except for the provisions relating to single family residential construction and use), including restrictions upon placement of structures, the time for completion of construction of Improvement to Property, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, environmental, or other relevant considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Control Committee. Notwithstanding anything contained in this Declaration to the contrary, the Committee Representative shall not have the power to grant a variance. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance; nor shall the granting of any variance affect the jurisdiction of the Architectural Control Committee other than with respect to the subject matter of the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned.

#### SECTION 4.14. COMPENSATION OF ARCHITECTURAL CONTROL COMMITTEE MEMBERS

The members of the Architectural Control Committee shall be entitled to reimbursement by the Association for reasonable expenses incurred by them in the

performance of their duties hereunder as the Board from time to time may authorize or approve.

#### SECTION 4.15. RECORDS OF ACTION

The Architectural Control Committee shall report in writing to the Board of Directors all final action of the Architectural Control Committee and the Board shall keep a permanent record of such reported action.

#### SECTION 4.16. ESTOPPEL CERTIFICATES

The Board of Directors, upon the reasonable request of any interested party and after confirming any necessary facts with the Architectural Control Committee, shall furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice of any falsity or inaccuracy of such a certificate, shall be entitled to rely on such certificate with respect to all matters set forth therein.

#### SECTION 4.17. NONLIABILITY FOR ARCHITECTURAL CONTROL COMMITTEE ACTION

None of the members of the Architectural Control Committee, any Committee Representative, the Association, any member of the Board of Directors shall be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Architectural Control Committee, except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of, the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes, or other governmental laws or regulations. Furthermore, none of the members of the Architectural Control Committee, the Committee Representative, any member of the Board of Directors, or Declarant shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association, or for a tort of another of such individuals, whether such other individuals were acting on behalf of the Association, the Architectural Control Committee, the Board of Directors, or otherwise. Finally, neither the Association, the Board, the Architectural Control Committee, or their officers, agents, members, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements, or portion thereof, or for failure to repair or maintain the same. Notwithstanding the foregoing, the Architectural Control Committee shall have the right to obtain reasonable liability insurance coverage and require the Association to pay the cost of same.

### **ARTICLE V** **ARCHITECTURAL RESTRICTIONS**

### SECTION 5.1. DWELLING UNIT SIZE

The ground floor area of any one story Dwelling Unit, exclusive of porches and garages, shall contain not less than two thousand five hundred (2,500) square feet. The ground floor area of any one and one-half story and two story Dwelling Units, exclusive of porches and garages, shall contain not less than one thousand four hundred (1,400) square feet, and the total living area of any one and one-half story single family dwelling, exclusive of porches and garages shall contain not less than two thousand six hundred twenty-five (2,625) square feet.

### SECTION 5.2. HEIGHT AND CHARACTER OF DWELLING UNIT

No Dwelling Unit shall be erected, altered, or permitted to remain on any Lot other than one Dwelling Unit used for single family residential purposes only, as provided in Section 6.2, and not to exceed the lesser of two (2) stories or forty-five (45) feet above the level of the street in front of the Lot in question, and a fully enclosed garage as provided in Section 5.5. Provided further that it shall be permissible to have third-level living space in the Dwelling Unit completely under a sloped roof with dormers or gables or additional levels beneath ground level in the Dwelling Unit, garage, so long as the maximum height of the buildings does not exceed forty-five (45) feet.

### SECTION 5.3. LOCATION OF DWELLING UNIT

Except as may be authorized in writing by the Architectural Control Committee, no Dwelling Unit or Improvement shall be located nearer to the front Lot line nor nearer to any side or rear Lot line than as permitted by the recorded Plat of the Subdivision. To provide for uniformity and proper utilization of the building area within the Lots, residences or appurtenant structures on a Lot shall not be less than five (5) feet from the residence or appurtenant structure on any contiguous Lot(s).

### SECTION 5.4. USE OF TEMPORARY STRUCTURES

No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn, patio covers, or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that the Association reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Subdivision as in its sole discretion may seem necessary or convenient while selling Lots, selling or constructing residences, or constructing other Improvements within the Subdivision. The right to use temporary structures in connection with the construction of Improvements may be assigned from time to time, in whole or in part, by the Association to Builders. All permitted temporary structures shall be properly maintained.

### SECTION 5.5 CARPORTS/GARAGES

No carports shall be constructed on any Lot. All garages shall be: (a) fully operable; (b) capable of housing at least two (2) automobiles; and, (c) enclosed by garage doors which must be kept in the closed position when the garage is not being used by the Owner



or occupant. Lots adjoining a Common Area and/or Golf Course, may not have garages on the common boundary with Reserves, and Lots 1 and 2, Block 1, may not have garages on the common boundary with Reserve "A", and Lot 41, Block 3, may not have garages on the common boundary with Reserve "B", but rather must locate the garage closer to the interior Lot line. Lots adjoining a Golf Course, may have attached garages, but not detached garages. Except for above referenced Lots, garages may be attached or detached to the residence. All of the above designated Lots must have specific separate Architectural Control Committee approval for the construction of garages in conformity with the provisions. The garage portion of any model home may be used by Builders for sales purposes, storage purposes, and other related purposes. Upon (or before) the sale of any such model home to the first purchaser thereof, the garage portion of the model home shall be converted to a fully enclosed garage with garage doors by the Builder. If the garage portion of the model home is not converted to a fully enclosed garage with garage doors by the Builder upon the sale of such model home, it shall be the obligation of the first purchaser of the model home and each subsequent Owner to the Lot (if not done by the first purchaser) to convert the garage portion of the model home to a fully enclosed garage with garage doors.

#### SECTION 5.6. DRIVEWAYS

Unless the Architectural Control Committee agrees otherwise, each Lot shall have driveway access to the street on which the Dwelling Unit constructed thereon faces. Subject to the foregoing limitations, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to an abutting street. All driveways, public walks and entry walks must be "picture framed" or "trial edged". All entry walks run directly to public walks.

#### SECTION 5.7. ROOFS AND CHIMNEYS

All roofs, including color, shall be approved by the Architectural Control Committee in writing, but all roofs must have a minimum guaranteed life of 25 years and architectural grade laminated shingles.

