

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
THE PRESERVE**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
THE PRESERVE**

**STATE OF TEXAS           §  
  §           **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF HAYES    §**

**THAT WHEREAS**, this Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Preserve (the “Declaration”), is made on this \_\_\_\_ day of \_\_\_\_\_, 2013 by The Preserve at Dripping Springs Homeowners Association, Inc., a Texas non-profit organization (hereinafter referred to as the "Association"), and is as follows:

WHEREAS, Gray Development Ltd., a Texas limited partnership, hereinafter called the “Original Declarant,” previously filed for record that certain Declaration of Covenants, Conditions and Restrictions for The Preserve, recorded at Volume 1856, Page 601 of the Real Property Records of Hays County, Texas (previously recorded at Volume 1852, Page 650 of the Real Property Records of Hays County, Texas) (as amended by that First Amendment to Covenants, Conditions and Restrictions for The Preserve, recorded at Volume 3025, Page 251 of the Real Property Records of Hays County, Texas, the “Original Declaration”); and

WHEREAS, the Original Declaration was applicable to the Property (as defined in Section 1.21 below); and

WHEREAS, Pursuant to Section 9.02(B) of the Original Declaration, the Association, acting on behalf of the Owners, desires to terminate the Original Declaration in its entirety, and substitute the terms and provisions of this Declaration in its place; and

WHEREAS, the Association desires to and herein reserves the right to add additional property to the provisions, covenants, conditions, restrictions, liens and charges hereinafter set forth; and

WHEREAS, the Association desires to continue to carry out a uniform plan for the Property and portions thereof for the benefit of the present and future owners of the Property, and the Association hereby adopts and establishes the following declarations, reservations, restrictions, covenants, conditions and easements to apply uniformly to the use, improvement, occupancy and conveyance of all or any portion of the Property, including the roads, streets, alleys and waterways herein; and each contract, instrument or deed which may be hereafter executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following (regardless of whether or not the same are set out in full or by reference in said contract or deed):

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, and obligations set forth herein, the receipt and sufficiency of which are acknowledged by the Association, the Original Declaration is hereby terminated in its entirety and the Property is hereby made subject to, and all of the Property shall be held, sold, conveyed and occupied subject to, the terms and provisions of the Declaration, which are for the purpose of protecting the value and desirability of and which shall run with the Property and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof, as follows:

## **ARTICLE I**

### **DEFINITIONS**

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

1.01 Architectural Control Committee. “Architectural Control Committee” (hereafter sometimes called “Architectural Control Committee,” or “ACC”) shall mean the committee created pursuant to this Declaration and having the authority and responsibility delegated thereto by this Declaration and/or the Board of Directors.

1.02 Articles. “Articles” shall mean the Articles of Incorporation of The Preserve at Dripping Springs Homeowners Association, Inc., which will be (or have been) filed in the office of the Secretary of State of the State of Texas, as the same are from time to time amended.

1.03 Assessments. “Assessments” shall mean assessments of the Association and includes regular annual assessments, special assessments, assessments benefiting specific areas, assessments on sale, transfer or conveyance of Property and sub-association assessments.

1.04 Association. “Association” shall mean and refer to The Preserve at Dripping Springs Homeowners Association, Inc.

1.05 Association Property. “Association Property” shall mean all real or personal property now or hereafter owned by or leased to the Association.

1.06 Beneficiary. “Beneficiary” shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust.

1.07 Board. “Board” shall mean the Board of Directors of the Association.

1.08 Bylaws. “Bylaws” shall mean the Bylaws of the Association, which may be adopted by the Board, as the same from time to time amended.

1.09 Common Areas. All of the areas designated as common areas on the Plat.

1.10 Declaration. “Declaration” shall mean this instrument and as it may be amended from time to time.

1.11 Improvement. “Improvement” or “Improvements” shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to, streets, buildings, outbuildings, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning equipment, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas electric, telephone, regular or cable television, or other utilities.

1.12 Local Common Area. “Local Common Area” shall mean any portion of the Property, currently designated (or designated in the future by the Association) as a common area for the primary benefit of the Owners and occupants of a particular area.

1.13 Lot. “Lot” or “Lots” shall mean any lot within the Property as described on a duly recorded subdivision plat.

1.14 Manager. “Manager” shall mean the person, form or corporation, if any, employed by the Association pursuant to this Declaration and delegated the duties, powers or functions of the Association.

1.15 Member. “Member” shall mean any person who is a member of the Association.

1.16 Mortgage. “Mortgage” shall mean any mortgage or deed or trust given to secure the payment of a debt.

1.17 Notice and Hearing. “Notice and Hearing” shall mean ten (10) days written notice and a hearing by the Board at which the person to whom notice is directed shall have the opportunity to be heard in person or by counsel at his expense.

1.18 Owner(s). “Owner(s)” shall mean the person or entity holding a fee simple interest in any Lot or in all or any portion of the Property, but shall not include the Beneficiary of a Mortgage.

1.19 Person. “Person” shall mean an individual or entity having the legal right to hold title to real property.

1.20 Plans and Specifications. “Plans and Specifications” shall mean any and all documents designed to guide and control the construction or erection of any Improvement, including, but not limited to, those indicating size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications for all building products and construction



techniques, samples of exterior colors, plans for utilities services, and all other documentation or information relevant to such improvement.

1.21 Property. “Property” shall mean, collectively, the land described as (a) all of the Lots located in The Preserve, Phase One, a subdivision located in Hays County, Texas, according to the plat filed of record in Volume 10, Page 153 in the plat records of Hays County, Texas, (b) all of the Lots located in The Preserve, Phase Two, a subdivision located in Hays County, Texas, according to the plat filed of record in Volume 10, Page 321 in the plat records of Hays County, Texas and (c) Lots 2-8 located in The Preserve, Phase Three, a subdivision located in Hays County, Texas, according to the plat filed of record in Volume 11, Page 366 in the plat records of Hays County, Texas, together with all land added to this Declaration as amendments or additional exhibits added in accordance with the provisions thereof. The Property specifically excludes (x) Lot 1A, Block "A" The Preserve, Phase One, according to the plat filed of record in Volume 10, Page 153 in the plat records of Hays County, Texas and (y) Lot 1, The Preserve, Phase Three, a subdivision located in Hays County, Texas, according to the plat filed of record in Volume 11, Page 366 in the plat records of Hays County, Texas.

1.22 Record, Recorded and Recordation. “Record, Recorded and Recordation” shall mean, with respect to any document, the recordation of such document in the office of the County Clerk of Hays County, Texas.

1.23 Subdivision. “Subdivision” shall mean a parcel of the Property, which has been shown on a final subdivision plat recorded in the Plat Records of Hays County, Texas.

1.24 Supplement Declaration. “Supplemental Declaration” shall mean any declaration of covenants, conditions and restrictions, which may be hereafter recorded by the Association, subject to all of the terms and restrictions of the Declaration and not in conflict herewith.

1.25 The Preserve Restrictions. “The Preserve Restrictions” shall mean this Declaration, together with any and all Supplemental Declarations, as either may be amended from time to time, together with the Articles and Bylaws.

1.26 The Preserve Rules. “The Preserve Rules” shall mean the rules adopted by the Board pursuant to the powers granted herein as they may be amended from time to time. The Preserve Rules shall include any rules set forth in signs which may be posted by the Association on the Property.

1.27 Visible From Neighboring Property. “Visible From Neighboring Property” shall mean that with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of adjoining Lot. An adjoining Lot shall be any Lot having a common lot line except for the intervention of a street, road, right-of-way, or easement.

## ARTICLE II

### ORIGINAL DECLARANT

Original Declarant no longer has any interest in the Property and any and all rights of Original Declarant with respect to the Property are no longer in effect.

### **ARTICLE III**

#### **GENERAL RESTRICTIONS**

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

3.01 Antennas. No exterior radio or televisions antenna, aerial or receiving dish greater than 24" in diameter shall be erected or maintained without the prior written approval of the ACC. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television, electromagnetic or radio signal on any other Lot.

3.02 Obnoxious Activities. No nuisance, obnoxious or offensive activities shall be carried on any Lot so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no excessive dog barking, no exterior speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property which are audible from neighboring Property.

3.03 Subdividing and Resubdividing. No Lot which has been finally platted shall be further divided or subdivided, nor may any easements be conveyed by the Owner thereof (including any sub-association) without the prior written approval of the Board of Directors. Nothing herein shall be deemed to require the approval of the Board of Directors for the transfer or sale of any Lot, including Improvements thereon, to more than one person, to be held by them as tenants-in-common or joint tenants, or for the grant of any Mortgage.

3.04 Signs. No sign of any kind shall be displayed to the public view without the prior written approval of the ACC. Builders may erect one sign, no larger than four (4) square feet in area, per lot, which has a model home or home under construction or for sale. Signs for model homes may be erected and shall be no larger than thirty-two (32) square feet. Such sign will be removed from the property immediately upon sale and closing of the home. Except as provided by this Section, the ACC shall have the right to approve signs of any type advertising a portion of the Property for sale or lease and it may set standards for the same. The Association, or its assigns, will have the right to enter any Lot and to remove any sign, advertisement, billboard, or advertising structure that does not comply with the above, and in so doing shall not be subject to any liability of trespass or other tort in connection therewith or arising out of such removal. Owners may erect small identification signs with their names and address subject to ACC approval.

3.05 Rubbish and Debris. No rubbish or debris of any kind (including weeds, brush, or material of any nature deemed to be rubbish or debris by the ACC) shall be placed or permitted to accumulate upon any portion of the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property or to its occupants. The ACC shall determine what constitutes rubbish, debris, or odors and what conditions render any portion of the Property unsanitary, unsightly, offensive or detrimental to any other Property or to its occupants, and the decision of the ACC shall be final and binding on all parties. Refuse, garbage and trash shall be kept at all times in a covered container, and such container shall be kept within an enclosed structure or appropriately screened from view. No garbage or trash shall be permitted to be buried on any Lot at any time. Composting shall be permitted only of vegetative matter and only if such composting is: (i) confined to an area to the rear of the house and in a receptacle approved by the ACC, (ii) not Visible From Neighboring Property or from any street, and (iii) maintained in an inoffensive manner.

3.06 Construction of Improvements. No Improvements shall hereafter be constructed upon any portion of the Property without the prior written approval of the ACC. All Improvements shall be constructed in compliance with any conditions and requirements of the ACC. During the construction of the primary residence or other substantial Improvements, the Owner shall provide or assure that the contractor employed by the Owner provide portable toilet facilities which will be maintained and serviced by a certified sanitary service company and a trash dumpster, which shall be regularly maintained. The positioning of all Improvements upon Lots within the Property is hereby expressly made subject to the ACC review and approval. Prior to the construction of Improvements on any vacant Lot, the Owner shall deposit with the Association the amount of \$2,500.00 (the "Construction Deposit"). The Construction Deposit shall be applied toward any clean up costs incurred by the Association with respect to such construction if the Owner of such Lot has not removed all construction debris from the Lot within thirty (30) days following substantial completion of such Improvements. Additionally, the Construction Deposit shall be applied toward any clean up costs incurred by the Association with respect to such construction if the construction of such Improvements stops for a period of thirty (30) days or more (excluding stops for force majeure reasons) if the Owner of such Lot has not removed all construction debris from the Lot within thirty (30) days following the expiration of such thirty (30) day period. The Construction Deposit (or remaining portion thereof, if applicable) shall be returned to the Owner following the timely removal of all construction debris from the Lot by such Owner following substantial completion of the Improvements on such Lot.

