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**DECLARATION OF COVENANTS,  
CONDITIONS and RESTRICTIONS**

FILED FOR RECORD  
8:00 AM

FOR

FEB 26 2007

ALBURY TRAILS ESTATES

lee

*Barbara L. Highman*  
County Clerk, Harris County, Texas

**SECTION ONE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ALBURY TRAILS ESTATES, SECTION ONE is made this \_\_\_\_\_ day of February, 2007, by Willow Creek Development Company, Limited, a Texas limited partnership (hereinafter referred to as "Declarant").

Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of real property within the Properties. Declarant desires to provide a reasonable procedure for the overall development of the properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. This Declaration does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code Ann. 81.001 et seq. (Vernon 1983) and 82.001 et seq. (Vernon 1993).

**Article I**  
**Definitions**

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration or by deed, contract or agreement become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public rights-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 2. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Albury Trails Estates Community Association, Inc., to be filed with the Secretary of State of the State of Texas.

Section 3. "Association" shall mean and refer to Albury Trails Estates Community Association, Inc., a Texas nonprofit corporation, its successors or assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Texas corporate law. The use of the term "association" or "associations" in lower case shall refer to any owners association having jurisdiction over any part of the Properties.

Section 4. "Base Assessment" shall mean and refer to assessments leveled against all Lots in the Properties to fund Common Expenses.

Section 5. "By-Laws" shall mean and refer to the By-Laws of Albury Trails Estates Community Association, Inc., as they may be amended from time to time.

Section 6. "Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 7. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Lot Owners, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, Articles of Incorporation of the Association, and the Rules and Regulations, but shall not include original construction of installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" vote of the Association.

Section 8. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties (as hereinafter defined). Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.

Section 9. "Declarant" shall mean and refer to Willow Creek Development Company, Limited ("WCDC") or its successors, successors-in-title or assigns who own any portion of the property described on Exhibit "A" hereof or additions thereto for the purpose of development and/or sale.

Section 10. "General Land Use Plan" shall mean and refer to the plan for the development of the Albury Trails Estates residential community prepared for WCDC as it may be amended from time to time in the sole and absolute discretion of WCDC, which plan includes the property described on Exhibit "A" and additional property which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the General Land Use Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described from the General Land Use Plan bar its later annexation in accordance with Article VIII hereof.

Section 11. "Lot" shall mean the platted lots within Albury Trails Estates, Section One, intended for development, use, and occupancy as a residence, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) single-family detached houses on separately platted lots, as well as vacant platted lots, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned as well as any structure thereon.

Section 12. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 13. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed recorded in the Real Property Records of Harris County, Texas.

Section 14. "Mortgagor" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 15. "Mortgagee" shall mean and refer to any Person who gives a Mortgage.

Section 16. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, that the purchaser (rather than the fee owner) will be considered the Owner.

Section 17. "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 18. "Properties" shall mean and refer to the platted residential lots and Restricted Reserves included in the plat of Albury Trails Estates, Section One, and such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 19. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 3, of this Declaration.

Section 20. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant (and the Owner of the property) which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Association pursuant to Article VIII, Section 2, of this Declaration to subject additional property to this Declaration.

## Article II Property Rights

Section I. General. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

- (a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association;
- (b) the right of the Board to limit the number of guests who may use the Common Area, and to adopt other rules regulating the use and enjoyment of the Common Area;
- (c) the right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, By-Laws, or rules of the Association, after notice and a hearing pursuant to the Article VII, Section 1, of the By-Laws;
- (d) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Article XIII, Section 4 hereof;
- (e) the right of the Association, acting through the Board, to approve use of the Common Area by any Commercial building owner(s) and/or their guests prior to the usage;
- (f) the right of the Board to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;
- (g) the right of the Board to permit nonmember use of any recreational facility situated on the Common Area upon payment of use fees established by the Board;
- (h) the right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

Any Owner may delegate his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have delegated all such rights to the Lot's lessee.

## Article III Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and by By-Laws. The membership rights of a Lot owned by a

corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting.

- a. Eligibility: Eligibility to vote or serve, as a representative, director or officer shall be predicated upon a Member being in good standing with the Association. To be in good standing, the Member must have all assessments of every type and category paid up to date and have no outstanding financial obligations to the Association that are delinquent. Additionally, no Member shall be allowed to vote or hold office if that Member is alleged in a formal written notice from the Association to have a deed restriction violation on one or more Lots in Albury Trails Estates.

- b. Voting Rights: The Association shall have two (2) classes of membership, Class "A" and Class "B" as follows:

- i. Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Section I hereof, there shall be only one (1) vote per Lot.

In any situation where a Member is entitled personally to exercise the vote for his Lot and more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

- ii. Class "B". The Class "B" Member shall be the Declarant or homebuilders within Albury Trails Estates. The Class "B" Member shall be entitled to ten (10) votes for each Lot owned. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to all or any portion of the members of the Board of Directors so long as Class "B" Membership exists. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of;

- (a) When the total votes in Class "A" membership equal the total votes in the Class "B" membership; or  
(b) December 31, 2030; or,

## Article IV Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements, situated upon the Common Areas, landscaped medians within public or private rights-of-ways throughout the Properties, landscaping and other flora on any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto), and such portions of any additional property included within the area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association. There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities. The Association may maintain other property, which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Base Assessment.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas and other improvements comprising the Lot. Owners of Lots adjacent to any roadway within the Properties shall maintain driveways serving their respective Lots, whether or not lying within the Lot boundaries, and shall maintain and irrigate landscaping on that portion of the right-of way between the Lot boundary and the back-of-curb of the adjacent street.

In addition to any other enforcement rights available to the association, if any Owner fails to properly perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Lot and the owner thereof in accordance with Article X, Section 3 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the owner reasonable notice and an opportunity to cure the problem prior to entry.

### Section 3. Party Walls and Party Fences.

- (a) General Rules, of Law to Apply. Each wall or fence built as a part of the original construction on the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. Repair and replacement of Common Area walls and fences

constructed on behalf of the Association shall be the responsibility of the Association. Parties responsible for damage shall be held accountable for said damage.

- (c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has Owners thereafter make use of the wall or fence may restore it. If the other Owner or Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- (d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owners under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.
- (e) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party as its sole and exclusive remedy shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

## Article V Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket "all-risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard, (if reasonably available).

The Board shall also obtain a public liability policy covering the Area of Common Responsibility for all damage of injury caused by the negligence of the Association, its officers, directors, committee members, employees or agents. The public liability policy shall have at least a One Million (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million (\$3,000,000.00) Dollar limit per occurrence, if reasonably available, and a Five Hundred Thousand (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses of the Association and shall be included in the Base Assessment, as defined in Article 1 and as more particularly described in Article X, Section 1. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of

insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association for the respective benefited parties, as further identified in subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth;

- (a) All policies shall be written with a company authorized to do business in Texas (if reasonably available) which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.
- (b) All policies on the Area of Common Responsibility shall be for the benefit of the Association.
- (c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Association's Board of Directors.
- (d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.
- (e) All property insurance policies shall have an inflation guard endorsement, if reasonably available, and, if the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Harris County, Texas area.
- (f) The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:
  - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, employees and manager, and agents;
  - (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
  - (iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;
  - (iv) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee.
  - (v) a statement that any "other insurance" clause in any policy excludes individual Owners' policies from consideration; and
  - (vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.



In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, and flood insurance, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than one-sixth (1/6) of the annual Base Assessments on all Lots, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 2. Individual Insurance. The decision to acquire insurance by Lot owners is subject to the discretion of each Lot owner. However, each Owner covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The Owner shall pay any costs of repair or reconstruction. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and ruins (including slab, driveways and other improvements) and thereafter the Owner shall maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Section 3. Damage and Destruction.

- (a) Immediately after damage or destruction by fire or other casualty to all or any part of the Association's Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.
- (b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the vote of the Association, if Common Area, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area shall be repaired or reconstructed.
- (c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and

no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be cleared of all debris and ruins and maintained by the Association, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the process of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction. Any proceeds remaining after defraying such costs of repair or reconstruction or if no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area or to the common property of a Neighborhood Association for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a special assessment against those Owners of Lots responsible for the premiums for the applicable insurance coverage under Section I of this Article. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

#### Article VI No Partition

Except as is permitted in this Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

#### Article VII Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty-seven (67%) percent of the total vote in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibit "A") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibit "A" of this Declaration, and Voting Members representing at least seventy-five (75%) percent of the total vote of the Association shall

otherwise agree, the Association shall restore or replace such improvements taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

## Article VIII Annexation of Additional Property

Section 1. Annexation Without Approval of Class "A" Membership. Declarant shall have the unilateral right, privilege, and option, from time to time at any time to subject to the provisions of this Declaration and the jurisdiction of the Association additional real property. Such annexation shall be accomplished by filing in the public records of Harris County, Texas, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "A" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex real property other than property owned by the Declarant, or its successors or assigns to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Voting Members or alternates representing a majority of the votes of the Association present at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the public records of Harris County, Texas, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibit "A", or additions thereto, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to this Article VIII, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant.

Section 5. Amendment. This article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" or additional thereto.

## Article IX Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violations of this Declaration, the By-Laws, or such rules and regulations may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area. In addition, the Association, in accordance with Article VII, of the By-Laws, shall have the right, without the obligation, to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner of such Owner's Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall also have the

power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws and/or Rules and Regulations of the Association.