To the extent required by 202.011 of the Texas Property Code, Owners are entitled to install roof shingles designed primarily to be wind and/or hail resistant; shingles that provide heating and cooling efficiencies greater than those provided by customary composite shingles; and shingles that provide solar generation capabilities (collectively referred to as "Alternative Shingles"), subject to the regulations outlined in the Associations Section 202 Items Policy.

All chimneys shall be constructed with brick, stucco, Hardi Stucco, or stucco board when visible from the front curb.

#### SECTION 5.8. BUILDING MATERIALS; TYPE OF CONSTRUCTION

Unless otherwise approved by the Committee, at least sixty percent (60%) of the exterior wall area of all residences below eight (8) feet and above the foundation excluding detached (but not excluding attached) garages, gables, windows, and door openings must

be of masonry, stucco or brick veneer. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the consent of the Architectural Control Committee. Every garage and accessory building (except a greenhouse) shall correspond in style and architectural and exterior building materials with the dwelling to which it is appurtenant. No structure of any kind or character which incorporates frame construction on the exterior shall be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is of redwood or cedar material. Notwithstanding the foregoing, the Architectural Control Committee is empowered to waive this restriction, if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood. Wall materials used on all Lots shall be restricted to those types and colors of bricks approved by the Architectural Control Committee. All siding material shall be HardiPlank or equal and not more than eight inches (8") in width.

#### SECTION 5.9. GRASS, SHRUBBERY AND LANDSCAPING

Prior to sale thereof, each Lot with a residence thereon shall be sodded front, rear and sides with grass, (Bermuda grass being required for Lots adjoining a Common Area and/or Golf Course) and all areas visible from any street shall be landscaped with Shrubbery of types and quantities approved by the Architectural Control Committee. All grass and shrubbery shall be maintained by the Owner of the Lot. Failure by the Owner to maintain a Lot in a reasonable manner shall give a right to the Association to enter the property for purposes of yard maintenance including mowing of grass and trimming of trees and charge the Owner all costs attributable thereto.

#### SECTION 5.10. MAILBOXES

New or replacement Mailboxes shall be: (a) constructed of brick, tumbled or used brick, stucco, rock, or any combination of the same; (b) a New Orleans Wrought Iron style; as approved by the ACC. House numbers and similar matter used in the Property must be harmonious with the overall character and aesthetics of the community. This provision with respect to mailboxes shall not apply when the United States Postal Service requires cluster box units.

#### SECTION 5.11. SWIMMING POOLS

No above-ground swimming pools shall be permitted.

#### SECTION 5.12. ANTENNAS

No electronic antenna or device of any type for transmitting or receiving electronic signals shall be erected, constructed, or placed on the exterior of any Dwelling Unit or Improvement constructed on any Lot in the Subdivision or free standing on any Lot, except for a satellite dish not visible from the street and no larger than 36" in diameter. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any Lot that unreasonably interferes with the reception of television or

radio signals upon any other Lot.

#### SECTION 5.13. FLAGPOLES

To the extent required by Section 202.012 of the Texas Property Code, Owners are entitled to display a United States Flag, a Texas State Flag, or a replica flag of any branch of the United States Armed Forces ("Permitted Flags"), and to install a flag pole on their property for the purpose of displaying the Permitted Flags; subject to the regulations outlined in the Associations Section 202 Items Policy.

#### SECTION 5.14. EXTERIOR LIGHTING

All exterior lighting must first be approved by the Architectural Control Committee.

#### SECTION 5.15. SOUND DEVICES

No horns, whistles, bells, or other sound devices, except for security systems used exclusively to protect the Dwelling Unit, shall be placed or used on any Lot or Improvements. This paragraph shall not preclude the use of outdoor speakers for hi-fi, stereos, or radios if the sound level is maintained at a reasonably low level with respect to adjoining property. All homes must have security systems.

#### SECTION 5.16. WINDOW TREATMENT

No window in any Dwelling Unit or other Improvement that is visible from any other Lot or a street may be covered with any aluminum foil or other reflective material. Window coverings must be compatible with the design and color of the Dwelling Unit and the overall appearance of the Subdivision. The Architectural Control Committee shall have the sole authority to determine whether particular window coverings are compatible with the design and color of the Dwelling Unit and the overall appearance of the Subdivision.

#### SECTION 5.17. AIR CONDITIONERS

No window, roof or wall type air conditioner that is visible from any street or any other Lot, Common Area or golf course shall be used, placed or maintained on or in any Dwelling Unit, garage or other Improvement.

#### SECTION 5.18. WALLS AND FENCES

The Developer is responsible for the construction of six foot fencing and brick columns adjacent to Lot 1, Block 1 and Lot 41, Block 3, with maintenance provided by the Home Owner Association. An eight foot wood fence shall be constructed on the property line on the north side of Lots 2 and 3 and 5-19, Block 1. The maintenance and repair of this fence is the responsibility of the Lot Owner. Design of the wood fencing on the east boundary of the subdivision Lots 19-38, Block 1 is at the option of the Builder/Owner and shall be maintained by the Lot Owner. All other fencing shall be "good neighbor" wood fencing. Builder must submit fence plans to Developer. The Owner shall be responsible for maintaining all walls and fences installed on their property in their original condition. No



chain link or other wire fencing is allowed. All fences for lots adjoining a Common Area or the Golf Course, specifically Lots 1-3, Block 2 and Lots 1-13 and 15-41, Block 3, must be constructed of wrought iron, along the rear and perpendicular interior lot lines to the principal rear elevation of the residences. Iron fences must be of the design and color as described in drawings provided by the Developer. Fences on corner lots must be wrought iron from the rear property line to the principal rear elevation of the structure. The remainder of the side lot may be fenced with a six foot wood fence of the design illustrated and provided by the Developer.

#### SECTION 5.19. DISPOSAL UNIT REQUIREMENTS

Each kitchen in each residential dwelling or servant's quarters situated on any Lot shall be equipped with a garbage disposal unit, which garbage disposal unit at all times shall be kept in a serviceable condition.

#### SECTION 5.20. REMOVAL OF TRASH AND DEBRIS DURING CONSTRUCTION

During the construction, repair, and restoration of Improvements, each Builder shall remove and haul from the Lots all tree stumps, tree-limbs, branches, underbrush, and all other trash or rubbish cleared from the Lot to permit construction of the Improvements, including landscaping. No burning of trash or other debris is permitted on any Lot, and no materials or trash hauled from any Lot may be placed elsewhere within the Subdivision, unless approved in writing by the Architectural Control Committee. Additionally, each Owner or Builder, during construction of Improvements, continuously shall keep the Lot in a reasonably clean and organized condition. Papers, rubbish, trash, scrap, and unusable building materials are to be kept picked up, and hauled from the Lot on a regular basis. No trash, materials, or dirt shall be placed in any street. Any such trash, materials, or dirt inadvertently spilling or getting into the street or street gutter shall be removed, without delay, not less frequently than daily.