3.07 Lot Maintenance. The Owners or occupants of all Lots shall at all times keep all weeds and grass cut in an attractive manner on the Lot and in the area located between the Lot boundary and the paved portion adjacent Private Roadway(s), and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements as incident to construction of Improvements thereon as herein permitted. Notwithstanding the foregoing, the Owners of any vacant Lot shall not be required to cut the weeds and grass on the vacant Lot, but shall at all times keep all weeds and grass cut in the area located between the vacant Lot boundary and the paved portion adjacent Private Roadway(s). The exterior of each residence and garage shall be maintained in good repair, including but not limited to the maintenance of: (i)

exterior paint such that no peeling of the paint exists, and (ii) rain gutters and downspouts such that they are properly attached to the residence and are functional and operational for their intended purpose. All fences, if any, which have been erected on any Lot shall be maintained in good repair by Owner, and Owner shall promptly repair or replace the same in the event of partial or total destruction. The drying of clothes outside is prohibited. New building materials used in the construction of Improvements erected upon any Lot may be placed upon a Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the Improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

3.08 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement, shall be performed only with the written approval of the ACC.

3.09 Use of Recreation and Open Spaces. No land within any Recreation and Open Space shall be improved, used or occupied, except in such manner as shall have been approved by the Association.

3.10 Violation of Declaration, Bylaws or Rules; Failure to Pay Assessment; Payment Plan.

A. Violation of Declaration, Bylaws or Rules. A violation by an Owner, his family, guests, lessees or licensees, of The Preserve Restrictions, Bylaws of The Preserve at Dripping Springs Homeowners Association, Inc. or Rules promulgated by the Board of Directors shall authorize the Board to avail itself of any one or more of the following remedies:

1. The right to enter the Property and Improvements, after thirty (30) days notice of the violation, and cure or abate such violation and to charge the expense thereof, if any, to such Owner, or
2. The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to, attorney's fees and court costs.

Before the Board may invoke the remedy provided in Paragraphs (1) and (2) above, it shall afford the Owner Notice and a Hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute.

B. Failure to Pay Assessment or Fine; Payment Plan. An Owner who fails to timely pay any assessment or fine authorized or permitted by this Declaration, shall have the right to pay such assessment or fine in accordance with the following payment plan (provided that if such Owner has defaulted on any payment plan in the 2-year period preceding the date

such Owner becomes delinquent on the payment of such assessment or fine, no such payment plan shall be available to such Owner):

1. The amount of the past due assessment or fine (which shall include reasonable administration costs incurred in administering the payment plan and attorney fees and collection costs associated with such assessment or fine) shall be paid in six (6) monthly installments, each such installment being equal to the amount required to amortize the amount of the past due assessment or fine over six (6) months using an interest rate of ten percent (10%) per annum (not to exceed the maximum charge permitted under applicable law)
2. The first such installment shall be due and payable on the first (1<sup>st</sup>) day of the first calendar month following the calendar month in which the Owner receives the initial written notice (such notice to include the amount of each installment due under the payment plan) that such assessment or fine is past due and each subsequent installment shall be due and payable on the first (1<sup>st</sup>) day of each succeeding calendar month.
3. The Association shall apply payments made under the payment plan in the following order: (1) delinquent assessments; (2) current assessments; (3) attorney fees and collection costs associated with delinquent assessments; (4) other attorney fees; (5) fines; and (6) other amounts. Notwithstanding the foregoing, if, at the time the Owner submits a payment under the payment plan, the Owner is in default under the payment plan, the Association shall not be required to follow the foregoing application schedule; provided, however, fines cannot be given priority over any other amount owed under any circumstances.

3.11 Drainage. There shall be no material interference with the established drainage patterns over any of the Property unless adequate provisions are made for proper drainage and written approval by the ACC is obtained prior to any construction work or other activity, which may cause such interference with established drainage patterns. No objects or structures, including but not limited to buildings, fences, or landscaping shall be allowed in a drainage easement except as may be approved by the ACC and all appropriate governmental authorities.

3.12 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property, which are or might be unsafe or hazardous to any person or Property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except in a contained barbecue unit (while attended and in use for cooking purposes), within a safe and well-designed interior fireplace, or such campfires or picnic fires in Recreation and Open Spaces designated for such use by the Association as to Association Property.

3.13 Temporary Structures. No tent, trailer, garage, barn shack or other Improvement structure of a temporary nature shall be placed upon the Property, except that temporary structures necessary for storage for tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the approval of the ACC, such approval to include the nature, size, duration and location of such structure.

3.14 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons.

3.15 Animals. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any part of the Property. The keeping of ordinary household pets such as dogs or cats is allowed, but no poultry, fowl, livestock or other animals may be kept on any portion of the Property. A maximum of two (2) adult dogs and/or two (2) adult cats shall be permitted. Every Owner shall erect appropriate fencing to confine all of their household pets within their Lot. All dogs off the Owner's Lot shall be on a leash. No animals shall be permitted until appropriate conventional or buried electrical fencing is complete.

3.16 Unightly Articles; Vehicles. No article deemed to be unsightly by the ACC shall be permitted to remain on any portion of the Property so as to be visible from an adjoining Lot or public or Private Roadways. Liquid propane, gas, oil and other exterior tanks shall be kept within enclosed structures or permanently screened from view. No motor vehicle may be parked or stored on any part of any Lot, easement, right-of-way or Common Area unless such vehicle does not exceed: (i) six feet six inches (6'6") in height, or (ii) seven feet six inches (7'6") in width, or (iii) twenty-three (23) feet in length; and is concealed from public view inside a garage or other approved enclosure, except passenger automobiles, passenger vans (the term "passenger vans" specifically excludes motor homes and recreation vehicles), motorcycles, pick-up trucks, or pick-up trucks with attached-bed campers, that are in operating condition, having current license plates and inspection stickers, and are in routine use as motor vehicles on the streets and highways of the State of Texas and which do not exceed: (i) six feet six inches in height, (ii) seven feet six inches in width, or (iii) twenty-one feet in length. No non-motorized vehicle, trailer, boat, marine craft, hovercraft, aircraft, machinery or equipment or any part thereof any kind may be parked, serviced, repaired (except minor emergency repairs) or stored, on any part of any Lot, easement, right-of-way, of Common Area or in the Private Roadway to such Lot, easement, right-of-way, or Common Area unless such object is concealed from public view inside a garage or other approved enclosure. The phrase "approved enclosure" as used in this Section shall mean any fence, structure or other Improvement approved by the ACC. If complaint is received about a violation of any part of this Section, the ACC will be the final authority on the matter. This restriction shall not apply to any vehicle, machinery, or maintenance equipment temporarily parked and in use for the construction, repair or maintenance of a house, building or other Improvement in the immediate vicinity.

3.17 Mobile Homes, Travel Trailers and Recreation Vehicles. No mobile homes shall be parked or placed on any portion of the Property at any time, and no travel trailers or recreational vehicles shall be parked outside an approved enclosure on or near any portion of the

Property so as to be visible from adjoining Property or from public or private thoroughfares for more than forty-eight (48) hours.

3.18 Fences. The construction of fences shall be restricted, and no fence shall be constructed on the Property without the prior written consent of the ACC. The ACC may, in its sole discretion, prohibit the construction of any proposed fence, or specify a different type of material for which any proposed fence must be constructed, or require that any proposed fence be screened so as not to be visible from other portions of the Property.

A. Subdivision Fences. Fences shall be six feet (6') in height and shall be built of a combination of rock and wrought iron. Columns will be made of eight inch (8") cut limestone, with three inch (3") limestone cap, and will not exceed fifty feet (50') on center for wrought iron fencing. See "Exhibit Two" for additional details.

B. Interior Lot Fences. Fences shall be four feet (4'), five feet (5') or six feet (6') in height. Black, vinyl coated, chain link fence is allowed so long as it is not visible from or adjoining any street. Interior lot fences may also be constructed of the same materials and design as specified for Subdivision Fences above. No fence facing a street from the front of a residential structure and extending to the side lot lines may be built more than twenty feet (20') from the back wall of the residential structure. See "Exhibit Two" for additional details.

3.19 Mailboxes. No mailbox shall be erected on a Lot without the prior written consent of the ACC. The ACC may, in its discretion, specify a standard mailbox design to be utilized in any neighborhood.

3.20 Siding; Metal Roofs; Wood, Asphalt and Composition Roof Shingles. One-story plans must have 100% masonry (exclusive of side gables, all dormers, front porches, and front gables on non-load bearing areas). Two-story plans must have 100% masonry on the front elevation and side elevations (exclusive of side gables, all dormers, front porches, front gables on non-load bearing areas, and walls not supported by masonry below). See "Exhibit Three-A" and "Exhibit Three-B" for detail on one-story and two-story plans. Notwithstanding the foregoing, the ACC is empowered to reject or accept a plan that does or does not meet these masonry requirements, if in the ACC's sole discretion the building would enhance, blend in, or detract from the general appearance of the neighborhood. All siding shall be a lightweight concrete product. The eaves and soffits shall not be considered in computing the amount of exterior siding used. The decision of the ACC as to the percentage of exterior siding used, or shown on a construction plan, shall be final and binding on all parties. Except as provided herein, the use of wooden roof shingles is specifically prohibited. Metal roofs, tile roofs, asphalt roof shingles and composition roof shingles are allowed with the prior written consent of the ACC. The roof shingles shall be a 25-year dimensional asphalt or composition minimum quality or grade. Any roofing material used in construction must be designed primarily to be wind and hail resistant; provide heating and cooling efficiencies greater than those provided by customary composite shingles; or provide solar generation capabilities; and when installed resemble the shingles used or otherwise authorized for use in the Property; are more durable than and are of equal or

superior quality to the shingles described herein; and match the aesthetics of the houses in the Property surrounding the Owner's Lot.

3.21 Hunting/Trapping/Firearms. Hunting, trapping and discharge of firearms are expressly prohibited within the Property.

3.22 Dumping. Dumping of ashes, trash, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive material is expressly prohibited within the Property.

3.23 No Overnight Parking. No vehicle of any kind shall be allowed to park overnight on any street within the Property. Each Lot shall provide reasonable on-site parking for guests.

3.24 Motorized Vehicles. All motorized vehicles operated within the Property shall have mufflers installed in good condition, which limits the exhaust noise to no more than eighty (80) decibels, ten (10) feet from the end of the exhaust pipe. Only licensed drivers shall operate motorized vehicles on any Private Roadway. The Association shall not be liable to any Owner or to any other person for any loss, damage or injury arising out of the operation of motorized vehicles operated within the Property.

3.25 Trees, Shrubs and Landscaping. Any additions, modifications, or changes to the landscaping must first be submitted to the ACC for approval prior to commencement of any work. This shall include the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping, notwithstanding the landscaping requirements referenced in Section 4.08 and attached "Exhibit One." All landscaping must be maintained to be consistent with the overall style and appearance of the subdivision.

3.26 Underground Utility Lines. No utility lines, including but not limited to wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any Property within the Subdivision unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved in writing by the ACC; provided, however, that no provisions hereof shall be deemed to forbid the erection or temporary power or telephone structures incident to the construction of buildings or structures which have been previously approved in writing by the ACC. The installation method, including, but not limited to, location and type of installation, for both temporary and permanent utilities shall be included in the Plans and Specifications and approved in writing by the ACC.

3.27 Improvements and Alterations. No structures, Improvements, alterations, repairs (excluding routine repairs), excavations or other work which in any way alters the exterior appearance of any structure within the Subdivision or the appearance of any other Improvement located thereon from its natural or improved state existing on the date such Property was first conveyed in fee to the current Owner shall be made or done, without the prior approval of the ACC.



