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SECOND RESTATEMENT  
OF  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
LONG CREEK SUBDIVISION  
GUADALUPE COUNTY, TEXAS  
OF JULY, 2004

GOLF ASSOCIATES, LTD.  
DECLARANT  
MCQUEENEY, GUADALUPE COUNTY, TEXAS

THIS SECOND RESTATEMENT OF THE COVENANTS, CONDITIONS, AND RESTRICTIONS OF RECORD IS MEANT TO MERELY RESTATE THE PRIOR, RECORDED COVENANTS OF RECORD AND OTHER THAN COMBINING ALL SUCH RECORDED DOCUMENTS, IS MEANT TO CORRECT CLERICAL ERRORS IN THE ORIGINAL COVENANTS, CONDITIONS AND RESTRICTIONS OF RECORD RECORDED IN VOLUME 1292, PAGES 0191 THROUGH 0232, OFFICIAL RECORDS OF GUADALUPE COUNTY, TEXAS; AS WELL AS THE FOUR AMENDMENTS IDENTIFIED BELOW AND THE RESTATEMENT OF MAY, 2004. ALL OF THE PERTINENT PRIOR DOCUMENTS ARE AS FOLLOWS:

1. Covenants, conditions and restrictions set forth on Plat of Long Creek Subdivision Phase I, recorded in Volume 5, Pages 348A-350A, Map and Plat Records of Guadalupe County, Texas;
2. Covenants, conditions, and restrictions set forth on replat of Long Creek Subdivision Phase 1, as recorded in Volume 5, Pages 384A-386A, of the Map and Plat Records of Guadalupe County, Texas;
3. Covenants, conditions, and restrictions set forth on Plat of Long Creek Subdivision Phase 2A, recorded in Volume 6, Page 6, of the Map and Plat Records of Guadalupe County, Texas;
4. Covenants, conditions, and restrictions set forth on second replat of Long Creek Subdivision Phase 1, as recorded in Volume 6, Pages 39-43, of the Map and Plat Records of Guadalupe County, Texas;
5. Covenants, conditions, and restrictions set forth on Plat of Long Creek Subdivision Phase 2B, recorded in Volume 6, Page 70, of the Map and Plat Records of Guadalupe County, Texas;
6. Covenants, conditions, and restrictions set forth on replat of a portion of Long Creek Subdivision Phase 1, establishing Lots 24A and 1A, Block 2, as recorded in Volume 6, Page 305, of the Map and Plat Records of Guadalupe County, Texas;
7. Covenants, conditions, and restrictions set forth on replat of Long Creek Subdivision Phase 2A, establishing Lot 4A, Block 14, as recorded in Volume 6, Page 585, of the Map and Plat Records of Guadalupe County, Texas;
8. Covenants, conditions, and restrictions set forth on replat of a portion of Long Creek Subdivision Phase 1, Block 2, establishing Lots 17A-20A, as recorded in Volume 6, Page 635, of the Map and Plat Records of Guadalupe County, Texas;

9. Terms, conditions and stipulations of the Declaration of Covenants, Conditions and Restrictions of Long Creek Subdivision Phase I, duly recorded in Volume 1292, Pages 191-232, Official Records of Guadalupe County, Texas;
10. Terms, conditions and stipulations of the Declaration of Annexation of Long Creek Subdivision Phase 2A, duly recorded in Volume 1343, Pages 766-768, Official Records of Guadalupe County, Texas;
11. Terms, conditions and stipulations of the Declaration of Annexation of Long Creek Subdivision Phase 2B, a 0.913 acre tract, and a 0.134 acre tract, duly recorded in Volume 1524, Pages 565-570, Official Records of Guadalupe County, Texas;
12. Terms, conditions and stipulations of the First Amendment to Declaration of Covenants, Conditions and Restrictions of Long Creek Subdivision Phases 1 and 2A, duly recorded in Volume 1563, Pages 731-733, Official Records of Guadalupe County, Texas;
13. Terms, conditions and stipulations of the Second Amendment to Declaration of Covenants, Conditions and Restrictions of Long Creek Subdivision, duly recorded in Volume 1576, Pages 406-408, Official Records of Guadalupe County, Texas;
14. Terms, conditions and stipulations of the Third Amendment to Declaration of Covenants, Conditions and Restrictions of Long Creek Subdivision, duly recorded in Volume 1576, Pages 409-411, Official Records of Guadalupe County, Texas;
15. Terms, conditions and stipulations of the Declaration of Annexation of a 0.11 acre tract, duly recorded in Volume 1965, Pages 129-132, Official Records of Guadalupe County, Texas;
16. Terms, conditions and stipulations of the Fourth Amendment to Declaration of Covenants, Conditions and Restrictions of Long Creek Subdivision, duly recorded in Volume 1996, Pages 429-437, Official Records of Guadalupe County, Texas; and
17. Terms, conditions and stipulations of the Restatement of Declaration of Covenants, Conditions and Restrictions of Long Creek Subdivision, Guadalupe County, Texas, of May, 2004, duly recorded in Volume 2006, Pages 170-213, Official Records of Guadalupe County, Texas.

**ANY CONFLICT BETWEEN THESE SECOND RESTATED COVENANTS, CONDITIONS, AND RESTRICTIONS OF RECORD SHALL BE RESOLVED BY THE ALTERATION, AMENDMENT AND OTHERWISE CHANGING OF THE PRIOR RECORDED DOCUMENTS TO THIS SECOND RESTATEMENT DATED JULY, 2004. THAT IS, IN ALL MANNER, SHAPE, OR FORM, THIS SECOND RESTATED DECLARATION SHALL BE DEEMED CONTROLLING.**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**LONG CREEK SUBDIVISION**

(Superseding and replacing prior covenants)

THE STATE OF TEXAS           §  
  §  
COUNTY OF GUADALUPE       §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LONG CREEK SUBDIVISION PHASE 1, PHASE 2A, AND PHASE 2B is made on the date hereinafter set forth by GOLF ASSOCIATES, LTD., a Texas Limited Partnership ("Declarant"):

WHEREAS, LONG CREEK SUBDIVISION PHASE 1 was established by the Declaration of Covenants, Conditions and Restrictions of Long Creek Subdivision Phase 1, recorded in Volume 1292, Page 191, Official Public Records of Real Property of Guadalupe County, Texas ("Declaration"); LONG CREEK SUBDIVISION PHASE 2A was established by Declaration of Annexation of Long Creek Subdivision Phase 2A, recorded in Volume 1343, Page 766, Official Public Records of Guadalupe County, Texas. LONG CREEK SUBDIVISION PHASE 2B, a 0.913 acre tract and a 0.134 acre tract were established by Declaration of Annexation of such real property, as recorded in Volume 1524, Page 0565, Official Records of Guadalupe County, Texas. For the purposes of this Amendment, both Phases and the two parcels are referred to as "Subdivision." For additional identification purposes, PHASE 1 is also referred to herein as five plats recorded in Volume 6, Pages 039-043, Map and Plat Records of Guadalupe County, Texas. PHASE 2A is also referred to herein as one plat recorded in Volume 6, Page 006, Map and Plat Records of Guadalupe County, Texas. One parcel, 0.913 acres, is also referred to herein as that one tract of land identified in Volume 1524, Pages 0568-0569, of the Official Records of Guadalupe County, Texas. The second parcel, 0.134 acres, is also referred to herein as that one tract of land identified in Volume 1524, Page 0570, of the Official Records of Guadalupe County, Texas. There have been several replats of individual Lots within the Subdivision that are specifically identified elsewhere herein. However, each and every one of such replatted Lots or groups of Lots are part and parcel of the Subdivision and subject to the terms and conditions herein ("Subdivision"). Declarant intends by this SECOND RESTATED Declaration to impose upon the Subdivision restrictions under a general plan of improvement for the benefit of all Owners of residential property within the Subdivision. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Subdivision, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the properties as are now or may hereafter be subjected to this Declaration; and

WHEREAS, Declarant has revised these Covenants, Conditions, and Restrictions of record four times prior to this date; and

WHEREAS, Declarant has deemed it desirable to subject and bind the Subdivision to the jurisdiction and assessment of LONG CREEK OWNERS ASSOCIATION, INC., with the power and duty to maintain and administer the Common Area of the Subdivision and the power to administer and enforce the covenants and restrictions established herein and to collect and disburse the assessments and charges hereinafter created.

NOW, THEREFORE, Declarant declares that all the properties described hereinabove and any additional property as may by subsequent amendment be added to this Declaration is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, and shall run with the real property and shall be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof, and shall hereafter be subject to the jurisdiction and assessments of Long Creek Owners Association, Inc.

#### **ARTICLE I: PURPOSE**

Long Creek Subdivision Phase 1 is encumbered by this Declaration of Covenants, Conditions and Restrictions for the following reasons: to ensure the best and highest use and most appropriate development of the Subdivision; to protect Owners against improper use of surrounding lots; to preserve so far as practicable the natural beauty of the property; to guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials; to encourage and secure the erection of attractive improvements on each Lot with appropriate locations; and, in general, to provide for high quality development.