#### SECTION 5.21. EXCAVATION AND TREE REMOVAL

The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as may be necessary in conjunction with the landscaping of or construction on such Lot. No trees shall be cut or removed except for an area within fifteen (15) feet from the proposed slab and five (5) feet from the proposed driveway to provide room for construction of Improvements or to remove dead or unsightly trees; provided, however, that removal of any other tree in excess of a two inch (2") caliber requires the approval of the Architectural Control Committee.

#### SECTION 5.22. PRIVATE UTILITY LINES

All electrical telephone and other utility lines and facilities which are located on a Lot and which are not owned and maintained by a governmental entity or a public utility company shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Architectural Control Committee, and shall be maintained at all times by the Owner of the Lot upon which is located.

### SECTION 5.23. WIND GENERATORS

No wind generators shall be erected or maintained on any Lot that is visible from any street, Lot, or Common Area.

### SECTION 5.24. SOLAR COLLECTORS

Solar panels are permitted to the extent required by Section 202.010 of the Texas Property Code, subject to the regulations outlined in the Associations Section 202 Items Policy.

### SECTION 5.25. DAMAGE OR DESTRUCTION OR IMPROVEMENTS

Owners are bound and obligated through the purchase of a Lot to maintain the Lot and all Improvements thereon in a neat and habitable manner. In the event of damage to any Improvement, the Owner shall have the shorter of the period permitted by applicable laws or sixty (60) days to begin repairing or demolishing the destroyed or damaged portion, and, once timely commenced, such repairs or demolition must be pursued diligently to completion. If, however, damage to the Improvements is not covered by insurance, or if the Owner's claim is not approved by the Owner's insurance company, or if the Owner decides not to restore the Improvements at such time, then the Owner may apply for a "hardship" extension to the operation of this restriction to be submitted to the Board within sixty (60) days from the date of such destruction or damage. The Board shall rule on the Owner's Application for a "hardship" extension within thirty (30) days from the date of submission. In no event shall the granting of a "hardship" extension in a particular case be deemed a waiver of the right to enforce this restriction thereafter. If a hardship extension is granted, the Owner thereafter immediately shall cause the damaged or destroyed Improvement to be demolished and the Lot to be suitably landscaped, subject to the approval of the Architectural Control Committee, so as to present a pleasing and attractive appearance. It shall be the duty of the Owner to keep all exterior finishes in good and attractive condition. Should Owner fail to do so, the Association may make such repairs and painting as may be necessary to maintain the overall attractive appearance of the property consistent with the subdivision standards and all charges therefor shall be borne by the Owner.

### SECTION 5.26. DUTY OF MAINTENANCE

The Owner of each Lot shall, at the Owner's sole cost and expense, keep the Owner's Lot and Dwelling Unit in a well maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Mowing grass on a regular basis;
- (c) Tree and shrub pruning;

- (d) Adequately watering landscaped areas;
- (e) Keeping exterior lighting and maintenance facilities in working order;
- (f) Keeping lawn, garden and other landscaped areas alive, free of weeds, and attractive;
- (g) Keeping parking areas, driveways and roads in good repair;
- (h) Complying with all government health and police requirements;
- (i) Cleaning and maintaining landscaped areas lying between public right-of-way lines and the Owner's Lot unless such streets or landscaped areas are expressly designated to be Common Areas maintained by applicable governmental authorities or the Association.

#### SECTION 5.27. RELIGIOUS ITEMS

Religious Items related to any faith that is motivated by an Owner's sincere religious belief or tradition, may be displayed, as required by Section 202.018 of the Texas Property Code, subject to the regulations called out in the Associations Section 202 Items Policy.

#### SECTION 5.28. RAIN BARRELS

Rainwater Recovery Barrels or Systems ("Barrels/System") shall be permitted to the extent required by Section 202.007(d) of the Texas Property Code, subject to the regulations called out in the Associations Section 202 Items Policy.

### **ARTICLE VI** **USE RESTRICTIONS**

#### SECTION 6.1. GENERAL

No Owner shall use the Common Areas or use or permit such Owner's Lot or Dwelling Unit to be used for any purpose that would (a) void any insurance in force with respect to the Subdivision; (b) make it impossible to obtain any insurance required by this Declaration; (c) constitute a public or private nuisance, which determination may be made by the Board in its sole discretion; (d) constitute a violation of the Declaration or any applicable law or (e) unreasonably interfere with the use and occupancy of the Subdivision by other Owners.

## SECTION 6.2. SINGLE FAMILY RESIDENTIAL USE

Each Owner shall use his Lot and the Dwelling Unit on his Lot, if any, for single family residential purposes only. As used herein, the term "single family residential purposes" shall be deemed to specifically prohibit, by way of illustration but without limitation, the use of any Lot for a duplex apartment, a garage apartment or any other apartment or for any multi-family use, or for any business, educational, church, professional, or other commercial activity of any type provided that an Owner may use his residence as a personal office for a profession or occupation, if: (a) the public is not invited, permitted, or allowed to enter the Dwelling Unit or any structure or Improvement upon such Lot and conduct business therein; (b) no signs advertising such profession or business are permitted; (c) no on-site employees are permitted; (d) no offensive activity or condition, noise and/or odor are permitted; and (e) such use in all respects complies with the laws of the State of Texas, the ordinances of the City of Conroe, and the laws, rules, and regulations of any regulatory body or governmental agency having authority and jurisdiction over such matters. The term "single family" shall also be defined as: (a) one or more persons related by blood, marriage, or adoption, which may include only parents, their children (including foster children and wards), their dependent brothers and sisters, their grandparents and domestic servants; and (b) no more than two unrelated persons living together as a single housekeeping unit and their children (including foster children and wards), their dependent brothers or sisters, their grandparents and their domestic servants.