3.28 Solar Equipment. Request for approval of installation of any type of solar equipment shall be included in the Plans and Specifications and approved in writing by the ACC. Solar equipment may be located either on the roof of the home or of another structure on the Lot; or in a fenced yard or patio owned and maintained by the Owner. If mounted on the roof of the home or other structure, solar equipment may not extend higher than or beyond the roofline; must conform to the slope of the roof and have a top edge that is parallel to the roofline; and all frames, support brackets, or visible piping or wiring must be in a silver, bronze, or black tone commonly available in the marketplace. If located in a fenced yard or patio, solar equipment may not extend above the fence line. Solar equipment shall not be installed in any location or manner that would void any material warranties. Solar equipment may be located in an area other than an area designated by the ACC if the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the ACC. The ACC may not withhold approval for installation of solar equipment if the preceding provisions are met or exceeded, unless the ACC determines in writing that placement of the solar equipment as proposed by the Owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. For purposes of making such a determination, the written approval of the proposed placement of the solar equipment by all Owners of adjoining Lots constitutes prima facie evidence that such a condition does not exist.

3.29 Garages. Each single-family residential structure shall have a minimum two-car garage. No attached garage shall face any street unless approved by the ACC. Any detached garage entry shall remain unseen from any street unless approved by the ACC.

3.30 Trees. The native trees larger than eight (8) inches in diameter, measured six (6) feet from the base of the tree, on any Lot shall not be destroyed or removed from any Lot without the prior approval of the ACC, except such trees as may be necessary for the construction and maintenance of roads, driveways, residence, garages, septic fields, accessory buildings and/or walled-in service yards, patios and decks. The pruning of live oak trees and red oak trees shall be conducted in a manner to minimize the spread of the oak wilt infection. Such pruning practices shall include painting all wounds on of live oak trees and red oak trees immediately following pruning and conducting pruning operations at time when the spread of the oak wilt infection is least likely to occur. All live oak trees and red oak trees infected with the oak wilt shall be promptly removed by the Owner of the Lot on which such infected tree is located.

3.31 Flags. An Owner may display the U.S., Texas, or military branch flag on the Owner's Lot, subject to the following limitations:

- (1) all flags shall be displayed in accordance with the US/Texas flag code;
- (2) all flagpoles (freestanding or attached to a dwelling) shall be constructed of permanent, long-lasting materials, with an appropriate finish that is harmonious with the dwelling;

- (3) the displays shall comply with all applicable ordinances, easements, and setback requirements;
- (4) the flag and flagpole shall be maintained in good condition and any deteriorated flag or structurally unsafe flagpole shall be promptly repaired, replaced, or removed;
- (5) no flagpole shall exceed 20 feet in height or be located within twenty (20) feet of any Lot line;
- (6) no flag shall exceed forty (40) square feet in size;
- (7) regulation of the size, location, and intensity of any lights used to illuminate a flag;
- (8) no unreasonable noise can be caused by an external halyard (hoisting rope) or flagpole; and
- (9) no more than three (3) flags may be displayed at any time on any Lot.

3.32 Rain Harvesting Devices. Request for approval of installation of any type of rain-harvesting devices shall be included in the Plans and Specifications and approved in writing by the ACC. The ACC shall approve rain-harvesting devices if the following requirements are met:

- (1) all rain-harvesting devices shall be behind the front building line (i.e. no rain-harvesting devices shall be located between the front building line and the street);
- (2) all rain-harvesting devices shall be constructed of permanent, long-lasting materials, with an appropriate finish that is harmonious with the dwelling (or shall be appropriately screened from view);
- (3) the rain-harvesting devices shall comply with all applicable ordinances, easements, and setback requirements; and
- (4) the rain-harvesting devices shall be maintained in good condition and any deteriorated rain-harvesting devices shall be promptly repaired, replaced, or removed.

## **ARTICLE IV**

### **RESIDENTIAL RESTRICTIONS**

In addition to the General Restrictions set forth above, the Property shall be subject to the following limitations and restrictions, which are designed to protect the residential character of the Property.

4.01 Residential Use. All Lots within the Property shall be improved and used solely for single-family residential use.

4.02 Plans and Specifications. Each Owner shall submit detailed Plans and Specifications, pursuant to the Rules of the ACC, and such Plans and Specifications must be approved in writing prior to the commencement of construction of any Improvements. The Plans and Specifications shall include, but not be limited to:

- A. A site plan showing the location of the home, fences, mailbox, driveway(s), septic systems and all other Improvements to the Lot.
- B. A set of house plans by a registered architect, builder or designer that clearly demonstrates that the house described by the Plans is designated for the specific Lot, except where a master set of plans has been approved by the ACC and can be repeated; and floor plans, foundation plans, building section, landscape plan, specifications including detailed descriptions and samples of all exterior materials and finishes.

4.03 Time for Construction.

- A. The construction of a structure of Improvements shall be continuous and proceed in an orderly fashion without interruption, and any structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed eighteen (18) months from the commencement of construction.
- B. Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, excavation or site preparation for the purpose of foundation.
- C. Materials and equipment necessary for construction, and all debris resulting from clearing or construction shall be confined to the Residential Lot and stored in either a dumpster or bin and removed at the end of construction, and shall not be left on any other Lots, Common Areas, or roadway. The Construction Deposit shall not limit an Owner's liability with respect to removal of construction debris.

4.04 Improvements and Use. The Lots shall be used solely for single-family residences. No Lot shall be improved or used except by dwelling or structure designated to accommodate not more than a single-family, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-family resident. Each such dwelling on a platted Lot shall have an attached or detached garage for two (2) or more cars. Garages shall be used for the storage of automobiles and other personal property. No garage shall be converted into living space unless a replacement garage complying with the provisions of this Declaration is constructed prior to such conversion and such conversion is approved by the ACC. But, in general, all outbuildings will be constructed of the same materials and be consistent with the architectural design of the primary residence. As used herein, the term "residential purposes" shall be construed to prohibit mobile homes or trailers being placed on the Lots, or the use of said Lots for garage apartments. No Lot shall be used for business or professional purposes of any kind (including, without limitation, childcare), not for any commercial or manufacturing purposes; subject to Home Occupations (as defined below). Outbuildings, storage sheds, and dog kennels shall be permitted subject to the prior written notice approval of the ACC, which approval may include a requirement for screening. All one-story single-family residential structures shall have a living area of not less than two thousand six hundred (2,600) square feet, exclusive of open and closed porches, patios, garages, port-a-

catches, balconies or decks. All two-story single-family residential structures shall have a living area of not less than two thousand eight hundred (2,800) square feet, exclusive of open and closed porches, patios, garages, port-a-caches, balconies or decks.

Home Occupations. Notwithstanding Section 4.04 to the contrary, the practice of an occupation within a residential structure ("Home Occupation") shall be permitted on the Property, but only to the extent that any such Home Occupation is in compliance with the following limitations:

(a) The residential character of the Lot and Improvements in which the Home Occupation is conducted shall be maintained. Neither the interior nor the exterior of the Improvements shall be structurally altered so as to require compliance with non-residential construction codes to accommodate the Home Occupation.

(b) The Home Occupation shall not generate customer-related vehicular traffic in excess of three (3) vehicles per twenty-four hour day.

(c) No direct selling of merchandise shall occur on the Property.

(d) No equipment or materials associated with the Home Occupation shall be displayed or stored where visible from adjoining properties or from any street.

(e) The Home Occupation shall not produce external noise, vibration, smoke, dust, odor, heat, glare, fumes, electrical interference or waste run-off outside the Improvements.

(f) No vehicle used in connection with the Home Occupation which requires a commercial driver's license to operate shall be parked on the Property or on any street adjacent to the Property.

(g) The Home Occupation shall not be advertised by any signs on the Property, nor shall the street address of the Home Occupation be advertised through signs, billboards, television, radio or newspapers.

(h) Nothing herein shall be construed to allow the following businesses or occupations as Home Occupations: animal hospitals, animal breeding, clinics, hospitals, daycare or childcare facilities, contractors' yards, dancing schools, junk yards, lodging house residential uses (including, without limitation, bed and breakfast operations), massage parlors, restaurants, rental outlets, or vehicle repair shops.

4.05 Rentals. Nothing in this Declaration shall prevent the rental of any Lot by the Owner of such Lot for residential purposes. Leases must be for periods of at least six (6) months. Any tenant, lessee or other occupant (all being referred to herein as "Tenants") shall be provided with a copy of this Declaration prior to taking occupancy on the Property and all lease (and other occupancy agreements) shall require that Tenants comply with all of the provisions of this Declaration. The Owner shall provide to the Association the name and address of the

Tenants prior to such Tenants taking occupancy on the Property and the address of the Owner during the Tenants occupancy. The Association shall notify the Tenants and the Owner of any violations by the Tenants of the provisions of this Declaration, provided that the Owner shall at all times remain fully and primarily liable for all such violations.

4.06 Construction in Place. All dwellings and structures, except children's playhouses constructed within the Property, shall be built in place on the Lot (the use of pre-fabricated materials shall be allowed only with the prior written approval of the ACC), it being the intent of this Declaration that only new construction shall be placed and erected on the Property.

4.07 Set-Back Requirements. No building or structure shall be located on any Lot nearer the street than the setback lines on the recorded plat or seventy-five feet (75'), whichever is greater. Likewise, no building or structure shall be located nearer than ten feet (10') to an interior Lot line shown on the plat, or nearer than twenty-five feet (25') to the rear Lot line or other setback requirements as may be imposed by local ordinance, or nearer than twenty-five (25') on the street side of a corner lot. Fences shall not be considered as part of a structure for purposes of this Section. In the event a buyer purchases two (2) or more adjoining Lots and desires to construct a dwelling across the common side Lot line(s), the ACC may permit such act by written waiver of the side Lot line setbacks, provided there is not then, or known to be planned, any utility easement along the common side Lot line. Said approval will be subject to the approval of and compliance with any City, County or State statutes or guidelines.

4.08 Yards and Sprinkler Systems. All yards, including trees and plantings of all types, shall be well maintained and kept neat, trim and free of debris at all times. The front yard of any residence shall consist of that area between the street (or streets) adjacent to the Lot, the property lines on each side of the Lot, and the front building line or lines of the residence extended to the property lines on each side of the Lot. Landscaping shall extend to the edge of the ribbon curb of the street on all Lots. All landscaped areas of each residence shall contain an underground sprinkler system of a design adequate to water the designated area referenced on "Exhibit One" attached hereto.

4.09 Driveways. All driveways must be at least twelve feet (12') wide and constructed of concrete. Garage doors shall not be visible from the street or streets adjacent to the Lot without the prior written approval of the ACC.

4.10 Swimming Pools. Moveable above-ground swimming pools are strictly prohibited. All swimming pools must be in a fenced enclosure.

## **ARTICLE V**

### **THE ASSOCIATION**

5.01 Organization. The Association shall be a non-profit corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law or set forth in its Article and Bylaws and in this Declaration. Neither the Articles nor Bylaws shall for any

reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.02 Membership. The Owner of each Lot, whether such owner be one or more persons or entities, shall, upon and by virtue of becoming such Owner, automatically become a member of the Association and shall remain a member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the fee ownership of each Lot and may not be separated from such ownership. Whenever the fee ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

5.03 Voting; Notice of Election; Recount of Votes; Ballots.

A. Voting; Notice of Election. Each Owner shall be entitled to one (1) vote per Lot owned. If more than one (1) person holds an interest in any Lot, all such persons shall be members of the Association; and the vote for such multiple-owned Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Not later than the 10th day or earlier than the 60th day before the date of an election or vote, the Association shall give written notice of the election or vote to each Owner of Property in the Association, for purposes of an Association-wide election or vote.

B. Recount of Votes. Any Owner may, not later than the 15th day after the date of the meeting at which an election was held, require a recount of the votes. A demand for a recount must be submitted in writing either by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the Association's mailing address as reflected on the latest management certificate; or in person to the Association's managing agent as reflected on the latest management certificate or to the address to which absentee and proxy ballots are mailed. The Association shall, at the expense of the Owner requesting the recount, retain for the purpose of performing the recount the services of a Person qualified to tabulate votes. The Association shall enter into a contract for the services of a Person who is not a Member of the Association or related to a Member of the Association Board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and is a current or former county judge; county elections administrator; justice of the peace; or county voter registrar; or a Person agreed on by the Association and the Persons requesting the recount. Any recount must be performed on or before the 30th day after the date of receipt of a request and payment for a recount. If the recount changes the results of the election, the Association shall reimburse the requesting Owner for the cost of the recount. The Association shall provide the results of the recount to each Owner who requested the recount. Any action taken by the Board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

C. Ballots. Any vote cast in an election or vote by a Member must be in writing and signed by the Member. Electronic votes shall constitute written and signed ballots. In an Association-wide election, written and signed ballots are not required for uncontested races.