In addition to all other remedies that may be available, the Association has the right to collect attorney fees and/or fines as set by the Board from any Owner that is in violation of this Declaration, any applicable Supplemental Restrictions or amendments, any Architectural Guidelines, the Building Guidelines, or any other rule or regulation promulgated by the Association. Every Owner shall comply with all provisions of this Declaration, the By-Laws, and the rules and regulations of the Association, all other dedicatory instruments of the Association and any amendments or supplements to any of the foregoing. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration, any amendment, Supplemental Restriction, the By-Laws or any other dedicatory instruments.

The Association, through the Board, by contract or other agreement, shall have the right to enforce county ordinances and/or ordinances of the City of Houston, Texas, if applicable, and to permit Harris County and the City of Houston, Texas to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Governmental Interests. For so long as the Declarant owns any property in the Properties, the Association shall permit the Declarant authority to designate sites within the Properties, which may include Common Area owned by the Association, for fire, police, water, and sewer facilities, parks and other public facilities.

#### Article X Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 7 of this Article. There shall be two (2) types of assessments, (a) Base Assessments to fund Common Expenses for the benefit of all Members of the Association and (b) Special Assessments as described in Section 3 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at the lower of eighteen percent (18%) per annum or the highest rate allowed by Texas law) as computed from the date the delinquency first occurs, late charges, costs, and attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made until paid. Each such assessment, together with interest, late charges, costs, and attorney's fees, shall also be the personal obligation of the

Person who was the Owner of such Lot at the time the assessment arose, and, in the event of a transfer of title, his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of any assessments therein stated to have been paid. The Association may require the advance payment of a processing fee (set by the Board of Directors) for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors and, if the Board so elects (in its sole and absolute discretion), assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of the annual assessment and/or any other assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant may annually elect either to pay fifty percent (50%) of the assessments charged to occupied Lots or to pay to the Association the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board of Directors in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these. To facilitate initial Association operations, Declarant may make a loan to the Association. Reimbursement shall be considered in the annual Association budget.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared, as provided in Section 6 of this Article.

The Base Assessment to be levied against each Lot for the coming year shall be determined by analyzing the total budgeted Common Expenses, including reserves, the amount each Lot is obligated to pay and the total number of Lots subject to an assessment.

Notwithstanding the above, the Board may, in its sole discretion, reduce the Base Assessments determined pursuant to the above by taking into account assessments to be levied upon additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Assessments for platted Lots with or without homes and completed homes, which are owned by the Declarant or a Builder (and not being used as a residence) shall be assessed at fifty percent (50%) of the rate assessed to all other Lots.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article VIII hereof, the Declarant may elect on an annual basis, but shall not be obligated to do so, to reduce the resulting Base Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 1 above): provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

The Board shall cause a copy of the Common Expense Budget and notice of the amount of the Base Assessment to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Voting Members by Voting Members or their alternates representing at least a majority of the total vote in the Association, and by the Declarant so long as it owns any property in the Properties. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings in Article III, Section 2, of the By-Laws, which petition must be presented to the Board within ten (10) days of delivery of the notice of assessments.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year, and the Base Assessment will be calculated thereon.

### Section 3. Special Assessments.

- (a) Entire Membership. The Association may levy Special Assessments from time to time provided such assessment receives the affirmative vote or written consent of Voting Members or their alternates representing sixty-seven percent (67%) of the total votes in the Association present at a regular or special meeting called for the purpose of proposing a special assessment at which a quorum is present and the written consent of the Developer so long as it owns any property in the Properties. Special Assessments levied against the entire membership shall be allocated to the Lots in the same percentage as base assessments unless the Board determines that another method is more equitable. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.
- (b) Less Than All Members. The Association may levy a Special Assessment against any Member individually and against such Member's Lot to reimburse the Association for costs incurred in bringing a member and his Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, or the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

Section 4. Lien Subordination. The lien for any unpaid assessments provided for herein shall be prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

### Section 5. Collection and Remedies for Assessments.

- (a) The assessments provided for in this Declaration, together with late charges, attorneys' fees, interest and costs as necessary for collection, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with late charges, attorney's fees, interest and costs, shall also be the personal obligation of the Owner of the land at the time the assessment became due. This personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.
- (b) Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of 1) eighteen percent (18%) or 2) the maximum non-usurious rate of interest. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by reason of non-use or abandonment.
- (c) In order to secure the payment of the assessments hereby levied, an assessment lien is hereby reserved in each deed from the Declarant to the Owner of each Lot in Albury Trails Estates, which lien may be foreclosed upon by non-judicial foreclosure pursuant to the provisions of Section 51.002 of the Texas Property Code (or any successor statute); each Owner grants a power of sale to the Association to sell such property upon default in payment by any amount owed. Alternatively, the Association



may judicially foreclose the lien or maintain an action at law to collect the amount owed.

- (d) The President of the Association or his or her designee is hereby appointed Trustee to exercise the Association's power of sale. Trustee shall not incur any personal liability hereunder except for his or her own willful misconduct.
- (e) Although no further action is required to create or perfect the lien, the Association may, as further evidence and give notice of the lien, by executing and recording a document setting forth the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The Association shall also have the right but not the obligation to notify a delinquent Owner's lender, in writing, of such Owner's delinquency and default.
- (f) In the event the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 5 1.002 (or any successor statute) and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale no less than twenty one (21) days prior to the date of the proposed foreclosure sale, postage prepaid, registered or certified mail, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association or by hand delivery. At any foreclosure proceeding, any person or entity, including but not limited to the Declarant, Association or any Owner, shall have the right to bid for such Property at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period Property is owned by the Association following foreclosure, 1) no right to vote shall be exercised on its behalf; 2) no assessment shall be levied on it. Out of the proceeds of such sale, there shall be paid all expenses incurred by the Association in connection with such default, including attorneys' fees and trustee's fees; second, from such proceeds there shall be paid to the Association an amount equal to the amount of assessments in default inclusive of interest, late charges and attorneys' fees; and, third, the remaining balance, if any, shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant-at-sufferance and may be removed from possession by any lawful means.

Section 6. Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice assessments, as provided in Sections 2 and 3 of this Article.

Section 7. Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence as to each Lot on the first day of the month following; (a)

the month in which the Lot is made subject to this Declaration; or (b) the month in which a subdivision plat is recorded covering the property comprising the Lot, whichever is later. The first annual Base Assessment levied on a Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Section 8. Transfer of Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien (but not the personal obligation) of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns.

Section 9. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) all Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks, if any.

## Article XI Architectural Standards

No structure shall be placed, erected or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to Sections 1 and 2 below. The Board of Directors may establish reasonable fees to be charged by the committee on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 1 and 2 of this Article XI. This Article may not be amended without the Declarant's written

consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

Section 1. Architectural Review Committee. The Architectural Review Committee ("ARC") shall consist of at least three (3) but not more than five (5), persons and shall have exclusive jurisdiction over all original construction and any modifications, additions, or alterations on any portion of the Properties. Until one hundred (100%) percent of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right without the obligation to appoint all members of the ARC, who shall serve at the discretion of the Declarant. The Declarant may surrender all or any positions on the ARC to the Association at any time. After such time as one hundred (100%) percent of the Properties have been developed and conveyed, the Board of Directors shall appoint the members of the ARC, who shall serve and may be removed at the discretion of the Board of Directors. The members of the ARC may include architects, engineers and other persons who are not members of the Association.

In the event that the ARC fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within sixty (60) days after submission thereof, the plans shall be deemed approved.

Section 2. Modifications Subcommittee. The ARC may request that the Board of Directors establish a Modifications Committee ("MC") to consist of at least three (3) and no more than five (5) persons, all of whom shall be recommended by the ARC and appointed by, and shall serve at the discretion of, the Board of Directors. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures and the open space, if any, appurtenant, thereto; Notwithstanding the above, the ARC shall have the right to veto any action taken by the MC which the ARC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the ARC.

The MC may promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with those of the ARC. In addition thereto, the following shall apply. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Lot, or to paint the interior of his Lot any color desired, provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Lot visible from outside the Lot shall be subject to approvals hereunder. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within sixty (60) days after submission, the plans shall be deemed approved.

Section 3. No Waiver of Future Approvals. The approval of either the ARC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall

not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 4. Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 5. Compliance. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Architectural Restrictions or procedures promulgated by the ARC or MC may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained therein.

Section 6. No Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the ARC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

Section 7. Location of Improvements.

- (a.) Dwellings shall face the street on which the Lot on which they are located has the smallest frontage.
- (b.) Dwellings shall not be located on any Lot nearer to the lot lines than the minimum corresponding building set back lines shown on the recorded plat. No house or other allowed structure may be built on a lot except within the building lines shown below, unless a variance for same is granted by the ARC:

Front Building Line – Twenty-Five feet (25') back from the front property line for main structures and garages on lots where a twenty-five foot (25') building line is shown on the plat. Twenty feet (20') back from the front property lines for building or garage on cul-de-sac lots where a twenty-foot (20') building line is shown on the plat. Porte-cochere overhangs may be in front of the above described building line.

Side Building Line – Five feet (5') back from each side lot line.

Rear Building Line – Seven feet (7') from rear lot line, or the rear utility easement.