## SECTION 6.3. VEHICLES

No motor vehicle or non-motorized vehicle, boat, trailer, marine craft, recreational vehicle, camper rig off of truck, hovercraft, aircraft machinery, or equipment of any kind may be parked or stored on any part of any Lot, easement, right-of-way, unless such vehicle or object is completely concealed from public view inside a garage or enclosure approved by the Architectural Control Committee. Passenger automobiles, passenger vans, motorcycles, or pick-up trucks that: (a) are in operating condition; (b) have current license plates and inspection stickers; (c) are in daily use as motor vehicles on the streets and highways of the State of Texas; (d) which do not exceed six feet six inches (6'6") in height, or eight feet (8') in width, or twenty-four feet (24') in length; and (e) have no commercial advertising located thereon, may be parked in the driveway on a Lot; however, no vehicle shall be parked so as to obstruct or block a sidewalk. No vehicle may be repaired on a Lot unless the vehicle being repaired is concealed from view inside a garage or other approved enclosure. This restriction shall not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity; provided, however, overnight parking of ANY vehicles in the street is prohibited. For safety reasons, NO overnight parking of ANY vehicles in the street is permitted; however, owners or occupants of Lots may seek a temporary variance from this restriction for temporary guests. Any such request for a variance must receive the prior approval of the Board of Directors of the Association. The Board of Directors of the Association may adopt additional Rules and

Regulations regulating parking on the streets in the Subdivision. Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways or on any Lot. Any vehicle parked in violation of this section or parking rules promulgated by the Board may be towed.

#### SECTION 6.4. NO NOXIOUS OR OFFENSIVE ACTIVITY

No noxious or offensive activity shall be carried on upon any property within the Subdivision nor shall anything be done or placed thereon that is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others. Among other noxious or offensive activity, it shall be considered an offensive activity to park a vehicle on any non-paved portion of the Lot.

#### SECTION 6.5. NO HAZARDOUS ACTIVITIES

No activity shall be conducted on and no Improvements shall be constructed on any property within the Subdivision that is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior or exterior fireplace.

#### SECTION 6.6. TRASH RECEPTACLES AND COLLECTION

All trash receptacles shall be screened by fences or shrubbery so as not to be generally visible by the public or from the Golf Course, unless otherwise approved in writing by the Architectural Control Committee. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the applicable governmental authority, and/or the Association, in connection with the storage and removal of trash and garbage.

It is preferred that All trash Receptacles should be placed at the curb the morning of scheduled pickup, and should be removed from the curb after pickup is complete. However, in accordance with municipal code, Part II, Section 54-34 (b) *"No waste intended for municipal collection may be placed at curbside earlier than 5:00 p.m. of the day prior to the scheduled collection day. The collection cart and any items not collected, should be removed from curbside not later than 12:00 noon of the day following the day on which collection is scheduled to occur."*

All Lots shall at all times be kept in a healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly-fitting lids, and which shall be maintained in a clean and sanitary condition. No Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long



as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on any Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot. All woodpiles, yard equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Dwelling Units, streets, the Golf Course, and property located adjacent to the Lot. All rubbish, trash, and garbage shall regularly be removed from the Property and shall not be allowed to accumulate thereon.

#### SECTION 6.7. CLOTHES DRYING

No outside clothesline or other outside facilities for drying shall be erected placed or maintained on any Lot if visible from any other Lot, nor shall clothing or household fabric or any other article be hung, dried, or aired on any Lot in the Subdivision in such a way as to be visible from other Lots/streets or the Common Area.

#### SECTION 6.8. ANIMALS

No animals of any kind shall be raised, bred, or kept in the Subdivision except as hereinafter provided. A total of two (2) household pets may be kept on a Lot (except for fish of a type customarily kept within normal home aquariums, with respect to which there shall be no limitation on amount) provided that: (a) they are not kept, bred, or maintained for commercial purposes; (b) they do not make objectionable noises, create any objectionable or, otherwise constitute an unreasonable nuisance or danger to other Owners; (c) they are kept within the Dwelling Unit, an enclosed yard on the Lot occupied by the Owner of such pets, or on a leash being held by a Person capable of controlling the animal; and (d) they are not in violation of any other provision of this Declaration and such limitations as may be set forth in the Rules and Regulations. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal that, in the sole opinion of the Board, is not being maintained in accordance with the foregoing restrictions. Each Owner, tenant or guest of an Owner shall have the absolute duty and responsibility to clean up after such animals to the extent they have used any portion of the Lot of another Owner or any Common Areas.

#### SECTION 6.9. SIGNS AND BILLBOARDS

No signs, billboards, posters or advertising devices of any character shall be erected, permitted or maintained on any Lot except one (1) sign of not more than nine (9) square feet area which is used to: (a) advertise the property for sale or lease; (b) indicate traffic control or security services; (c) identify the builder or contractor while construction is in progress on such Lot; or (d) promote a political candidate, party or issue (1) no earlier than 90 days before the date of the election to which the sign relates; and (2) must be removed within 10 days after that election date, and must be ground-mounted. The Association shall have the right to erect identifying signs at each entrance to the Subdivision. In no event shall any sign, billboard, poster or advertising device of any character, other than as specifically prescribed in the first sentence of this Section 6.9 be erected, permitted or maintained on any Lot without the express prior written consent of



the Architectural Control Committee.

#### SECTION 6.10. OIL AND MINING OPERATIONS

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall any walls, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

#### SECTION 6.11. TREATMENT FACILITIES

No Lot shall be used for the operation of a boarding or rooming house, a residence for transients, a "group home", "family home", "community home", "half-way house", day-care center rehabilitation center, treatment facility, or residence of unrelated individuals who are engaging in, undertaking, or participating in any group living, rehabilitation, treatment, therapy, or training with respect to previous or continuing criminal activities or convictions, alleged criminal activities, alcohol or drug dependency, physical or mental handicaps or illness, or other similar matters, unless otherwise allowed by the terms of any law specifically negating the provisions of restrictive covenants prohibiting same.

#### SECTION 6.12. LEASING

Lots may only be leased for single family residential purposes as defined in this Declaration. No Owner shall be permitted to lease his Lot for hotel or transient purposes, which for purposes of this Section **6.12** is defined as a period of less than thirty (30) days. No Owner shall be permitted to lease less than the entire Lot. Every such lease shall be in writing. Every such lease shall provide that the tenant shall be bound by and subject to all of the obligations of the Owner under this Declaration. The Owner making such lease shall not be relieved from any of such obligations. Upon the execution of a lease agreement, the Owner shall notify the Association in writing of the Owner's residence address and the name of Owner's Lessee. No Lessee shall be entitled to use the recreational facilities or the Common Area of the Association until the information specified in this Section is provided to the Association in writing and the Owner further notifies the Association in writing that the Lessee has been granted the authority to use the recreational facilities and Common Area of the Association by such Owner.

