

**DECLARATION OF AMENDED AND RESTATED COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
QUAIL VALLEY,  
THUNDERBIRD WEST COURTYARD HOMES,  
A SUBDIVISION IN FORT BEND COUNTY, TEXAS**

---

THE STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND       §

WHEREAS, MACNAUGHTON & CO., a Texas corporation, Trustee (the "Declarant"), was the sole owner of that certain real property known as Quail Valley, Thunderbird West Courtyard Homes according to the plat thereof recorded in Volume 19, Page 16 of the Map Records of Fort Bend, County, Texas (the "Subdivision");

WHEREAS, Declarant did execute and file of record that certain instrument entitled "Restrictions and Covenants Governing Property and Lots in Quail Valley Subdivision, Thunderbird West Courtyard Homes Section an Addition in Fort Bend County, Texas which is owned by MacNaughton & Co., Trustee Missouri City, Texas" filed of record in Volume 746, Page 336, *et seq.* in the Deed Records of Fort Bend County, Texas ("Prior Restrictions"), by which instrument the Declarant imposed on the Property all those certain covenants, conditions, restrictions, easements, charges, and liens therein set forth; and

WHEREAS, Article B, Paragraph 14 of the Prior Restrictions entitled "Terms" provides that a majority of the then owners of the Lots in Subdivision can amend or change the Prior Restrictions.

NOW, THEREFORE, for and in consideration of the premises, the Prior Restrictions, as previously amended, are amended and restated as set forth below and the Subdivision is and shall be held, transferred, sold, conveyed and occupied subject to the following easements, restrictions, covenants, conditions and charges, which easements, restrictions, covenants, conditions and charges shall run with the Subdivision and be binding on all parties having or acquiring any right, title or interest, whether legal or equitable, in the Subdivision or any part thereof, and shall inure to the benefit of such parties.

**ARTICLE I**  
**Definitions**

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

**SECTION 1.1. ACC** – The Architectural Control Committee established and empowered in accordance with Article III of this Declaration.

**SECTION 1.2. ACCESSORY BUILDINGS** - shall mean buildings or structures on the same Lot with a Residential Dwelling; the use of which is customarily secondary to the main use of the Residential Dwelling. Accessory Buildings include, but are not limited to the following structure or uses: detached garages detached summer/outdoor kitchens, gazebos, playhouses, storage sheds, utility sheds, potting sheds, pool houses, and other permanent buildings with solid roofs.

**SECTION 1.3. ARTICLES OF INCORPORATION** - The Articles of Incorporation of Quail Valley Fund, Inc.

**SECTION 1.4. BOARD** - The Board of Trustees of Quail Valley Fund, Inc.

**SECTION 1.5. BYLAWS** - The Bylaws of the Quail Valley Fund, Inc.

**SECTION 1.6. CITY** - The City of Missouri City, Texas.

**SECTION 1.7. COMMON AREA** - Any real property and improvements thereon owned or maintained by the Quail Valley Fund, Inc. for the common use and benefit of the Owners.

**SECTION 1.8. DECLARATION** - This “Declaration of Amended and Restated Covenants, Conditions and Restrictions for Quail Valley, Thunderbird West Courtyard Homes, A Subdivision in Fort Bend County, Texas.”

**SECTION 1.9. FUND** - Quail Valley Fund, Inc., a Texas non-profit corporation.

**SECTION 1.10. GOLF COURSE** - Quail Valley Golf Course, whether or not hereafter renamed, and its successors and assigns.

**SECTION 1.11. GOLF COURSE LOT** - Any Lot that is located, in whole or in part, contiguous to the Golf Course.

**SECTION 1.12. IMPROVEMENT** - Any building (including Residential Dwellings and Accessory Buildings), structure, fixture, or fence, and any addition to, or modification of an existing building structure, fixture or fence.

**SECTION 1.13. LAKE(S)** - Each Lake shown on the Plat. It is expressly understood by all Owners that entities other than the Fund (e.g. the Golf Course or governmental entity) may own and control the Lakes.

**SECTION 1.14. LAKE LOT** - Each Lot on which there exists a portion of a Lake and each Lot which is contiguous, in whole or in part, to a Lake or a reserve on which the Lake is situated.

**SECTION 1.15. LOT(S)** - Each of the Lots shown on the Plat.

**SECTION 1.16. MAINTENANCE FUND** - Shall mean that funds created by the payment of the annual assessment by the owners of Lots on the Properties, as provided for in the restrictive covenants applicable to the Properties and managed by the Board of the Quail Valley Fund, Inc.

**SECTION 1.17. MEMBER(S)** - All Lot Owners as provided in Article IV hereof.

**SECTION 1.18. MORTGAGE** - A security interest, mortgage, deed of trust, or lien instrument granted by an Owner of a Lot to secure the payment of a loan made to such Owner, duly recorded in the Official Public Records of Real Property of Fort Bend County, Texas, and creating a lien or security interest encumbering a Lot and some or all Improvements thereon.

**SECTION 1.19. OWNER(S)** - Any person or persons, firm, corporation or other entity or any combination thereof that is the record owner of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as a security for the performance of an obligation.

**SECTION 1.20. PLANS** - The final construction plans and specifications (including a related site plan) of any Residential Dwelling or other Improvement of any kind to be erected, placed, constructed, maintained or altered on any Lot.

**SECTION 1.21. PLAT** - The plat for Quail Valley, Thunderbird West Courtyard Homes.

**SECTION 1.22. PRIOR RESTRICTIONS** - Those certain instruments first defined above as the "Prior Restrictions" filed of record in the Volume 746, Page 336, et seq. of the Deed Records of Fort Bend County, Texas, as amended.

**SECTION 1.23. PROPERTIES** - Shall mean and refer to all of the subdivisions under the jurisdiction of the Quail Valley Fund, Inc. as reflected in the Management Certificate required by Section 209.004 of the Texas Property Code and filed of record in the Official Public Records of Real Property of Fort Bend County, Texas under County Clerk's File No. 2002022458 and as amended from time to time.

**SECTION 1.24. RESIDENTIAL DWELLING** - The single family residence and appurtenances constructed on a Lot.

**SECTION 1.25. RULES AND REGULATIONS** - Rules adopted from time to time by the Board concerning the management and administration of the Properties for the use, benefit and enjoyment of the Owners, including, but not limited to, Rules and Regulations governing the use of private streets, if any, in the Properties.

**SECTION 1.26. SUBDIVISION** - All of Quail Valley, Thunderbird West Courtyard Homes, a subdivision in Fort Bend County, Texas according to the plat thereof recorded in Volume 19, Page 16 of the Map Records of Fort Bend County, Texas, and any replats thereof.

**SECTION 1.27. UTILITY COMPANY or UTILITY COMPANIES** - Any public entity, utility district, governmental entity (including without limitation, districts created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution) or one or more private entities that regulate, provide or maintain utilities and drainage.

## **ARTICLE II**

### **General Provisions Relating to Use and Occupancy**

#### **SECTION 2.1. GENERAL.**

**2.1.1. GRANDFATHER CLAUSE/NONCONFORMITIES.** Any Lot, Improvement, or use of a Lot in violation of the Declaration as of the date this Declaration is filed of record in the Official Public Records of Real Property of Fort Bend County, Texas (“Effective Date”) will be considered nonconforming (“Nonconformities”). Nonconformities that are in compliance with the Prior Restrictions on the Effective Date of the Declaration are grandfathered and may continue in legal existence. Nonconformities may be maintained, repaired, or cosmetically remodeled, and in the case of physical destruction, may be replaced in their original form. Provided, however, a Residential Dwelling or Accessory Building on a non-conforming Lot as of the Effective Date of this Declaration (“Non-conforming Lot”), which dwelling is physically destroyed or demolished may be replaced with an architecturally different Residential Structure or Accessory Building, so long as the new construction on the Non-conforming Lot is in compliance with all of the remaining provisions of the Declaration and is approved by the ACC. Nonconformities lose their legal status and are no longer grandfathered at such times as the Lot, Improvement or use comes into compliance with the Declaration, and thereafter, Nonconformities must cease and may not resume. The Board in its sole discretion may determine whether Nonconformities ever existed or has ceased to exist.

#### **SECTION 2.2. USE RESTRICTIONS.**

**2.2.1. RESERVES.** As set forth in the Prior Restrictions Reserve “A” of the Subdivision is unrestricted to be used for any legal purpose.