Section 8. Garages and Driveways.

- (a) The ARC shall approve in writing the location of all garages and driveways.
- (b) Each residential structure shall be accompanied by a garage which shall have no more than three (3) single garage doors or one (1) double garage door and one (1) single garage door facing the street. Each house shall have a garage which shall accommodate a minimum of two (2) and a maximum of four (4) automobiles. Attached garages where the garage doors face the front of the building line shall be recessed from the front facade of the house a minimum distance of two feet (2') or have a Porte-cochere.
- (c) In cases where building plans provide a split load garage where one of the garages parallels the street and the other faces the street, but is offset to the depth of the parallel garage, the two foot (2') recess shall not be required.
- (d) Detached garages may have a three foot (3') side lot building set back line.
- (e) On each Lot the Builder shall construct and the Owner shall maintain at his expense the driveway from the garage to the abutting Street, including the portion of the driveway in the street easement, and the Builder shall repair at his expense any damage to the Street occasioned by connecting the driveway thereto.

Section 9. Minimum Square Footage within Improvements. The minimum living area of each residence shall be in accordance with the following:

1600 square feet for a single story residence  
2200 square feet for a two-story residence

Section 10. Building Materials. All construction plans submitted for approval by the ARC must specify the color and type of materials of which the structure will be built. Unless the ARC otherwise agrees in writing, the exterior finish of any portion of a structure facing a street must only be brick, stone or other masonry material (collectively "Masonry Material"), except for the application of accent siding and cases where the side of home faces side yard street corner. All homes and attached garages shall have a minimum of fifty-one percent (51%) masonry exterior. Any exception must be approved by the ARC.

Section 11. Roofing Materials. The roofs of all buildings shall be constructed or covered only with materials specifically approved by the ARC, which approval must be obtained in writing before the commencement of roof construction, covering or recovering. All roofs shall be of clay tile, slate, seamed metal or dimensional composition shingles with a minimum twenty-five (25) year warranty. The ARC shall specify the quality, color, appearance and weight of roofing materials to be used and the use of any other material shall be specifically approved in writing by the ARC. All roofs shall be weathered wood in color.

Section 12. Fences.

- (a) Materials – Fences must only be constructed of brick, wood or wrought iron. No chain link, concrete, metallic or plastic fences shall be built.
- (b) Wood Fences – All wood fences between lots shall be a minimum of six feet in height, and shall not exceed eight feet (8') in height. All wood fences shall comply

with ARC specifications. No wood fence on a side yard may extend closer to the front of the lot than three feet (3') behind front of the main structure.

Section 13. Lot Grading and Drainage. After the conveyance of each Lot or Lots from the Developer or Declarant, each Lot must be graded and maintained in such a manner so as to permit all water from all sources to drain naturally into the storm sewer system that sides on or fronts each respective Lot. Exceptions will be made where existing topography requires an alternate lot grading plan. Swimming pool backwashes shall not drain into the street.

Section 14. Mailboxes and Address Markers. Mailboxes shall be, unless prohibited by the U.S. Postal Service, masonry to match the architectural style of the house. Each house shall have a brass or masonry address marker attached to the house or mailbox.

Section 15. Repetition of Plan Elevation. Unless otherwise approved by the ARC, the construction of houses with the same elevation design will only be allowed when such houses are separated by three (3) full lots (i.e. every fourth lot can be a repeat elevation). A spacing of one (1) lot will be required for repetitive house plans with different elevations. For purposes of plan elevation separation, a lot across a street will count as one lot for separation purposes.

Section 16. Temporary Buildings. Temporary buildings, structures or out buildings shall not be permitted on any Lot. Declarant may permit temporary toilet facilities, sales and construction offices and storage areas to be used by Builders in connection with the construction and sale of residences. Builders in the Subdivision may use garages of model homes as sales offices for the time during which such builders are marketing homes within the Subdivision. At the time of the sale of a residence by a Builder to a third party, any garage appurtenant to such residence used for sale purposes must be reconverted to a garage.

Section 17. Grass and Shrubbery. Each Lot shall be solid sodded with grass, in the front, including the area between the front of the residence and the curb line of the abutting street or streets, and the side of the lot up to the fence line.. The landscaping plan shall be approved by the ARC.

Grass and weeds shall be kept mowed to prevent unsightly appearance. Dead or damaged trees, which might create a hazard to property or persons within the Subdivision, shall be promptly removed or repaired, and if not removed by the Owner upon request, then the Association may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damage caused by such removal. Vacant Lots shall not be used as dumping grounds for rubbish, trash, rubble, soil or builders debris.

Section 18. Visual Obstructions at the Intersections of Public Streets. Nothing which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street property lines or extensions thereof shall be placed, planted or permitted on a corner Lot.

## Article XII Use Restrictions

The Properties shall be used only for the purposes as designated on a recorded plat which shall be limited to residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association), as may more particularly be set forth in this Declaration and amendments hereto. Any Supplemental Declaration or additional covenants imposed on the property may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

The platted Lots within the Property are hereby restricted to residential dwelling for single-family residential use. As used herein, the term "residential use" shall be construed to prohibit the use of the Lot for duplex houses, garage apartments for rental purposes or apartment houses.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees and licensees, if any, until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of Voting Members representing a majority of the total votes in the Association and by the Declarant, so long as it owns any property in the Properties.

Section 1. Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except entry, marketing and directional signs installed by Declarant and the following:

- (a.) For Sale Signs. An Owner may erect one (1) sign on his Lot, not exceeding 2'x3' in area, fastened only to a stake in the ground and extending not more than five (5) feet above the surface of such Lot advertising the property for sale.
- (b.) Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship or a political party, issue or proposal, provided only one (1) such sign shall be erected for each political candidate, political party, issue or proposal, provided that such signs shall not be erected more than thirty (30) days in advance of the election to which they pertain and shall be removed within three (3) days after such election.
- (c.) School Spirit Signs. Signs containing information about one or more children residing in the Dwelling and the school they attend shall be permitted so long as the sign is not more than 36" x 36". There shall be no more than one sign for each child under the age of eighteen (18), residing in the Dwelling.
- (d.) Security Signs/Stickers. Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the Dwelling shall be permitted so long as the sign is not more than 8" x 8" or the sticker is no more than 4" x 4". There shall be no more than one sign and no more than four (4) stickers located on the windows or doors.

All signs within Albury Trails Estates are subject to the Builder and/or Architectural Guidelines and Bulletins promulgated by the ARC. A Builder and/or the Declarant may place certain information and advertising signs on Lots without the prior permission of the ARC, so long as such signs are similar to those listed as acceptable for Builder use in the Builder and/or Architectural Guidelines and Bulletins promulgated by the ARC and so long as such signs do not otherwise violate this Declaration. If any sign is placed within Albury Trails Estates in violation of this Declaration, the Association or its agents shall be authorized, but not obligated, to enter upon any Lot and remove and/or dispose of any such sign violation, and in doing so shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry, removal and/or disposal nor in any way shall the Association or its agent be liable for any accounting or other claim for such action.

## **Section 2. Parking and Prohibited Vehicles.**

(a) **Parking.** Vehicles shall be parked only in the garage or driveway serving the Lot, or in such other paved areas as have been approved by the Board of Directors for parking vehicles. A maximum of two (2) occupant vehicles may be parked outside of the garage, if any, serving a residential Lot. For purposes of this provision, a vehicle shall be considered an "occupant vehicle" if it is parked on the Lot four (4) or more hours per day, four (4) or more days in any seven (7) day period. The Board of Directors may authorize on-street parking on a temporary basis for visitors and guests, subject to reasonable rules and regulations. No garage shall be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the ARC. Notwithstanding the foregoing, however, a builder may temporarily convert a garage into a sales or construction office, provided that it is converted back to a garage within thirty (30) days after cessation of construction and sale of new homes within the Properties by such builder. Garage doors visible from any street within the Properties shall remain closed except during ingress or egress or when the garage is actively being used by the Owner or occupant.

(b) **Prohibited Vehicles In Residential Sections.** Commercial vehicles, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the Properties must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) hours without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such period of time, as is reasonable necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed.



Section 3. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets, not to exceed a total of three (3) pets, may be permitted in a Lot. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties shall be removed upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purposes. Dogs shall at all times whenever they are outside a Lot be confined on a leash held by a responsible person.

Section 5. Quiet Enjoyment. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on a Lot. The use and discharge of firecrackers and other fireworks is prohibited within the Properties.

Section 6. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. Notwithstanding the above, the

disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours.

Section 7. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any Lot, which is visible from any street, common area or other Lot unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a visible location as approved by the ARC. The ARC may require as much screening as possible while not substantially interfering with reception. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Property. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No broadcast or MMDS antenna mast may exceed the height of the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property. The Declarant by promulgating this section is not attempting to violate the Telecommunications Act of 1996 ("the Act"), as may be amended from time to time. This section shall be interpreted to be as restrictive as possible while not violating the Act.

Section 8. Clotheslines, Garbage Cans, Tanks, Etc. No clotheslines shall be erected or installed on the exterior portion of any Lot and no clothing, linens or other material shall be aired or dried on the exterior portion of any Lot. All garbage cans, above-ground storage tanks, mechanical equipment, woodpiles, yard equipment and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be stored in appropriate containers approved pursuant to Article XI hereof and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon.