#### **ARTICLE II: DEFINITIONS**

The following words when used in this Declaration or any amendment (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to LONG CREEK OWNERS ASSOCIATION, INC., a Texas non-profit corporation, its successors and assigns, as provided for herein. Membership in the Association is appurtenant to ownership of a Lot.
- (b) "Properties" shall mean and refer to the properties known as LONG CREEK SUBDIVISION UNIT 1, and additions thereto, as are subject to this Declaration or any amendment.
- (c) "Lot" shall mean and refer to any of the plots of land as shown on the Subdivision Plat.
- (d) "Subdivision Plat" shall mean and refer to the map or plat of LONG CREEK SUBDIVISION PHASE 1, filed for record in Volume 5, Pages 348A-350A, of the Plat Records of Guadalupe County, Texas and any amendment thereof upon filing of same for record in the Plat Records of Guadalupe County, Texas.
- (e) "Living Unit" shall mean and refer to a single family residence and its garage situated on a Lot.
- (f) "Villa Unit" shall mean and refer to single family homes located on Lots 16-27, Block 2, as shown on the Subdivision Plat, known as Golf Villas.
- (g) "Marina Unit" shall mean and refer to an exclusive license granted by the Declarant, ON A LIMITED BASIS AS SPACE PERMITS, to Owners for use of a covered watercraft slip with

- lifts on the watercraft marina facilities at Bandit Bay, which shall be appurtenant to the ownership of the Lots of Owners to which the license is granted.
- (h) "Single Family" shall mean and refer to a group related by blood, adoption, or marriage or a number of unrelated roommates equal to the number of bedrooms in a Living or Villa Unit.
  - (i) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot, within the Properties, including contract sellers but not including those having an interest merely as security for the performance of an obligation.
  - (j) "Declarant" shall mean and refer to GOLF ASSOCIATES, LTD., its successors or assigns, who are designated as such in writing by Declarant.
  - (k) "ARC" and "Architectural Review Committee" means the Architectural Review Committee of Long Creek Owners Association, Inc.
  - (l) "Common Area(s)" shall mean and refer to all real and personal property leased, owned, or maintained by the Association for the common use and benefit of the Members of the Association. Common Area includes any entrance monuments and water features, entrance gates, gate apparatus, bridges, perimeter walls and fences, drainage facilities and detention ponds, decorative ponds, greenbelts, esplanade and right-of-way landscaping, any improvement areas lying within indicated public easements or rights-of-way, safety lanes and private roads, and watercraft marina facilities at Bandit Bay (excluding the water contained therein), and other areas not comprised of residential Lots as shown on the Subdivision Plat. The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Areas which may be hereafter established. The Golf Course (as defined herein) is not a part of the Common Area.
  - (m) "Resident" means each Owner who resides within the Properties, a bona fide lessee who has an enforceable lease agreement with an Owner and who resides on the Properties, and any individual who is otherwise lawfully domiciled in a Living or Villa Unit.
  - (n) "Member" shall mean and refer to Members of the Association.
  - (o) "Builder Member" shall mean such builders approved by Declarant for construction within the Subdivision who own one or more Lots for construction of a Living or Villa Unit for resale to others.
  - (p) "Board of Directors" and "Board" shall mean and refer to the Board of Directors of Long Creek Owners Association, Inc., the election and procedures of which shall be as set forth in the Articles of Incorporation and Bylaws of the Association. The Board of Directors shall be the elected body having its normal meaning under the Texas non-profit corporate law.
  - (q) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Long Creek Subdivision Phase 1, and any amendments and supplements hereto made in accordance with the terms hereof.
  - (r) "Design Guidelines" means the standards, specifications and guidelines applicable to construction, placement, location, alteration, landscaping, maintenance and design of any improvements within the Properties and all amendments and supplements thereof. Design Guidelines may be amended from time to time and are fully incorporated into this Declaration, and shall be enforceable in the same manner as the covenants contained herein.
  - (s) "Golf Course" shall mean and refer to any parcel of land adjacent to or within the Properties which is operated as a golf course, and all related and supporting facilities and improvements operated in connection therewith.
  - (t) "Swale Ditch" shall mean and refer to drainage improvements adjacent to the roads located on the Properties.



**ARTICLE III: PROPERTY RIGHTS**

3.1 Every Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area that shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- 3.1(a) the right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed or situated upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities;
- 3.1(b) the right of the Association to suspend an Owner's voting rights and the right to use any facility for any period during which any assessment of the Association against that Owner's Lot remains unpaid, and for infractions by an Owner of the restrictive covenants contained in this Declaration, and/or the Association's Bylaws and rules and regulations for the duration of the infraction;
- 3.1(c) the right of the Association to grant easements in and to the Common Areas to any public agency, authority or utility for such purposes as benefits the Properties or portions thereof and Owners or Lots contained therein;
- 3.1(d) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided two-thirds (2/3) of each Class of members present at a meeting called for such purpose shall approve; provided however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, liens, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or Owner, or the holder of any mortgage irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Subdivision;
- 3.1(e) the right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least two-thirds (2/3) of the votes of each Class of members of the Association which are present or represented by proxy and entitled to be cast at a meeting duly called for such purpose;
- 3.1(f) the right of the Association to prescribe rules and regulations as they may be expanded, amended or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of the Owner's Lot may be affected by this provision and that the rules and regulations may change from time to time. The Board shall have the authority to enforce the rules and regulations and this Declaration by all appropriate means, including but not limited to, the imposition of fines, if notice and an opportunity to be heard are given, and a member found to have violated the rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees; and
- 3.1(g) the right of certain Owners to the exclusive use of the Marina Units.

3.2 The entrance gates, streets, sidewalks and alley network within the Subdivision are "private" and constitute a portion of the Common Area that are subject to the jurisdiction and administration of the Association. In addition to the other provisions appearing within this

Article, the Board of Directors of the Association is specifically authorized to recommend, adopt, implement and enforce rules and regulations governing use of the entrance, sidewalks, streets and alleys covering items such as, but not limited to:

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

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

(3) charges for reasonable expense reimbursements and/or deposits (e.g. key, access card, and/or radio transmitter device deposits) related to the use, operation and maintenance of entrance gates;

(4) subject to Article VIII, Section (D)(5), determination of other occasions when the entrance gates will be opened and closed;

(5) signs and graphics to provide announcements to unauthorized personnel concerning potential criminal trespass matters; and

(6) disclaimers of liability of any and all matters or occurrences on or related to the Common Area.

**ARTICLE IV: ARCHITECTURAL REVIEW**

In order to protect the overall integrity of the development of the Subdivision as well as the homogeneity of improvements of all Owners, a committee of representatives designated as the Architectural Review Committee, is hereby established to carry out all duties as noted herein with full authority to approve and disapprove and control all construction, development and improvement activities of any kind (including, without limitation, structures, buildings, hardscape and landscape) within the Subdivision and to insure that all such activities are constructed in accordance with good workmanship-like manners and standard industry trade practices and to insure that all improvements are architecturally, aesthetically and ecologically designed to be compatible with Declarant's conceptual plan for the overall Subdivision and/or as decided by the Architectural Review Committee. The ARC shall have the right to promulgate and enforce uniform criteria for Builder Members and builders selected by Owners to ensure that the Living and Villa Units are constructed by builders with a reputation for quality construction. The ARC shall have the right to disapprove builders which do not meet the criteria of the ARC. BEFORE A BUILDER IS SELECTED, OWNERS SHOULD CONTACT THE ARCHITECTURAL REVIEW COMMITTEE TO OBTAIN THE LIST OF CRITERIA FOR APPROVED BUILDERS.

Declarant, the Association, or the ARC, in its sole discretion and judgment, may require a Builder Member or a builder selected by an Owner to deposit the sum of \$500.00 with the Association to insure that a Lot and adjacent areas and Common Areas are properly cleaned and cleared during and following the completion of construction.

No building, structure, fence, residence, house, garage, accessory building, outbuilding or construction of any kind shall be erected, placed, constructed, maintained, modified, or altered, and no landscaping or hardscape shall be installed on any Lot in the Subdivision, nor shall any

clearing or sitework (including specifically the removal of trees or any other vegetation) be commenced until a complete set of plans and specifications shall have been formally submitted to the ARC with a written request for approval and the ARC's written approval received. Plans and specifications which are submitted shall contain and include, but not necessarily be limited to, the following information: floor plans, including finished floor and Lot grading plan; exterior elevations for any buildings, fence or other structure; a plat or site plan showing easements and the location of any building, fence or other structure (including location of light poles, if applicable); exterior lighting and location; landscaping and irrigation plans; samples of exterior finish materials and color samples; and any other plans, specifications or information deemed pertinent by the Architectural Review Committee and/or Declarant.

The Architectural Review Committee shall review all plans, specifications and other information which is submitted for compliance with all the requirements of this covenant and for the compatibility of any improvements (including landscaping) therein with the architectural, aesthetic and ecological goals of the Subdivision and Declarant, it being the intent that such goals require that all improvements be compatible with all other improvements in the Subdivision and that they be in harmony with their natural surroundings. The ARC shall have full right and authority to utilize its sole discretion in approving or disapproving any plans and specifications which are submitted. In the event the ARC fails to approve submitted plans or to request additional information reasonably required within thirty (30) days after submission, the applicant shall give the ARC written notice of its failure to respond. Unless the ARC responds within ten (10) days of receipt of such notice, approval will be deemed granted.

Any changes made to plans previously approved by the ARC, must be re-submitted to the ARC in the same manner as the original plan and in accordance with the requirements and notice provisions of the foregoing paragraph concerning original plans.

The Architectural Review Committee may disapprove the construction or design of any improvement, including the removal of any trees or other natural vegetation, on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or value of the Subdivision, or to preserve the serenity and natural beauty of any surroundings. Prior approvals and/or disapprovals of the ARC pertaining to any improvement activities or regarding matters of design or aesthetics shall not be deemed binding upon the ARC for later requests for approval if the ARC feels that the repetition of such matters will have an adverse effect on the Subdivision. The Architectural Review Committee shall have the express power to construe and interpret any covenant herein that may be capable of more than one construction.

During reasonable hours, members of the Architectural Review Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the Living or Villa Unit thereon, for the purpose of ascertaining whether or not the provisions of the Declaration have been or are being complied with, and said persons shall not be deemed guilty of trespass by reason of such entry.

The ARC shall have the authority to employ professional consultants at the expense of the Association to assist it in performance of its duties. The decision of the Architectural Review Committee shall be final, conclusive and binding upon the applicant. The ARC members shall not be entitled to any compensation for any services rendered pursuant to this covenant.

Members of the ARC shall not be liable to any person (including Owners, Builder Members and other builders and/or contractors) subject to or possessing or claiming any benefits of this Declaration and the covenants contained herein for any damage or injury to property arising out of their acts hereunder.

The number and initial ARC members shall be decided by Declarant, so long as there is a Class B membership. In the event of the death or resignation of any member of the ARC, Declarant shall have full power and authority to appoint a successor committee member or members, chosen in its sole discretion, with like authority. Upon the expiration of the Class B membership, the Board of Directors shall appoint the members of the ARC, which shall consist of at least three (3) but no more than five (5) members.