**2.2.2. SINGLE FAMILY RESIDENTIAL USE.** Each Owner shall use his Lot and the Residential Dwelling and other Improvements on his Lot for single family residential purposes only. As used herein, the term “single family residential purposes” shall be deemed to specifically prohibit, without limitation, the use of a Lot for a duplex apartment, a garage apartment or any other apartment or for any multi-family use or for any business, professional or other

commercial activity of any type, unless such business, professional or commercial activity is unobtrusive and merely incidental to the primary use of the Lot and the Residential Dwelling for residential purposes. As used herein, the term "unobtrusive" means, without limitation, that there is no business, professional, or commercial related sign, logo or symbol displayed on the Lot; there are no clients, customers, employees or the like who go to the Lot for any business, professional, or commercial related purpose on a regular basis; and the conduct of the business, professional, or commercial activity is not otherwise apparent by reason of noise, odor, vehicle and/or pedestrian traffic and the like. No Owner shall use or permit such Owner's Lot or Residential Dwelling to be used for any purpose that would (i) void any insurance in force with respect to the Subdivision; (ii) make it impossible to obtain any insurance required by this Declaration; (iii) constitute a public or private nuisance, which determination may be made by the Board in its sole discretion; (iv) constitute a violation of the provisions of this Declaration or any applicable law, or; (v) unreasonably interfere with the use and occupancy of any Lot in the Properties or Common Area by other Owners. The term "single family residential purposes" as used in this Section shall also be defined as (a) one (1) or more persons related by blood, marriage, or adoption, which may include only parents, their children (including foster children and wards), their dependent brothers and sisters, their grandparents and domestic servants or caregivers, or (b) no more than two (2) unrelated persons living together as a single housekeeping unit and their children (including wards), their dependent brothers or sisters, their grandparents and their domestic servants or caregivers. No Lot may ever have more than two (2) live-in domestic servants or caregivers. No Owner shall be permitted to lease his Lot for hotel or transient purposes, which for purposes of this Section is defined as a period of less than six (6) months. Every lessee shall be bound by and subject to all the obligations under this Declaration. The Owner making such lease shall not, however, be relieved from any obligation for him or his lessees to comply with the provisions of this Declaration. The Board may make additional Rules and Regulations regarding leasing of Lots.

**2.2.3. PASSENGER VEHICLES.** Except as provided in Article II, Section 2.2.4, below, no Owner, lessee, or occupant of a Lot, including all persons who reside with such Owner, lessee or occupant on the Lot (for the purposes of this Section all hereinafter defined as an "Occupant"), shall park, keep or store any vehicle on any Lot which vehicles are visible from any street in the Properties ("Street(s)") or any neighboring Lot other than passenger vehicles or pick-up trucks. Provided, however, Occupants may only park such passenger vehicles and pick-up trucks on the Streets so that they are never parked on Streets in excess of three (3) days (or any portion thereof) in any seven (7) day period of time. For the purposes of this Declaration, the term "passenger vehicle" is limited to any vehicle which displays a passenger vehicle license plate issued by the State of Texas or which, if displaying a license plate issued by another state, would be eligible to obtain a passenger vehicle license plate from the State of Texas, a passenger van and a sport utility vehicle used as a family vehicle (whether or not the sport utility vehicle displays a passenger or truck vehicle license plate); the term "pick-up truck" is limited to one-ton capacity pick-up,

Except as provided below, any vehicle used for commercial purposes cannot be parked on the Streets but must be parked in the driveway of the Occupant's Lot. Commercial vehicle as used in this Section is defined as any vehicle displaying company logo, signs or equipment such as ladder racks, tools, compressors, welding machines, or any other equipment that is used for commercial use. Contractors that are performing work on an Improvement on the Lot or the Lot may park in the Street during performance of their work; otherwise contractors may not park on the Streets. No vehicle of any kind shall be parked on any sidewalk, unpaved portion of a Lot or on any grass. No inoperable vehicle shall be parked, kept or stored on a Lot if visible from any Street or any neighboring Lot. For the purposes of this Section, a vehicle shall be deemed to be inoperable if (a) it does not display all current and necessary licenses and permits, (b) it does not have fully inflated tires, (c) it is on a jack, blocks or the like, or (d) it is otherwise incapable of being legally operated on a public street or right-of-way.

**2.2.4. OTHER VEHICLES.** No mobile home trailer, utility trailer, recreational vehicle, boat or the like shall be parked, kept or stored on any street in the Properties or on any portion of a Lot if visible from any street in the Properties or any neighboring Lot in excess of three (3) days (or any portion thereof) in any seven (7) day period of time. A mobile home trailer, utility trailer, recreational vehicle, boat or the like may be parked in the garage on a Lot or in some other structure approved by the ACC out of public view.

**2.2.5. VEHICLE REPAIRS.** No passenger vehicle, pick-up truck, mobile home trailer, utility trailer, recreational vehicle, boat or other vehicle of any kind shall be constructed or reconstructed on a Lot within the Properties if visible from any street in the Properties or any neighboring Lot. Only normal maintenance (oil change, tire changes, repairs of brakes, etc.) is permitted as long as the work is completed within a twenty-four (24) hour period.

**2.2.6. NUISANCES.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to a Lot and no odors shall be permitted to arise there from, so as to render the Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to an other Lot or to its occupants. No nuisance shall be permitted to exist or operate upon a Lot. For the purpose of this provision, a nuisance shall be any activity or condition on a Lot which is reasonably considered to be an annoyance to surrounding residents of ordinary sensibilities and/or which might be thought to reduce the desirability of any Lot. The Board is authorized to determine whether any activity or condition on a Lot constitutes a nuisance or is offensive and its determination shall be conclusive and binding on all parties. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes and patio speakers (which may only be utilized at such a volume so as not to become a nuisance to the Owners or neighboring Lots) shall be located, used or placed on any Lot and then only if properly maintained and operated.

**2.2.7. TRASH CONTAINERS.** No garbage or trash or garbage or trash container shall be maintained on a Lot so as to be visible from any street in the

Properties or any neighboring Lot except to make the same available for collection after 6:00 p.m. of the day prior to pick up. Garbage and trash made available for collection shall be placed in tied trash bags or covered containers, or as otherwise provided in any trash disposal contract entered into by the Fund. Any garbage or trash container not picked up on collection day must be removed by 6:00 p.m., on the day of collection, barring extenuating circumstances.

**2.2.8. CLOTHES DRYING.** No outside clothesline or other outside facilities for drying or airing clothes shall be erected, placed or maintained on a Lot if visible from the Golf Course, a Lake or any street in the Properties.

**2.2.9. ANIMALS.** No animals or birds, other than a reasonable number of generally recognized house or yard pets, shall be maintained on a Lot and then only if they are kept thereon solely as domestic pets and not for commercial purposes (reasonably defined as no more than the number of animals allowed in compliance with the Missouri City Code of Ordinances, which is currently four (4)). No poultry of any type, including by way of illustration, but not limitation chickens, turkeys, pigeons, geese or ducks are allowed. No exotic animal or breed of animal that is commonly recognized to be inherently aggressive or vicious toward other animals and/or humans (e.g. pit bull dogs) is permitted in the Subdivision. No unleashed dog is permitted on any street or on the Common Area. Each dog must be kept either in the Residential Dwelling or other Improvement on the Lot or in a yard fully enclosed by a fence. An "invisible" fence that controls dogs through underground electrical wiring is **not** an acceptable form of maintaining a dog in the yard of a Lot. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance to the other Owners. The Board shall have the authority to determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal or bird is a generally recognized house or yard pet, an exotic animal, an inherently aggressive or vicious animal, or a nuisance, or whether the number of animals or birds kept on any Lot is reasonable, and its determination shall be conclusive and binding on all parties.

**2.2.10. DISEASES AND INSECTS.** No Owner shall permit any thing or condition to exist on a Lot, which shall be or induce, breed or harbor infectious plant diseases or noxious insects, including by way of illustration, but not limitation fire ants.

**2.2.11. CONSOLIDATION AND REPLATTING OF LOTS.** Notwithstanding any provision in this Declaration to the contrary, any Owner of one (1) or more adjoining Lots or portions thereof may consolidate or replat such Lots into one (1) building site, with the privilege of constructing a Residential Dwelling on the resulting site, in which event setback lines shall be measured from the resulting side property lines rather than from the Lot lines indicated on the Plat. Provided, however, any such building site must: have a frontage at the building setback line of not less than the minimum frontage of the smallest Lot on the original Plat of the Subdivision and be no smaller than the smallest Lot on the original Plat of the Subdivision. Upon the consolidation or replatting of one (1) or more adjoining

Lots, the resulting building site shall still be considered separate Lots for purposes of voting rights in the Fund and calculating the charges and assessments set forth in Article V of this Declaration. By way of illustration, if two (2) Lots are consolidated or replatted into one (1) building site, the Owners of the building site will be entitled to two (2) votes in the Fund and be responsible for payment of two (2) assessments. Likewise, if one and one half (1½) Lots are consolidated or replatted into one (1) building site, the Owners of the building site will be entitled to one and one half (1½) votes in the Fund and be responsible for the payment of one and one half (1½) Assessments. Lots which have previously been consolidated prior to the date this Declaration is filed of record in the Official Public Records of Real Property of Fort Bend County, Texas will be bound by any prior agreement with the Fund.