Section 9. Subdivision of Lot and Time Sharing. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years, except that the Declarant hereby reserves the right for itself and its assigns to operate such a program with respect to Lots which it owns.

Section 10. Firearms. The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

Section 11. Pools. No above ground swimming pools shall be erected, constructed or installed on any Lot.

Section 12. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals, wells or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties. All sprinkler and irrigation systems serving Lots shall draw upon public water supplies only and shall be subject to approval in accordance with Article XI of this Declaration. Private irrigation wells are prohibited on the Properties. This Section 12 shall not apply to the Declarant, and it may not be amended without Declarant's written consent.

Section 13. Tents, Mobile Homes and Temporary Structures. Except as may be permitted by the Declarant or the ARC, no tent, shack, mobile home, outbuilding or other structure of a temporary nature shall be placed upon a Lot or any part of the Properties. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board.

Section 14. Drainage and Septic System. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person other than the Association or Declarant may rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant, are prohibited within the Properties. No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any storm sewer, drainage ditch or swale, stream, pond or lake within the Properties.

Section 15. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 16. Air Conditioning Units. Any air conditioning units installed in a Lot shall be located or screened so as not to be visible from any street or Common Area within the Properties. Window air conditioning units shall not be allowed.

Section 17. Lighting. Except for traditional holiday decorative lights, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 18. Artificial Vegetation, Exterior Sculpture, and Similar items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. No exterior sculpture, fountains, flags and temporary flagpoles, birdhouses, birdbaths, other decorative embellishments

or similar items shall be permitted unless approved in accordance with Article XI of this Declaration.

Section 19. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article XI hereof. No windmills, wind generators or other apparatus for generating power from the wind shall be erected or installed on any Lot.

Section 20. Playground. No jungle gyms, swing sets or similar playground equipment shall be erected or installed on any Lot without prior written approval of the ARC or MC in accordance with Article XI hereof. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 21. Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Lot except as approved in accordance with Article XI of this Declaration.

Section 22. Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Property, (c) the business activity does not involve persons coming onto the Property who do not reside in the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, as may be determined in the sole discretion of the Board.

The term "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or conducted by a builder with approval of the Declarant, with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties.

Section 23. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Properties except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment,

and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 24. Leasing of Lots.

- (a) Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, or gratuity.
- (b) Leasing Provisions.
  - (i) General. Lots may be rented only in their entirety; no fraction or portion may be rented. All leases shall be in writing and shall be for an initial term of no less than thirty (30) days, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.
  - (ii) Compliance with Declaration, By-Laws and Rules and Regulations. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

Section 25. Laws and Ordinances. Every Owner and occupant of any Lot, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 26. Single Family Occupancy. No Lot shall be occupied by more than a single family. For purposes of these restrictions, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household Lot and the household employees of such household Lot. It is not the intent of the Declarant to exclude from a Lot any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

Section 27. Water and Mineral Operations. No oil, gas or other mineral or water drilling, oil, gas or other mineral or water development operations, oil refining, quarrying or mining operations of any kind shall be permitted on any Lot. No derrick or other structure designed for use in drilling for water, oil, natural gas, or other minerals shall be erected and maintained or permitted on any Lot.

Article XIII  
General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. So long as it still owns property for development as part of the Properties, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing sixty-seven (67%) percent of the total votes in the Association, and the consent of the Declarant so long as It owns any property within the Properties. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Upon approval of the Owners, as set out above, and the Association's joinder and approval of said amendment [as evidence by the President's or Vice-President's signature] the amendment shall be recorded in the public records of Harris County, Texas whereupon to the extent of any conflict with this Declaration, the amended declaration shall control.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property within the Properties, the Association, and the designees of each (which may include, without limitation, Harris County, Texas, and any utility and/or utility district), blanket easements upon, across, over, and under all of the Properties for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, monitoring systems, and similar systems, roads, walkways, bicycle pathways, wetlands, drainage systems, levees, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity, and shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry into any Lot shall be made only after reasonable notice to the Owner or occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier easements across all Lots and the Common Areas for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to Harris County, or to any other local, state, or federal governmental entity.

Section 5. Easements to Serve Additional Property. The Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees and mortgagees, shall have and there is hereby reserved an easement over the Common Areas for the purposes of enjoyment, use, access and development of any Additional Property by this reference incorporated herein, whether or not such Additional Property is made subject to this Declaration. This easement includes but is not limited to a right of ingress and egress over the Common Areas for construction of roads and for tying in and installation of utilities on the Additional Property. Declarant agrees that it, its successors or assigns, shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic connected with development of the Additional Property. Declarant further agrees that if the easement is exercised for permanent access to the Additional Property and such Additional Property or any portion thereof is not made subject to this Declaration, the Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving the Additional Property. Such agreement shall provide for sharing of costs based on the ratio which the number of Lots on that portion of the Additional Property which is served by the easement and is not made subject to this Declaration bears to the total number of Lots within the Properties and on such portion of the Additional Property.

Section 6. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 7. Non-waiver. Failure of the Association to enforce this Declaration shall not be tantamount to a waiver of future violations of the Declaration.

Section 8. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 9. Use of the Word "Albury Trails Estates". No Person shall use the word "Albury Trails Estates" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the term "Albury Trails Estates" in printed or promotional matter where such term is used solely to specify that particular property is located within Albury Trails Estates and the Association.

Section 10. Compliance. Every Owner and occupant of any Lot shall comply with all lawful provisions of this Declaration, the By-Laws, Articles of Incorporation, and rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Lot Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws.

Section 11. Books and Records. The books, records and papers of the Association shall be, by appointment, during normal business hours, be subject to inspection by any Member, for any proper purpose, with the exception of the following: contracts being negotiated, payroll records,



pending disputes, personal homeowner files. The Articles of Incorporation, By-Laws, and this Declaration shall likewise be available for inspection, by appointment during normal business hours by any Member at the office of the Association, for any proper purpose.

Section 12. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

Section 13. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, the Association's properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation. The surviving or consolidated association shall administer any restrictions together with any Declarations of Covenants, Conditions and Restrictions governing these and any other properties, under one administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 14. Current Address. Owners are required to notify the Association of their current address at all times. If an Owner fails to notify the Association of their current address, the Association shall use the address of the Lot as the current address.

Section 15. Security. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY DWELLING, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE ARC AND MC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ARC OR MC MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR

LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER. OCCUPANT TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

Section 16. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Dwelling, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Board of Directors, the transferee shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

#### Article XIV Alternate Dispute Resolution.

Section 1. Dispute Resolution. No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners; Members; the Board of Directors; officers in the Association; or the Association. Disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process.

Section 2. Outside Mediator. In a dispute between any of the above entities or individuals the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator will either be an attorney-mediator skilled in community association law, a Professional Community Association Manager ("P.C.A.M.") as certified by the Community Associations Institute, or a Certified Property Manager ("C.P.M.") as certified by the Institute of Real Estate Managers. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in Albury Trails Estates, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than thirty (30) days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

Section 3. Mediation is Not a Waiver. By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before a mediation may be scheduled.

Section 4. Assessment Collection. The provisions of this Declaration dealing with Alternate Dispute Resolution shall not apply to the collection of assessments by the Association as set out in the Declaration.

Section 5. Term. This Article XIV, Alternative Dispute Resolution, shall be in full force and effect for an initial period of three (3) years from the date of execution of this Declaration. However, this Article shall remain in full force and effect unless, at the first open meeting of the Association after such initial period, a majority of the Board of Directors votes to terminate the provisions of this Article XIV, Alternative Dispute Resolution.

## Article XV Declarants Rights

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other person, persons, entity or entities provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein or in the By-Laws, as applicable, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Harris County, Texas. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "A" in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant and any builder designated by Declarant maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant and such designated builder(s) shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Lots owned by the Declarant and any clubhouse or community center, which may be owned by the Association, as models and sales office, respectively.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 20<sup>th</sup> day of February, 2007.

DECLARANT

WILLOW CREEK DEVELOPMENT COMPANY, 20v  
LIMITED, a Texas limited partnership Ardliet  
Corporation, General Partner

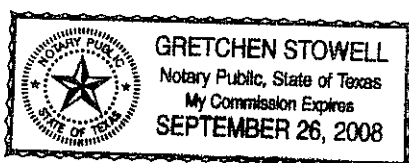
By: Randal A. Hendricks  
Randal A. Hendricks, President

ACKNOWLEDGEMENTS

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF HARRIS     §

BEFORE ME, the undersigned authority, on this day personally appeared RANDAL A. HENDRICKS, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 20<sup>th</sup> day of February, 2007.



[SEAL]

Gretchen Stowell  
Notary Public in and for  
The State of Texas

**EXHIBIT "A"**

**ALBURY TRAILS ESTATES**

**SECTION ONE**

A subdivision of 21.010 Acres in the Elizabeth Smith Survey, Abstract 70, Harris County, Texas, as shown on the map or plat thereof recorded under Harris County Clerk's File No. 20060186883 (Film code No. 606119) of the Map Records of Harris County, Texas;

SAVE AND EXCEPT Restricted Reserve "A" (0.109 acres), Restricted Reserve "B" (0.340 acres), Restricted Reserve "C" (0.074 acres), Restricted Reserve "D" (0.177 acres), Restricted Reserve "E" (0.327 acres), and Restricted Reserve "F" (0.285 acres).