The ARC shall promulgate and publish Design Guidelines, which are incorporated into this Declaration by reference, and will be made available to Owners, Builder Members, builders and developers who seek to engage in construction upon the Properties. Such Design Guidelines will supplement this Declaration and may make other and further provisions as to the approval and disapproval of plans and specifications, prohibited materials and other matters relating to the appearance, design and quality of improvements. Such Design Guidelines may be amended from time to time upon the affirmative vote of two-thirds (2/3) of the members of the ARC and the consent of the Board. EACH OWNER AND BUILDER MEMBER SHALL SEEK AND OBTAIN AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL DESIGN GUIDELINES AND LOT INFORMATION PRIOR TO ACQUISITION OF, AND CONSTRUCTION ON, ANY LOT IN THE SUBDIVISION.

#### **ARTICLE V: USE GUIDELINES AND RESTRICTIONS**

##### **(A) Single Family Residential Purpose.**

All Lots in the Subdivision shall be used for single family residential purposes only. No business may be operated out of a Living or Villa Unit, whether for profit or non-profit. No building or structure intended for or adapted to business or commercial use shall be constructed or maintained on any Lot. This restriction shall not prohibit a resident from using a Living or Villa Unit for personal business or professional pursuits, provided that: (i) such use is incidental to the Living or Villa Unit's residential use; (ii) such use conforms to all applicable laws and ordinances; (iii) there is no external evidence of such use; and (iv) such use does not entail visits by the public, employees, suppliers, or clients. No hobby may be conducted on any Lot which attracts vehicular or pedestrian traffic to the Lot. No direct sales activities (excluding activities of the Declarant and Builder Members and Golf Course and community activities specifically approved by the Board), flea markets, estate sales, garage sales, bazaars, sample sales, promotional parties or similar activities shall be conducted on any portion of the Subdivision.

During the construction and sales period of the initial Living and Villa Units, Declarant or Builder Members may erect and maintain such structures as are customary in connection with such construction and sale of such property, including, but not limited to storage facilities, signs and construction and sales trailers. All temporary construction and sales structures shall be aesthetically compatible with the Subdivision development.

No Living Unit, Villa Unit, or other structure shall remain incomplete for more than nine (9) months after construction has commenced.

Without limiting any other rule-making authority under the Declaration, the Board of Directors is specifically authorized to promulgate and enact rules and regulations limiting the number of persons who may become Residents of a Living or Villa Unit, provided that at no time shall there be more than two (2) Residents per bedroom within a Living or Villa Unit.

All the provisions of this Declaration, Articles of Incorporation, Bylaws, Design Guidelines and rules and regulations of the Association shall be applicable and enforceable against any Resident to the same extent as against an Owner. Any lease or rental agreement shall be deemed to be subject to the documents of the Association by reference without the necessity of specific reference to them, and they shall bind the tenants to their terms and conditions.

**(B) Garages.**

Every Living and Villa Unit shall have and maintain a garage attached to the residence large enough to accommodate under roof a minimum of two (2), but not more than three (3), full-sized automobiles. All garages on Lots 1 through 6, Block 9, and Lots 1 through 20, Block 11, shall be constructed on the rear of the Lot for access through the alley only. No garage shall be permanently enclosed for conversion to any other use. Open car ports are not permitted, unless special design circumstances warrant their use, in which case permission must be obtained in writing from the ARC. All garages must have garage doors constructed in order to be harmonious in quality and color with the exterior of the Living or Villa Unit, and shall be installed with electric opening and closing devices, which devices shall at all times be kept in serviceable condition. All garage doors shall be closed when not in use. Each Owner, member or resident shall refrain from performing repairs or maintenance to any vehicle outside of the garage or visible from the street or the Golf Course. Vehicles shall not be parked on any non-paved portion of any Lot.

**(C) Accessory Buildings.**

Accessory buildings and/or structures may be constructed of materials architecturally compatible with the finish material of the exterior walls of the Living Unit or Villa Unit and tailored to the visual attractiveness of the Lot, in accordance with the Design Guidelines and subject to the approval of the Architectural Review Committee. All accessory buildings shall be erected within the setback lines of the Lot as shown on the Subdivision Plat. Structures such as swimming pools or spas may be within the rear setback if they are even with the grade of the Lot.

**(D) Building Materials.**

The exterior walls of all Living and Villa Units shall be constructed with 80% exterior masonry as prescribed by the Design Guidelines, or other material as approved by the ARC. The minimum masonry percentage shall apply to the aggregate area of all exterior walls including windows. Acceptable masonry includes limestone, brick, stucco and rock. Exposed beam rough cedar is permitted. No more than twenty-four (24) inches of the slab of the Living or Villa Unit shall be exposed above finished grade as viewed from any street, right-of-way or other Common Area or the Golf Course, unless special grading circumstances require and if screened from view by plants or other means as approved by the ARC .

Roofing shall be flat or barrel concrete tile, clay tile, slate, standing seam metal (reflectivity to be determined in the Design Guidelines), architectural grade dimensional composite (25 year), or

other materials as approved by the ARC. Colors of all roofing materials shall be subject to the approval of the Architectural Review Committee.

All fireplace flues and smoke stacks shall be enclosed and concealed from public view in finished chimneys or materials architecturally compatible with the finish material of the exterior walls of the Living or Villa Unit or otherwise approved by the ARC.

If Declarant or the Association constructs "gang" mailboxes on the Properties, no other mailboxes shall be permitted. If "gang" mailboxes are not constructed by Declarant, when a Living or Villa Unit is constructed, a brick, stone or other masonry mailbox shall be constructed consistent with the architecture of the Living or Villa Unit in accordance with the plans approved by the ARC.

**(E) Height Restriction.**

No Living or Villa Unit, building or structure erected, altered or placed on a Lot, shall exceed thirty-six (36) vertical feet in height above the highest grade on a Lot; provided that all applicable ordinances, regulations, and statutes with respect to the maximum height of buildings and structures shall be complied with at all times.

**(F) Minimum Floor Space.**

The main residence building of each Living or Villa Unit constructed on a Lot shall contain the minimum, contiguous square feet being exclusive of open or screened porches, terraces, patios, driveways, carports, garages, accessory buildings, and living quarters for domestic servants separated or detached from the primary living area as specified by the Design Guidelines. No less than 60% of the contiguous square feet of the Living Unit, exclusive of open or screened porches, terraces, patios, driveways, carports, garages, accessory buildings, and living quarters for domestic servants separated or detached from the Living Unit, shall be on the ground floor. The ground floor is defined as the area under the roof of the Living Unit within 2 feet of the natural grade elevation of the Lot at the front building set back line or above the 100-year flood plain elevation if it is above the natural grade elevation of the Lot.

**(G) Setbacks.**

All Living and Villa Units, buildings and structures must be constructed, placed and maintained in conformity with the setbacks shown on the Subdivision Plat and Design Guidelines. The ARC may establish additional setback lines for other improvements.

**(H) Fences, Walls and Hedges.**

No hedge shall be placed on any Lot nearer to any street than the front setback line of the Lot, and no fence, wall, or hedge which serves as a barrier may be erected, placed or maintained forward of the front wall line of a Living or Villa Unit (excluding decorative walls or fences which are part of the architectural design of the main structure of the Living or Villa Unit and which location has been approved in writing by the ARC). All fences or walls located on Lots are to be maintained at the Owner's expense. All fences shall be of the following composition: all masonry, brick, a combination of wood and masonry compatible with the finish material of the exterior walls of the Living or Villa Unit, black wrought iron style or other material approved by the ARC. Chain-link fences are prohibited. Fences connected to the front of a Living or Villa Unit to the side Lot line and extending to the rear wall line of a Living or Villa Unit shall be constructed with materials consistent with the residence. Except for Lots 1 through 20, Block 11, and Lots 1 through 6, Block 9, fences extending from the rear wall line to and along the rear

Lot line shall be constructed of black wrought iron style and shall not obstruct the view of adjacent Lots.

Fences, walls or hedges in the front of a Lot shall not exceed three feet (3') in height. Side yard fences extending from the front wall line to the rear wall line of a Living or Villa Unit shall not exceed eight feet (8') in height. Other side yard fences and rear yard fences shall not exceed five feet (5') in height and hedges not more than three feet (3') in height.

The ARC may approve acceptable materials other than the aforesaid composition requirements for fences, walls and hedges and the aforesaid height or setback limitation in connection with retaining walls. Acceptable materials for retaining walls are described in the Design Guidelines.

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

**(I) Driveways.**

Driveways on each residential Lot must be constructed of concrete and the finish must be approved by the ARC. Other materials may be approved by the ARC except asphalt, which is expressly prohibited. Each driveway must accommodate two (2) full-size vehicles in front of the garage for off-street parking requirements.

The driveway turnout shall be constructed in such manner as to provide an attractive transitional radius from the street pavement into the driveway entrance and shall prevent escape of drainage water from the street onto any Lots. A minimum twelve inch (12") diameter culvert pipe shall be installed under driveways on all Lots which have Swale Ditches in front to insure proper drainage.

**(J) Temporary structures.**

No structure of a temporary character (sales structure, trailer, tent, shack, garage, barn or other accessory buildings) shall be used on any Lot at any time for storage or as a residence, either temporarily or permanently. No trailer (except Builder Member sales and construction trailers) boat trailers, watercraft trailers, campers, recreational vehicles, motor homes, or similar vehicles shall at any time be connected to utilities situated within a Lot. No prefabricated dwelling or building previously constructed elsewhere may be placed or maintained on any Lot. No modular, manufactured, prefabricated or mobile home, whether or not the wheels have been removed, may be placed or maintained on any Lot. All structures of a temporary character must be approved by the Architectural Review Committee.

**(K) Signs.**

No signs, banners, or pennants of any kind shall be displayed to the public view on any Lot except signs used by Declarant to advertise Lots for sale by Declarant or Builder Member to advertise Living or Villa Units for sale. Signs advertising subcontractors or suppliers or advertising Lots for sale or lease are specifically prohibited. No more than two (2) political signs

may be erected upon a Lot by an Owner, or Resident of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal; provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election. In no event shall any sign on any Lot be larger than eighteen inches (18") by twenty-four inches (24"). All signs posted must be approved in writing by the Association prior to placement on any Lot. Declarant or its agents shall have the right to remove any signs, billboard or other advertising structure that does not comply with the above, and in doing so shall not be subject to any liability for trespass or any other liability in connection with such removal.