5.04 Joint or Common Ownership. Any Property interest, entitling the Owner(s) thereof to vote as herein provided, held jointly or in common by more than one (1) person, shall require that the Owner(s) thereof designate, in writing, the individual person or Owner who shall be entitled to cast such vote(s) and no other person shall be authorized to vote on behalf of such Lot. A copy of such written designation shall be filed with the Secretary of the Board before any such vote may be cast, and upon the failure of the Owner(s) thereof to file such designation, such votes shall neither be cast nor counted for any purpose whatsoever.

5.05 Proxy Voting. Any Owner may give a revocable written proxy to any person, authorizing such person to cast the Owner's votes on any matter. Such written proxy shall be in such form as may be prescribed by the Bylaws, but no such proxy shall be valid for a period of greater than eleven (11) months, and shall not be valid unless filed with the Secretary of the Board of Directors in the manner required by the Bylaws.

5.06 Cumulative Voting. The cumulative system of voting shall not be allowed.

5.07 Quorum for Membership Action; Voting Procedure.

A. Quorum for Membership Action. With respect to any annual or special "general" membership meeting of the Association, at the first call of such meeting, the presence at the meeting in person or by proxy of sixty-six percent (66%) of the total votes of the membership shall constitute a quorum. If the required quorum is not forthcoming, at such meetings, the meeting may be adjourned and recalled on the same day, and the required quorum at such meeting shall be one-half (1/2) the required quorum at such meeting immediately preceding. This procedure shall be continued until a quorum has been obtained.

B. Voting Procedure. The voting rights of an Owner may be cast or given in person or by proxy at a meeting of the Association; by absentee ballot in accordance with this section; or by electronic ballot. An absentee or electronic ballot may be counted as an Owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot; may not be counted, even if properly delivered, if the Owner attends any meeting to vote in person, so that any vote cast at a meeting by a Property Owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

1. A solicitation for votes by absentee ballot must include an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action; instructions for delivery of the completed absentee ballot, including the delivery location; and the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."

2. For the purposes of this section, "electronic ballot" means a ballot given by e-mail; facsimile; or posting on an Internet website for which the identity of the Owner submitting the ballot can be confirmed; and for which the Owner may receive a receipt of the electronic transmission and receipt of the Owner's ballot.

3. If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

#### 5.08 Board of Directors and Officers; Ineligibility; Open Board Meetings.

A. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and Bylaws, as the same may be amended from time to time. Any Board member whose term has expired must be elected by the Members. A Board member may be appointed by the Board only to fill a vacancy caused by a resignation, death, or disability. A Board member appointed to fill a vacant position shall serve the unexpired term of the predecessor Board member.

B. Ineligibility. If the Board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a Board member has been convicted of a felony or crime involving moral turpitude, the Board member is immediately ineligible to serve on the Board of the Association, automatically considered removed from the Board, and prohibited from future service on the Board.

#### C. Open Board Meetings.

1. In this section "Board Meeting" means a deliberation between a quorum of the voting Board of the Association, or between a quorum of the voting Board and another Person, during which Association business is considered and the Board takes formal action; and does not include the gathering of a quorum of the Board at a social function unrelated to the business of the Association or the attendance by a quorum of the Board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is



not taken and any discussion of Association business is incidental to the social function, convention, ceremonial event, or press conference.

2. Regular and special Board Meetings must be open to Owners, subject to the right of the Board to adjourn a Board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion of privacy of individual Owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual Owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

3. Except for a meeting held by electronic or telephonic means, a Board Meeting must be held in Hays County, Texas or in a county adjacent to Hays County.

4. The Board shall keep a record of each regular or special Board Meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

5. Members shall be given notice of the date, hour, place, and general subject of a regular or special Board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be mailed to each Property Owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or provided at least 72 hours before the start of the meeting by posting the notice in a conspicuous manner reasonably designed to provide notice to Association Members in a place located on Association Property or, with the Property Owner's consent, on other conspicuously located privately owned Property within the Subdivision; or on any Internet website maintained by the Association or other Internet media; and sending the notice by e-mail to each Owner who has registered an e-mail address with the Association.

6. If the Board recesses a regular or special Board meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner prescribed herein within two hours after adjourning the meeting being continued.

7. The Board may meet by any method of electronic or telephonic communication without prior notice to Owners, if each Director may hear and be heard by every other Director, or the Board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate Board action. Any action taken without notice to Owners must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting. The Board may not, without prior notice to Owners, consider or vote on fines; damage Assessments; initiation of foreclosure actions; initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; increases in Assessments; levying of special Assessments; appeals from a denial of architectural control approval; or a suspension of a right of a particular Owner before the Owner has an opportunity to attend a Board meeting to present the Owner's position, including any defense, on the issue.

5.09 Duties of the Association. Subject to and in accordance with these restrictions, the Association, acting through the Board, shall have and perform each of the following duties:

A. Association Property.

1. Ownership and Control. To accept, own, operate and maintain all Common Areas, Private Roadways, and Recreation and Open Spaces, together with all Improvements of whatever kind and for whatever purpose which may be located in said areas; and to accept, own, operate and maintain all other property, real and personal, conveyed to the Association. All of the areas designated as common areas on the Plat are hereby dedicated as common areas for the use and benefit of all persons and entities owning property or an interest in any property in the Subdivision. Ownership of Common Areas within the Subdivision has been conveyed to the Association. These restrictions shall not apply to the Common Areas shown on the Plat.

2. Repair and Maintenance of Association Property. To maintain in good repair and condition, and make capital improvements to all lands, Improvements and other Association Property.

3. Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any Association Property, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

B. Insurance. To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount to carry out the Association functions, including, without limitation, officers' and directors' liability insurance. Without limiting the generality of the foregoing sentence, the Association shall obtain, as is customarily carried with

respect to other developments similar in construction, design and use, and continue in force and effect a policy of comprehensive general liability insurance covering all areas of the Property within the Association's control.

C. Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Preserve Rules and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of its functions, including the use and occupancy of Association Property. Without limiting the generality of the foregoing, such Preserve Rules may set dues and fees and prescribe the regulations governing the operation of Association Property. Such Preserve Rules may also prescribe regulations governing the use of the Common Areas and the Recreation and Open Space and establish charges for the use of the Recreation and Open Space by Owners or non-Owners. Each Member shall be entitled to examine such Preserve Rules and Bylaws at any time during normal working hours at the principal office of the Association.

If customary and if done or authorized by the Association, Rules may be published on signs posted or painted on the Property, or communicated to owners as temporary or seasonal Rules that are circumstance-based. Each resident must comply with any Rules and signs posted from time to time on the Property by the Association, such as those regulating use of Common Areas. Posted rules are incorporated into the Rules by reference. Also, each resident must comply with notices communicated by the Association, from time to time, in the nature of seasonal or temporary Rules, or notice of a change affecting use of the Property. Temporary Rules are incorporated into the Rules by reference. The Association may, but is not required to, recite the text of a sign in a publicly record document. In the event of a discrepancy or conflict between a Rule that is posted on the Property by the Association and a Rule that is in this Declaration or another Association document, the Rule that is posted by the Association controls if it is posted in a place and manner that is appropriate for the conduct to which it relate.

D. Architectural Control Committee. To appoint and remove Members of the ACC.

E. Enforcement. To enforce on its own behalf and on behalf of all Owners, this Declaration, as beneficiary of said covenants, conditions and restrictions and as assignee of Original Declarant; and to perform all other acts, whether or not anywhere expressly authorized herein, as may be reasonably necessary to enforce any of the provisions of The Preserve Restrictions. The Board shall be authorized to assess fines, institute litigation, settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the provisions of The Preserve Restrictions.

F. Financing. To execute mortgages, both construction and permanent, for the construction of facilities, including Improvements on the Property owned by or leased to the Association, and to accept lands in Recreation and Open Spaces, whether or not improved, from Original Declarant, subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by

the borrower. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien as shall be deemed appropriate by the Association on the Improvement or other facilities to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of the Members of the Association, or otherwise, or any combination thereof, as may be deemed appropriate by the Association, as the case may be, but subject to the limitations imposed by this Declaration.

G. Records; Record Retention; Access to Records. To keep books and records of the Association's affairs.

1. Record Retention. The Association shall maintain its books and records according to the following record retention schedule:

- a. Certificates of formation, Bylaws, restrictive covenants, and all amendments to the certificates of formation, Bylaws, and covenants shall be retained permanently.
- b. Financial books and records shall be retained for seven (7) years.
- c. Account records of current Owners shall be retained for five (5) years.
- d. Contracts with a term of one year or more shall be retained for four (4) years after the expiration of the contract term.
- e. Minutes of meetings of the Owners and the Board shall be retained for seven (7) years.
- f. Tax returns and audit records shall be retained for seven (7) years.

2. Access to Records. The Association shall make all books and records of the Association, including financial records, open to and reasonably available for examination by an Owner, or a Person designated in a writing signed by the Owner as the Owner's agent, attorney, or certified public accountant. An Owner is entitled to obtain from the Association copies of information contained in the books and records.

- a. An attorney's files and records relating to the Association, excluding invoices requested by an Owner, are not records of the Association and are not subject to inspection by the Owner or production in a legal proceeding. If a document in an attorney's files and records relating to the Association would be responsive to a legally authorized request to inspect or copy Association documents, the document shall be produced by using the copy from the attorney's files and records if the Association has not maintained

a separate copy of the document. This does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

b. An Owner or the Owner's authorized representative must submit a written request for access or information by certified mail, with sufficient detail describing the Association's books and records requested, to the mailing address of the Association or authorized representative as reflected on the most current management certificate. The request must contain an election either to inspect the books and records before obtaining copies or to have the Association forward copies of the requested books and records and:

(1) if an inspection is requested, the Association, on or before the 10th business day after the date the Association receives the request, shall send written notice of dates during normal business hours that the Owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the Association; or

(2) if copies of identified books and records are requested, the Association shall, to the extent those books and records are in the possession, custody, or control of the Association, produce the requested books and records for the requesting party on or before the 10th business day after the date the Association receives the request, except as otherwise provided herein.

c. If the Association is unable to produce the books or records requested on or before the 10th business day after the date the Association receives the request, the Association must provide to the requestor written notice that:

(1) informs the requestor that the Association is unable to produce the information on or before the 10th business day after the date the Association received the request; and

(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice is given.

d. If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the Association to copy and forward to the requesting party.

e. The Association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the Association.

f. The Association may charge the requesting party up to \$0.50 per page for the reproduction of the information requested. The charge for labor costs incurred in processing a request for public information is \$15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information. An Owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed. The Association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the Association shall submit a final invoice to the Owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the Owner, the additional amounts, if not reimbursed to the Association before the 30th business day after the date the invoice is sent to the Owner, may be added to the Owner's account as an Assessment. If the estimated costs exceeded the final invoice amount, the Owner is entitled to a refund, and the refund shall be issued to the Owner not later than the 30th business day after the date the invoice is sent to the owner. The rates which the Association may charge an Owner are the same as the maximum permitted rates published in Section 70.3 of the Texas Administrative Code (Title 1, Part 3, Chapter 70). The charges shown on Exhibit "Four" attached hereto are some of the T.A.C. rates in effect on the date this policy is adopted and will be deemed to change automatically with changes in the State's maximum permitted rates for Public Information requests. Notwithstanding anything to the contrary in any writing or communication made by the Association, the Association will not in any event be entitled to receive or collect reproduction of information charges from an Owner in amounts greater than the maximum amounts permitted by applicable law. If from any circumstances whatsoever the Association charges or receives an amount in excess of the maximum charges permitted by law, the excess amount will be reimbursed to the Owner. The Association may reduce or waive some or all of the charges addressed by this paragraph on a request-by-request basis, without waiving the right to charge such fees on future requests.

g. Except as provided herein and to the extent the information is provided in the meeting minutes, the Association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual Owner of the Association, an Owner's personal financial information, including records of payment or

nonpayment of amounts due the Association, an Owner's contact information other than the Owner's address, or information related to an employee of the Association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property Owner.

h. The books and records described by herein shall be released or made available for inspection if the express written approval of the Owner whose records are the subject of the request for inspection is provided to the Association.