#### SECTION 6.13. GARAGE SALES PROHIBITED

No Owner may conduct sales of personal property on a Lot at any time; however, the Association "may" choose to designate one day per year for a community wide "garage sale" to be held on common grounds designated by the Association. Items may be donated to the Association to help offset shared community expenses such as Holiday decorations or other costs that benefit all of West Fork, and/or members may establish a booth for the purpose of selling personal items for their own benefit.

#### SECTION 6.14. ATHLETIC EQUIPMENT

All Athletic equipment, including swing-sets, trampoline's, play-scapes, slides, portable basket ball standards (goals), sports courts, etc., must have plans submitted and approved in advance by the ACC and should be designed in harmony with the construction of the community. Upon approval by the ACC, Residents may locate athletic equipment in their yards behind the fence line per approved design and placement plan. Athletic equipment must be stained/painted, and maintained to blend in and compliment the neighborhood and the residence. Platform height of play-scapes is limited to provide privacy to neighbors. Fixed basketball goals are NOT permitted whether attached to the residence or to a poll. Portable basketball goals ARE permitted providing; (a) the placement plan is approved by the ACC; (b) placement during use may be not be closer to the road than 15 feet from the nearest curb; (c) the portable goal must be moved to a location generally out of view from the street when not in use.

#### SECTION 6.15. HOLIDAY DECORATIONS

The acceptable time-frame for winter holiday decorations is from the day after Thanksgiving until January 10<sup>th</sup>. All other decorations must be displayed no more than fifteen (15) days prior to the day of the holiday, and must be removed within seven (7) days after the holiday. All holiday lighting must have a "UL" or comparable rating. Outdoor lights must be designed for outdoor use. All members must insure that the number of, and times of use of holiday lights do not disturb other Residents.

### **ARTICLE VII COVENANTS FOR ASSESSMENTS**

#### SECTION 7.1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS

The Association, for each Lot owned within the Subdivision, hereby covenants, and each Owner agrees and covenants by acceptance of a deed to pay the Association:

- (a) Annual Assessments;
- (b) Special Assessments; and
- (c) Reimbursement Assessments, all as hereinafter defined.

The Annual, Special, and Reimbursement Assessments (the "Assessments"), together with interest, costs and reasonable attorney's fees, shall also be a charge on the land and shall be a continuing lien upon the property against which the Assessments are made. The assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessments fell due.

## SECTION 7.2. PURPOSE OF ANNUAL ASSESSMENTS

Each Lot in the Subdivision is hereby subjected to an Annual Assessment for the purpose of creating a fund to be designated and known as the "Maintenance Fund", which Annual Assessment will be paid by the Owner or Owners of each Lot within the Subdivision to the Association, on or before January 1 of each year, in advance annual installments, commencing on a date and in a manner to be promulgated by the Board of Directors of the Association. The rate at which each Lot will be assessed will be determined annually and may be adjusted from year to year by the Association, as hereinafter provided as the needs for the Subdivision may, in the judgment of the Association, require. Such assessment will be uniform, except as hereinafter provided for any Builder building on a vacant lot. The Association shall use proceeds of said Maintenance Fund for the use and benefit of all residents of the Subdivision, as well as any other subdivision brought within the jurisdiction of the Association; provided, however, that other subdivisions to be entitled to the benefit of this Maintenance Fund must be impressed with and subjected to the Annual Assessment on a uniform, per Lot basis, equivalent to the Annual Assessment imposed hereby. The uses and benefits to be provided by the Association shall include, by way of clarification and not limitation, at its sole option, all costs of the Association in preparation of this Declaration, formation of the Homeowners Association, and other front end costs in developing Common Areas and amenities, and any and all of the following: constructing and maintaining paths, parks, lakes, landscape reserves, parkways, easements, esplanades, fences, cul-de-sac and street medians, recreational facilities, including swimming pools and tennis courts, play courts, and other common areas, payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions and conditions affecting the Subdivision to which the Maintenance Fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the Assessments, employing security, lifeguards, instructors, and operators, caring for vacant Lots, garbage collection, and doing other things necessary or desirable, in the opinion of the Association, to keep the Subdivision neat and in good order or which is considered of general benefit to the Owners or occupants of the Subdivision. It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith. Nothing herein shall constitute a representation that any of the above will, in fact, be provided by the Association.

## SECTION 7.3. MAXIMUM ANNUAL ASSESSMENT

Until January 1 of the year immediately following the conveyance of the first Lot to a resident Owner, the maximum annual Assessment shall be \$600.00 per Lot per year.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased each year not more than fifteen percent (15%) above the Annual Assessment for the previous year without a vote of the membership. Said 15% shall be compounded annually for each year from the date hereof,

meaning that the Annual Assessment may be increased by the accumulated maximum amount.

- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above compounded fifteen percent (15%) by a vote of two-thirds (2/3) of Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the Annual Assessment at an amount not to exceed the maximum permitted herein.

#### SECTION 7.4. SPECIAL ASSESSMENTS

In addition to the Annual Assessments authorized above, the Association may levy, any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any use or benefit provided for herein in Section 7.2. Provided, however, any such assessment shall have the assent of two-thirds (2/3rd) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

#### SECTION 7.5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 7.3 AND 7.4

Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.3 or 7.4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such called meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### SECTION 7.6. UNIFORM RATE OF ASSESSMENT

Both Annual and Special Assessments must be fixed at a uniform rate; provided, however, Lots which are owned by a Builder, as defined herein, shall be assessed at the rate of one-half (1/2) of any Annual Assessment or Special Assessment.

#### SECTION 7.7. DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENTS

The Annual Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first Annual Assessment shall be adjusted according to the number of days remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment

against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

#### SECTION 7.8. REIMBURSEMENT ASSESSMENTS

The Board of Directors, subject to the provisions hereof, may levy a Reimbursement Assessment against any Member if the failure of the Member or the Member's family, guests, or tenants to comply with this Declaration, the Articles of Incorporation, the Bylaws, Minimum Construction Standards, or the Rules and Regulations shall have resulted in the expenditure of funds or the determination that funds will be expended by the Association to cause such compliance. The amount of the Reimbursement Assessment shall be due and payable to the Association (10) days after notice to the Member of the decision of the Board of Directors that the Reimbursement Assessment is owing.