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in the number Sequence on the date and at time stamped herein by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County Texas on

FEB 26 2007



*Beverly B. Kayman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

Return to:

✓✓  
Willow Creek Development Company Limited  
400 Randal Way, Suite 106  
Spring, TX 77388

**THE FOLLOWING PAGES ARE  
PROVIDED FOR SEARCHABILITY**

**DECLARATION OF COVENANTS,  
CONDITIONS and RESTRICTIONS**

**FOR**

**ALBURY TRAILS ESTATES**

**SECTION ONE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ALBURY TRAILS ESTATES, SECTION ONE is made this \_\_\_\_\_ day of February, 2007, by Willow Creek Development Company, Limited, a Texas limited partnership (hereinafter referred to as "Declarant").

Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of real property within the Properties. Declarant desires to provide a reasonable procedure for the overall development of the properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. This Declaration does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code Ann. 81.001 et seq. (Vernon 1983) and 82.001 et seq. (Vernon 1993).

Article I  
Definitions

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration or by deed, contract or agreement become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public rights-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 2. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Albury Trails Estates Community Association, Inc., to be filed with the Secretary of State of the State of Texas.

Section 3. "Association" shall mean and refer to Albury Trails Estates Community Association, Inc., a Texas nonprofit corporation, its successors or assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Texas corporate law. The use of the term "association" or "associations" in lower case shall refer to any owners association having jurisdiction over any part of the Properties.

Section 4. "Base Assessment" shall mean and refer to assessments leveled against all Lots in the Properties to fund Common Expenses.

Section 5. "By-Laws" shall mean and refer to the By-Laws of Albury Trails Estates Community Association, Inc., as they may be amended from time to time.

Section 6. "Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 7. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Lot Owners, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, Articles of Incorporation of the Association, and the Rules and Regulations, but shall not include original construction or installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" vote of the Association.

Section 8. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties (as hereinafter defined). Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.

Section 9. "Declarant" shall mean and refer to Willow Creek Development Company, Limited ("WCDC") or its successors, successors-in-title or assigns who own any portion of the property described on Exhibit "A" hereof or additions thereto for the purpose of development and/or sale.

Section 10. "General Land Use Plan" shall mean and refer to the plan for the development of the Albury Trails Estates residential community prepared for WCDC as it may be amended from time to time in the sole and absolute discretion of WCDC, which plan includes the property described on Exhibit "A" and additional property which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the General Land Use Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described from the General Land Use Plan bar its later annexation in accordance with Article VIII hereof.



Section 11. "Lot" shall mean the platted lots within Albury Trails Estates, Section One, intended for development, use, and occupancy as a residence, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) single-family detached houses on separately platted lots, as well as vacant platted lots, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned as well as any structure thereon.

Section 12. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 13. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed recorded in the Real Property Records of Harris County, Texas.

Section 14. "Mortgagor" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 15. "Mortgagee" shall mean and refer to any Person who gives a Mortgage.

Section 16. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, that the purchaser (rather than the fee owner) will be considered the Owner.

Section 17. "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 18. "Properties" shall mean and refer to the platted residential lots and Restricted Reserves included in the plat of Albury Trails Estates, Section One, and such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 19. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 3, of this Declaration.

Section 20. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant (and the Owner of the property) which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Association pursuant to Article VIII, Section 2, of this Declaration to subject additional property to this Declaration.

## Article II Property Rights

Section I. General. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

- (a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association;
- (b) the right of the Board to limit the number of guests who may use the Common Area, and to adopt other rules regulating the use and enjoyment of the Common Area;
- (c) the right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, By-Laws, or rules of the Association, after notice and a hearing pursuant to the Article VII, Section 1, of the By-Laws;
- (d) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Article XIII, Section 4 hereof;
- (e) the right of the Association, acting through the Board, to approve use of the Common Area by any Commercial building owner(s) and/or their guests prior to the usage;
- (f) the right of the Board to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;
- (g) the right of the Board to permit nonmember use of any recreational facility situated on the Common Area upon payment of use fees established by the Board;
- (h) the right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

Any Owner may delegate his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have delegated all such rights to the Lot's lessee.

## Article III Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and by By-Laws. The membership rights of a Lot owned by a

corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting.

- a. Eligibility: Eligibility to vote or serve, as a representative, director or officer shall be predicated upon a Member being in good standing with the Association. To be in good standing, the Member must have all assessments of every type and category paid up to date and have no outstanding financial obligations to the Association that are delinquent. Additionally, no Member shall be allowed to vote or hold office if that Member is alleged in a formal written notice from the Association to have a deed restriction violation on one or more Lots in Albury Trails Estates.

- b. Voting Rights: The Association shall have two (2) classes of membership, Class "A" and Class "B" as follows:

- i. Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Section I hereof, there shall be only one (1) vote per Lot.

In any situation where a Member is entitled personally to exercise the vote for his Lot and more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

- ii. Class "B". The Class "B" Member shall be the Declarant or homebuilders within Albury Trails Estates. The Class "B" Member shall be entitled to ten (10) votes for each Lot owned. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to all or any portion of the members of the Board of Directors so long as Class "B" Membership exists. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of;

- (a) When the total votes in Class "A" membership equal the total votes in the Class "B" membership; or
- (b) December 31, 2030; or,

## Article IV Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements, situated upon the Common Areas, landscaped medians within public or private rights-of-ways throughout the Properties, landscaping and other flora on any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto), and such portions of any additional property included within the area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association. There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities. The Association may maintain other property, which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Base Assessment.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas and other improvements comprising the Lot. Owners of Lots adjacent to any roadway within the Properties shall maintain driveways serving their respective Lots, whether or not lying within the Lot boundaries, and shall maintain and irrigate landscaping on that portion of the right-of way between the Lot boundary and the back-of-curb of the adjacent street.

In addition to any other enforcement rights available to the association, if any Owner fails to properly perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Lot and the owner thereof in accordance with Article X, Section 3 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the owner reasonable notice and an opportunity to cure the problem prior to entry.

Section 3. Party Walls and Party Fences.

- (a) General Rules, of Law to Apply. Each wall or fence built as a part of the original construction on the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. Repair and replacement of Common Area walls and fences

constructed on behalf of the Association shall be the responsibility of the Association. Parties responsible for damage shall be held accountable for said damage.

- (c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has Owners thereafter make use of the wall or fence may restore it. If the other Owner or Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- (d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owners under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.
- (e) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party as its sole and exclusive remedy shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

## Article V

### Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket "all-risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard, (if reasonably available).

The Board shall also obtain a public liability policy covering the Area of Common Responsibility for all damage of injury caused by the negligence of the Association, its officers, directors, committee members, employees or agents. The public liability policy shall have at least a One Million (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million (\$3,000,000.00) Dollar limit per occurrence, if reasonably available, and a Five Hundred Thousand (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses of the Association and shall be included in the Base Assessment, as defined in Article 1 and as more particularly described in Article X, Section 1. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of

insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association for the respective benefited parties, as further identified in subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth;

- (a) All policies shall be written with a company authorized to do business in Texas (if reasonably available) which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.
- (b) All policies on the Area of Common Responsibility shall be for the benefit of the Association.
- (c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Association's Board of Directors.
- (d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.
- (e) All property insurance policies shall have an inflation guard endorsement, if reasonably available, and, if the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Harris County, Texas area.
- (f) The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:
  - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, employees and manager, and agents;
  - (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
  - (iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;
  - (iv) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee.
  - (v) a statement that any "other insurance" clause in any policy excludes individual Owners' policies from consideration; and
  - (vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, and flood insurance, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than one-sixth (1/6) of the annual Base Assessments on all Lots, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 2. Individual Insurance. The decision to acquire insurance by Lot owners is subject to the discretion of each Lot owner. However, each Owner covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The Owner shall pay any costs of repair or reconstruction. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and ruins (including slab, driveways and other improvements) and thereafter the Owner shall maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Section 3. Damage and Destruction.

- (a) Immediately after damage or destruction by fire or other casualty to all or any part of the Association's Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.
- (b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the vote of the Association, if Common Area, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area shall be repaired or reconstructed.
- (c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and

no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be cleared of all debris and ruins and maintained by the Association, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the process of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction. Any proceeds remaining after defraying such costs of repair or reconstruction or if no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area or to the common property of a Neighborhood Association for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a special assessment against those Owners of Lots responsible for the premiums for the applicable insurance coverage under Section I of this Article. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## Article VI No Partition

Except as is permitted in this Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

## Article VII Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty-seven (67%) percent of the total vote in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibit "A") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibit "A" of this Declaration, and Voting Members representing at least seventy-five (75%) percent of the total vote of the Association shall



otherwise agree, the Association shall restore or replace such improvements taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

## Article VIII Annexation of Additional Property

Section 1. Annexation Without Approval of Class "A" Membership. Declarant shall have the unilateral right, privilege, and option, from time to time at any time to subject to the provisions of this Declaration and the jurisdiction of the Association additional real property. Such annexation shall be accomplished by filing in the public records of Harris County, Texas, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "A" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex real property other than property owned by the Declarant, or its successors or assigns to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Voting Members or alternates representing a majority of the votes of the Association present at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the public records of Harris County, Texas, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibit "A", or additions thereto, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to this Article VIII, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant.