H. Other. To carry out and enforce all duties of the Association set forth in The Preserve Restrictions.

5.10 Powers and Authority of the Association. The Association shall have the powers of a Texas non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts, which may be necessary or proper for, or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association shall have the power and authority at all times as follows:

A. Assessments; Fines. To levy assessments as provided in Article VIII below. An assessment is defined as that sum which must be levied in the manner and against the Property set forth in Article VIII hereof in order to raise the total amount for which the levy in question is being made. To assess fines against Owners and Lots for violations of this Declaration.

B. Limitation on Annual Assessment. Until changed by the Association in accordance with the Bylaws and this Section, the annual assessment on each Lot shall be Six Hundred Dollars (\$600.00) per Lot. Of this annual assessment, Two Hundred Dollars (\$200.00) shall be earmarked for private road and right-of-way maintenance and other capital improvements as further described in Section 6.04 and will be utilized solely for that purpose. On January 2<sup>nd</sup> of each year, or at such other time as the Board of Directors deems appropriate, the Board of Directors may set the annual assessment for the calendar year at whatever level they deem appropriate, however, the Board of Directors may increase the annual assessment by a maximum of twenty percent (20%) of the then current assessment in any given year. Further, such percentage increases are not cumulative (i.e. the 20% maximum increase for a specific year, if not utilized, will not carry forward to subsequent years) and may be prospective only. Any increase in assessment not provided for in this Section must be made by the Association as a whole, in the same manner as an amendment to the Articles of Incorporation of the Association.

C. Right of Entry and Enforcement. To enter at any time in an emergency, or in a non-emergency after Notice required by Article III, Section 3.10 A.1., without being liable to any Owner, upon any portion of the Property or into any Improvement thereon, or onto any

Local Common Area, Recreation or Open Space for the purpose of enforcing The Preserve Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the restrictions herein established, at the expense of the Owner thereof, if, for any reason whatsoever, the Owner thereof fails to maintain or repair any such area as required by The Preserve Restrictions. An emergency shall exist where circumstances result in an immediate threat to property, or the health and welfare of persons. The Association shall also have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of The Preserve Restrictions.

D. Conveyances. To grant and convey to any person or entity the real Property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way, or mortgages out of, in, on, over, or under any Association Property for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder:

1. Parks, parkways, campgrounds, or other recreational facilities or structures;
2. Roads, streets, walks, driveways, trails and paths;
3. Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
4. Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and
5. Any similar public, quasi-public, or private Improvements or facilities.

Nothing above contained, however, shall be construed to permit use or occupancy of any Improvement or other facility in a way, which would violate applicable use and occupancy restrictions imposed thereon by other provisions of this Declaration.

E. Manager. To retain and pay for the services of a person or firm (the “Manager”) to manage and operate the Association, including its Property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The Owners hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated. Any management agreements entered into by the Association shall provide that the agreement may be terminated by the Association, without cause, upon sixty (60) days written notice.

F. Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association, the operation and



management of its Property, the enforcement of The Preserve Restrictions, or in the performance of any other duty, right, power or authority of the Association.

G. Association Property Services. To pay for water, sewer, garbage removal, landscaping, gardening, electric and all other utilities, services and maintenance for the Property of the Association.

H. Other Areas. To maintain and repair easements, roads, roadways, rights-of-way, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Property, as appropriate.

I. Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or the terms of The Preserve Restrictions.

J. Construction on Association Property. To construct new Improvements or additions to the Association Property.

K. Contracts. To enter into contracts with persons, on such terms and provisions as the Board shall determine, to operate and maintain any Local Common Area or Recreation and Open Space, or to provide any service or perform any function on behalf of any other person.

L. Permits/Licenses. To obtain and hold any and all types of permits and licenses, and to operate restaurants and club facilities, if applicable.

M. Own Property. To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

N. Create Another Association. To create a subsidiary or other association to have the rights and powers, and to perform the duties, obligations or functions necessary to the obtaining of a tax exemption, if it shall ever be ruled or held that an exemption under the Internal Revenue Code is unavailable to the Association under this Declaration; or alternatively, the Association may retain the rights, powers, duties, obligations and functions which prevent the obtaining of the tax exemption and transfer some or all of its other rights, powers, duties, obligations, and functions to such subsidiary or other association.

#### 5.11 Indemnification.

A. Determination by Board. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that he/she is or was a director, officer, committee member, employee, servant or agent of the Association against expenses (including attorneys' fees, judgments, fines

and amounts paid in settlement) actually and reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court that he/she (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *Nolo Contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

All liability, loss, damage, costs and expense incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses; provided, however, that nothing contained in this Article V shall be deemed to obligate the Association to indemnify any Member or Owner, who is or has been a director, officer, committee member, or non-compensated agent of the Association, with respect to any duties or obligations assumed or liabilities incurred by him/her under and by virtue of the restrictive covenants as a Member of the Association or Owner of a Lot covered thereby.

B. Insurance. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee members, employee, servant or agent of the Association, against any liability asserted against him/her or incurred by him/her in any such capacity, or arising out of his/her status as such, whether or not the Association would have the power to indemnify him/her against such liability hereunder or otherwise.

## ARTICLE VI

### ARCHITECTURAL CONTROL COMMITTEE

6.01 Membership of Architectural Control Committee. The ACC shall consist of not less than three (3) and no more than five (5) voting members (“Voting Members”), and such additional non-voting members serving in an advisory capacity (“Advisory Members”) as the Board deems appropriate.

6.02 Action by Architectural Control Committee. Items presented to the ACC shall be decided by a majority vote of the current voting members of the ACC.

6.03 Term. Each Member of the Association shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein.

6.04 Intentionally Deleted.

6.05 Duties.

A. General. It shall be the duty of the ACC to receive, consider and act upon all proposals, plans, complaints, requests for determination, Plans and Specifications or other matters submitted pursuant to the terms of this Declaration, and to carry out all other duties imposed in it by this Declaration.

B. Consultant. The ACC may, but need not, hire specialized consultants and incur expenses to aid the ACC in reviewing Plans and Specifications and their incidents. Prior to hiring any such specialized consultants, the ACC shall inform the Owner which has submitted the applicable Plans and Specifications, such notice to include the ACC's estimate of the cost of hiring such specialized consultants. Such Owner shall have ten (10) days following the receipt of the ACC's notice to consent to the ACC hiring such specialized consultants, such consent to include a payment from such Owner to the ACC in the amount of the estimated cost of hiring such specialized consultants. Failure of the Owner to timely consent to such hiring or to make such payment to the ACC shall be deemed as such Owner's withdrawal of such Owner's Plans and Specifications for review. If such Owner timely consents to such hiring and if the final cost of hiring such specialized consultants exceeds the ACC's estimate, the Owner shall reimburse the ACC for such excess within fifteen (15) days following such Owner's receipt of an invoice from the ACC. Any such excess amount shall be deemed to be an Assessment benefiting such Owner's Lot(s) (as described in Paragraph 7.05 below).

#### 6.06 Adoption of Rules.

A. The ACC may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties.

B. Unless and until a political subdivision of the State of Texas regulates such matters by law in the Property, the rules promulgated by the ACC may include building codes governing all types of construction on the Property, a fire code, a housing code, and other similar codes as the ACC deems necessary and desirable. To the extent possible, those codes shall (i) be performance based, (ii) encourage the use of new technologies, techniques and materials, and (iii) be compatible with the codes of Hays County, Texas and the Uniform Building Code.

6.07 Review of Proposed Construction. Whenever in this Declaration or in any Supplemental Declaration the approval of the ACC is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts, which, in its sole discretion, are relevant. Except as provided in Sections 9.06 and 9.07 below, prior to commencement of any construction of any Improvement on the Property or any portion thereof, the final Plans and Specifications thereof shall be submitted to the ACC, and construction thereof may not commence unless and until the ACC has approved such Plans and Specifications in writing. The ACC shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress, to assure its conformance with Plans and Specifications approved by the ACC. The ACC shall not be responsible for reviewing any

proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof, from the standpoint of structural safety, engineering soundness, or conformance with buildings or other codes.

6.08 Procedure for Submission and Approval of Plans and Specifications.

A. Submission and approval of Plans and Specifications shall be in accordance with the rules promulgated by the ACC, as authorized by this Section 6.08.

B. If the ACC fails to approve or disapprove any material or Plans and Specifications submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt (“Approved Period”) or to give notice of its actions as above required, it shall be conclusively presumed that the ACC has approved such materials as submitted. If the ACC requests additional or amended materials or amended Plans and Specifications (“Amendments”) during the initial Approval Period, the Approval Period shall be automatically extended for fifteen (15) days following the date upon which such Amendments have been submitted. If the Amendments are not submitted on or before the date specified by the ACC (or if no time is specified, within fifteen (15) days after the Amendments are requested) (the “Amendment Deadline”), then the Plans and Specifications shall be automatically disapproved. If the ACC approves Plans and Specifications on the condition that certain Amendments be submitted (“Conditional Approval”), such Conditional Approval shall expire if the Amendments are not received by the Amendment Deadline.

6.09 Meetings of the Architectural Control Committee. The ACC shall meet from time to time as necessary to perform its duties hereunder. The ACC may, by resolution unanimously adopted in writing, designate one of its Members to take any action or perform any duties for and on behalf of the ACC, except the granting of variances as hereinafter provided. In the absence of such designation, the vote of a majority of all the Members of the ACC taken at a meeting shall constitute an act of the ACC.

6.10 Action Without Formal Meetings. The ACC may take action without formal meeting by a majority of the ACC consenting in writing on any matter, which it might consider at a formal meeting. Such written consent of such majority shall constitute the act of the ACC.

6.11 No Waiver of Future Approvals. The approval or consent of the ACC to any Plans of Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the ACC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

6.12 Non-liability of Architectural Control Committee Members. Neither the ACC, nor any Member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the ACC’s or the Board’s respective

duties under this Declaration unless due to the willful misconduct or bad faith of the ACC or its Member or the Board of its Member, as the case may be. Neither the ACC nor the Members thereof shall be liable to any Owner due to the construction of any Improvements within the Property or the creation thereby of an obstruction to the view from such Owner's Lot or Lots. The approval of plans and specifications shall not be deemed or construed to be an opinion, warranty or representation that the plans and/or specifications are technically sound or that the Improvements described will be habitable or safe. **EACH OWNER OF ANY PORTION OF THE PROPERTY WHO SUBMITS, OR CAUSES TO BE SUBMITTED, PLANS OR SPECIFICATIONS TO THE BOARD HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS APPLICANT, THE BOARD AND ITS MEMBERS FROM ANY CLAIMS, CAUSES OF ACTION, LIABILITIES OR DAMAGES ARISING OUT OF CONSTRUCTION OF THE IMPROVEMENTS PURSUANT TO THE APPROVED PLANS AND SPECIFICATIONS.**

6.13 Variances. The ACC may grant variances from compliance with the provisions of this Declaration when, in the opinion of the ACC, such variance will not impair or detract from the high quality of development of the Property and such variance is justified due to aesthetic or visual considerations or unusual circumstances. Any request for a variance, which is submitted to the ACC, shall be accompanied by a site plan detailing the landscaping and setbacks proposed by the applicant. All variances granted must be approved by a majority of the ACC and may be evidenced by a written instrument. If a variance is granted, no violation of this Declaration shall be deemed to have occurred with respect to the specific provision for which the variance was granted provided that the development of the property affected by the variance is in compliance with all details set forth on the site plan designed to compensate therefor. The granting of any such variance shall not operate or be deemed to operate to waive or amend any of the terms and provisions of this Declaration for any purpose except as to the particular property and the particular matter covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.