**2.2.12. SIGNS.** No signs whatsoever (including, but not limited to commercial, political and similar signs) shall be erected or maintained on a Lot if visible from any street in the Properties or any neighboring Lot except:

- (i) Street signs and such other signs as may be required by law;
- (ii) During the time of construction of any Residential Dwelling or other Improvement (defined to be from the date that construction commences until completion of the Residential Dwelling or other Improvement), one (1) job identification sign having a face area not larger than three (3) square feet;
- (iii) During the time of remodeling of any Residential Dwelling or other Improvement (defined to be from the date that construction commences until completion of the Residential Dwelling or other Improvement, but not to exceed ninety (90) days), one (1) job identification sign having a face area not larger than three (3) square feet;
- (iv) A "for sale" sign not larger than six (6) square feet and not extending more than four (4) feet above the ground. Owners of golf-course properties may place one "for sale" sign in the front of the property and one (1) in the back of the property. Owners of corner Lots may place a sign on each street.
- (v) Home security signs and/or school spirit signs, if approved by the ACC, but then only in strict accordance with any recorded Architectural Guidelines governing such signs; and
- (vi) Owners may place ground mounted signs on their Lots, which advertise a political candidate or ballot item for an election ("Political Signs"), provided the following criteria are met:
  - (a) No Political Sign may be placed on an Owner's Lot

prior to the ninetieth (90th) day before the date of the election to which the sign relates (or such shorter time proscribed by the City, which currently is thirty (30) days, which shorter time would be enforced by the City), or remain on an Owner's Lot subsequent to the tenth (10th) day after the election date. In case of a run-off, the political sign can remain until the tenth (10<sup>th</sup>) day after the run-off election date.

- (b) No more than one (1) Political Sign is allowed per political candidate or ballot item.
- (c) No Political Sign may contain roofing material, siding, paving, materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component; be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object; include the painting of architectural surfaces; threaten the public health or safety; be larger than four feet (4') by six feet (6') and be no more than four feet (4') above the ground (or such smaller size proscribed by the City, which would be enforced by the City); may violate a law, contain language, graphics, or any display that would be offensive to the ordinary person; nor be accompanied by music, other sounds, by streamers or is otherwise distracting to motorists.

**2.2.13. LAKES.** No motorcycle, machinery or equipment of any kind shall be used on any area around a Lake except as needed to maintain such area. No boats, inflatable rafts, canoes or watercraft of any type shall be used in a Lake, except as may be permitted by Rules and Regulations governing the Lake adopted and published by the Board or the entity in control of the Lakes. Each Owner or other person who uses a Lake does so at his/her own risk. The construction of a dock is permitted, but its design must be approved by the ACC and the entity in control of that specific Lake.

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

## **SECTION 2.3. DECORATION, MAINTENANCE, ALTERATION AND REPAIRS.**

**2.3.1. DECORATION/ALTERATION.** Subject to the provisions of Article III, each Owner shall have the right to modify, alter, repair, decorate, redecorate

or improve the Residential Dwelling and other Improvements on such Owner's Lot, provided that all such action is performed with a minimum inconvenience to other Owners and does not constitute a nuisance. Notwithstanding the foregoing, the ACC shall have the authority to require any Owner to remove or eliminate any object situated on such Owner's Lot or the Residential Dwelling or other Improvement on the Lot that is visible from any street in the Properties or any other Lot or, in the case of a Lake Lot, a Lake, or in the case of a Golf Course Lot, the Golf Course, if, in the ACC's sole judgment, such object detracts from the visual attractiveness of the Properties.

**2.3.2. MAINTENANCE AND REPAIR.** No Residential Dwelling or other Improvement on a Lot shall be permitted to fall into disrepair (examples include, but are not limited to, the following: mildew; rotting wood; peeling paint, etc.), and each such Residential Dwelling or other Improvement on a Lot shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner of the Lot at such Owner's sole cost and expense. The Board shall have the exclusive authority to determine whether an Owner is maintaining his Lot and the Residential Dwelling and other Improvements on the Lot in a reasonable manner and in accordance with the standards of the Subdivision and the Board's determination shall be conclusive and binding on all parties. In the event the Owner of a Lot fails to keep the exterior of the Residential Dwelling or other Improvement on the Lot in good condition and repair, and such failure continues after ten (10) days notice by certified mail, then the Fund may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon the Lot and repair and/or paint the exterior of the Residential Dwelling or other Improvement on the Lot and otherwise cause the Residential Dwelling or other Improvement on the Lot to be placed in good condition and repair, and do every other thing necessary to secure compliance with this Declaration, and may charge the Owner of the Lot for the cost of such work. The Owner agrees by the purchase of such Lot to pay such charge, plus fifteen percent (15%) of such costs for overhead and supervision, immediately upon receipt of the corresponding statement. Payment of such charges shall be secured by the lien created in Article V of this Declaration. Interest thereon at the rate of eighteen percent (18%) per annum or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty-first (31<sup>st</sup>) day after a written invoice is delivered to the Owner.

## **SECTION 2.4. TYPE OF CONSTRUCTION AND MATERIALS.**

**2.4.1. TYPES OF BUILDINGS.** No buildings shall be erected, altered, placed or permitted to remain on any Lot other than (i) one (1) detached, single family dwelling not to exceed the height limitations set forth in Section 2.5.2 together with an attached or detached private garage for not less than two (2) nor more than four (4) vehicles and (ii) one (1) additional permitted Accessory Building (other than a detached garage), all of which are subject to approval by the ACC.

**2.4.2. STORAGE.** Without the prior written consent of the ACC, no building materials of any kind or character shall be placed or stored on any Lot more than thirty (30) days before the construction of a Residential Dwelling or other Improvement is commenced. All materials permitted to be placed on a Lot shall be placed within the property lines of the Lot. After the commencement of construction of any Residential Dwelling or Improvement on a Lot, the work thereon shall be prosecuted diligently, to the end that the Residential Dwelling or Improvement shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. In any event, substantial completion of a Residential Dwelling or remodeling of a home on a Lot must be achieved within two hundred seventy (270) days of the date of commencement of construction of the Residential Dwelling, unless a longer period is approved in writing by the ACC; substantial completion of any other Improvement must be achieved within one hundred eighty (180) days of the date of commencement of construction of the Improvement, unless a longer period is approved in writing by the ACC. Substantial is hereby defined as ninety percent (90%) of the construction is completed. For purposes hereof, construction of a Residential Dwelling or remodeling or other Improvement shall be deemed to have commenced on the date that any equipment or building material relating to such construction is moved onto the Lot. Also for purposes hereof, a Residential Dwelling shall be deemed to be substantially completed on the date an occupancy permit is issued by any governmental authority having jurisdiction or, if no such occupancy permit is required, the date the Residential Dwelling is ready to be occupied; any other Improvement shall be deemed to be substantially completed on the date the Improvement is capable of being used for its intended purpose. Upon the completion of the construction, any unused materials shall promptly be removed from the Lot.

**2.4.3. TEMPORARY STRUCTURES.** No building or structures of a temporary character, trailer (with or without wheels and whether or not attached to a foundation), mobile home (with or without wheels and whether or not attached to a foundation), modular or prefabricated home, shack, barn or other building, other than the permanent Residential Dwelling, an attached or detached garage (with a second level living quarters, if approved by the ACC) and one (1) Accessory Building approved by the ACC, shall be placed on a Lot, either temporarily or permanently, and no residence house, garage or other structure appurtenant thereto shall be moved onto a Lot from another location. Overnight camping in a backyard of a home is allowed. Tents for special events are allowed, but must be taken down within seven (7) days from time they are placed in use.

**2.4.4. CARPORTS/GARAGES.** A porte cochere may be permitted on a Lot if included in the original or subsequent Plans for the Residential Dwelling and approved by the ACC. No items of any type may ever be stored in a porte cochere, except golf carts and vehicles in compliance with Section 2.2.3 may be parked in a porte cochere. Garages must be provided for all Residential Dwellings and in no case shall a porte cochere act as or be substituted for a garage. No garage shall be placed or maintained on any easement. All garages

shall be enclosed by metal or wood garage doors with a paneled design that are harmonious in quality and color with the exterior of the appurtenant Residential Dwelling. In Blocks One (1), Two (2) and Three (3) of the Subdivision, covered parking is required for at least two (2) automobiles and paved open parking for at least one (1) additional automobile; such covered and open parking may face the street and Lot fronts, or may be a mixture of side load garage entry plus open parking facing the street.

**2.4.5. DETACHED SUMMER/OUTDOOR KITCHEN STRUCTURES.** For the purposes of this Section detached summer/outdoor kitchen structures are defined as a structure, open to the air on at least three (3) sides that is freestanding. The structure shall not exceed 350 square feet in area coverage and it shall be no more than fifteen feet (15') in height to the highest point from ground level. It must be in harmony with the main Residential Dwelling in terms of material, construction, roofing and color. The structure must comply with all building set back lines and may not encroach in any utility easement.

**2.4.6. AIR CONDITIONERS.** No window, roof or wall type air conditioner that is visible from any street in the Properties or the Golf Course shall be used, placed or maintained on or in any Residential Dwelling, garage or other Improvement.