**(L) Environmental Maintenance of Living Units.**

All improved yards and lawns shall be kept neat and well maintained and all grass, weeds, and vegetation on each Lot shall be kept mowed at regular intervals. Dead trees, shrubs, vines and plants shall be promptly removed from each Lot and replacements of equal or greater quality or value according to the minimum landscaping requirements of the Design Guidelines promptly installed. Lawns must be properly maintained (not to exceed four inches [4"] in height) and fences must be repaired and maintained. No objectionable or unsightly usage of Lots will be permitted which is visible to public view, any Lot, the Common Area and/or the Golf Course. Building materials shall not be stored on any Lot, except by Declarant, approved builders, or Builder Members in connection with the construction of a Living or Villa Unit, and any excess materials not needed for construction and any building refuse shall promptly be removed from each Lot.

Until a Living or Villa Unit is built on a Lot, Declarant or the Association may, at its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed. Declarant or the Association may also, at its option, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The cost of such maintenance or removal shall be a Member Charge to which the Lot is subject, and the Association shall have a lien and remedies therefore in the same manner as assessment liens created in Article XII, Section (H).

Front and street side yards shall be fully sodded commensurate with the time of the occupancy of a Living or Villa Unit upon completion of construction. All side and rear yards on all Lots must be planted with grass or other ground cover exclusive of any landscape areas at the time of completion of a Living or Villa Unit. Decorative ground cover rock in the front and side yards may not exceed ten percent (10%) of the total area of the front and side yards. Cuts into natural grade visible from the street or Golf Course are to be faced with masonry, sodding or landscaping. Allowances may be made for areas left in their natural state depending upon their appearance, and subject to the express approval of the ARC.

Each Lot on which a Living or Villa Unit is constructed shall have an underground water sprinkler system for the purpose of providing sufficient water to preserve and maintain the landscaping in a healthy and attractive condition.

The Association may require any Owner to remove or eliminate any object situated on a Living or Villa Unit or Lot that is visible from any Common Area, the Golf Course, or from any other Lot, if, in the Board's sole judgment, such object detracts from the visual attractiveness of the Subdivision. The Association, and its agents, during normal business hours, shall have the right, after 5 days written notice to the Owner of any Lot involved, setting forth the specific



violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner, to enter onto the Lot (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any person or entity) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement will be paid to the Association upon demand and if not paid within thirty (30) days thereof, shall become a Member Charge secured by a lien upon the Lot affected. The Association, or its agent, shall further have the right (upon like notice and conditions), to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance. The lien provided under this section will constitute a lien retained against the Lot with the same force and effect as the Lien for assessments set forth in this Declaration.

**(M) Vehicles.**

No trailer, motor home, tent, boat, watercraft, marine craft, hovercraft, aircraft, recreational vehicle, motor home, camper, camper body, travel trailer, truck larger than a one (1) ton pick-up (except those used by a Builder Member during the construction of improvements), or wrecked, junked, or inoperable vehicle shall be kept, parked, stored or maintained on any Lot unless enclosed in a garage. No dismantling or assembling of a motor vehicle, boat, trailer, truck or any other machinery or equipment shall be permitted on any Lot. The ARC shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by the ARC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph.

No vehicles, trailers, implements or apparatus may be driven or parked on any easement. No commercial vehicle bearing commercial insignia or names shall be parked on any Lot except within an enclosed garage, unless such vehicle is temporarily parked for the purpose of serving such Lot. No vehicle may be parked on any street or alley within the Subdivision, except as approved by Declarant and/or the Association. No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Subdivision at any time.

**(N) Offensive Activities.**

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Owners, the Properties, the Subdivision, or the Golf Course.

No Owner or occupant shall perform any work that will impair the structural soundness or integrity of another Living or Villa Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Living or Villa Units or their Owners or Residents.

No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to other Owners or Lots (reasonable security or landscape lighting is permitted with the approval of the ARC). Exterior speakers shall not be used at noise levels which annoy other Residents.

No horns, whistles, bells, or other sound devices (except security devices such as entry door and patio intercoms used exclusively to protect the Lot and improvements situated thereon) shall be placed or used upon any Lot.

**(O) Garbage and Refuse Disposal.**

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary containers, whether arranged for alley pickup or street pickup. No trash, ashes or other refuse may be thrown or dumped on any vacant Lot, Common Area, right-of-way, or drainage area in the Properties or the Golf Course. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept, placed or maintained on any Lot where visible from any Lot, street or the Golf Course, except solely on a day designated for removal of garbage and rubbish and on which days only such trash containers, and receptacles may be placed beside a street or alley for removal but shall be removed from view before the following day. Metal trash receptacles are prohibited. All trash receptacles shall be closed with lids.

**(P) Pets.**

No animals, livestock, poultry, exotic or dangerous pets of any type (i.e. pit bulls, boa constrictors, ferrets, etc.) that may pose a safety or health threat to the community shall be raised, bred or kept on any Lot except for cats, dogs, or other generally recognized household pets; provided that they are not kept, or maintained for breeding or any commercial purposes and provided further that no more than a total of three (3) animals may be kept on a single Lot. Any pet which endangers the health of any owner or occupant of a Lot or which creates a nuisance or an unreasonable disturbance or is not a common household pet, as may be determined by the Board, must be permanently removed from the Subdivision upon seven (7) days written notice by the Board of Directors. No pets shall be permitted in the Common Area without a leash.

All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws), and in accordance with all rules established by the Association. It shall be the responsibility of the owners of such household pets to prevent the animals from running loose or becoming a nuisance to the other Residents.

**(Q) Microwave, Radio, TV Antenna and Solar Collectors.**

No microwave dishes, ham operator towers or antennae, radio (citizen band or otherwise), or television appurtenances, devices or fixtures shall be maintained on any portion of any Lot, except direct broadcast satellite (DBS) antennae less than one meter in diameter, multichannel multipoint distribution system (MMDS) antennae less than one meter in diameter, or television broadcast reception antennae, which Owners shall screen from view. The ARC shall have the authority to gain access to a Lot to identify the best locations that allow for acceptable reception and to determine the location of permitted antennae on a Lot. If it is necessary to accomplish a safety objective, the ARC shall prohibit antennae which are otherwise permissible. Solar apparatus, if erected, must be maintained in such a way that it is screened from view of the Properties and the Golf Course, and shall be subject to the express approval, in advance, of the ARC. No antennae or solar apparatus may be placed in the Common Area, except by Declarant.

**(R) Air Conditioning Equipment.**

No window, roof or wall type air-conditioner that is visible from any Lot, street or the Golf Course shall be used, placed or maintained on or in any Living or Villa Unit. No air-conditioning apparatus shall be installed on the ground in front of a Living or Villa Unit.

**(S) Athletic Facilities.**

Sporting equipment, other than basketball goals, of either a permanent or temporary nature, shall not be placed on the front of any Lot or the side lot lines of corner lots in the Subdivision without the prior written consent of the ARC. All recreational equipment is subject to the Design Guidelines.

**(T) Sewer Service.**

All sewer service to the Lots is to be provided by the Guadalupe-Blanco River Authority. No outside toilet, privy, septic tank system or other private wastewater facility shall be constructed on any Lot. In order to obtain wastewater service, each Owner and Builder Member shall pay an inspection fee and sewer connection fee to the Guadalupe-Blanco River Authority and each Owner shall execute a standard sewer service agreement and comply with the terms thereof.

**(U) Lot Consolidation.**

Any Owner owning two (2) or more adjoining Lots or portions of two or more such Lots may, with the prior approval of the ARC, Declarant, and the appropriate jurisdictional authority, consolidate such Lots or portions thereof into a single building site for the purpose of constructing one (1) residence and such other improvements as are permitted herein; provided, however, that the Lot resulting from such consolidation shall bear, and the Owner thereof shall be responsible for, all assessments theretofore applicable to the Lots which are consolidated and each such building site shall meet, all lawful requirements of any applicable statute, ordinance or regulation. No further subdivision of platted Lots shall be permitted.

**(V) Swale Ditches.**

All Swale Ditches on the Properties are integral to the proper drainage of the entire Subdivision. No Owner may remove any Swale Ditch under any circumstances or change the grade of a Lot or Common Area to alter a Swale Ditch.

**(W) All-Electric.**

Declarant has entered into an agreement with the Guadalupe Valley Electric Cooperative ("GVEC") to provide electric power to each Lot, and in said agreement, Declarant has agreed that all Living and Villa Units in the Subdivision shall qualify for GVEC's all-electric (G2) rate. In that regard, all Living and Villa Units shall have installed, and each Owner shall maintain a properly sized electric central heat pump unit and R-11 thermal insulation in the walls and R-19 thermal insulation in the ceilings. Owners shall maintain load control switches on water heaters and central heat pump units as installed and as required by GVEC. No gas or propane gas, or any other fuel or power source other than electricity shall be used on any portion of the Properties.

In the event an Owner or Builder Member fails to utilize GVEC's electric power or a Living or Villa Unit fails to qualify for GVEC's all-electric (G-2) rate, Owner or Builder Member shall become responsible for and shall pay to Declarant any and all assessments, non-user fees or similar fees and charges and costs incurred by Declarant, its successors or assigns, and which

shall be a Member Charge, and the Association shall have a lien and remedies therefore in the same manner as assessment liens created in Article XII, Section (H).

**(X) Waterfront Lots.**

No boat houses, docks, bulkheads or other permitted structures or accessory buildings built upon the Lots which face Bandit Bay or Lake McQueeney, shall be constructed so as to extend beyond the existing property line into the water, and shall be constructed of materials architecturally compatible with the finish material of the exterior walls of the Living or Villa Unit and tailored to the visual attractiveness of the Lot, in accordance with the Design Guidelines and subject to the approval of the Architectural Review Committee.