#### SECTION 7.9. ESTOPPEL CERTIFICATES

The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

#### SECTION 7.10. ATTRIBUTION OF PAYMENTS

If any Owner's payment of an Assessment payment is less than the amount assessed and the payment does not specify whether it should be applied against a Common Assessment, Special Assessment, or Reimbursement Assessment, the payment received by the Association from the Owner shall be credited in the following order of priority: (a) Reimbursement Assessment until satisfied; (b) Special Assessment until satisfied; (c) Annual assessment until satisfied. In each application of funds, payments shall be credited first to interest, attorney's fees, and other costs of collection, and then to principal reduction.

#### SECTION 7.11. EFFECT OF NONPAYMENT OF ASSESSMENTS

Any assessments not paid within thirty (30) days after the due date shall be delinquent and shall be subject to the following:

- (a) Late charges, interest at the rate of eighteen percent (18%) per annum from the due date or the maximum rate of interest allowed by law, if less than eighteen percent (18%), and all costs of collection, including reasonable attorney's fees; and
- (b) All rights of the Owner as a Member of the Association shall be automatically suspended until all Assessments and related costs are paid in full, including



usage of the common Area. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the common Area or abandonment of his Lot.

The Association may bring an action at law against the Owner personally obligated to pay same or foreclose the Association's lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale, and each Owner expressly grants to the Association a power of sale in connection with the non-judicial foreclosure of the Association's lien and the right to appoint trustees to exercise said power of sale. Non-judicial foreclosure shall be conducted by notice and posting of sale in accordance with the then applicable laws of the state of Texas; and the Board of Directors of the Association is expressly empowered hereby to designate a trustee in writing from time to time to post or cause to be posted any required notices and to conduct any such non-judicial foreclosure sale. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale, and to acquire, lease, mortgage, or convey same.

#### SECTION 7.12. NO OFFSETS

The Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration or claim by the Owner of non-use of the Common Areas or abandonment of his Lot or claim by the Owner of inconvenience or discomfort arising from the making of repairs or Improvements to Common Areas from any action taken to comply with any law or any determination of the Board of Directors or from any other reason.

#### SECTION 7.13. SUBORDINATION OF THE LIEN TO MORTGAGES

The lien of the Assessments provided for herein shall be subordinate to any purchase money liens or any other validly created lien as against the homestead. Sale or transfer of any Lot shall not affect the lien of the Assessment; however, the sale or transfer of any Lot pursuant to the foreclosure of a purchase money lien or any proceeding in lieu thereof, shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for the Assessments thereafter becoming due or from the lien thereof.

### **ARTICLE VIII** **EASEMENTS AND UTILITIES**

#### SECTION 8.1. TITLE TO UTILITY LINES

The title conveyed to any Lot within the Subdivision shall be subject to any

easement affecting same for utility or other purposes and shall not be held or construed to include the title to the water, gas, electricity, telephone, cable television, security, storm sewer, or sanitary sewer lines, poles, pipes, conduits, or other appurtenances or facilities constructed by the Declarant, the Association, or public or private utility companies upon, under, along, across, or through such utility easements; and the right (but no obligation) to construct, maintain, repair, and operate such systems, utilities, appurtenances, and facilities is reserved to the Association and their successors and assigns. The Owners of the respective Lots shall not be deemed separately to own pipes, wires, conduits, or other service lines running through their property that are used for or serve other Lots, but each Owner shall have an easement for such use of the aforesaid facilities as shall be necessary for the use, maintenance, and enjoyment of his Lot.

### SECTION 8.2. ACCESS EASEMENT FOR OWNERS

A non-exclusive easement hereby is granted to each Owner in and to Lots for the purpose of reasonable and necessary access to such Owner's Lot for construction, maintenance, and repair of Improvements thereon, provided that the Owner using an adjacent Lot for access purposes (the "Easement Site") shall keep such Easement Site free of any trash, rubbish, and any other materials at all times during or after construction. Prior to any exercise of the access easement granted in this Section 8.2, the Owner or Builder of the Lot intending to exercise such easement upon, over, or across the Easement Site shall give notice of such intent to the Owner (or occupant) of the Easement Site. Unless otherwise authorized in writing by the Owner of the Easement Site, this access easement may be used only between the hours, local time, of 7:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m., Saturday, and may be used only if the Owner (or occupant) intending to use such access easement gives at least twenty-four (24) hours notice (oral or written) to the Owner (or occupant) of the Easement Site (except in the case of an emergency or if no Improvements have been constructed on the Easement Site, in which case no notice need be given). In all events, the Easement Site shall be used in such manner as to avoid any unreasonable or unnecessary interference with the possession, use, or enjoyment of the Easement Site by the Owner (or occupant) or such Easement Site, and the Owner using Easement Site in all circumstances promptly shall repair any damage to the Easement Site caused by such Owner's use. If the Owner using the Easement Site does not repair any damage to the Easement Site caused by the Owner's use thereof within thirty (30) days after notice to the Owner harming the Easement Site of the damage, then the Association shall have the right, but shall not be obligated to, repair such damage and assess a Reimbursement Assessment against the Lot of the Owner harming the Easement Site. The Owner of the damaged Easement Site also shall be entitled to exercise all available legal and equitable remedies, in the event of the subject Owner's failure to repair any damage to the Easement Site.

### SECTION 8.3. ASSOCIATION EASEMENTS

The Association, its agents, servants, and employees shall have all other such easements as specifically referenced throughout this Declaration.

**ARTICLE IX**  
**ELECTRICAL SERVICE**

**SECTION 9.1. UNDERGROUND ELECTRICAL DISTRIBUTION**

The Owner of each Lot shall, at his own cost, maintain his Dwelling Unit in accordance with the subdivision underground electric distribution agreement. For so long as underground service is maintained in the Subdivision, the electric service to each Dwelling Unit therein shall be underground, uniform in character, and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

**ARTICLE X**  
**INSURANCE**

**SECTION 10.1 GENERAL PROVISIONS**

The Board shall have the authority to determine whether or not to obtain insurance for the Association and upon the Common Areas, if any, and if insurance is obtained, the amounts thereof. In the event that insurance is obtained, the premiums for such insurance shall be an expense of the Association which shall be paid out of the Maintenance Fund. Notwithstanding the foregoing, the Association shall at all times maintain adequate comprehensive general liability insurance and directors and officers liability insurance.