**2.4.7. ANTENNAS, SATELLITE DISHES AND MASTS.** 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 Lot, which are visible from any street, Common Area or another Lot, unless it is impossible to receive an acceptable quality signal from any other location. In that event, the receiving device may be placed in the least visible location where reception of an acceptable quality signal is possible. The Board may require painting or screening of the receiving device, which painting or screening does not substantially interfere with an acceptable quality signal. In no event are the following devices permitted: (i) satellite dishes, that are larger than one (1) meter in diameter; (ii) broadcast antenna masts, that exceed the height of the center ridge of the roofline; or (iii) MMDS antenna masts, that exceed the height of twelve feet (12') above the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted, placed, allowed or maintained upon any Lot, that transmit television, radio, satellite or other signals of any kind. This section is intended to be in compliance with the Telecommunications Act of 1996 (the "Act"), as the Act may be amended from time to time; this section shall be interpreted to be as restrictive as possible, while not violating the Act. The Board may promulgate Architectural Guidelines, which further define, restrict or elaborate on the placement and screening of receiving devices and masts, provided such Architectural Guidelines are in compliance with the Telecommunications Act.

**2.4.8. FOUNDATIONS.** Not more than six inches (6") of vertical surface of the concrete slab of any Residential Dwelling or Accessory Building shall be exposed to view from any street in the Properties or any adjacent Lot. Any slab in

excess of six inches (6") in height above finished grade shall have at least that excess in height covered with the same type, quality and grade of siding or masonry material used in the construction of the Residential Dwelling or other Improvement. Any Residential Dwelling or Accessory Building with a pier and beam foundation shall have all mechanical, electrical, plumbing lines and fixtures located under such foundation and screened from view from any street in the Properties, any adjacent Lot, the Golf Course or a Lake. The ACC, in its sole discretion, shall have the authority to determine the adequacy of any screening device or technique.

**2.4.9. EXTERIOR FINISH.** The exterior of any new Residential Dwelling and Accessory Buildings on each Lot, excluding doors, shutters, trim work, must be comprised of eighty-five percent (85%) brick, stone or masonry material. For purposes of this Section and Section 2.4.13, stucco (except stucco built according to the E.F.I.S. system) and Hardi-plank shall be considered as masonry material. All permitted stucco shall be applied to a metal lathe with an appropriate air space between the stucco and the paper barrier. All brick, stonework, masonry material and mortar must be approved by the ACC as to type, size, color and application. Concrete steps, stoops or porches must be finished in tile, brick or stone, unless otherwise approved by the ACC. No concrete, concrete block or cinder block shall be used as an exposed building surface. Any concrete, concrete block or cinder block utilized in the construction of a Residential Dwelling or Accessory Building or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Residential Dwelling or Accessory Building. Metal flashing, valleys, vents and gutters installed on a Residential Dwelling or Accessory Building shall blend or be painted to blend with the color of the exterior materials to which they are adhered or attached.

**2.4.10. EXTERIOR LIGHTING.** No exterior lighting shall be directed toward another Lot or significantly illuminate beyond the boundaries of the Lot on which the lighting fixture is situated.

**2.4.11. MAILBOXES.** All mailboxes shall be maintained in accordance with the standards of the U.S. Postal Service and specifically as follows:

1. Mailbox shall be securely fastened to its support.
2. Mailbox shall be level.
3. Mailbox will have a door that closes properly.
4. Mailbox will be in a neat and good condition (e.g. without any rusting, mildew or chipped paint).

**2.4.12. ROOFING.** The ACC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials that may be utilized for any Residential Dwelling, Accessory Building or other Improvement. No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Residential Dwelling or other Improvement, including, without limitation, the roof of any Residential Dwelling or

Accessory Building, if visible from any street, a Lake or the Golf Course unless approved by the ACC. The roof and height on any Accessory Building on a Lot will be considered and approved by the ACC on a case-by-case basis. For example, the height of utility sheds may not generally exceed the height of ten feet (10') and in no event may any roof of an allowed Accessory Building ever exceed in height the roof of the Residential Dwelling.

**2.4.13. CHIMNEYS.** The exterior of newly constructed chimneys shall be constructed of either brick, stone, masonry or other material approved in writing by the ACC. No cantilevered chimneys or chimneys with siding shall be permitted. If a fireplace utilizes a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted metal cowl or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall blend or be painted to blend with the color of the roofing material used for the Residential Dwelling.

**2.4.14. WINDOW TREATMENTS AND DOORS.** Reflective material, newspapers, sheets or other non traditional window coverings shall not be permitted on the windows or doors of any Residential Dwelling or other Improvement on a Lot. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes except as approved in writing by the ACC. Window treatment must be maintained in good repair or working condition.

**2.4.15. UTILITY METERS AND HVAC EQUIPMENT FOR NEW CONSTRUCTION.** All electrical, gas, telephone and cable television meters and apparatus boxes and all exterior heating, ventilating and air-conditioning compressor units and equipment for new buildings shall be located, to the extent possible at the side of the Residential Dwelling or Accessory Building, out of view in a manner approved by the ACC.

**2.4.16. PLAY STRUCTURES.** One (1) free-standing play structure is permitted on a Lot provided that, in no event shall a permitted play structure exceed twelve feet (12') in height, measured from the ground to the highest point of the play structure and in no event shall a platform of a play structure extend above the ground by more than four and one half (4½) feet. A play structure on a Lot must be located within the rear yard of the Lot and in accordance with the applicable side and rear building setbacks. A freestanding play structure shall not be deemed to be an Accessory Building for purposes of Section 2.4.1 of this Declaration.

**2.4.17. LANDSCAPING.**

(1) The landscaping plan for any new construction of a home shall be submitted to the ACC for approval pursuant to the provisions of Article III.

(2) The front and side yards of each Lot shall be sodded/maintained with grass. The rear yard of each Lake Lot and Golf Course Lot shall also be

sodded/maintained with grass except in areas where landscaping is located. Owners are responsible for maintenance of the turf on their lawns. Sections of a yard that are nothing more than bare dirt must be sodded by the Owner, except for areas underneath shade trees that do not receive adequate sunlight to support turf in which case alternate vegetative ground cover must be planted and maintained.

(3) All landscaping for any new construction a Lot shall be completed in accordance with the landscaping Plan approved by the ACC no later than thirty (30) days following the date of substantial completion of the Residential Dwelling situated thereon.

(4) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot where such hedge or shrubbery interferes with traffic sight-lines for roadways within the Properties.

(5) Rock or similar hardscape may be incorporated into the landscaping; provided that, a solid rock yard or similar type of hardscape is not permitted in the front yard of a Lot or in the side yard of a Lot if visible from the street in front of the Lot at ground level or, if a corner Lot, the side street adjacent to the Lot at ground level. A solid rock yard or similar type of hardscape is not permitted in the rear yard of a Lake Lot or a Golf Course Lot.

(6) No rocks, rock walls or other substances shall be placed on any Lot as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion of such Lot or to otherwise impede or limit access to the same.

(7) Vegetable, herb or similar gardens or plants must blend with existing landscape.

(8) No Owner shall allow the grass or weeds on his Lot to grow to a height in excess of six inches (6"), measured from the surface of the ground. No grass or weeds will be allowed to grow over the curb, sidewalks or driveways. Owners will keep yards neatly trimmed and in good repair. Flower beds shall be weeded and kept in good and neat conditions. Grass clippings are to be removed from streets and sidewalks after the yard has been mowed.

(9) Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be removed from each Lot or Residential Dwelling or other Improvement on the Lot within thirty (30) days after such holiday passes.

**2.4.18. SWIMMING POOLS AND OTHER AMENITY STRUCTURES.** No outdoor swimming pool, outdoor hot tub, reflecting pond, sauna, whirlpool, lap pool, or any other water amenity shall be constructed, installed, and maintained on any Lot without the prior written approval of ACC. No waterfall or similar type

of water amenity or feature shall extend more than four feet (4') above grade on any Lake Lot or Golf Course Lot. The ACC shall have the right to adopt further Rules and Regulations governing the construction of swimming pools, outdoor water features and other amenities on Lots within the Subdivision. Permanent, above-ground swimming pools are not permitted.

**2.4.19. DRIVEWAYS AND SIDEWALKS.** The driveway and sidewalk of any new construction shall be constructed of concrete. No driveway or sidewalk may be removed, replaced or altered without the approval of the ACC. Asphalt paving or white portland cement is prohibited. Other materials (e.g. brick) may be used only if approved in writing by the ACC. No driveway or sidewalk shall be painted or stained without the prior written approval of the ACC. Driveways shall not exceed twenty feet (20') in width except as required for garage or porte cochere access or as otherwise permitted in writing by the ACC.