**ARTICLE VI: MAINTENANCE OF VILLA UNITS**

In addition to maintenance upon the Common Area, the Association will have primary responsibility for maintenance (generally limited only to mowing, trimming and edging of the Villa Units) as follows: (i) interior lots - front yard area of the Lot between the front property line and the front building line; (ii) corner lots - front yard area between the front property line and front building line, and that portion of the side area exposed to the street, between the side property line and the side building line, but excluding patios, courtyards and fenced areas. All other exterior maintenance shall be the responsibility of the Villa Unit Owner. Such exterior maintenance shall not include trees or fences. Dead trees, shrubs, vines and plants shall be promptly removed from each Lot by the Owner and replacements of equal or greater quality or value according to the minimum landscaping requirements of the Design Guidelines promptly installed by the Owner.

In the event that the need for maintenance or repair of a Villa Unit or the improvements thereon is needed, and said maintenance or repair is not completed within a reasonable time after the Owner has been notified by the Association, the Association shall make the needed repairs or maintenance and the cost of such shall be a Member Charge to which the Lot is subject, and the Association shall have a lien and remedies therefore in the same manner as assessment liens created in Article XII, Section (H).

In the event the need for maintenance or repair of a Lot or a Villa Unit or the improvements thereon is caused by any cause whatsoever covered by insurance, the Owner of that particular Lot shall be responsible for the payment of any applicable insurance deductibles which shall be a Member Charge, and the Association shall have a lien and remedies therefore in the same manner as assessment liens created in Article XII, Section (H).

**ARTICLE VII: GOLF COURSE**

**(A) Ownership and Operation of Golf Course.**

All persons, including all Owners, Members and Residents, are hereby advised that no representations or warranties have been made by Declarant, the Association, or any other person with regard to the continuing existence, ownership, or operation of the Golf Course, and no purported representation or warranty in such regard, either oral or written, shall ever be effective without an amendment to this Declaration executed or joined into by Declarant. The ownership and/or operation of the Golf Course may change at any time and from time to time by virtue of, but without limitation (1) the sale or assumption of operations of the Golf Course by an independent entity or entities; (2) the creation or conversion of the ownership and/or

operating structure of the Golf Course to an "equity" club or similar arrangement whereby the Golf Course or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (3) the transfer of ownership or control of the Golf Course to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association or any Owner shall be required to effectuate any transfer or conversion.

**(B) Right to Use.**

Neither membership in the Association nor ownership or occupancy of a Living or Villa Unit shall confer any membership or ownership interest in the right to use the Golf Course. Rights to use the Golf Course will be granted only to such persons, and on such terms and conditions as may be determined from time to time by the owner of the Golf Course. The owner of the Golf Course shall have the right, in its sole discretion and without notice, to amend or waive the terms and conditions of the use of the Golf Course, including without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

**(C) View Impairment.**

Declarant, the Association, or the owner or operator of the Golf Course, do not guarantee or represent that any view over and across the Golf Course from adjacent Lots will be preserved without impairment. The owner of the Golf Course shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Lots and any express or implied easements for view purpose or for the passage of light and air are hereby expressly disclaimed. NO OWNER (OR RESIDENT) MAY PRUNE, TRIM OR REMOVE ANY TREE, SHRUB, OR LANDSCAPE NOT LOCATED ON OWNER'S LOT.

**(D) Limitation on Amendments.**

In recognition of the fact that the provisions of this Article are for the benefit of the owner of the Golf Course, no amendment to this Article, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Course by other provision of this Declaration, may be made without the written approval of the owner of the Golf Course. The foregoing shall not apply, however, to amendments made by the Declarant.

**(E) Jurisdiction and Cooperation.**

It is Declarant's intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

**(F) Assumption of Risk, Release and Indemnification.**

Each Owner, by its purchase of a Lot in the vicinity of the Golf Course, hereby expressly assumes the risk of personal injury, property damage, or other loss caused by maintenance and operation of the Golf Course including, without limitation: (i) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around or before sunrise or after sunset), (ii) noise caused by

golfers, (iii) use of pesticides, herbicides and fertilizers, (iv) view restrictions, (v) reduction in privacy caused by constant golf traffic on the Golf Course or the removal or pruning of shrubbery or trees in the Golf Course, (vi) errant golf balls and golf clubs, and (vii) design of the Golf Course.

Each Owner agrees that Declarant, any successor Declarant, the Association, the owner of the Golf Course, or their successors, successors in title, or assigns, any officer, director or partner of any of the foregoing, or any organizer or sponsor of any tournament or special event (collectively, for the purposes of this Article VII, Section (F), "Released Parties") shall not be liable to any Owner claiming any loss, injury or damage based upon, due to, arising from, directly or indirectly, or otherwise related to the proximity of such Owner's Lot to the Golf Course, the management of the Golf Course, or the exercise of the easements granted in this Article VII, Article VIII, or any other written instrument, even if such loss, damage or injury is caused in whole or in part by the negligence of any of the Released Parties. Each Owner and Resident hereby agrees to indemnify, defend, and hold harmless the Released Parties from and against any and all such claims as set forth in the preceding sentence by Owner, Owner's lessees, licensees, invitees and employees with respect to tenants, Owner's Lot for injury, loss, or damage, whether known or unknown, foreseen, or unforeseen, arising from or resulting from, directly or indirectly, acts or omissions of the Released Parties, even if caused in whole or in part by the negligence of the Released Parties. **THE FOREGOING RELEASE AND INDEMNITY IS INTENDED TO RELEASE AND INDEMNIFY THE RELEASED PARTIES FROM AND AGAINST THEIR OWN NEGLIGENCE.**

#### **ARTICLE VIII: EASEMENTS AND ACCESS**

##### **(A) Easements for Utilities, Etc.**

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Subdivision Plat, or as shown on a duly recorded easement instrument, if any. Within these easements, no structure, shrubbery, trees, fence or swimming pool shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or in the case of drainage easements, which may change or impede the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all improvements in such area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Neither the Association, Declarant, nor any utility company using the easements herein or referred to shall be liable for any damages done by them or their assigns, agents, employees or servants to shrubbery, improvements or other property of the Owners situated on the land covered by said easements.

There is hereby reserved to Declarant and the Association, and the designees of each, access and maintenance easements upon, across, over and under the Properties to the extent reasonably necessary for the purpose of installing, replacing, repairing and maintaining cable television systems, master television systems, security and similar systems, roads, walkways, paths, trails, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including but not limited to, water, sewers, meter boxes, telephone, and electricity, and, for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on the Subdivision Plat.

An easement is hereby extended and acknowledged to all police, fire protection, ambulance, garbage and trash collector pickup vehicles and all similar persons to enter upon the Common Area in performance of their duties.

Each Lot is conveyed subject to all easements, conditions and reservations shown on the Subdivision Plat, or as shown on a duly recorded easement instrument, if any, and each Owner shall take notice of all such easements, conditions, and reservations. No Owner shall maintain any condition or improvements in any platted easement which will significantly interfere with the intended use of the easement.

**(B) Drainage Easements.**

Easements for drainage throughout the subdivision are reserved as shown on the Subdivision Plat, or a duly recorded easement instrument, if any, on an affected Lot. No Owner of any Lot in the subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such easements. More specifically and without limitation, no Owner or Resident of a Living or Villa Unit may:

(1) alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements;

(2) alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without the prior written approval of the ARC and the Road Administrator of Guadalupe County;

(3) construct, erect or install a fence or other structure of any type or nature within or upon such drainage easements;

(4) permit storage, either temporary or permanent, of any type upon or within such drainage easements;

(5) place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis; or

(6) remove, alter or tamper in any way with any Swale Ditch on the Properties.

By acceptance of a deed to any Lot, each Owner covenants and agrees to ensure such Lot is graded and maintained in accordance with the grading plan set forth in the Design Guidelines and that the drainage of such Lot is maintained in accordance with the grading and drainage plan.

**(C) Easements to Serve Additional Property.**

The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of additional property, as provided in Article XVI of this Declaration, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of the roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any

damage caused to the Common Area as a result of vehicular traffic connected to the development of such property.

**(D) Easements for Golf Course.**

Every Lot and the Common Area are burdened with an easement permitting golfers to come upon such Common Area or Lot to retrieve errant golf balls; provided, however, if any Living or Villa Unit is fenced or walled, the golfer must seek and obtain the Owner's permission. **Under no circumstances shall Declarant, the Association, or its Members, Las Golf Interests, L.L.C., The L.M. Warner Co., L.L.C., their successors and assigns, successors-in-title to the Golf Course, Builder Members, officers, directors or partners of the foregoing be held liable for any damage or injury resulting from errant golf balls, golf clubs, or the exercise of this easement. Golfers shall not be liable for damage caused by errant golf balls or golf clubs that result from ordinary and usual conduct associated with playing the game of golf.**

(1) The owner of the Golf Course, its agents, successors, successors in title, and assigns, and the members of the Golf Course shall at all times have rights of non-exclusive easement of access and use over those portions of the Common Area reasonably necessary to the operation, maintenance, repair, replacement and enjoyment of the Golf Course, including, but not limited to, ingress and egress and utilities.

(2) The Properties immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water, pesticides and chemicals from the irrigation system serving the Golf Course. Under no circumstances shall the Association or the owner(s) of the Golf Course be held liable for any damage or injury resulting from such overspray or exercise of this easement.

(3) The owner of the Golf Course, its agents, employees, contractors, successors, successors in title, and assigns, shall have a perpetual, non-exclusive easement of access over the Properties for the installation, maintenance, repair, replacement, observation and control of the entire irrigation and equipment serving all portions of the Golf Course, encroachments, construction, and maintenance of golf cart paths, landscaping, and retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from the Golf Course.

(4) The owner of the Golf Course, its successors, successors in title, and assigns, shall have a perpetual, non-exclusive easement of access over the Properties and Common Area for the purpose of placing speed bumps to protect golfers.