Section 5. Amendment. This article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" or additional thereto.

## Article IX Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violations of this Declaration, the By-Laws, or such rules and regulations may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area. In addition, the Association, in accordance with Article VII, of the By-Laws, shall have the right, without the obligation, to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner of such Owner's Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall also have the

power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws and/or Rules and Regulations of the Association.

In addition to all other remedies that may be available, the Association has the right to collect attorney fees and/or fines as set by the Board from any Owner that is in violation of this Declaration, any applicable Supplemental Restrictions or amendments, any Architectural Guidelines, the Building Guidelines, or any other rule or regulation promulgated by the Association. Every Owner shall comply with all provisions of this Declaration, the By-Laws, and the rules and regulations of the Association, all other dedicatory instruments of the Association and any amendments or supplements to any of the foregoing. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration, any amendment, Supplemental Restriction, the By-Laws or any other dedicatory instruments.

The Association, through the Board, by contract or other agreement, shall have the right to enforce county ordinances and/or ordinances of the City of Houston, Texas, if applicable, and to permit Harris County and the City of Houston, Texas to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Governmental Interests. For so long as the Declarant owns any property in the Properties, the Association shall permit the Declarant authority to designate sites within the Properties, which may include Common Area owned by the Association, for fire, police, water, and sewer facilities, parks and other public facilities.

#### Article X Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 7 of this Article. There shall be two (2) types of assessments, (a) Base Assessments to fund Common Expenses for the benefit of all Members of the Association and (b) Special Assessments as described in Section 3 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at the lower of eighteen percent (18%) per annum or the highest rate allowed by Texas law) as computed from the date the delinquency first occurs, late charges, costs, and attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made until paid. Each such assessment, together with interest, late charges, costs, and attorney's fees, shall also be the personal obligation of the

Person who was the Owner of such Lot at the time the assessment arose, and, in the event of a transfer of title, his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of any assessments therein stated to have been paid. The Association may require the advance payment of a processing fee (set by the Board of Directors) for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors and, if the Board so elects (in its sole and absolute discretion), assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of the annual assessment and/or any other assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant may annually elect either to pay fifty percent (50%) of the assessments charged to occupied Lots or to pay to the Association the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board of Directors in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these. To facilitate initial Association operations, Declarant may make a loan to the Association. Reimbursement shall be considered in the annual Association budget.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared, as provided in Section 6 of this Article.

The Base Assessment to be levied against each Lot for the coming year shall be determined by analyzing the total budgeted Common Expenses, including reserves, the amount each Lot is obligated to pay and the total number of Lots subject to an assessment.

Notwithstanding the above, the Board may, in its sole discretion, reduce the Base Assessments determined pursuant to the above by taking into account assessments to be levied upon additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Assessments for platted Lots with or without homes and completed homes, which are owned by the Declarant or a Builder (and not being used as a residence) shall be assessed at fifty percent (50%) of the rate assessed to all other Lots.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article VIII hereof, the Declarant may elect on an annual basis, but shall not be obligated to do so, to reduce the resulting Base Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 1 above): provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

The Board shall cause a copy of the Common Expense Budget and notice of the amount of the Base Assessment to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Voting Members by Voting Members or their alternates representing at least a majority of the total vote in the Association, and by the Declarant so long as it owns any property in the Properties. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings in Article III, Section 2, of the By-Laws, which petition must be presented to the Board within ten (10) days of delivery of the notice of assessments.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year, and the Base Assessment will be calculated thereon.

### Section 3. Special Assessments.

- (a) Entire Membership. The Association may levy Special Assessments from time to time provided such assessment receives the affirmative vote or written consent of Voting Members or their alternates representing sixty-seven percent (67%) of the total votes in the Association present at a regular or special meeting called for the purpose of proposing a special assessment at which a quorum is present and the written consent of the Developer so long as it owns any property in the Properties. Special Assessments levied against the entire membership shall be allocated to the Lots in the same percentage as base assessments unless the Board determines that another method is more equitable. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.
- (b) Less Than All Members. The Association may levy a Special Assessment against any Member individually and against such Member's Lot to reimburse the Association for costs incurred in bringing a member and his Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, or the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

Section 4. Lien Subordination. The lien for any unpaid assessments provided for herein shall be prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

### Section 5. Collection and Remedies for Assessments.

- (a) The assessments provided for in this Declaration, together with late charges, attorneys' fees, interest and costs as necessary for collection, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with late charges, attorney's fees, interest and costs, shall also be the personal obligation of the Owner of the land at the time the assessment became due. This personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.
- (b) Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of 1) eighteen percent (18%) or 2) the maximum non-usurious rate of interest. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by reason of non-use or abandonment.
- (c) In order to secure the payment of the assessments hereby levied, an assessment lien is hereby reserved in each deed from the Declarant to the Owner of each Lot in Albury Trails Estates, which lien may be foreclosed upon by non-judicial foreclosure pursuant to the provisions of Section 51.002 of the Texas Property Code (or any successor statute); each Owner grants a power of sale to the Association to sell such property upon default in payment by any amount owed. Alternatively, the Association

may judicially foreclose the lien or maintain an action at law to collect the amount owed.

- (d) The President of the Association or his or her designee is hereby appointed Trustee to exercise the Association's power of sale. Trustee shall not incur any personal liability hereunder except for his or her own willful misconduct.
- (e) Although no further action is required to create or perfect the lien, the Association may, as further evidence and give notice of the lien, by executing and recording a document setting forth the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The Association shall also have the right but not the obligation to notify a delinquent Owner's lender, in writing, of such Owner's delinquency and default.
- (f) In the event the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 5 1.002 (or any successor statute) and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale no less than twenty one (21) days prior to the date of the proposed foreclosure sale, postage prepaid, registered or certified mail, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association or by hand delivery. At any foreclosure proceeding, any person or entity, including but not limited to the Declarant, Association or any Owner, shall have the right to bid for such Property at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period Property is owned by the Association following foreclosure, 1) no right to vote shall be exercised on its behalf; 2) no assessment shall be levied on it. Out of the proceeds of such sale, there shall be paid all expenses incurred by the Association in connection with such default, including attorneys' fees and trustee's fees; second, from such proceeds there shall be paid to the Association an amount equal to the amount of assessments in default inclusive of interest, late charges and attorneys' fees; and, third, the remaining balance, if any, shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant-at-sufferance and may be removed from possession by any lawful means.

Section 6. Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice assessments, as provided in Sections 2 and 3 of this Article.

Section 7. Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence as to each Lot on the first day of the month following; (a)

the month in which the Lot is made subject to this Declaration; or (b) the month in which a subdivision plat is recorded covering the property comprising the Lot, whichever is later. The first annual Base Assessment levied on a Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Section 8. Transfer of Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien (but not the personal obligation) of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns.

Section 9. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) all Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks, if any.

## Article XI Architectural Standards

No structure shall be placed, erected or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to Sections 1 and 2 below. The Board of Directors may establish reasonable fees to be charged by the committee on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 1 and 2 of this Article XI. This Article may not be amended without the Declarant's written



consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

Section 1. Architectural Review Committee. The Architectural Review Committee ("ARC") shall consist of at least three (3) but not more than five (5), persons and shall have exclusive jurisdiction over all original construction and any modifications, additions, or alterations on any portion of the Properties. Until one hundred (100%) percent of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right without the obligation to appoint all members of the ARC, who shall serve at the discretion of the Declarant. The Declarant may surrender all or any positions on the ARC to the Association at any time. After such time as one hundred (100%) percent of the Properties have been developed and conveyed, the Board of Directors shall appoint the members of the ARC, who shall serve and may be removed at the discretion of the Board of Directors. The members of the ARC may include architects, engineers and other persons who are not members of the Association.

In the event that the ARC fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within sixty (60) days after submission thereof, the plans shall be deemed approved.

Section 2. Modifications Subcommittee. The ARC may request that the Board of Directors establish a Modifications Committee ("MC") to consist of at least three (3) and no more than five (5) persons, all of whom shall be recommended by the ARC and appointed by, and shall serve at the discretion of, the Board of Directors. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures and the open space, if any, appurtenant, thereto; Notwithstanding the above, the ARC shall have the right to veto any action taken by the MC which the ARC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the ARC.

The MC may promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with those of the ARC. In addition thereto, the following shall apply. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Lot, or to paint the interior of his Lot any color desired, provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Lot visible from outside the Lot shall be subject to approvals hereunder, In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within sixty (60) days after submission, the plans shall be deemed approved.

Section 3. No Waiver of Future Approvals. The approval of either the ARC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall

not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 4. Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 5. Compliance. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Architectural Restrictions or procedures promulgated by the ARC or MC may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained therein.

Section 6. No Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the ARC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

Section 7. Location of Improvements.

- (a.) Dwellings shall face the street on which the Lot on which they are located has the smallest frontage.
- (b.) Dwellings shall not be located on any Lot nearer to the lot lines than the minimum corresponding building set back lines shown on the recorded plat. No house or other allowed structure may be built on a lot except within the building lines shown below, unless a variance for same is granted by the ARC:

Front Building Line – Twenty-Five feet (25') back from the front property line for main structures and garages on lots where a twenty-five foot (25') building line is shown on the plat. Twenty feet (20') back from the front property lines for building or garage on cul-de-sac lots where a twenty-foot (20') building line is shown on the plat.  
Porte-cochere overhangs may be in front of the above described building line.