**SECTION 10.2. INDIVIDUAL INSURANCE**

Each Owner shall be responsible for insuring his Lot and his Dwelling Units, its contents and furnishings. Each Owner, at his own cost and expense, shall be responsible for insuring against the liability of such Owner.

**ARTICLE XI**  
**AMENDMENT TO DECLARATION AND DURATION OF RESTRICTIONS**

**SECTION 11.1. AMENDMENT BY OWNERS**

The terms of this Declaration may be amended at any time by an instrument signed by those Owners owning at least two-thirds (2/3rds) of the Lots within the Subdivision. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the Official Public Records of Real Property of Montgomery County, Texas.

**SECTION 11.2. DURATION**

This Declaration shall remain in full force and effect until December 31, 2026, and shall be extended automatically for successive ten (10) year periods; provided however, that this Declaration may be amended at any time, as set forth in Sections 11.1, and 11.2.

**ARTICLE XII**  
**MISCELLANEOUS**

**SECTION 12.1. SEVERABILITY**

In the event of the invalidity or partial invalidity or partial unenforceability of any provision in this Declaration, the remainder of the Declaration shall remain in full force and effect.

**SECTION 12.2. NUMBER AND GENDER**

Pronouns, whenever used herein, and of whatever gender, shall include natural persons and corporations, entities and associations of every kind and character, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

**SECTION 12.3. DELAY IN ENFORCEMENT**

No delay in enforcing the provisions of this Declaration with respect to any breach or violation thereof shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time.

**SECTION 12.4. ENFORCEABILITY**

This Declaration shall run with the Subdivision and shall be binding upon and inure to the benefit of and be enforceable by the Association and each Owner of a Lot in the Subdivision, or any portion thereof, and their respective heirs, legal representatives, successors, and assigns. In the event any action to enforce this Declaration is initiated against an Owner or occupant of a Lot by the Association, the Association or other Owner, as the case may be, shall be entitled to recover reasonable attorney's fees from the Owner or occupant of a Lot who violated this Declaration.

**SECTION 12.5. REMEDIES**

In the event any person shall violate or attempt to violate any of the provisions of the Declaration, the Association, each Owner of a Lot, or any portion thereof, within the Subdivision may institute and prosecute a proceeding at law or in equity to abate, preempt or enjoin any such violation or attempted violation to recover monetary damages caused by such violation or attempted violation.

**SECTION 12.6. RIGHT OF ENTRY; ENFORCEMENT BY SELF HELP**

The Association shall have the right, in addition to and not in limitation of all the rights it may have under this Declaration, to enter upon any unoccupied, vacant or abandoned Lot, including any Improvements located thereon, if deemed reasonably necessary by the Board of Directors of the Association, for emergency, health, safety and/or security purposes to make repairs to Improvements, mow and edge grass, trim

trees, weed or remove flower beds and any other yard maintenance items, secure the Property, or abate or remove things or conditions which are potentially hazardous or which violate any provisions of this Declaration. Such right may be exercised by the Association's Board, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, the Association shall first attempt to provide reasonable notice to the last known Owner of the Lot. All costs of such efforts, including reasonable attorney's fees actually incurred, shall be assessed against the Owner of the Lot and shall be collected as provided for herein for the collection of the Assessments.

#### SECTION 12.7. VIOLATIONS OF LAW

Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property within the Subdivision hereby is declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures as set forth in this Declaration.

#### SECTION 12.8. REMEDIES CUMULATIVE

Each remedy provided under this Declaration is cumulative and not exclusive.

#### SECTION 12.9. NO REPRESENTATIONS OR WARRANTIES

No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Subdivision, or any improvement thereon, its or their physical condition, compliance with applicable laws, fitness for intended use, or in connection with the Subdivision, sale, operation, maintenance, cost of maintenance, taxes, or regulation thereof, unless and except as specifically shall be set forth in writing.

#### SECTION 12.10. VACATING OF PLAT OR CORRECTION OF PLAT BY OWNERS

No provisions of this Declaration shall preclude the Owners of Lots in the Subdivision from vacating a plat or filing a replat to correct any error in the original platting or replatting of such Lots in the Subdivision, or from otherwise recording a partial replat, provided that such vacating or replatting is done in accordance with applicable Texas statutes.

#### SECTION 12.11. LIMITATION ON LIABILITY

Neither the Association, the Board, the Architectural Control Committee, or any officer, agent or employee of any of the same acting within the scope of their respective duties described in this Declaration shall be liable to any Person for any reason or for any failure to act if the action or failure to act was in good faith and without malice.



#### SECTION 12.12. CAPTIONS FOR CONVENIENCE

The titles, heading, captions, and article and section numbers used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration. Unless the context otherwise requires, references herein to articles and sections are to articles and sections of this Declaration.

#### SECTION 12.13. GOVERNING LAW

This Declaration shall be construed and governed under the laws of the State of Texas.

#### SECTION 12.14. DISSOLUTION OF THE ASSOCIATION

Should the Homeowners Association ever be dissolved, the assets of the Association shall be conveyed to a nonprofit organization with similar purposes to the purposes set out for this Association or such assets shall be dedicated or transferred to a public body.

#### SECTION 12.15. APPROVAL BY THE VETERANS ADMINISTRATION (VA) OR THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) FOR CERTAIN ACTS

Notwithstanding anything to the contrary herein, any annexation of additional properties, mergers and/or consolidations with other similar organizations, mortgaging of Common Areas, and dissolution or amendment of Articles will require HUD or VA approval (so long as HUD or VA is empowered to give such approvals) so long as there exists a Class B membership.

#### SECTION 12.16. COLLECTION OF ASSESSMENTS BY MORTGAGEES

Mortgagees of properties within the Subdivision are not required to collect assessments.

#### SECTION 12.17. FAILURE TO PAY ASSESSMENTS HEREIN REQUIRED AS AFFECTING VA OR HUD INSURED MORTGAGES

Notwithstanding anything to the contrary herein, it shall not be an event of default under a federally insured mortgage to fail to pay subdivision assessments.