6.14 Guidelines for Buildings. The ACC may promulgate a set of guidelines not in conflict with this Declaration and any Supplemental Declarations for building and developing in the Property, which shall be general in nature and may be amended from time to time by the ACC.

6.15 Submission of Final Plans and Specifications. The final Plans and Specifications shall be submitted in triplicate to the ACC at the address forth in Section 9.04 below or such other address as may be designated from time to time, one copy of which will be returned to the person submitting the Plans with an endorsement as to the date received by the ACC.

6.16 Intentionally Deleted.

6.17 Inspection of Work.

A. Completed Work. Inspection of completed work and correction of defects shall proceed as follows:

1. Upon the completion of any Improvement for which the final Plans and Specifications were approved under this Declaration, the Owner shall give written notice of completion to the ACC.

2. Within such reasonable time as the ACC may set in its rules, but not to exceed thirty (30) days thereafter, the ACC or its duly authorized representative may inspect such Improvement. If the ACC finds that such work was not done in strict compliance with all approved Plans and Specifications, it shall notify the Owner in writing of such noncompliance within five (5) days, specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same.

3. If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the ACC shall notify the Board of Directors in writing of such failure. Upon notice to the Owner, given as provided in Section 9.04, the Board shall conduct a Hearing at which it shall determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board's ruling within such period, the Board, at its option, may either remove the non-complying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for all reasonable expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an assessment against such Owner and Improvement in question, and the land upon which the same is situated, for reimbursement, and the same shall constitute a lien upon such land and Improvement and be enforced as in this Declaration provided.

4. If for any reason after receipt of said written notice of completion from the Owner, no inspection is made or any noncompliance is not found within the period provided above in Subparagraph (2) of this Section 6.17(A), the Improvement shall be deemed to be in accordance with said approved Plans and Specifications. **NOTHING HEREIN SHALL BE CONSTRUED TO CERTIFY THE ACCEPTABILITY, SUFFICIENCY OR APPROVAL BY THE ARCHITECTURAL CONTROL COMMITTEE OF THE ACTUAL CONSTRUCTION OF THE IMPROVEMENTS OR OF THE WORKMANSHIP OR MATERIALS THEREOF. THE OWNER IS HEREBY NOTIFIED THAT THE ACC IN NO WAY WARRANTS THE SUFFICIENCY, ACCEPTABILITY OR APPROVAL BY THE ARCHITECTURAL CONTROL COMMITTEE OF**

THE CONSTRUCTION, WORKMANSHIP, MATERIALS OR EQUIPMENT OF THE IMPROVEMENTS.

B. Work in Progress. The ACC may inspect all work in progress and give notice of noncompliance as provided above in Subparagraph (2) of this Section. If the Owner denies that such noncompliance exists, the procedures set out in Subparagraph (3) of this Section shall be followed, except that no work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Board should ultimately find that noncompliance exists.

6.18 Governmental Agency Approval. Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any Owner from also securing such approval(s), certificate(s) or permit(s) of any governmental agency of entity (including but not limited to the City of Dripping Springs or Hay County, Texas) with jurisdiction as may be required by law, as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any Improvement, and the ACC may require that a copy of such approval(s), certificate(s) or permit(s) be provided to the ACC as a final condition to approval of Plans and Specifications, or as additional insurance to the ACC that the Improvements and uses of approved Plans and Specifications meet governmental requirements, or for both such purposes.

**ARTICLE VII**

**ASSOCIATION PROPERTY**

7.01 Use. Each Owner, the members of his family who reside with him and each lessee of any portion of the Property and the members of his family who reside with him in the Property shall be entitled to use the Property owned by the Association subject to:

A. The provisions of The Preserve Restrictions, and each person who uses any Property of the Association, in using the same, shall be deemed to have agreed to comply therewith:

B. The right of the Association to charge reasonable dues and use fees, which fees shall be in addition to assessments levied pursuant to Article VIII.

C. The right of the Association to suspend the rights to the use of any Property of the Association by any Member or lessee and their respective families, guests and invitees for any period during which any assessment, due, fine and/or fee against the Member's Property remains past due and unpaid; and, after Notice and Hearing by the Board, the right of the Association to invoke any remedy set forth herein for any other infraction.

D. The right of the Association, upon demand, to require that the Construction Deposit be made and kept with the Association to secure all sums, and to guarantee performance of all duties, due and owing or to become due and owing, to the Association;

E. Such rights to use Association Property as may have been granted by the Association or prior Owners of Property of the Association to others; and

F. Such covenants, conditions and restrictions as may have been imposed by the Association or prior Owners of Property of the Association.

7.02 Damages. Each Member and lessee described above shall be liable to the Association for any damage to Property of the Association, which may be sustained by reason of the negligent or intentional misconduct of such person or of his family, guests or invitees. If the Property, the ownership or leasing of which entitles the Owner or lessee thereof to use Association Property, is owned or leased jointly or in common, the liability of all such joint or common Owners or lessees shall be joint and severable. The amount of such damage may be assessed against such person's real and personal property on or within the Property, including the leasehold estate of any lessee or the lessor of such lessee, and may be collected as provided in Article VIII below for the collection of assessments.

7.03 Damage and Destruction. In case of destruction of or damage to Association Property by fire or other casualty, the available insurance proceeds shall be paid to the Association for the benefit of the Members and their mortgagees, and the Association shall contract to repair or rebuild the Association Property so damaged. Should the insurance proceeds be insufficient to pay all of the costs of repairing or rebuilding the damage, the Association may levy a special assessment as provided for in Article VIII to make good any deficiency. If the Board determines not to rebuild any Property so destroyed or damaged, or to build facilities substantially different from those, which were destroyed or damaged, it shall call a special meeting of the Members to consider such decision. If the Members, by three-fourths (3/4) of the votes cast at such meeting, elect to ratify such decision, the Board shall act accordingly; but if the Members do not by such percentage elect to ratify such decision, the Board shall proceed to repair or rebuild the damaged or destroyed facility with payment therefor to be made as set forth in this Section.

7.04 Ownership, Maintenance, and Assessments for Maintenance of Private Roadways Within The Preserve; Assessments for Capital Improvements Within The Preserve. In accordance with the provisions and authority granted under Sections 5.09(A)(1) and 5.10(A) and Article VIII of the Declaration, the Association shall own and have the obligation to maintain, and to levy and collect assessments for the maintenance of all roadways located in The Preserve (collectively, the "Private Roadways"), as those Private Roadways are depicted on the final subdivision plat for The Preserve, and any security gates or other devices controlling access (the "Security Facilities") to the Private Roadways. The Association shall levy assessments against each Lot adjoining or benefiting from the Private Roadways for maintenance of the Private Roadways and the Security Facilities, as the Association determines appropriate and in accordance with the provisions of the Declaration. The Private Roadways shall not be dedicated to or maintained by Hays County. If the Private Roadways are acquired by Hays County, an inspection by Hays County and/or the City of Dripping Springs may be required and modifications and improvements to said Private Roadways may be necessary before the County or City of Dripping Springs will accept the streets, and all Security Facilities shall be removed by



the Association to meet Hays County standards. Further, an express easement is hereby granted across the Private Roadways and any adjoining Common Areas for the use of the surface for all governmental functions, vehicular and non-vehicular, including fire and police protection, solid and other waste material pick up and any other purpose any governmental authority deems necessary, and the Association does further agree that all governmental entities, their agents or employees, shall not be responsible or liable for any damage occurring to the surface of the Private Roadways and adjoining Common Area as a result of governmental vehicles traversing over same.

In accordance with the provisions and authority granted under Sections 5.09(A)(1) and 5.10(A) and Article VII of the Declaration, the Association shall have the right to make capital improvements on the Property.

## **ARTICLE VIII**

### **MAINTENANCE FUNDS AND ASSESSMENTS**

8.01 Maintenance Fund. The Board shall establish a fund (the “Maintenance Fund”) into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes related to the areas and Improvements owned by or leased to the Association, or subject to these restrictions, for maintenance or operation by the Association or otherwise for purposes authorized by this Declaration, as it may from time to time be amended. At least thirty percent (30%) of the Maintenance Fund shall be allocated for the purpose of maintenance of the Private Roadways and the construction and maintenance of other capital improvements.

8.02 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under The Preserve Restrictions, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year’s fund, and shall levy an annual assessment in the manner hereinafter provided against the Owners of any Lot, hereinafter referred to as the Property. If the sums collected prove inadequate for any reason, including nonpayment of any individual assessment, the Association may at any time, and from time to time, increase the amount of the annual assessments as necessary to satisfy the actual expenses incurred by the Association in performing its functions under this Declaration. All such assessments shall be due and payable to the Association during the fiscal year in annual installments on or before an anniversary date based on the fiscal year as established by the Association. The assessment per lot will be paid at closing and will be prorated to the end of the fiscal year.

8.03 Special Assessments. In addition to the regular annual assessments provided for above in Section 8.02, the Board may levy special assessments whenever in the Board’s opinion such special assessments are necessary to enable the Board to carry out the functions of the Association under The Preserve Restrictions.

8.04 Division of Assessment Among Owners. Assessments made by the Association under Sections 8.02 and 8.03 shall be divided equally among all the Owners of Lots located within the Property as described in the exhibits to this Declaration, as amended.

8.05 Assessment Benefiting Specific Areas. The Association shall also have authority to levy assessments against specific local areas and Improvements to be expended for the benefit of the Properties so assessed. The assessments levied under this Section shall be levied in proportion to the benefits conferred or to be conferred, as determined by the Board, and therefore the amount levied against each parcel of land or Improvement need not be equal. Any such assessments shall constitute a lien on the Properties so assessed, and such liens shall be enforced in the same manner and to the same extent as provided for regular and special assessments in this Article.

8.06 Assessment on Sale, Transfer or Conveyance of Property; Resale Certificate. Any Property sold, transferred, or conveyed by the Owner (the "Transfer"), whether by deed, contract for deed, contract for sale, assignment or other instrument transferring title, or a right to acquire title or an interest therein upon the Transfer, a One Hundred Dollar (\$100.00) assessment ("Transfer Assessment") shall automatically be levied against the Property and shall be paid by the seller or purchaser to the Association at the time the Transfer of the Property is closed. This Transfer Assessment shall not apply to the following:

1. Transfers by device or descent or by operation of law upon the death of an Owner;
2. The creation of a lien or encumbrance upon the Property;
3. Transfer upon foreclosure of a lien judicial or non-judicial, or transfer in contemplation of foreclosure; and
4. Transfer by the holders of mortgage lien, where title to the Property was acquired by the holder of the lien at a judicial or non-judicial sale or conveyance in contemplation of a judicial or non-judicial sale.

In connection with a Transfer, either the purchaser, seller or their agent or a title company may request a resale certificate ("Resale Certificate") from the Association. The cost of the Resale Certificate shall be included in the Transfer Assessment. The purchaser shall pay for the Resale Certificate fee unless otherwise agreed by the purchase and seller. The Association shall require payment before beginning the process to issue a Resale Certificate but the Association shall not process such payment until the Resale Certificate is available for delivery. A Resale Certificate shall include a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

8.07 Late Charges. If any assessment made pursuant to Article VIII or if any fine is not paid within thirty (30) days after it is due, the Owner will be required to pay a late charge of Ten Dollars (\$10.00) for each such late assessment.