**2.4.20. LOT MAINTENANCE.** The Owner or occupant of a Lot shall at all times keep all weeds, grass and ground cover thereon cut in a sanitary, healthful and attractive manner in accordance with Section 2.4.17(8). In no event shall an Owner use any Lot for storage of materials and equipment (except for normal residential requirements or incident to construction of Improvements thereon as herein permitted) or permit the accumulation of garbage, trash or rubbish of any kind thereon. An Owner shall not burn anything on a Lot, except for recreational/social uses, such as barbeque grills and other devices specifically designed for such. The Owner or occupant of a Lot at the intersection of streets, where the rear yard or portion of the Lot is visible to full public view, shall construct and maintain a suitable enclosure approved in writing by the ACC to screen the following from public view: yard equipment, wood piles and storage piles that are incident to the normal residential requirements of a typical family. The Board shall have the exclusive authority to determine whether an Owner is maintaining his Lot in a reasonable manner and in accordance with Section 2.4.17 and the standards of the Subdivision and the Board's determination shall be conclusive and binding on all parties. In the event the Owner or occupant of any Lot fails to maintain the Lot in a reasonable manner as required by this Section and such failure continues after not less ten (10) days notice by certified mail to the Owner the Fund may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause the Lot to be mowed, edged and cleaned, cause the landscaping beds to be weeded and cleaned, cause shrubs and trees to be trimmed or pruned, and do every other thing necessary to secure compliance with the provisions of this Declaration, and may charge the Owner of such Lot for the cost of such work. The Owner agrees by the purchase of such Lot to pay such charge, plus fifteen percent (15%) of such costs for overhead and supervision, immediately upon receipt of the corresponding statement. Payment of such charges shall be secured by the lien created in Article V of this Declaration. Interest thereon at the rate of eighteen percent (18%) per annum or the maximum non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty-first (31<sup>st</sup>) day after a written invoice is delivered to the Owner.

**2.4.21. EXTERIOR COLORS.** The color(s) of paint and color impregnation proposed to be used on the exterior of the Residential Dwelling or other Improvement on a Lot should be compatible with colors commonly used on the exteriors of Residential Dwellings and Improvements in the Subdivision. The ACC has oversight responsibility should any question arise or complaints be filed. Exterior colors shall be generally limited to those colors used on Residential Dwellings and other Improvements at the time of original construction. The purpose of this covenant is to maintain harmony of the exterior paint colors of Residential Dwellings and other Improvements throughout the Subdivision. Iridescent colors or tones considered to be brilliant are not permitted. For the purpose of this paragraph, "brilliant" means a color that is not in the general texture of both the overall community and natural setting of the Subdivision.

**2.4.22. BASKETBALL GOALS.** No pole-mounted or wall or roof mounted basketball goal shall be installed on a Lot without the prior written approval of the ACC. Upon reviewing an application for a pole-mounted or wall or roof mounted basketball goal, the ACC is expressly authorized to consider, in addition to all other factors, the location of the proposed basketball goal in relation to the Residential Dwelling on an adjacent Lot and the potential impact on the Owner or occupant of any adjacent Lot with regard to noise. A portable basketball goal shall not be located on a Lot nearer to the front property line than the front wall of the Residential Dwelling on the Lot, whether or not in use. No portable basketball goal may be placed in a street for any length of time.

## **SECTION 2.5. SIZE AND LOCATION OF BUILDINGS AND STRUCTURES.**

**2.5.1. MINIMUM ALLOWABLE AREA OF INTERIOR LIVING SPACE.** The minimum allowable area of interior living space of Residential Dwellings on Lots in Blocks One (1), Two (2) and Three (3) is one thousand eight hundred (1,800) square feet and on Lots in Block Four (4), Five (5) and Six (6) two thousand (2,000) square feet. For purposes of this Declaration, the term "interior living space" excludes steps, porches, exterior balconies, and garages.

**2.5.2. MAXIMUM ALLOWABLE HEIGHT OF BUILDINGS.** No new construction of a Residential Dwelling shall exceed a reasonable height required for two (2) stories of living space (above finished grade) plus a pitched roof. No Residential Dwelling shall have more than two (2) stories of living space above finished grade, except (i) in a case where a third (3rd) story of living space is contained within the volume defined by the roof plans of the Residential Dwelling and (ii) turrets approved by the ACC. Notwithstanding the foregoing, no Residential Dwelling shall exceed the height allowed by the City. No Accessory Building or detached garage can exceed the height of the Residential Dwelling on the Lot. The plate line of Accessory Buildings cannot exceed ten feet (10').

**2.5.3. LOCATION OF IMPROVEMENTS - SETBACKS.** In Blocks Four (4), Five (5) and Six (6) of the Subdivision, no Residential Dwelling or other building shall be located on any Lot nearer to the front Lot line or nearer to the side street Lot line than the minimum building setback lines shown on the Plat.

In any event, no Residential Dwelling or other building shall be located on any Lot nearer than twenty-five (25) feet to the front Lot line, nor nearer than ten (10) feet to any side street line, unless otherwise noted on the Plat, nor nearer than twenty (20) feet to the rear Lot line, nor nearer than five (5) feet to any side Lot line. On all the Lots in Blocks Four (4), Five (5) and Six (6) of the Subdivision, no garages, or any other building, shall be constructed, placed or erected closer than five (5) feet of the rear Lot line nor within five (5) feet of any side or interior Lot line, with the exception that detached garages located on the rear portion of the Lot may be built within three (3) feet of any side Lot line, or interior Lot line, except in those instances where the location of the garage in this manner would violate a dedicated easement.

In Blocks One (1), Two (2) and Three (3) of the Subdivision, Residential Dwellings or other buildings may be constructed beginning on one zero side Lot line and to within ten (10) feet of the opposite side Lot line so that ten (10) feet is maintained as a minimum between the side of each Residential Dwelling on adjoining Lots. This ten (10) foot side yard may be connected to the adjoining Residential Dwelling by brick or wrought iron fencing; as specifically approved by the ACC, an may have un-covered patio construction within this ten (10) foot side Lot area.

An easement is hereby granted each Lot Owner whose Residential Dwelling is constructed on the zero Lot line to go on to Lot adjoining the zero Lot line as often as is reasonably necessary for purposes of maintenance, reconstruction, and repair of the exterior walls and roof of his Residential Dwelling and other Improvements. It is further provided that each Lot or parcel in the Subdivision shall be subject to an easement for minor (one foot or less) encroachments created by construction, overhangs, brick ledges, fences or other protrusions constructed by the Declarant or Lot Owner as long as it stands, and shall and does exist. In the event any Residential Dwelling in the Subdivision is partially or totally destroyed, and then rebuilt, the Owners affected agree that minor encroachments onto adjacent property due to construction, reconstruction or repair shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

In Blocks One (1), Two (2) and Three (3) no Residential Dwelling or other building shall be located nearer to the front Lot line or nearer to the side street line than the minimum building set back lines shown on the Plat and no garages, or any other building, shall be constructed, placed or erected closer than five (5) feet of the rear property line.

## **SECTION 2.6. WALLS AND FENCES.**

**2.6.1. FENCES ON LAKE LOTS AND GOLF COURSE LOTS.** Fencing on Lake Lots and Golf Course Lots may be installed along the side Lot lines and the rear property line, provided that, along the rear property line and along either side Lot line from the rear property line a distance of not less than twenty feet (20'), the fence shall be constructed of black wrought iron or other materials

similar in appearances approved by the ACC, shall be not less than four feet (4') in height, and shall have pickets four (4) inches on center interval spacing. All other fences on Lakes Lots and Golf Course Lots must comply with Section 2.6.2. All wrought iron or other approved fencing on Lake Lots and Golf Course Lots shall be consistent and comply with uniform specifications adopted by the ACC.

**2.6.2. OTHER FENCES.** No fence or wall shall be located nearer to the front property line of a Lot than the front of the Residential Dwelling. No fence or wall shall be located nearer to the side street adjacent to a corner lot than the side wall of the Residential Dwelling. No hedge or pergola that serves as a fence or wall shall be allowed to grow more than six feet (6') in height; provided that, all of the provisions in this Section 2.6 relating to the existence and location of a fence or wall shall be applicable to a hedge or pergola that serves as a fence or wall. In no event shall any fence or portion thereof be constructed of chain link or wire.

**2.6.3. MAINTENANCE OF FENCES.** Ownership of any wall or fence erected on a Lot shall pass with title to such Lot and it shall be the Lot Owner's responsibility to maintain such wall or fence.

**2.6.4. UNDERGROUND ELECTRIC SERVICE.** As provided in the Prior Restrictions and restated here, the Owner of such Lot shall at his own cost furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering or the customer's structure to the point of attachment of such cable (such point of attachment to be designated by the electric company's installed transformers or energized secondary junction boxes). The electric company furnishing service shall make the necessary electrical connections at said point of attachment and at the meter. In addition, the owner of each Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of the electric company furnishing service to the Residential Dwelling constructed on such Owner's Lot. For so long as underground service is maintained the electric service to each Lot shall be uniform and exclusively of the type known as single phase 120-240 volt, three (3)-wire, sixty (60) cycle alternating current.