(5) The owner of the Golf Course, its successors, successors in title, and assigns, shall have a perpetual, non-exclusive easement of access to the private roads through the entrance gate which shall remain open between the hours of six o'clock a.m. (6:00) and nine o'clock p.m. (9:00), daily. The owner of the Golf Course shall have the unfettered right of entry through the entrance gate for any emergencies, solely within the discretion of the owner of the Golf Course. Furthermore, if and when the owner of the Golf Course shall have after hours functions, between the hours of nine o'clock p.m. (9:00) and six o'clock a.m. (6:00) the next day, the owner of the Golf Course and all its invitees, licensees, and guests for such function, shall have right of entry not to exceed the given twenty-four (24) hour period, or more hours where appropriate for the given function. By and through source codes, electronic devices, or



otherwise, the owner of the Golf Course and such persons shall have additional hours of access on a case-by-case basis. Nothing here shall prevent the Owner of the Golf Course from access through the entrance gate for all emergencies. Declarant, its successors and assigns, including, but not limited to, the Long Creek Owners Association, Inc., or its legal successors and assigns, shall have the right to alter the access provisions of this Paragraph as to the owner of the Golf Course, unless joined in such alteration, amendment, and changes by such owner in a document that is duly recorded in the appropriate records of Guadalupe County, Texas.

In recognition of the fact that the easements of this Article VIII, Section (D) are for the benefit of the owner of the Golf Course, no amendment to this Article VIII, Section (D), and no amendment in derogation of any easements and rights reserved or granted to the owner of the Golf Course by other provisions of this Declaration, may be made without the written approval of the owner of the Golf Course. The foregoing shall not apply, however, to amendments made by the Declarant.

The failure of any Owner to comply with the provisions of this Article VIII shall in no event be deemed or construed to impose liability of any nature on the Association, ARC and/or Declarant, and such committee and/or Declarant may but shall not be charged with any affirmative duty to police, control or enforce such provisions.

#### **ARTICLE IX: ENFORCEMENT**

If the Owner or Resident of any Lot, or their heirs, executors, administrators, successors, assigns or tenants, shall violate or attempt to violate any of the restrictions and covenants set forth in this Declaration, it shall be lawful for the Association, Declarant, or any Owner subject to this Declaration, to prosecute any proceedings against the person or persons violating or attempting to violate any such restrictions and covenants. The failure of any Owner or Resident to comply with any restriction or covenant will result in irreparable damage to Declarant and other Owners of Lots in the Subdivision; thus the breach of any provision of this Declaration may not only give rise to an action for damages at law, but also may be enjoined or may be subject to an action for specific performance in equity in any court of competent jurisdiction. In the event an action is instituted to enforce the terms hereof or prohibit violations hereof, and the party bringing such action prevails, then in addition to any other remedy herein provided or provided by law, such party shall be entitled to recover court costs and reasonable attorney's fees, which sums along with any award of damages pursuant to Texas Property Code § 202.004(c), shall become a lien on the Lot and enforceable under the provisions of Article X11, Section (H) of this Declaration. Neither the Architectural Review Committee, Association, nor Declarant, shall be charged with any affirmative duty to police, control or enforce the terms of this Declaration and these duties shall be born by and be the responsibility of the Owners.

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

**ARTICLE X: COMMUNITY SERVICES ARRANGEMENTS**

Courtesy patrol and other community service arrangements may be provided by the Association, from time to time; however, neither Declarant or the Association are providers of security and the Owners must provide their own security for themselves, their Living or Villa Unit, Lot and personal property.

Although the Declarant and the Association reasonably believe that the existence and visibility of community services personnel and controlled access points may discourage the commission of criminal acts, within the Properties:

**DECLARANT AND THE ASSOCIATION SHALL NOT BE CONSIDERED TO HAVE A DUTY TO INSURE OR GUARANTEE THE SAFETY OF THE OWNERS IN THE SUBDIVISION OR TO BE A PROVIDER OF SECURITY SERVICES. WHETHER OR NOT SUCH SERVICES ARE PROVIDED, DECLARANT AND THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS, DAMAGE OR INJURY BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES AND SERVICES TAKEN OR PROVIDED. EACH OWNER, TENANT, GUEST OR INVITEE ACKNOWLEDGES AND UNDERSTANDS THAT DECLARANT, THE ASSOCIATION, THEIR OFFICERS, DIRECTORS AND COMMITTEE MEMBERS, ARE NOT SECURITY SERVICES PROVIDERS AND ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION, ITS DIRECTORS, OFFICERS AND COMMITTEE MEMBERS, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO ANY SECURITY MEASURES UNDERTAKEN WITHIN THE SUBDIVISION, INCLUDING BUT NOT LIMITED TO THE CONTROLLED ACCESS POINTS ON THE PROPERTIES.**

The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by authorized representatives of the Association. The Association will **not** carry any insurance pertaining to, nor does it assume liability or responsibility for, the real or personal property of the Owners, Residents, and Members (and their respective family members and guests), including, but not limited to boats and watercraft accessories stored in Marina Units.

Each Owner, Resident and Member expressly understands, covenants, and agrees with the Declarant and the Association that:

(1) Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner, Resident and Member;

(2) Each Owner, Resident and Member shall from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Resident's and Member's own selection to select, purchase, and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner, Resident and Member covering his or her personal property;

(3) Each Owner, Resident, and Member releases and holds Declarant and the Association harmless from any uninsured liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all aspects of the controlled access points, community service arrangements or private streets and alleys within the Properties, including, without limitation:

(a) the interviewing, hiring, training, licensing (if any), bonding (if any), and employment of community services personnel;

(b) the instructions, directions, and guidelines issued to community services personnel;

(c) the duties, performance, actions, inactions, or omission of or by the community services personnel; and

(d) the functioning of the mechanical gate access devices.

## **ARTICLE XI: MEMBERSHIP IN THE ASSOCIATION, VOTING RIGHTS AND REGISTRATION**

Every person or entity who is a record owner of a free or undivided interest in any Lot which is subject to the jurisdiction of and to assessment by the Association, shall be a Member of the Association.

### **(A) Classes of Membership.**

The Association has two classes of membership:

Class A: Class A members shall be all Owners and Builder Members with the exception of Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in a 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 (1) vote be cast with respect to any Lot.

Class B: The Class B member shall be Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. Class B members shall be entitled to three (3) votes for each Lot owned.

### **(B) Suspension of Voting Rights.**

All voting rights of an Owner may be suspended by the Board of Directors during any period in which such Owner is delinquent in the payment of any duly established assessment or is otherwise in default and/or violation thereunder or under the Bylaws or rules and regulations of the Association.

### **(C) Registration with the Association.**

In order that the Declarant and the Association can properly determine voting rights and acquaint every Lot purchaser and every Owner, Resident and Member with these Covenants and the day-to-day matters within the Association's jurisdiction, each Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise

and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as: (a) the full name and address of each Owner, Member, Resident and fiduciary; (b) the business address, occupation and telephone number of each Resident; (c) the description and license plate number of each automobile owned or used by a Resident and brought within the Properties; (d) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Resident cannot be located) in case of an emergency; and (e) such other information as may be reasonably requested from time to time by the Association. In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and Resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

## **ARTICLE XII: COVENANTS FOR MAINTENANCE ASSESSMENTS**

Each Builder Member and every Owner of a Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided; and (3) Member Charges levied against individual Lots to reimburse the Association for extra or unusual costs incurred by the Association for curing the Owner's violation of a restrictive covenant or provision contained in this Declaration; Licensees of Marina Units shall be deemed and covenant to pay marina unit assessments. The assessments and Member Charges, together with such interest thereon, reasonable attorney's fees and costs of collection thereof, as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment and Member Charge, together with such interest thereon, reasonable attorney's fees and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the obligation accrued. Upon the transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of the conveyance.

The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members, and in particular, for the improvement, maintenance and operation of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Properties by the Members.

### **(A) Annual Assessments.**

The initial annual assessment for both improved and unimproved Lots shall be on which Living Units have been or are to be constructed is \$650.00. The initial annual assessment for both improved and unimproved Lots shall be on which Villa Units have been or are to be constructed is \$1,200.00. The annual assessment may be adjusted by a majority vote of the Board of Directors, after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made, without membership vote, but shall not be increased to more than the greater of: (i) one hundred and ten percent (110%) above the prior year's annual assessment (ii) the result of multiplying said rate by a fraction, the numerator of which is the latest Consumer Price Index published on or before the sixtieth (60th) day prior to the date the Board sets the new maximum annual assessment rate and the

denominator of which is the Consumer Price Index published on the year prior to the one used in the numerator. Consumer Price Index is the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers. In the event the compilation and/or publication of the Consumer Price Index is substantially revised, transferred to any other governmental department or bureau or agency or shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices most nearly the same as the Consumer Price Index) shall be used to make the calculations. The Association may increase the maximum annual assessment rate by more than the amount specified in the preceding sentence only upon receipt of a two-thirds (2/3) approving vote of the Members at a meeting called for vote on such a proposed increase.

**(B) Annual Assessments For Villa Units.**

The Association shall designate that sum which is equal to the difference in the annual assessment for each Living Unit Lot and the additional maintenance cost by the Association for each Villa Unit Lot, which Owners of Villa Units shall pay as an additional annual assessment. The annual assessment for Villa Units shall be used by the Association exclusively for the payment of any and all expenses incurred by the Association in connection with the obligations imposed upon it by this Declaration relating to Villa Units in accordance with the terms of Article VI, ("Villa Unit Obligations"). The assessment for Villa Units shall be used first to pay the Villa Unit Obligations.

**(C) Marina Unit Assessment.**

In addition to the annual assessment and any special assessment, the Association shall impose a marina unit assessment for the costs of the maintenance of watercraft slip facilities at Bandit Bay to be paid by Licensees of Marina Unit Licenses.

**(D) Declarant's Assessment.**

During the Class B membership period, Declarant may annually elect either to pay regular assessments on its Lots, or to pay the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year (excluding amounts allocated for reserves). Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or a combination of these.

**(E) Special Assessments.**

In addition to the annual assessments provided for above, the Association may levy, in any assessment year, a special assessment, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Area, respond to the unusual emergency needs of the Association as may be expected to appear from time to time, or for such other lawful purpose related to the use of the Properties as the Board of Directors or the Members may determine, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Class A and Class B members (for so long as there remains a Class B membership) voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members and shall set forth the purpose of the meeting. Without the vote of the Members, as provided herein, the Board may levy special assessments for the following reasons: (i) against the Villa Units to pay Villa Obligations (ii) against the Lots of Licensees of the Marina Units if the marina unit assessment is insufficient to maintain the watercraft slip

facilities at Bandit Bay (iii) against affected Lots for expenses of the Association which benefit less than all the Lots.