8.08 Unpaid Assessments and Fines as Liens. All assessments, whether made pursuant to this Article VIII or any other article of this Declaration and all fines, if not paid within thirty (30) days after the date due, shall be deemed delinquent and in default; provided, however, that if the Owner has the right to pay the assessment or fine pursuant to a payment plan as set forth in Section 3.10(B) above, then such assessment shall not be deemed delinquent and in default unless and until the Owner fails to timely make any payment under such payment plan. The amount of any delinquent assessment or fine, and any late payment charge attributable thereto, plus interest on such assessment or fine and late payment charge at a rate of ten percent (10%) per annum simple interest (not to exceed the maximum charge permitted under applicable law), and the costs of collecting the same, including reasonable attorney's fees, shall be the personal obligation of the Owner of the Property against which the assessment or fine fell due and shall be a lien upon such Property. The transfer of title to such Property shall not terminate the lien, but personal obligation of the Owner shall not pass to successors in title unless they assume the obligation. The Association may either (a) bring an action at law against the Owner personally obligated to pay the same, (b) foreclose said lien against the Property, or (c) both. No Owner may waive or otherwise escape liability for any assessment or fine to nonuse of Association Property or any common area or by the abandonment of any Property. A certificate executed and acknowledged by any member of the Board stating the indebtedness secured by such lien shall be conclusive upon the Association as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon request at a fee of One Hundred Dollars (\$100.00).

8.09 Mortgage Protection. Notwithstanding any other provision of The Preserve Restrictions, no lien created under this Article VIII or under any other Article of this Declaration, nor any lien arising by reason of any breach of The Preserve Restrictions, nor the enforcement of any provision of this Declaration or of any Supplemental Declaration, shall defeat or render invalid the rights of the Beneficiary under any recorded Mortgage of first and senior priority now or hereafter given upon the Property, made in good faith and for value. However, after a conveyance in lieu of foreclosure, such Property shall remain subject to The Preserve Restrictions and shall thereafter be liable for all assessments levied after such completion of foreclosure conveyance in lieu of foreclosure.

8.10 Effect of Amendments on Mortgages. No amendment of Section 8.09 of this Declaration shall affect the rights of any Beneficiary whose Mortgage or deed of trust has the first and senior priority as provided in Section 8.09, unless the mortgagee consents in writing to the amendment thereof, or unless the amendment was filed of record prior to the recording of the Mortgage; provided, however, that after foreclosure, or conveyance in lieu of foreclosure, the Property which was subject to such Mortgage or deed of trust shall be subject to such amendment.

8.11 Subordination. The lien for assessments and fines provided for herein shall be subordinated to the lien of any first Mortgage if the Mortgage was recorded before the delinquent assessment or fine became due. Sale or transfer of any Property subject to unpaid assessments or fines shall not affect the assessment lien. However, the sale or transfer of any Property subject to assessment or fine pursuant to Mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Property subject to assessment or fine from liability for any assessments or fines thereafter becoming due or from the lien thereof.

## **ARTICLE IX**

### **MISCELLANEOUS**

9.01 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until December 31, 2022, unless amended as herein provided. After December 31, 2022, this Declaration, including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least two-thirds (2/3) of the Lots then subject to this Declaration.

9.02 Amendment. This Declaration may be amended by the recording in the Hays County Real Property Records of an instrument, executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least two-thirds (2/3) of the number of votes entitled to be cast pursuant to Section 5.03.

9.03 Utility Easements. The Association reserves the right to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on any areas conveyed to the Association or reserved as Common areas, Recreation and Open Spaces, or Private Roadways, sewer and other pipelines, conduits, wires and any public utility function beneath or above the surface of the ground, with the approval of the ACC and with the right of access to the same at any time for the purpose of repair and maintenance. To the extent any sanitary sewer, water, electricity, gas, telephone and cable television lines, drainage facilities or other utilities are installed within any portion of the Property, which utilities serve the Subdivision, the owners of the Property and the Subdivision shall be entitled to the full use and enjoyment of such portions of the utility connections which service such Property, or subdivided portion thereof, or Subdivision. In addition, such owners shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Property to repair, replace and generally maintain such connections and lines to the extent reasonably necessary for serving such owner's Property.

9.04 Notices. Unless otherwise provided herein, any notice permitted or required to be given by this Declaration shall be in writing and may be delivered by regular mail, by certified mail, return receipt requested, by personal delivery or by a nationally recognized overnight delivery service (such as FedEx or UPS) providing a receipt for delivery. The date of giving any

notice shall be deemed to be the date upon which delivery is actually made by one of the methods described in this Section 9.04 (or attempted if said delivery is refused or rejected). If a notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

As of the date of this Declaration, the address for notice to the Board and/or the ACC shall be at the following addresses:

The Preserve at Dripping Springs Homeowners Association, Inc.  
Board of Directors  
P.O. Box 1394  
Dripping Springs, Texas 78620

The Preserve at Dripping Springs Homeowners Association, Inc.  
Architectural Control Committee  
P.O. Box 1394  
Dripping Springs, Texas 78620

Such addresses for the Board and/or the ACC shall be effective unless and until either (a) a supplement to this Declaration shall be made and filed in the Real Property Records of Hays County, Texas, or (b) the website (<http://www.thepreserveatdrippingspringshoa.com>) for the Association is updated to specify notice of a different address for the Board and/or the ACC (in which event such address specified in such supplement shall be the address, for the Board and/or the ACC).

Any notice to an Owner shall be effective when delivered either personally or by mail (as set forth above in this Section 9.04) to the Owner's last known address as shown on the records of The Preserve at the time of such mailing. Such address may be changed from time to time by notice in writing given, pursuant to this Section 9.04, by such Owner to the Board.

9.05 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas, and all obligations herein shall be performed in Hays County, Texas.

9.06 Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with the provisions of this Declaration, and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the application provision, including, but not limited to, any provision prohibiting temporary waiver

of the applicable provision and any provision prohibiting temporary structures, may be granted by the ACC, provided that such wavier shall be only for the reasonable period of such construction.

9.07 Applicability. Except as expressly set forth herein, each contract, deed, deed of trust, or ground lease which may be hereafter executed with respect to any portion of the Property shall be deemed and held to have been executed, delivered and accepted subject to all of the provisions of this Declaration, including, without limitation, the reservations, restrictions, covenants, conditions, liens and charges set forth herein, regardless of whether or not any of such provisions are set forth in such contract, deed, deed of trust, or ground lease, and whether or not referred to in any such instrument

9.08 Assignment of the Association. Notwithstanding any provision in this Declaration to the contrary, the Association may, in writing, assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person and may permit the participation, in whole or in part, by any other person in any of its privileges, exemptions, rights and duties hereunder. Any such assignment shall be evidenced by instrument filed for record in the Official Records of Real Property of Hays County, Texas.

9.09 Enforcement and Non-waiver.

A. Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, The Board of Directors and/or ACC, shall have the right to enforce all of the provisions of The Preserve Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

B. Violation of Restrictions. Every act or omission whereby any provision of The Preserve Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner (at his own expense) or the Board.

C. Nonwaiver. The failure to enforce any provision of The Preserve Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restriction.

D. Liens. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot in the Property in order to enforce any right or effect compliance with this Declaration.

9.10 Construction.

A. Restrictions Severable. The provisions of The Preserve Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

B. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

C. Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles hereof.

**[SIGNATURE PAGE(S) FOLLOW]**

[Signature Page for that Amended and Restated Declaration  
of Covenants, Conditions and Restrictions for The Preserve]

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

DECLARANT:

THE PRESERVE AT DRIPPING SPRINGS  
HOMEOWNERS ASSOCIATION, INC.,  
a Texas non-profit organization

\_\_\_\_\_  
By: Ronald W. Kelly  
Chairman of the Board of Directors

ACKNOWLEDGEMENT

THE STATE OF TEXAS     §  
  §  
COUNTY OF \_\_\_\_\_     §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013,  
by Ronald W. Kelly, Chairman of the Board of Directors of The Preserve at Dripping Springs  
Homeowners Association, Inc., a Texas non-profit organization, on behalf of such non-profit  
organization.

\_\_\_\_\_  
Notary Public in and for The State of Texas

\_\_\_\_\_  
Printed Name

My Commission Expires:

\_\_\_\_\_

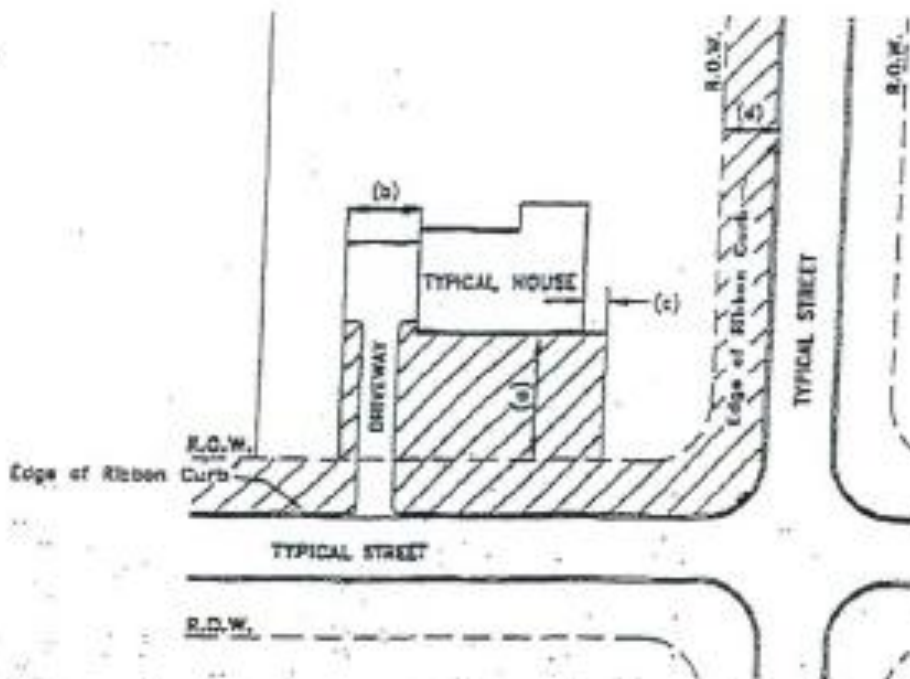


## Exhibit One

Front yard shall be sodded or otherwise improved with landscaping per the following requirements:

- (a) Front of house to ribbon curb of streets
- (b) 30' on driveway side of house (from front plane of house to ribbon curb of street)
- (c) 10' on non-driveway side of house (from front plane of house to ribbon curb of street)
- (d) All areas along ribbon curb of streets, between the edge of the ribbon curb and the street right-of-way shall be sodded (No 'natural islands' may be located in the R.O.W. areas)

LANDSCAPE: Natural islands are areas maintained in their natural state. Areas not required to be sodded or otherwise improved with landscaping can be left in their natural state.



Note: Letters (a)-(d) shown in the drawing correspond with the written descriptions shown in this exhibit as (a)-(d).