Side Building Line – Five feet (5') back from each side lot line.

Rear Building Line – Seven feet (7') from rear lot line, or the rear utility easement.

Section 8. Garages and Driveways.

- (a) The ARC shall approve in writing the location of all garages and driveways.
- (b) Each residential structure shall be accompanied by a garage which shall have no more than three (3) single garage doors or one (1) double garage door and one (1) single garage door facing the street. Each house shall have a garage which shall accommodate a minimum of two (2) and a maximum of four (4) automobiles. Attached garages where the garage doors face the front of the building line shall be recessed from the front facade of the house a minimum distance of two feet (2') or have a Porte-cochere.
- (c) In cases where building plans provide a split load garage where one of the garages parallels the street and the other faces the street, but is offset to the depth of the parallel garage, the two foot (2') recess shall not be required.
- (d) Detached garages may have a three foot (3') side lot building set back line.
- (e) On each Lot the Builder shall construct and the Owner shall maintain at his expense the driveway from the garage to the abutting Street, including the portion of the driveway in the street easement, and the Builder shall repair at his expense any damage to the Street occasioned by connecting the driveway thereto.

Section 9. Minimum Square Footage within Improvements. The minimum living area of each residence shall be in accordance with the following:

1600 square feet for a single story residence  
2200 square feet for a two-story residence

Section 10. Building Materials. All construction plans submitted for approval by the ARC must specify the color and type of materials of which the structure will be built. Unless the ARC otherwise agrees in writing, the exterior finish of any portion of a structure facing a street must only be brick, stone or other masonry material (collectively "Masonry Material"), except for the application of accent siding and cases where the side of home faces side yard street corner. All homes and attached garages shall have a minimum of fifty-one percent (51%) masonry exterior. Any exception must be approved by the ARC.

Section 11. Roofing Materials. The roofs of all buildings shall be constructed or covered only with materials specifically approved by the ARC, which approval must be obtained in writing before the commencement of roof construction, covering or recovering. All roofs shall be of clay tile, slate, seamed metal or dimensional composition shingles with a minimum twenty-five (25) year warranty. The ARC shall specify the quality, color, appearance and weight of roofing materials to be used and the use of any other material shall be specifically approved in writing by the ARC. All roofs shall be weathered wood in color.

Section 12. Fences.

- (a) Materials – Fences must only be constructed of brick, wood or wrought iron. No chain link, concrete, metallic or plastic fences shall be built.
- (b) Wood Fences – All wood fences between lots shall be a minimum of six feet in height, and shall not exceed eight feet (8') in height. All wood fences shall comply

with ARC specifications. No wood fence on a side yard may extend closer to the front of the lot than three feet (3') behind front of the main structure.

Section 13. Lot Grading and Drainage. After the conveyance of each Lot or Lots from the Developer or Declarant, each Lot must be graded and maintained in such a manner so as to permit all water from all sources to drain naturally into the storm sewer system that sides on or fronts each respective Lot. Exceptions will be made where existing topography requires an alternate lot grading plan. Swimming pool backwashes shall not drain into the street.

Section 14. Mailboxes and Address Markers. Mailboxes shall be, unless prohibited by the U.S. Postal Service, masonry to match the architectural style of the house. Each house shall have a brass or masonry address marker attached to the house or mailbox.

Section 15. Repetition of Plan Elevation. Unless otherwise approved by the ARC, the construction of houses with the same elevation design will only be allowed when such houses are separated by three (3) full lots (i.e. every fourth lot can be a repeat elevation). A spacing of one (1) lot will be required for repetitive house plans with different elevations. For purposes of plan elevation separation, a lot across a street will count as one lot for separation purposes.

Section 16. Temporary Buildings. Temporary buildings, structures or out buildings shall not be permitted on any Lot. Declarant may permit temporary toilet facilities, sales and construction offices and storage areas to be used by Builders in connection with the construction and sale of residences. Builders in the Subdivision may use garages of model homes as sales offices for the time during which such builders are marketing homes within the Subdivision. At the time of the sale of a residence by a Builder to a third party, any garage appurtenant to such residence used for sale purposes must be reconverted to a garage.

Section 17. Grass and Shrubbery. Each Lot shall be solid sodded with grass, in the front, including the area between the front of the residence and the curb line of the abutting street or streets, and the side of the lot up to the fence line.. The landscaping plan shall be approved by the ARC.

Grass and weeds shall be kept mowed to prevent unsightly appearance. Dead or damaged trees, which might create a hazard to property or persons within the Subdivision, shall be promptly removed or repaired, and if not removed by the Owner upon request, then the Association may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damage caused by such removal. Vacant Lots shall not be used as dumping grounds for rubbish, trash, rubble, soil or builders debris.

Section 18. Visual Obstructions at the Intersections of Public Streets. Nothing which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street property lines or extensions thereof shall be placed, planted or permitted on a corner Lot.

## Article XII Use Restrictions

The Properties shall be used only for the purposes as designated on a recorded plat which shall be limited to residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association), as may more particularly be set forth in this Declaration and amendments hereto. Any Supplemental Declaration or additional covenants imposed on the property may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

The platted Lots within the Property are hereby restricted to residential dwelling for single-family residential use. As used herein, the term "residential use" shall be construed to prohibit the use of the Lot for duplex houses, garage apartments for rental purposes or apartment houses.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees and licensees, if any, until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of Voting Members representing a majority of the total votes in the Association and by the Declarant, so long as it owns any property in the Properties.

Section 1. Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except entry, marketing and directional signs installed by Declarant and the following:

- (a.) For Sale Signs. An Owner may erect one (1) sign on his Lot, not exceeding 2'x3' in area, fastened only to a stake in the ground and extending not more than five (5) feet above the surface of such Lot advertising the property for sale.
- (b.) Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship or a political party, issue or proposal, provided only one (1) such sign shall be erected for each political candidate, political party, issue or proposal, provided that such signs shall not be erected more than thirty (30) days in advance of the election to which they pertain and shall be removed within three (3) days after such election.
- (c.) School Spirit Signs. Signs containing information about one or more children residing in the Dwelling and the school they attend shall be permitted so long as the sign is not more than 36" x 36". There shall be no more than one sign for each child under the age of eighteen (18), residing in the Dwelling.
- (d.) Security Signs/Stickers. Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the Dwelling shall be permitted so long as the sign is not more than 8" x 8" or the sticker is no more than 4" x 4". There shall be no more than one sign and no more than four (4) stickers located on the windows or doors.

All signs within Albury Trails Estates are subject to the Builder and/or Architectural Guidelines and Bulletins promulgated by the ARC. A Builder and/or the Declarant may place certain information and advertising signs on Lots without the prior permission of the ARC, so long as such signs are similar to those listed as acceptable for Builder use in the Builder and/or Architectural Guidelines and Bulletins promulgated by the ARC and so long as such signs do not otherwise violate this Declaration. If any sign is placed within Albury Trails Estates in violation of this Declaration, the Association or its agents shall be authorized, but not obligated, to enter upon any Lot and remove and/or dispose of any such sign violation, and in doing so shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry, removal and/or disposal nor in any way shall the Association or its agent be liable for any accounting or other claim for such action.

## Section 2. Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garage or driveway serving the Lot, or in such other paved areas as have been approved by the Board of Directors for parking vehicles. A maximum of two (2) occupant vehicles may be parked outside of the garage, if any, serving a residential Lot. For purposes of this provision, a vehicle shall be considered an "occupant vehicle" if it is parked on the Lot four (4) or more hours per day, four (4) or more days in any seven (7) day period. The Board of Directors may authorize on-street parking on a temporary basis for visitors and guests, subject to reasonable rules and regulations. No garage shall be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the ARC. Notwithstanding the foregoing, however, a builder may temporarily convert a garage into a sales or construction office, provided that it is convened back to a garage within thirty (30) days after cessation of construction and sale of new homes within the Properties by such builder. Garage doors visible from any street within the Properties shall remain closed except during ingress or egress or when the garage is actively being used by the Owner or occupant.

(b) Prohibited Vehicles In Residential Sections. Commercial vehicles, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the Properties must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) hours without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such period of time, as is reasonable necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed.

Section 3. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets, not to exceed a total of three (3) pets, may be permitted in a Lot. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties shall be removed upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purposes. Dogs shall at all times whenever they are outside a Lot be confined on a leash held by a responsible person.

Section 5. Quiet Enjoyment. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on a Lot. The use and discharge of firecrackers and other fireworks is prohibited within the Properties.

Section 6. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. Notwithstanding the above, the

disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours.

Section 7. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any Lot, which is visible from any street, common area or other Lot unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a visible location as approved by the ARC. The ARC may require as much screening as possible while not substantially interfering with reception. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Property. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No broadcast or MMDS antenna mast may exceed the height of the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property. The Declarant by promulgating this section is not attempting to violate the Telecommunications Act of 1996 ("the Act"), as may be amended from time to time. This section shall be interpreted to be as restrictive as possible while not violating the Act.

Section 8. Clotheslines, Garbage Cans, Tanks, Etc. No clotheslines shall be erected or installed on the exterior portion of any Lot and no clothing, linens or other material shall be aired or dried on the exterior portion of any Lot. All garbage cans, above-ground storage tanks, mechanical equipment, woodpiles, yard equipment and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be stored in appropriate containers approved pursuant to Article XI hereof and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon.