**(F) Member Charge.**

In addition to the annual assessment and any special assessment, the Association, by vote of the Board, may impose a charge (Member Charge) upon any Lot for the purposes of reimbursing the Association for all direct and indirect costs incurred by the Association with regard to the maintenance, repair or replacement of landscaping or site improvements on any particular Lot when the Board has determined the maintenance, repair or replacement of improvements associated with such Lot has been neglected to the point where conditions existing on such Lot are not in conformance with the maintenance obligations set forth in Article V of this Declaration, an Owner or Builder Member places anything in the Common Area, and for any other purpose as provided in this Declaration. The Owners of such Lot shall be notified in writing of said determination and the specific deficiencies found to exist and shall be afforded a reasonable period of time to respond to said notice by correcting the deficiencies. The Owner shall be assessed the cost of reimbursing the Association for any and all costs, including attorney's fees, to secure compliance.

**(G) Commencement, Due Dates, Budget and Late Charges.**

The obligation to pay assessments shall commence as to each Lot on the first day of the month following the month in which the Lot is made subject to this Declaration. The annual, special and marina unit assessments provided for herein shall become due and payable and shall be collected as the Board of Directors of the Association shall determine. The amount of the first annual assessment shall be an amount which bears the same relationship to the annual assessment provided for above as the remaining number of months in that year bear to twelve. The Board shall use reasonable efforts to provide each Member with an invoice statement as to the appropriate amount due, but any failure to provide such a notice shall not relieve any Member of the obligation. The due date of any special assessment under the provisions hereof shall be fixed in the resolution authorizing such assessment. The special assessments are due and payable on the date fixed in the resolution authorizing the special assessment. Member charges are due and payable within thirty (30) days after the Member was served with notice by the Association of the amount of such Member Charge.

Each year, in accordance with the Bylaws, the Board of Directors of the Association shall adopt an annual budget and set the amount of the annual and marina unit assessment, taking into consideration the Association's operating cost for the then current year, expected increases or decreases in such costs over the next year, and future needs of the Association. The annual budget shall be adopted by the Board at least thirty (30) days prior to the commencement of each fiscal year.

Any assessment not paid within fifteen (15) days after the due date shall bear a late charge from the due date at a rate to be determined, from time to time, by the Board.

**(H) Power of Sale and Remedies to Enforce Lien for Assessments, Member Charges, and Other Charges.**

Each Owner and Builder Member, by acceptance of a deed to a Lot, and/or a License to a Marina Unit, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner or Builder Member personally for the collection of such assessments and other charges provided in this Declaration as a debt and to enforce the

Association's lien by all methods available for the enforcement of such liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, and grants to the Association the power of sale in connection with said lien. The President of the Board of Directors shall have the right to appoint Agents, to mail and file the notices required by Texas Property Code § 51.002, to conduct an assessment lien foreclosure sale, and to otherwise comply with the statute. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

In addition to the late charges on delinquent accounts, each Owner and Builder Member shall be obligated to pay to the Association all actual costs of collection incurred by the Association, including attorney's fees and such reasonable late charges and collection charges as the Board of Directors may establish, all of which shall also be subject to the liens of the Association.

At any assessment lien foreclosure sale, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure, the Residents of such Lot shall be required to pay a reasonable rent for the use of such Living or Villa Unit and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to appoint a receiver to collect such rents and, further, shall be entitled to take possession of such Lot by forcible detainer or by Writ of Possession.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, non-judicial foreclosure, or conveyance in lieu of foreclosure or in satisfaction of mortgage debt. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due nor from the lien for any such subsequent assessment.

### **ARTICLE XIII: MAINTENANCE FUND AND GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION**

#### **(A) Maintenance Fund.**

The Board, for the benefit of the Owners, shall establish and maintain a maintenance fund into which shall be deposited the annual assessments collected from Owners and which maintenance fund shall be used, without limitation, for the payment of the following:

(1) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.

(2) Care and preservation of the Common Area.

(3) The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board of Directors, (provided that any contract for management of the Association shall be terminable by

the Association, with no penalty upon ninety [90] days prior written notice to the managing party) and the services of such other personnel as the Board of Directors or the manager deem necessary.

(4) Legal and accounting services.

(5) A policy or policies of insurance insuring the Common Area, the Association, its Directors, and Officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association, in any amount or amounts as determined by the Board of Directors.

(6) Workers compensation insurance to the extent necessary to comply with any applicable laws.

(7) Such fidelity bonds as may be required by the Bylaws or as the Board of Directors may determine to be advisable.

(8) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board of Directors is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

(9) Perpetual maintenance and enhancement of all Common Area including walls, ponds, water features, watercraft slip facilities at Bandit Bay, gates, grounds, landscaping, lights, irrigation and electric for right-of-way and all entry monuments, walls and fences, and signs owned or maintained by the Association.

**(B) Powers and Duties of Board:**

The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association:

(1) To execute all declarations of Ownership for tax assessment purposes and with regard to the Common Areas, if any, on behalf of all Owners.

(2) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

(3) To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

(4) To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for repairs and replacements.

(5) To make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time.



(6) To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals for any proper purpose.

(7) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

(8) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

(9) To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

(10) To establish a monetary "fines" system which shall include due process hearings and a discretionary range of fine amounts, which, when levied, shall constitute a permitted Member Charge assessment secured by the lien herein established.

(11) To establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses.

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

The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

#### **ARTICLE XIV: GRANT OF LICENSES FOR MARINA UNITS**

Declarant may grant licenses for Marina Units to Owners, for a price to be determined, by a written License Agreement, which shall define the terms and conditions of the license. BECAUSE OF LIMITED SPACE, LICENSES FOR MARINA UNITS WILL NOT BE AVAILABLE TO EVERY OWNER; however, those licenses granted shall be appurtenant to the ownership of a Lot. Leasing or assignment of a Marina Unit by a licensee of a Marina Unit is expressly prohibited.

Licensees shall be required to pay reasonable maintenance costs of the Marina Units' facilities, and the Association shall have a lien and remedies therefore in the same manner as assessment liens created in Article XII, Section (H).

#### **ARTICLE XV: INSURANCE AND CONDEMNATION**

##### **(A) Fire, Hazard and Casualty Insurance of Lots.**

Owners of Lots hereby covenant and agree with all other Owners and the Association to carry all-risk casualty insurance on their Lot, and, in the case of Marina Unit Licensees, on their

Marina Unit. Each Owner of a Lot further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original Living Unit. In the event the Living Unit is totally destroyed and the Owner determines not to rebuild or reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of the construction.

Each Owner shall be responsible, at his own cost and expense, for personal liability insurance to the extent not covered by the Association and public liability insurance acquired by the Association on behalf of all Owners with respect to the Common Area. Before a Living Unit is erected on any Lot, each Owner or Builder Member shall carry, at Owner or Builder Member's expense, homeowners and lot owners insurance. Once a Living Unit has been erected on a Lot and is Owner occupied, each Owner shall, at Owner's expense, obtain homeowners insurance. If a Living Unit is leased to a third party, the Owner or Resident shall obtain liability and hazard insurance.

**(B) Property and Public Liability Insurance With Respect to Common Area, Errors and Omissions and Indemnification.**

(1) The Board of Directors of the Association shall obtain and continue in effect property insurance, to insure the buildings and structures in the Common Area, naming the Association as beneficiary with an endorsement to the mortgagee, if any, against risks of loss or damage by fire and other hazards as are covered under standard fire and extended coverage provisions, and said insurance to include coverage against vandalism.

(2) The Board of Directors of the Association shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its agents and employees, and each Owner, from and against liability in connection with the Common Area.

(3) The Board of Directors of the Association shall obtain liability insurance covering errors and omissions of directors, officers, managers, employees and representatives of the Association, and fidelity bonds for all officers and employees which have control over the receipt or disbursement of funds.

(4) The Association may indemnify directors, officers, employees and agents and may purchase indemnity insurance in accordance with the provisions of Article 2.22A of the Texas Non-profit Corporations Act.

**(C) Insurance Premiums with Respect to Common Area.**

All costs, charges and premiums for all insurance with respect to the Common Area that the Board of Directors authorizes as provided herein shall be a common expense of all Owners and shall be part of the annual assessment.

**(D) Other Insurance.**

None of the above prevents the Board of Directors from obtaining other insurance as may be required by law (e.g. workers compensation) or other insurances which may become the norm for properties of this nature.

**(E) Condemnation.**

If part or all of the Common Area shall be taken or condemned by any authority having the power of eminent domain, any compensation and damages shall be paid to the Association. The Board of Directors shall have the exclusive right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation issues affecting the Common Area. The award made for any taking shall be payable to the Association as trustee for all the Owners and shall be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any property described in this Declaration, and Owners representing at least seventy-five per cent (75%) of the Class A votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.

If the taking does not involve any improvements on the Common Area, or if the decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes.

The Association shall give timely notice of the existence of such proceedings to all Owners and their mortgagees, if any. The expense of participation in such proceedings shall be common expenses chargeable to the Owners.

**(F) Insufficient Proceeds.**

If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in Article XII, Section (E) of this Declaration.

**ARTICLE XVI: DURATION AND AMENDMENT OF THIS DECLARATION AND ANNEXATION OF ADDITIONAL PROPERTIES**

This Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the extension, agreeing to terminate this Declaration. This Declaration may be amended by written instrument approved by the affirmative vote of the Members of the Association holding at least seventy-five percent (75%) of the total Class A and Class B membership votes. Any amendment shall be effective when it is certified by the President of the Association as to the requisite number of votes and recorded in the Official Public Records of Real Property of Guadalupe County, Texas. An amendment so certified and recorded shall be conclusively presumed to have been duly adopted. Declarant shall have the right to amend this Declaration for any reason, without the necessity of joinder by any other Owner of Lots, or any interest therein, for so long as Declarant still owns property described herein.