## **SECTION 2.7. RESERVATIONS AND EASEMENTS.**

**2.7.1 DRAINAGE.** Except as shown on the drainage plan for the Subdivision, if any, no Owner of a Lot shall be permitted to construct improvements on such Lot or to grade such Lot or permit such Lot to remain in or be placed in such condition that rain water falling on such Lot drains to any other Lot. It is the intent of this provision to preserve natural drainage. An underground drainage system may be required for new construction by the ACC to assure proper drainage on the Lot.

**2.7.2. COMMON AREA.** The Common Area is reserved for the common use, benefit and enjoyment of the Owners of the Properties, unless otherwise restricted to the use of the Owners in the Subdivision by Rules and Regulations, subject to such reasonable Rules and Regulations governing the use thereof as may be promulgated by the Fund. An Owner's right to use the Common Area (as limited by any Rules and Regulations) is appurtenant to the title to a Lot. The Fund shall have the right to charge a reasonable fee for the use of any facility situated on any Common Area. Each Owner shall observe and comply with any reasonable Rules and Regulations promulgated and published by the Fund relating to the Common Area and Lakes and shall be deemed to acknowledge and agree that all such Rules and Regulations. All Common Area shall be maintained by the Fund.

**2.7.3. RESERVATIONS.** As stated in the Prior Restrictions, the following reservations and easements shall be considered a part of and be construed as being adopted in each and every contract, deed or other conveyance executed or to be executed in the conveyance of the Lots in the Subdivision. MacNaughton & Co., its successors and assigns, shall have the right to construct, erect and maintain over, along, upon and under the several streets, drives, lanes, roads, easements and reserve areas, as shown on the Plat, wires, poles for the purpose of constructing and maintaining a system of electric lights, power, telephone and telegraph lines and connections; and to construct, lay and maintain along, in and under any and all of said streets, lanes, drives, roads, easements and reserve areas all pipe, conduits, valves and other necessary and proper equipment for the construction of systems of drainage, sewage and water supply (retaining also the right to grant or deny to areas beyond said Subdivision connection privileges and on said drainage, sewage or water systems), gas, light and power, telegraph and telephone service and other utilities to the Subdivision and the Lot Owners therein, and for all other purposes incident to the development and use of said property as a community unit and subdivision. It is agreed and understood that the title conveyed to any Lot or parcel of land in the Subdivision by contract, deed or other conveyance shall not in any event be held or construed to include the title to the water, gas, sewer, electric lights, electric power or telegraph or telephone lines, poles or conduits or any other utility or appurtenances thereto constructed by MacNaughton & Co., or any public utility companies through, along or upon any portion of the hereinabove mentioned streets, drives, lanes, roads, easements and reserve areas, and the right to maintain, repair, sell or lease such lines, utilities, and appurtenances is hereby expressly reserved by MacNaughton & Co.

**2.7.4. OTHER.** As provided in the Prior Restrictions and restated here, there are dedicated and reserved permanent and unobstructed easements as shown on the Plat, across certain designated portions of various of the Lots therein upon, under and through which to construct and maintain water, telephone and electric light services and other public utilities, which said easements shall be a burden and charge against such Lots in the Subdivision, by whomsoever owned, and there is also dedicated and reserved and unobstructed

aerial easement for utilities five (5) feet wide and from a plane twenty (20) feet above the ground upward located adjacent to all easements shown on the above mentioned recorded plat. There is further reserved a permanent right of entry to the Fund and its representatives into all Lakes as shown on the Plat for maintenance purposes, which Lakes are the responsibility of the Fund to maintain, if any.

### **ARTICLE III** **Architectural Approval**

**SECTION 3.1. ACC.** The ACC shall be a committee consisting of at least three (3) members, all of whom shall be appointed by the Board. The names of the ACC shall periodically be published at such time and in such manner as determined by the Board ACC members must be members of the Fund. Members of the ACC appointed by the Board may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

**SECTION 3.2. APPROVAL OF IMPROVEMENTS REQUIRED.** In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Subdivision, to establish and preserve a harmonious design for the development and to protect and promote the value of the Subdivision, the Lots and residential dwellings and all improvements thereon, no improvement of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot by any Owner, that affects the exterior appearance of a Lot or the residential dwelling or other improvement on a Lot unless plans and specifications therefore have been submitted to and approved by the ACC in accordance with the terms and provisions of this Article. Without limiting the foregoing, new construction of any residential dwelling, accessory building, sidewalk, driveway, mailbox, deck, patio, swimming pool, greenhouse, playhouse, awning, wall, fence, garage, guest or servant's quarters, or any other outbuilding, shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any residential dwelling or other improvement, unless the plans and specifications for the same have been submitted to and approved by the ACC in accordance with the terms and provisions of this Article.

The ACC is hereby authorized and empowered to approve all Plans for new construction of a residential dwelling or other improvements on a Lot. The ACC is required to approve or deny submissions within thirty (30) calendar days of receipt. Prior to the commencement of new construction of a residential dwelling or other improvements on a Lot, the Owner thereof shall submit to the ACC Plans and related data for each proposed improvement, which shall include, as appropriate, the following:

- (i) A check in the amount of the applicable Submission Fee set by the ACC and approved by the Board, if any, made payable to the Fund.

(ii) Two (2) copies of a drawing indicating the location of all improvements, including, specifically, the residential dwelling and any accessory buildings, the location of all driveways, walkways, decks, terraces, patios and other Improvements and the relationship of the same to any setback requirements applicable to the residential dwelling or other Improvement.

(iii) Two (2) copies of a foundation plan, floor plans and exterior elevation drawing of the front, back, and sides of the residential dwelling or other improvement to be constructed on the Lot.

(iv) Two (2) copies of written specifications and, if requested by the ACC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the residential dwelling or other improvement on the Lot, including, without limitation, the type and color of all brick, stone, stucco, roofing and other materials to be utilized on the exterior of a residential dwelling or other improvement and the color of paint or stain to be used on all doors, shutters, trim work, eaves and dormers on the exterior of such residential dwelling or other improvement.

(v) A written statement of the estimated date of commencement, if the proposed Improvement is approved, and the estimated date of completion.

(vi) Such other Plans or other information or documentation as may be required by the ACC.

The ACC shall, in its sole discretion, determine whether the Plans and other data submitted by any Owner for approval are acceptable. One (1) copy of the Plans and related data so submitted to the ACC shall be retained in the records of the ACC and the other copy shall be returned to the Owner submitting the same marked "approved", "approved as noted" or "disapproved". The Board may establish and change from time to time, if deemed appropriate, a reasonable fee sufficient to cover the expense of reviewing Plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such Plans and to monitor and otherwise enforce the terms hereof (the "Submission Fee").

The ACC shall have the right to disapprove any Plans for new construction or changes to existing structures and improvements, which are inconsistent with the objectives and purposes of this Declaration, including purely aesthetic considerations; any failure to comply with any of the provisions of this Declaration or Architectural Guidelines; failure to provide requested information; objection to exterior design, appearance or materials; objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Subdivision; objection to the location of any proposed improvement; objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of the residential dwelling or other improvement; or any other matter which, in the sole judgment of the ACC, would

render the proposed residential dwelling or other improvement inharmonious with the general plan of development contemplated for the Subdivision. The ACC shall have the right to approve any submitted Plans with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the Plans for such Residential Dwelling or other Improvement. Any revisions, modifications or changes in any plans previously approved by the ACC must be approved by the ACC in the same manner specified above.

If construction of a new residential dwelling or other improvement has not substantially commenced (e.g., by clearing and grading, pouring of footing and otherwise commencing related construction work) within ninety (90) days of approval by the ACC of the plans for such residential dwelling or other improvement, then no construction may be commenced (or continued) on such Lot and the Owner of such Lot shall be required to resubmit all Plans for any residential dwelling or other improvement to be constructed on the Lot to the ACC for approval in the same manner specified above.

Plans denied by the ACC may be appealed to the Board within thirty (30) calendar days of the denial by the ACC. Such appeal must be sent to the Board by certified mail, which appeal details the decision of the ACC they are appealing and the basis for the appeal. In the event of an appeal, the decision of the ACC shall remain in effect during the pendency of the appeal. The Board must approve or deny the appeal within thirty (30) calendar days of the receipt of the appeal. The decision of the Board shall be conclusive and binding on all parties. The Board shall have the authority to adopt procedures for appeals of decisions of the ACC.

**SECTION 3.3. ADDRESS OF COMMITTEE.** The address of the ACC shall be at the principal office of the Fund.

**SECTION 3.4. ARCHITECTURAL GUIDELINES.** The ACC from time to time may promulgate, supplement or amend the Architectural Guidelines, which provide an outline of minimum acceptable standards for proposed improvements, provided, however, that such outline will serve as a minimum guideline only and the ACC may impose other requirements in connection with its review of any proposed improvements. If the recorded Architectural Guidelines impose requirements that are more stringent than the provisions of this Declaration, the provisions of the recorded Architectural Guidelines shall control.