Exhibit Two

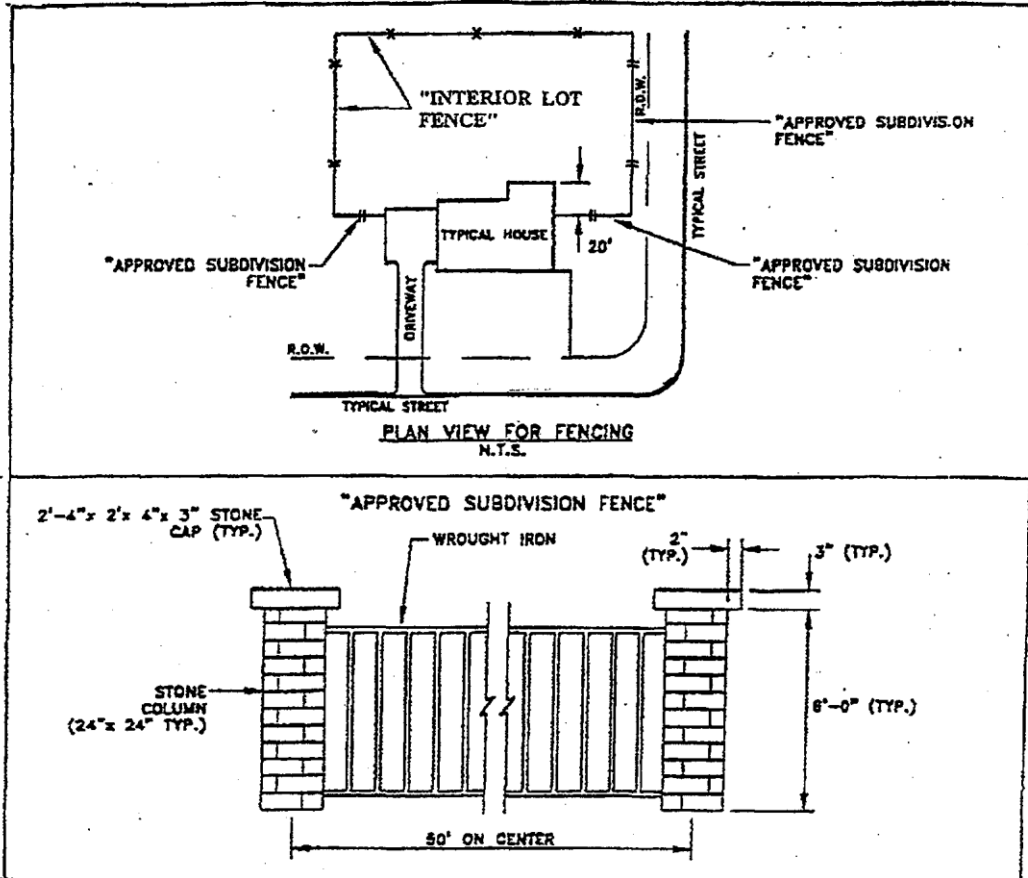
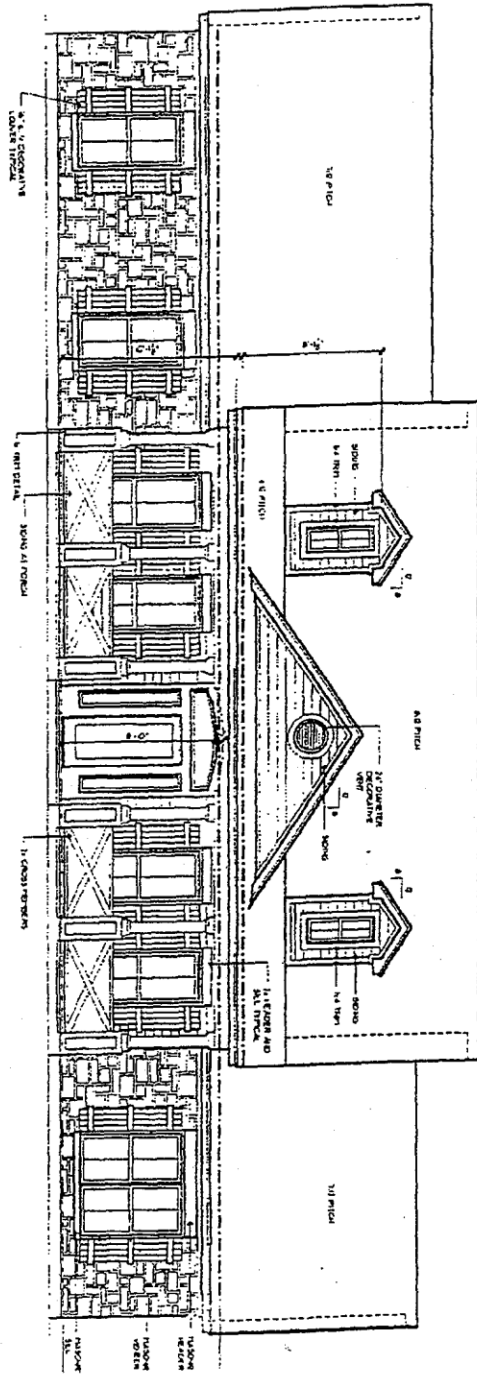


Exhibit Three - A

EXHIBIT THREE-A

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FRONT ELEVATION



RIGHT ELEVATION

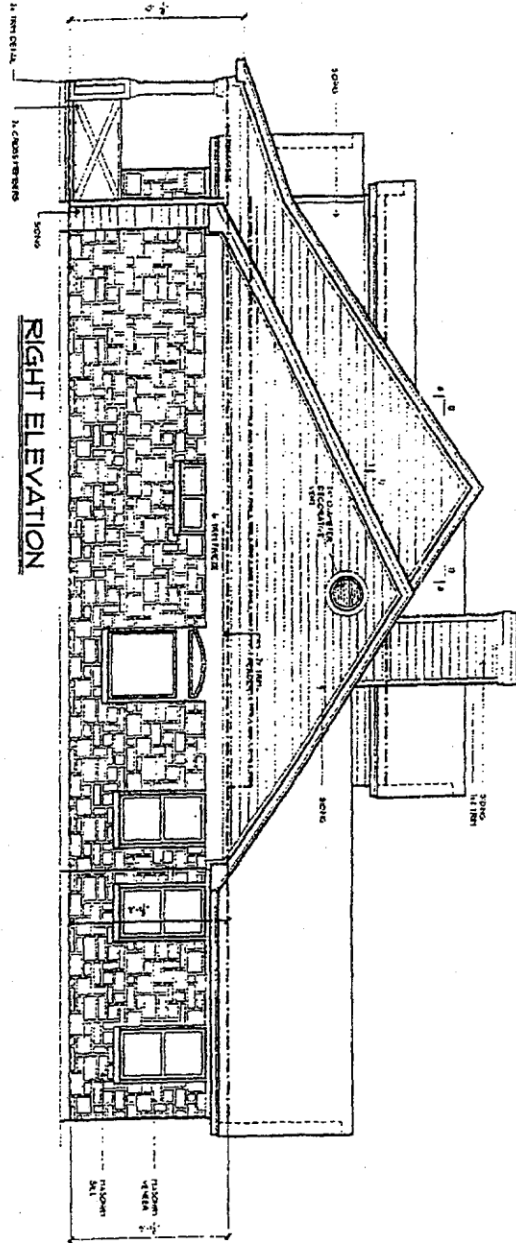


Exhibit Three - B

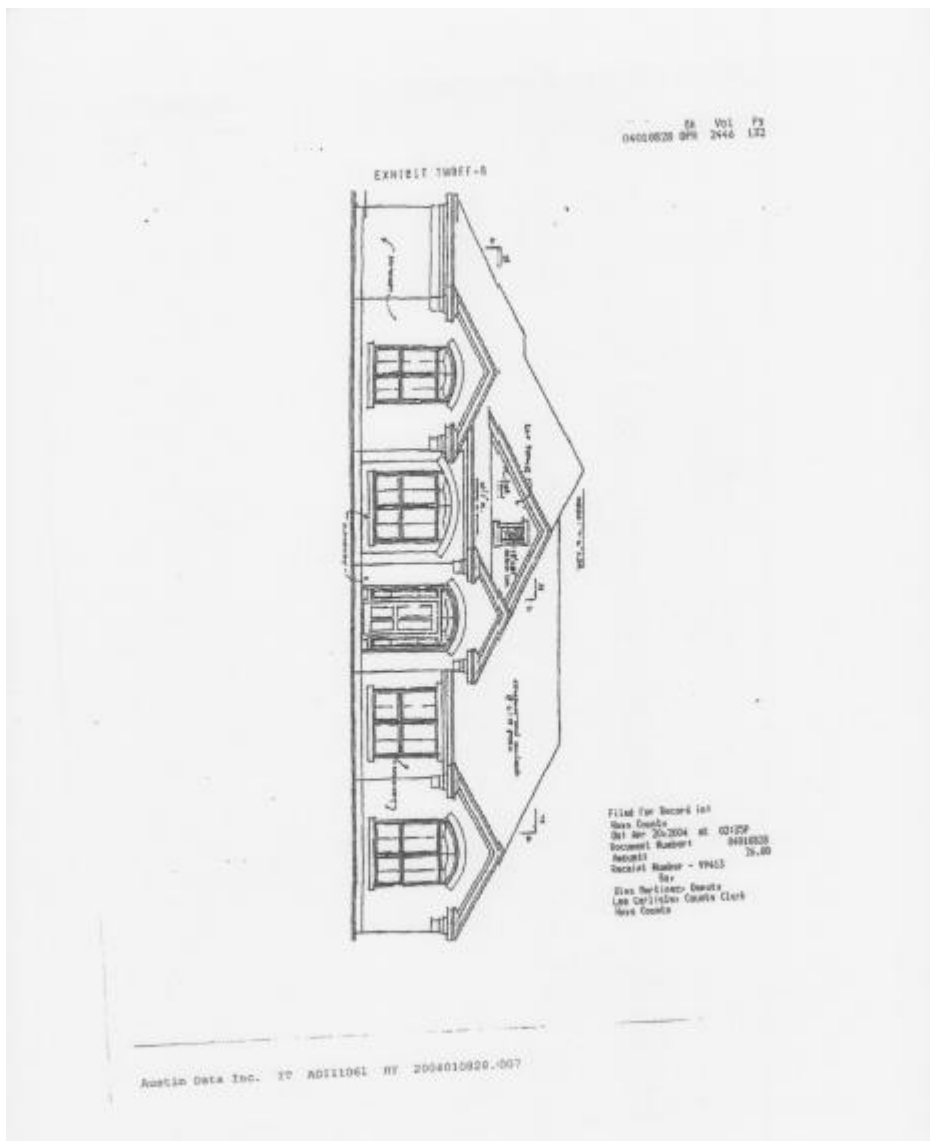


Exhibit Four

**ASSOCIATION RECORDS PRODUCTION & COPYING POLICY**

**PRESCRIBED COSTS TO OWNER**

**Copy Charges:**

Electronic image transmitted by email - no copy charge

Electronic image downloaded to USB drive - actual cost of drive

Standard paper copy or scan (letter or legal size) - \$0.10 per page (double sided is 2 pages)

Oversize paper copy or scan (such as 11x17) - \$0.50 per page

Diskette or CD - \$1.00

DVD - \$3.00

**Labor Charge:**

No labor charge if the request is for 50 or fewer pages of information, unless the records must be retrieved from a storage facility that is remote from the processor's office.

\$15.00 per hour, in 1/4 hour increments, for actual time to locate, compile, manipulate data, reproduce information, and (if necessary) redact confidential information, for requests of more than 50 pages and for records in remote storage.

No labor charge for time spent to review the requested information to determine if the information qualifies for an exemption from Open Records.

**Overhead Charge:**

No overhead charge if the request is for 50 or fewer pages of information. Otherwise, the overhead charge is 20 percent of the labor charge.

**Remote Document Retrieval Charge:**

If the requested information is stored with a commercial records storage company that charges a fee to deliver and return stored records, the Association may seek reimbursement of the third-party fee from the owner if the request otherwise qualifies for a labor charge.

**Other Charges:**

Actual postage and shipping charges if necessary to transmit the reproduced information to the owner.

Actual cost of miscellaneous supplies, such as boxes, if used to produce the requested information.

If the Association accepts payment by credit card, the Association may recoup the amount of any actual transaction fee charged by the credit card company for the privilege.

No sales tax.