Section 9. Subdivision of Lot and Time Sharing. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years, except that the Declarant hereby reserves the right for itself and its assigns to operate such a program with respect to Lots which it owns.

Section 10. Firearms. The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.



Section 11. Pools. No above ground swimming pools shall be erected, constructed or installed on any Lot.

Section 12. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals, wells or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties. All sprinkler and irrigation systems serving Lots shall draw upon public water supplies only and shall be subject to approval in accordance with Article XI of this Declaration. Private irrigation wells are prohibited on the Properties. This Section 12 shall not apply to the Declarant, and it may not be amended without Declarant's written consent.

Section 13. Tents, Mobile Homes and Temporary Structures. Except as may be permitted by the Declarant or the ARC, no tent, shack, mobile home, outbuilding or other structure of a temporary nature shall be placed upon a Lot or any part of the Properties. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board.

Section 14. Drainage and Septic System. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person other than the Association or Declarant may rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant, are prohibited within the Properties. No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any storm sewer, drainage ditch or swale, stream, pond or lake within the Properties.

Section 15. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 16. Air Conditioning Units. Any air conditioning units installed in a Lot shall be located or screened so as not to be visible from any street or Common Area within the Properties. Window air conditioning units shall not be allowed.

Section 17. Lighting. Except for traditional holiday decorative lights, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 18. Artificial Vegetation, Exterior Sculpture, and Similar items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. No exterior sculpture, fountains, flags and temporary flagpoles, birdhouses, birdbaths, other decorative embellishments

or similar items shall be permitted unless approved in accordance with Article XI of this Declaration.

Section 19. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article XI hereof. No windmills, wind generators or other apparatus for generating power from the wind shall be erected or installed on any Lot.

Section 20. Playground. No jungle gyms, swing sets or similar playground equipment shall be erected or installed on any Lot without prior written approval of the ARC or MC in accordance with Article XI hereof. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 21. Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Lot except as approved in accordance with Article XI of this Declaration.

Section 22. Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Property, (c) the business activity does not involve persons coming onto the Property who do not reside in the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, as may be determined in the sole discretion of the Board.

The term "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or conducted by a builder with approval of the Declarant, with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties.

Section 23. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Properties except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment,

and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

**Section 24. Leasing of Lots.**

- (a) Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, or gratuity.
- (b) Leasing Provisions.
  - (i) General. Lots may be rented only in their entirety; no fraction or portion may be rented. All leases shall be in writing and shall be for an initial term of no less than thirty (30) days, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.
  - (ii) Compliance with Declaration, By-Laws and Rules and Regulations. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

**Section 25. Laws and Ordinances.** Every Owner and occupant of any Lot, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

**Section 26. Single Family Occupancy.** No Lot shall be occupied by more than a single family. For purposes of these restrictions, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household Lot and the household employees of such household Lot. It is not the intent of the Declarant to exclude from a Lot any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

**Section 27. Water and Mineral Operations.** No oil, gas or other mineral or water drilling, oil, gas or other mineral or water development operations, oil refining, quarrying or mining operations of any kind shall be permitted on any Lot. No derrick or other structure designed for use in drilling for water, oil, natural gas, or other minerals shall be erected and maintained or permitted on any Lot.

### Article XIII General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. So long as it still owns property for development as part of the Properties, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing sixty-seven (67%) percent of the total votes in the Association, and the consent of the Declarant so long as It owns any property within the Properties. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Upon approval of the Owners, as set out above, and the Association's joinder and approval of said amendment [as evidence by the President's or Vice-President's signature] the amendment shall be recorded in the public records of Harris County, Texas whereupon to the extent of any conflict with this Declaration, the amended declaration shall control.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property within the Properties, the Association, and the designees of each (which may include, without limitation, Harris County, Texas, and any utility and/or utility district), blanket easements upon, across, over, and under all of the Properties for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, monitoring systems, and similar systems, roads, walkways, bicycle pathways, wetlands, drainage systems, levees, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity, and shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry into any Lot shall be made only after reasonable notice to the Owner or occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier easements across all Lots and the Common Areas for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to Harris County, or to any other local, state, or federal governmental entity.

Section 5. Easements to Serve Additional Property. The Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees and mortgagees, shall have and there is hereby reserved an easement over the Common Areas for the purposes of enjoyment, use, access and development of any Additional Property by this reference incorporated herein, whether or not such Additional Property is made subject to this Declaration. This easement includes but is not limited to a right of ingress and egress over the Common Areas for construction of roads and for tying in and installation of utilities on the Additional Property. Declarant agrees that it, its successors or assigns, shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic connected with development of the Additional Property. Declarant further agrees that if the easement is exercised for permanent access to the Additional Property and such Additional Property or any portion thereof is not made subject to this Declaration, the Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving the Additional Property. Such agreement shall provide for sharing of costs based on the ratio which the number of Lots on that portion of the Additional Property which is served by the easement and is not made subject to this Declaration bears to the total number of Lots within the Properties and on such portion of the Additional Property.

Section 6. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 7. Non-waiver. Failure of the Association to enforce this Declaration shall not be tantamount to a waiver of future violations of the Declaration.

Section 8. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 9. Use of the Word "Albury Trails Estates". No Person shall use the word "Albury Trails Estates" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the term "Albury Trails Estates" in printed or promotional matter where such term is used solely to specify that particular property is located within Albury Trails Estates and the Association.

Section 10. Compliance. Every Owner and occupant of any Lot shall comply with all lawful provisions of this Declaration, the By-Laws, Articles of Incorporation, and rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Lot Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws.

Section 11. Books and Records. The books, records and papers of the Association shall be, by appointment, during normal business hours, be subject to inspection by any Member, for any proper purpose, with the exception of the following: contracts being negotiated, payroll records,

pending disputes, personal homeowner files. The Articles of Incorporation, By-Laws, and this Declaration shall likewise be available for inspection, by appointment during normal business hours by any Member at the office of the Association, for any proper purpose.

Section 12. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

Section 13. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, the Association's properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation. The surviving or consolidated association shall administer any restrictions together with any Declarations of Covenants, Conditions and Restrictions governing these and any other properties, under one administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 14. Current Address. Owners are required to notify the Association of their current address at all times. If an Owner fails to notify the Association of their current address, the Association shall use the address of the Lot as the current address.

Section 15. Security. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY DWELLING, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE ARC AND MC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ARC OR MC MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR

LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

Section 16. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Dwelling, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Board of Directors, the transferee shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

#### Article XIV Alternate Dispute Resolution.

Section 1. Dispute Resolution. No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners; Members; the Board of Directors; officers in the Association; or the Association. Disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process.

Section 2. Outside Mediator. In a dispute between any of the above entities or individuals the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator will either be an attorney-mediator skilled in community association law, a Professional Community Association Manager ("P.C.A.M.") as certified by the Community Associations Institute, or a Certified Property Manager ("C.P.M.") as certified by the Institute of Real Estate Managers. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in Albury Trails Estates, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than thirty (30) days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.



Section 3. Mediation is Not a Waiver. By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before a mediation may be scheduled.

Section 4. Assessment Collection. The provisions of this Declaration dealing with Alternate Dispute Resolution shall not apply to the collection of assessments by the Association as set out in the Declaration.

Section 5. Term. This Article XIV, Alternative Dispute Resolution, shall be in full force and effect for an initial period of three (3) years from the date of execution of this Declaration. However, this Article shall remain in full force and effect unless, at the first open meeting of the Association after such initial period, a majority of the Board of Directors votes to terminate the provisions of this Article XIV, Alternative Dispute Resolution.

#### Article XV Declarants Rights

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other person, persons, entity or entities provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein or in the By-Laws, as applicable, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Harris County, Texas. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "A" in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant and any builder designated by Declarant maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant and such designated builder(s) shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Lots owned by the Declarant and any clubhouse or community center, which may be owned by the Association, as models and sales office, respectively.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this \_\_\_\_\_ day of February, 2007.

DECLARANT

WILLOW CREEK DEVELOPMENT COMPANY,  
LIMITED, a Texas limited partnership Ardliet  
Corporation, General Partner

By: \_\_\_\_\_  
Randal A. Hendricks, President

#### ACKNOWLEDGEMENTS

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF HARRIS     §

BEFORE ME, the undersigned authority, on this day personally appeared RANDAL A. HENDRICKS, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of February, 2007.

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

[SEAL]

## **EXHIBIT “A”**

### **ALBURY TRAILS ESTATES**

#### **SECTION ONE**

A subdivision of 21.010 Acres in the Elizabeth Smith Survey, Abstract 70, Harris County, Texas, as shown on the map or plat thereof recorded under Harris County Clerk’s File No. 20060186883 (Film code No. 606119) of the Map Records of Harris County, Texas;

SAVE AND EXCEPT Restricted Reserve “A” (0.109 acres), Restricted Reserve “B” (0.340 acres), Restricted Reserve “C” (0.074 acres), Restricted Reserve “D” (0.177 acres), Restricted Reserve “E” (0.327 acres), and Restricted Reserve “F” (0.285 acres).

Return to:  
Willow Creek Development Company Limited  
400 Randal Way, Suite 106  
Spring, TX 77388