Declarant shall have the right, privilege and option to annex additional land to make it subject to this Declaration until January 1, 2017, by filing in the Official Public Records of Real Property of Guadalupe County, Texas, an instrument annexing such property. Thereafter, additional property may be annexed and made subject to this Declaration, or property may be withdrawn, by written instrument approved by the affirmative vote of the Members of the Association holding at least seventy-five percent (75%) of the total votes and filed of record in the Official Public Records of Real Property of Guadalupe County, Texas.

#### **ARTICLE XVII: GOVERNMENTAL REQUIREMENTS**

By acceptance of a deed to a Lot, or initiating construction of a residence or improvements to a Lot, each Builder Member, builder and contractor, assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable governmental rules, regulations, and permits, including, but not limited to those promulgated or issued by the Environmental Protection Agency and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 et seq. ), and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Water Development Board and Texas Natural Resource Conservation Commission, related to each Lot, including, without limitation, the provisions of chapters 325 and 331, Texas Administrative Code, and any specific rulings made pursuant to the terms thereof. The foregoing references are made for the benefit of builders and contractors and do not in any way limit the terms and requirements of this covenant and the requirement that all Builder Members and contractors comply with all governmental regulations, and any plan required by such regulations such as Storm Water Pollution Plan, affecting each Lot and construction site with which they are associated, including delivery to Declarant of a certification of understanding relating to any applicable NPDES permit prior to the start of construction. Each Builder Member and contractor, by acceptance of a deed to a Lot or undertaking the making of improvements to a Lot, holds harmless and indemnifies Declarant from costs, loss, or damage occasioned by the failure to abide by any applicable governmental statute, rule, regulation or permit related to the Properties.

By acceptance of a deed to a Lot, each Builder Member and Owner agrees that Declarant and the Association shall have the right to enter upon any Lot on which one or more conditions or activities prohibited by appropriate governmental authority is maintained, or on which there has been a failure to perform any act required by appropriate governmental authority, for the purpose of curing any such violation, provided that the Owner or Builder Member has been given five (5) days prior written notice and has failed to remedy the complained of violation within such time, and each such Owner and Builder Member indemnifies and holds harmless Declarant and the Association from all cost and expense of such curative action and any cost or expense of penalty or fine levied by any governmental authority as a result of the act or failure to act of the Owner, builder, contractor, or Builder Member with respect to his Lot or the Properties. The foregoing remedy shall be cumulative of all other remedies for violations of provisions of these covenants.

#### **ARTICLE XVIII: DECLARANT RIGHTS**

Notwithstanding anything to the contrary contained elsewhere in this Declaration, the Articles of Incorporation, and Bylaws of Long Creek Owners Association, Inc., Declarant shall have the following rights:

(A) Declarant and its duly authorized agents, representatives, and employees shall have, and there hereby is reserved to Declarant, its agents, representatives, and employees, an easement over, across, and to the Subdivision for construction of Living or Villa Units, Common Area, and for the maintenance of sales offices, signs, and/or model Living or Villa Units on the Properties, so long as Declarant owns any land or unit subject to this Declaration primarily for the purpose of sale and to expand the Properties.

(B) Declarant shall have the authority to appoint and remove the members of the Board of Directors of the Association so long as there is a Class B membership.

(C) Declarant shall have the right to appoint ARC members and successor ARC members so long as there is a Class B membership. During the period of Declarant control of the ARC, the ARC may promulgate and enforce uniform criteria for Builder Members and contract builders selected by Owners to ensure that all builders have a reputation for quality construction, and shall have the right to disapprove builders which do not meet the criteria.

(D) Declarant shall have the exclusive assignable right to grant licenses for Marina Units to Owners, for a price to be determined, by a written License Agreement, which shall define the terms and conditions of the license.

(E) Declarant shall have the right to annex additional land into the Properties.

The Class B membership shall expire on the earlier of: (i) two years after the termination of the Class B control period pursuant to the Bylaws; or (ii) on the date Declarant voluntarily relinquishes such right by executing and recording a written declaration of intent which shall become effective as specified in such declaration.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (i) 40 years from the date of this Declaration, or (ii) upon recording by Declarant of a written statement that all sales activity has ceased.

## **ARTICLE XIX: GENERAL PROVISIONS**

### **(A) Interpretation.**

If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible to more than one or conflicting interpretations, then the interpretation that is most nearly in accordance with the general purposes and objectives of this Declaration shall govern. Whenever in the application of the provisions of this Declaration, or any amendment hereto, conflict with the application of any provision of the By-Laws of the Association, the provisions or application of this Declaration shall prevail.

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

The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions here apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

**(B) Notices.**

Any notice required to be given to any Owner, Member or Resident shall be complete when the notice is deposited in the United States Mail, postage prepaid, and addressed to the Owner, Member or Resident at the last known address as shown by the records of the Association, pursuant to Article XI, Section (C) of this Declaration.

**(C) Headings.**

The headings contained in this Declaration are for reference purpose only and shall not in any way affect the meaning or interpretation of this Declaration.

**(D) Use of the Words "Long Creek" and "The Bandit".**

No person shall use the words "Long Creek" or "The Bandit" or any other term which the Declarant may select as the name of this development or any component in any printed or promotional material without Declarant's prior written consent. However, Owners may use the words "Long Creek" in printed or promotional material solely to specify that a Lot is located within the Properties, and the Association shall be entitled to use the words "Long Creek" in its name.

**(E) Exhibits.**

Any Exhibits attached to this Declaration are hereby incorporated by reference as completely and fully as if copied verbatim herein and amendment of such exhibit shall be governed by the amendment provisions of this Declaration.

**(F) Invalidation and Severance.**

The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in force and effect.

**(G) Entirety of this Restatement.**

This Second Restatement of the Covenants, Conditions, and Restrictions includes the Declaration Title page and every page thereafter to the signature page that follows Article XX.

**ARTICLE XX: DISPUTE RESOLUTION**

**20.1 Defined Terms.**

As used in this Article XX, the following terms shall have the meaning set forth below:

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

20.1(b) "Bound Parties" means: (1) the Declarant; (ii) all Owners, Lessees, and Occupants; and (iii) any contractor or subcontractor, architect, engineer, consultant or other person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of

construction of the Common Elements or the Lots and who agrees in writing to be bound by the provisions of this Article XX.

20.1(c) "Claim" means: (i) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Elements, the Lots, or any other part of the Condominium, including, without limitation, any claim or cause of action that the Common Elements or the Lots are defective or that the Declarant, its limited partners, agents, contractors, employees, subcontractors, architects, attorneys, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof, or (ii) any claim or cause of action against the Declarant or any employee, agent, attorney, director, member, limited partner, or officer of Declarant arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The award of the arbitrator issued pursuant hereto shall be final, binding, and non appealable.

## 20.2 Agreement to Resolve Certain Disputes Without Litigation.

All Bound Parties agree that all Claims shall be resolved in accordance with the dispute resolution procedures set forth in this Article XX.

## 20.3 Notice of Claim.

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

information required to be contained in a preliminary expert opinion affidavit submitted pursuant to the Texas Rules of Civil Procedure, particularly Rule 194 and its subparagraphs, as amended.

#### **20.4 Mediation.**

The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within ninety (90) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

#### **20.5 Binding Arbitration.**

In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 20.5. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 20.5. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 20.5, the arbitration shall be conducted in accordance with the following rules:

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

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and all disputes between the parties shall be resolved by a binding arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules and pursuant to the Federal Arbitration Act, 9 U. S. C. Sections 1-14. In the event of a conflict between the AAA Rules, the Federal Arbitration Act, and this Section 20.5, the provisions of this Section 20.5 shall govern.



(c) Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 20.5 as the "Arbitrator".

(d) Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator, provided they qualify under existing Texas law and the existing rules of the AAA. "Existing rules" shall be interpreted as the rules of the referenced entities at the time the Claim is made.

(e) Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 20.5. (c).

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

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

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

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

(j) Hearings.

Hearings may be held at any place within the State of Texas designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

**20.6 Final Award.**

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

**20.7 Right to Enter, Inspect, Repair and/or Replace.**

Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Lot for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 20.6 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Lots. The right of a Bound Party and its employees, agents, attorneys, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

**20.8 Use of Funds.**

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

**20.9 Approval of Litigation.**

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

monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of their Lot of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 20.3.

**20.10 Statute of Limitations.**

All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 20.5. If the arbitration proceedings are not initiated within the time period provided by Texas law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

**20.11 Conflicts.**

In the event of any conflict between this Article XX and any other provision of the Declaration or Design Guidelines, this Article XX shall control, except for the provisions of Section 20.8 above, in which the other terms and provisions of the Declaration shall be deemed controlling in all respects. Any provision conflicting with the statements in the foregoing sentence of this Section 20.10, shall be deemed to be amended and altered and brought into compliance with such sentence.

**20.12 Acceptance.**

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

**DECLARANT**  
GOLF ASSOCIATES, LTD.  
A Texas Limited Partnership

BY: The L. M. Warner Co., L. L. C.  
General Partner

By: L M Warner  
L. M. Warner  
Duly authorized representative

STATE OF ARIZONA      §  
   §  
COUNTY OF Maricopa   §

**REPRESENTATIVE ACKNOWLEDGEMENT**

This instrument was acknowledged before me on the 4th day of August, 2004, by L. M. Warner, as the duly authorized representative of The L. M. Warner Co., L. L. C., General Partner of GOLF ASSOCIATES, LTD., a Texas Limited Partnership, on behalf of said partnership.

Kathleen Livingston  
Notary Public, in and for  
The State of Arizona  
My Commission expires 5-8-05

FILED FOR RECORD  
04 AUG 11 AM 9:47  
TERESA F. FICL  
COUNTY CLERK GUADALUPE COUNTY  
Carol Norton

THE STATE OF TEXAS  
COUNTY OF GUADALUPE  
I hereby certify that this instrument was  
FILED on the date and at the time stamped  
hereon by me and was duly recorded in the  
Official Public Records of Guadalupe County,  
Texas.



Jessica Reed  
County Clerk  
Guadalupe County Texas