**SECTION 3.5. FAILURE OF COMMITTEE TO ACT ON PLANS.** Any request for approval of a proposed Improvement on a Lot shall be deemed to be denied by the ACC unless approval is transmitted to the Owner by the ACC within thirty (30) days after the date of actual receipt by the ACC of the request at its office. If the ACC requests additional information or materials from an applicant in writing within the specified thirty (30) day period, the applicant's request shall also be deemed to be disapproved, whether so stated in the written communication or not, and a new thirty (30) day period for review shall not commence until the date of actual receipt by the ACC of the requested

information or materials. No approval shall ever operate to permit any Owner to construct or maintain any improvement on a Lot that violates any provision of this Declaration, the Architectural Guidelines, with the ACC at all times retaining the right to object to any improvement on a Lot that violates any provision of this Declaration, or the Architectural Guidelines, unless a variance has been granted by the ACC in accordance with Section 3.12 of this Declaration.

**SECTION 3.6. PROSECUTION OF WORK AFTER APPROVAL.** After approval of any proposed Improvement on a Lot, the proposed Improvement shall be prosecuted diligently and continuously and shall be completed within the timeframe approved by the ACC and in strict conformity with the description of the proposed Improvement in the Plans submitted to and approved by the ACC. No building materials shall be placed upon a Lot until the Owner is ready to commence construction. Owners shall keep the job site and all surrounding areas clean during the progress of construction. All construction trash, debris and rubbish on each Lot shall be properly disposed of at least weekly. In no event shall any used construction material be buried in a Lot or beneath a Residential Dwelling or other Improvement. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any street. All construction vehicles must be parked on the Lot or in areas designated by the ACC. Construction on a Lot is permitted only between the hours of 7:00 o'clock a.m. and 9:00 o'clock p.m., Monday through Saturday, unless special permission to proceed with construction at other times is given in writing by the ACC. No Improvement on a Lot shall be deemed completed until the exterior fascia and trim on the structure has been applied and finished and all construction materials and debris have been cleaned up and removed from the Lot and all rooms in the residential dwelling, other than attics, have been finished. Removal of materials and debris shall occur not later than thirty (30) days following completion of the exterior of the Residential Dwelling or other Improvement.

**SECTION 3.7. NOTICE OF COMPLETION.** Promptly upon completion of the improvement on a Lot, the applicant shall deliver a notice of completion ("Notice of Completion") to the ACC and, for all purposes hereunder, the date of receipt of such Notice of Completion by the ACC shall be deemed to be the date of completion of such improvement, provided that the improvement is, in fact, completed as of the date of receipt of the Notice of Completion.

**SECTION 3.8. INSPECTION OF WORK.** The ACC or its duly authorized representative shall have the right to inspect any improvement on a Lot before or after completion, provided that the right of inspection shall terminate sixty (60) days after the ACC shall have received a Notice of Completion from the applicant.

**SECTION 3.9. NOTICE OF NONCOMPLIANCE.** If, as a result of inspections or otherwise, the ACC finds that any improvement on a Lot has been constructed or undertaken without obtaining the approval of the ACC, or has been completed other than in strict conformity with the description and materials provided by the Owner to the ACC and approved the ACC, or has not been

completed within the required time period after the date of approval by the ACC, the ACC shall notify the Owner in writing by certified mail of the noncompliance ("Notice of Noncompliance"), which notice shall be given, in any event, within sixty (60) days after the ACC receives a Notice of Completion. The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance. If the Owner does not comply with the Notice of Noncompliance within the period specified by the ACC, the Fund may, acting through the Board, at its option but with no obligation to do so, remedy the noncompliance (including, if applicable, completion of the Improvement in question) or take legal action to force compliance; and, if the Board elects to take any action with respect to such violation, the Owner shall reimburse the Fund upon demand for all expenses incurred therewith. The permissive (but not mandatory) right of the Fund to remedy or remove any noncompliance (it being understood that no Owner may require the Board to take such action) shall be in addition to all other rights and remedies that the Fund may have at law, in equity, under this Declaration, or otherwise. Any expenses incurred by the Fund as a result of the noncompliance, plus fifteen percent (15 %) of such costs for overhead and supervision and interest thereon (from the date an invoice is submitted to Owner) at the rate of eighteen percent (18%) per annum, or the maximum, non-usurious rate, whichever is less, shall be charged to the Owner's assessment account and collected in the same manner as provided in Article V.

**SECTION 3.10. FAILURE OF COMMITTEE TO ACT AFTER NOTICE OF COMPLETION.** If, for any reason other than the Owner's act or neglect, the ACC fails to notify the Owner of any noncompliance within sixty (60) days after receipt by the ACC of a written Notice of Completion from the Owner, the Improvement on a Lot shall be deemed in compliance if the improvement on a Lot in fact was completed as of the date of Notice of Completion; provided, however, that no such deemed approval shall operate to permit any Owner to construct or maintain any improvement on a Lot that violates any provision of this Declaration or the Architectural Guidelines, the ACC at all times retaining the right to object to any improvement on a Lot that violates this Declaration or the Architectural Guidelines.

**SECTION 3.11. NO IMPLIED WAIVER OR ESTOPPEL.** No action or failure to act by the ACC or by the Board shall constitute a waiver or estoppel with respect to future action by the ACC or the Board. Specifically, the approval by the ACC of any improvement on a Lot shall not be deemed a waiver of any right or an estoppel against withholding approval or consent for any similar improvement on another Lot or any similar proposals, plans, specifications, or other materials submitted with respect to any other improvement on a Lot.

**SECTION 3.12. POWER TO GRANT VARIANCES.** The ACC may recommend to the Board that a variance be granted from compliance with any of the provisions of Article II of this Declaration (except for the provisions relating to single family residential construction and use), including restrictions upon placement of structures, the time for completion of construction of Improvements

on a Lot, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, environmental, or other relevant considerations may require. Such variances must be evidenced in writing and shall become effective when signed by the Board's designated representative. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not (a) operate to waive any of the provisions of this Declaration or the Architectural Guidelines for any purpose except as to the particular property and particular provision hereof covered by the variance, (b) affect the jurisdiction of the Board or the ACC other than with respect to the subject matter of the variance, or (c) affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned. Any such variance granted by the ACC must be filed of record in the Official Public Records of Real Property of Fort Bend County, Texas.

**SECTION 3.13. COMPENSATION OF ACC MEMBERS.** The members of the ACC shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder as the Board from time to time may authorize or approve, but they shall not otherwise be compensated by the Fund.

**SECTION 3.14. NONLIABILITY FOR ACC ACTION.** None of the members of the ACC, the Fund, or any member of the Board shall be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the ACC, except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the ACC shall not guarantee or warrant the workmanship of the improvement, including its design, construction, safety, whether structural or otherwise, conformance with building codes, or other governmental laws or regulations or whether the improvement is suitable or fit for its intended purpose. Furthermore, none of the members of the ACC, any member of the Board shall be personally liable for debts contracted for or otherwise incurred by the Fund or for any torts committed by or on behalf of the Fund, or for a tort of another of such individuals, whether such other individuals were acting on behalf of the Fund, the ACC, the Board, or otherwise. Finally, neither the Fund, the Board, the ACC, or their officers, agents, members, or employees shall be liable for any incidental or consequential damages for failure to inspect any improvement.

**SECTION 3.15. CONSTRUCTION PERIOD EXCEPTION.** During the course of actual construction of any permitted Improvement on a Lot, and provided construction is proceeding with due diligence, the ACC may temporarily suspend the provisions of Article II contained in this Declaration as to the Lot upon which the construction is taking place to the extent necessary to permit such construction; provided, however, that during the course of any such construction, nothing shall be done that will result in a violation of any of the provisions of this Declaration upon completion of construction or that will constitute a nuisance or

unreasonable interference with the use and enjoyment of other property within the Properties.

**SECTION 3.16. SUBSURFACE CONDITIONS.** The approval of Plans by the ACC for new construction of a residential dwelling or other improvement on a Lot shall not be construed in any respect as a representation or warranty by the ACC to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot are suitable for the construction of the improvement contemplated by such Plans. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot for the construction of any contemplated Improvement thereon.

#### **ARTICLE IV** **Management and Operation of the Fund**

**SECTION 4.1. NON-PROFIT CORPORATION.** The Quail Valley Fund, Inc., a Texas non-profit corporation, has been organized, and it shall be governed by the Articles of Incorporation of said Fund; and all duties, obligations, benefits, liens, and rights hereunder in favor of the Fund shall vest in said corporation.

**SECTION 4.2. MEMBERSHIP AND VOTING RIGHTS.** Every Owner of a Lot subject to a maintenance charge assessment by the Fund shall be a member of the Fund as provided for in the Fund's By-Laws and elsewhere herein. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

Members shall be all Owners and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote of such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) be cast with respect to any Lot.

Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation.

**SECTION 4.3. BYLAWS.** The Fund may make whatever rules or bylaws it may choose to govern the organization; provided, however, that same are not in conflict with the terms and provisions hereof.