#### SECTION 12.18. MORTGAGE OR CONVEYANCE OF COMMON AREA

The Common Area may not be mortgaged or conveyed unless approved by a minimum of 2/3rds of the Lot Owners, excluding the developer.

#### SECTION 12.19. ACCESS THROUGH COMMON AREA

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

access.

**SECTION 12.20. NO ABSOLUTE LIABILITY ON LOT OWNER FOR DAMAGE TO COMMON AREA**

There shall be no absolute liability on the Lot Owner for damage to the common area or for damages to other Lots in the Subdivision.

**ARTICLE XIII**  
**PROPERTY RIGHTS IN COMMON AREAS**

**SECTION 13.1. CONVEYANCES TO THE ASSOCIATION**

Although Declarant may retain the legal title to easements or fee simple parcels designated as Common Areas, or portions thereof, until Declarant conveys legal title to the last Lot in the Subdivision, Declarant, at any time after the date hereof, may convey legal title to all or a portion of such Common Areas to the Association. The Association shall be obligated to accept title to, operate and maintain the Common Areas conveyed to the Association. Declarant hereby covenants that the Common Areas or portions thereof that it may convey to the Association shall be free and clear of all liens and encumbrances (other than the lien for property taxes not then due and payable).

**SECTION 13.2. RIGHTS OF MEMBERS**

Every Member of the Association and the Declarant shall have a beneficial interest of nonexclusive use and enjoyment in and to the Common Areas and such Common Areas and such interest shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to publish Rules and Regulations governing the use of the Common Area and to establish penalties for infractions thereof; and
- (b) The right of the Association to enter into and execute contracts with any party (including, without limitation, Declarant or its affiliates) for the purpose of providing maintenance or other materials or services consistent with the purposes of the Association and this Declaration.

**ARTICLE XIV**  
**ANNEXATION OF ADDITIONAL LAND**

**SECTION 14.1. ADDITIONAL LAND**

Additional residential property and Common Areas outside of the Subdivision that are adjacent to or in the proximity of the Subdivision, at any time and from time to time, may be annexed by the Association into the Subdivision, without the consent of the Owners or any other parties; provided, however, that such additional property is made


subject to similar terms and conditions as set forth in this Declaration and that such annexed property is impressed with and subject to similar terms and conditions as set forth in this Declaration and that such annexed property is impressed with and subject to at least the Assessments imposed pursuant to this Declaration. Such additional property may be annexed into this Subdivision by a written instrument executed by the Association and recorded in the Official Public Records of Real Property of Montgomery County, Texas.

**ARTICLE XV  
CONFLICTS**

In the event of any conflict between the Articles of Incorporation and the By-Laws, the By-Laws shall control. In the event of any conflict between these Declarations and the By-Laws, the Declaration shall control.

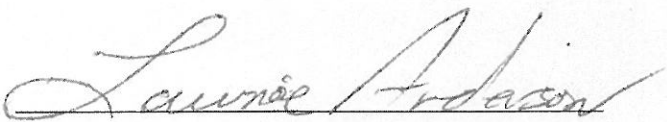
In accordance with Article XI, Section 11.1 of these Declarations, at the annual meeting of the Members of the Association on February 25, 2013, at least two-thirds (2/3rds) of members present, in person or by proxy, approved these Amended and Restated Declaration of Covenants, Conditions, and Restrictions of the Association.

IN WITNESS WHEREOF, the herein, has executed the foregoing instrument on this \_\_\_\_ day of April 2013.

  
Secretary

ATTEST:

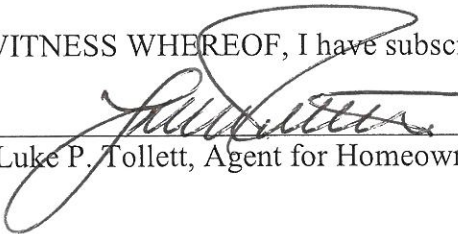
4/17/2013  
Date

  
President

**CERTIFICATION**

“I, the undersigned, do hereby certify that I am an agent of Homeowners Association of West Fork, Inc., a Texas Nonprofit Corporation and that the foregoing instrument is a true and correct copy of the original.”

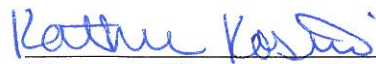
IN WITNESS WHEREOF, I have subscribed my name on this 30<sup>th</sup> day of April, 2013.

By:   
Luke P. Tollett, Agent for Homeowners Association of West Fork, Inc.

STATE OF TEXAS                   §  
  §  
COUNTY OF MONTGOMERY   §

BEFORE ME, the undersigned authority, on the day personally appeared Luke P. Tollett, Attorney for the Homeowners Association of West Fork, Inc., and known by me to be the person whose name is subscribed to the foregoing document and being by me first duly sworn, declared that he is the person who signed the foregoing document in his representative capacity and that the statements contained therein are true and correct.

Given under my hand and seal of office this the 30<sup>th</sup> day of April, 2013.

  
Notary Public, State of Texas

**After recording return to:**  
HOLT & YOUNG, P.C.  
9821 Katy Freeway, Ste. 350  
Houston, Texas 77024



WITH WALL OF HOUSE  
CLOSEST TO SIDE P.L.

OPEN SPACE

LENGTH OF 90" IRON  
FENCE WILL VARY.  
ALIGN W/ WALL OF HOUSE  
CLOSEST TO  
SIDE P.L.

12" WRAUGHT IRON FENCE PER DETAIL  
ALIGN WITH  
WALL  
CLOSEST TO  
SIDE P.L.

OPTIONAL W/ WOOD SIDE FENCE  
ALONG STREET

SCREEN A/C UNITS FROM  
PUBLIC VIEW WITH MINIMUM  
OF 3 SHIKES (PHOTODIA,  
LIGNSTRUM OR COMMON NANOITE)  
SCREEN SIZE  
(TYPICAL)

B.L.  
P.O.W.

fence layout for lots backing on golf course/common open space





**FILED FOR RECORD**

05/03/2013 1:37PM



COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS  
COUNTY OF MONTGOMERY

I hereby certify this instrument was filed in file number  
sequence on the date and at the time stamped herein  
by me and was duly RECORDED in the Official Public  
Records of Montgomery County, Texas.

**05/03/2013**



County Clerk  
Montgomery County, Texas