**SECTION 4.4. INSPECTION OF RECORDS.** The members of the Fund shall have the right to inspect the books and records of the Fund in accordance with the Texas Non-Profit Corporation Act. Copies of the documents and records of the Fund shall be provided to Owners upon receipt of payment in

advance of fees that will be charged, also in accordance with the Texas Non-Profit Corporation Act.

**SECTION 4.5. TRANSFER OF MEMBERSHIP FEES.** Prior to changing the name of the Owner of any Lot on the membership rolls of the Association, the Association or its managing agent (if authorized by the Board of Directors) may charge a transfer fee or processing fee when ownership to any Lot changes or the Mortgage on the Lot is refinanced.

## **ARTICLE V**

### **Maintenance Expense Charge and Maintenance Fund**

**SECTION 5.1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.** Each Lot in the Subdivision is hereby subjected to an annual maintenance charge and other assessments and charges set forth below ("Assessments"), for each Lot owned within the Subdivision, covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Fund such Assessments. The Assessments and other charges set forth in this Declaration, together with late fees (penalty), interest costs, court costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing vendor's lien upon the property against which each such assessment is made, as originally provided in the Prior Restrictions and restated in this Declaration.

The purchaser of a Lot has the sole responsibility for the notification of the Fund and/or the Fund's property manager, at the address listed in the management certificate filed under Section 209.004 TEX. PROP. CODE, before the sale of any Lot is closed in order to 1) provide change of ownership data; 2) arrange for payment of account transfer costs; and 3) determine the status of the assessment account of the Lot being purchased. Nothing shall relieve the new Owner of a Lot from liability for the payment of transfer fees and any past due assessments, late charges (penalty), interest costs, court costs, or attorney's fees owed on the assessment account of the Lot on the date title is acquired from the prior Owner.

**SECTION 5.2. PURPOSE OF ASSESSMENT.** The Assessments levied by the Fund shall be deposited in the "Maintenance Fund" and used for the benefit of the Properties. The funds of the Fund shall be expended for costs and maintenance in areas which include, but are not limited to the following: purchasing and maintaining Common Area, parks, parkways, trash collection, esplanades, landscaping, neighborhood message boards and special lighting; payment of legal and all other expenses incurred in connection with the collection and accounting of the Assessments levied by the Fund; payment of legal and all other expenses incurred in the enforcement of all covenants and restrictions for the Properties; contracting for property management, landscaping, independent auditor, and other services, and doing any other thing necessary or desirable which, in the opinion of the Board serves to keep the Properties neat and in good

order, or which the Board considers of general benefit to the owners or occupants of the Properties.

It is understood that the judgment of the Board in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

The Board is authorized to borrow money, without personal liability on the part of the members of the Board, for the purpose of the "Maintenance fund", giving as security funds then or in the future paid into the "Maintenance fund."

**SECTION 5.3. BASIS AND MAXIMUM LEVEL OF ANNUAL ASSESSMENTS.** A maintenance charge shall be payable to the Fund annually in advance of January 1 of each year. The annual maintenance charge in effect as of January 1, 2007 is three hundred seventy four dollars and 00/100 (\$374.00) per Lot. The Board of the Fund, may, without a vote of the membership, raise the annual maintenance charge at any regular meeting of the Board by an amount no more than six percent (6%) above the annual assessment for the previous year. The annual maintenance charge may be increased more than six percent (6%) above the annual assessment for the previous year if the increase is approved by a vote of a majority of the Members who are voting in person or by proxy at an annual or special meeting duly called for that purpose. This increase shall become effective on the 1<sup>st</sup> of January of the following calendar year.

**SECTION 5.4. DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENT.** The Board shall fix the Assessment to be levied against each Lot in the next calendar year. Written notice of the figure at which the Board has set for the Assessment shall be sent to every Owner whose Lot is subject to the payment thereof.

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

**SECTION 5.5. EFFECT OF NONPAYMENT OF ASSESSMENTS.** The outstanding balance of any Assessments not paid within thirty (30) days after the 1st of January each year shall bear interest at the rate of eighteen percent (18%) per annum, or the maximum, non-usurious rate, and such interest charge shall be added to the assessment account of any Owner whose account is not fully paid on the first day of each month.

The Fund may bring an action at law against the Owner personally obligated to pay the Assessments, late charges (penalty) and interest, or foreclose the lien against the Lot at any time after the Owner has failed to pay the Assessment and all accumulated penalties and interest in full. No Owner may waive or otherwise escape liability for the Assessments, late charges or interest provided herein by non-use of the facilities or services provided by the Fund or by the abandonment of his Lot.

**SECTION 5.6. SUBORDINATION OF LIEN TO MORTGAGE LIENHOLDERS.** The lien of the Assessments provided for herein shall be subordinate to the lien of any Mortgage(s) granted or created by the Owner of any Lot to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot. Sale or transfer of any Lot shall not effect the Assessment lien; however, the sale or transfer of any Lot pursuant to a foreclosure under such purchase-money or improvement Mortgages shall extinguish the lien of such Assessments as to payment thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

**ARTICLE VI**  
**Indemnity; Security**

**SECTION 6.1. SECURITY.** The Fund, its trustees, officers, managers, employees, agents, and attorneys ("Fund and Related Parties") shall not in any way be considered an insurer or guarantor of security within the properties. The Fund and related parties shall not be liable for any loss or damage by reason of failure to provide adequate security or the ineffectiveness of security measures undertaken.

**ARTICLE VII**  
**Fire or Casualty: Rebuilding**

**SECTION 7.1. REBUILDING.** In the event of a fire or other casualty, other than a city wide catastrophe such as an hurricane, tornado or similar event, causing damage or destruction to the Residential Dwelling or other Improvement on a Lot, the Owner of such damaged or destroyed Residential Dwelling or Improvement shall, within one hundred eighty (180) days after such fire or casualty, contract to repair or reconstruct the damaged portion of Residential Dwelling or Improvement and shall cause the Residential Dwelling or Improvement to be fully repaired or reconstructed in accordance with new plans presented to and approved by the ACC, and shall promptly commence repairing or reconstructing such Residential Dwelling or Improvement, to the end that the Residential Dwelling or Improvement shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. Alternatively, such damaged or destroyed Residential Dwelling or Improvement shall be razed and the Lot restored as nearly as possible to its original condition within one hundred eighty (180) days of its damage or destruction. In the event that the repair and reconstruction of the Residential Dwelling or Improvement has not commenced within the specified one hundred eighty (180) days, the Fund and/or any contractor engaged by the Fund, shall upon thirty (30) days written notice to the Owner at the Owner's last known mailing address according to the records of the Fund, have the authority but not the obligation to enter upon the Lot, raze the Residential Dwelling or Improvement and restore the Lot as nearly as possible to its original condition. The one hundred eighty (180) days referenced above can be extended by the Board based upon the circumstances

in each situation. Any costs incurred by the Fund to raze the Residential Dwelling or Improvement and to restore the Lot to its original condition plus fifteen percent (15%) of such costs for overhead and supervision, shall be charged to the Owner's assessment account, secured by the lien created in Article V of this Declaration and collected in the manner provided in Article V of this Declaration. Interest thereon at the rate of eighteen percent (18%) per annum or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty-first (31<sup>st</sup>) day after a written invoice is delivered to the Owner.

## **ARTICLE VIII**

### **Amendment, Duration, Annexation and Merger**

**SECTION 8.1. AMENDMENT.** The provisions of this Declaration may be amended at any time by an instrument in writing signed by the Secretary of the Fund certifying that (i) the Board has reviewed and approves of the amendment (which is a condition precedent), and (ii) the Owners representing not less than fifty percent (50%) plus one (1) of the Lots in the Subdivision have approved such amendment, in writing, setting forth the amendments, and duly recorded in the Official Public Records of Real Property of Fort Bend County, Texas. In the event that there are multiple Owners of a Lot, the written approval of an amendment to this Declaration may be reflected by the signature of a single Co-Owner. Any legal challenge to the validity of an amendment to this Declaration must be initiated by filing a suit not later than one (1) year after the date the amendment document is recorded in the Official Public Records of Real Property of Fort Bend County, Texas.

**SECTION 8.2. DURATION.** The provisions of this Declaration shall remain in full force and effect until January 1, 2040, and shall be extended automatically for successive ten (10) year periods; provided however, that the provisions of this Declaration may be terminated on January 1, 2040, or on the commencement of any successive ten (10) year period by filing for record in the Official Public Records of Real Property of Fort Bend County, Texas, an instrument in writing signed by Owners representing not less than seventy-five percent (75%) of the Lots in the Subdivision.

**SECTION 8.3. ANNEXATION.** Additional land may be annexed and subjected to the provisions of this Declaration with the consent of the Board. The annexation of additional land shall be effective upon filing of record an annexation instrument in the Official Public Records of Real Property of Fort Bend County, Texas.

**SECTION 8.4. MERGER.** Upon a merger or consolidation of the Fund with another Association, the Fund's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights and obligations of the Fund as a surviving corporation pursuant to a merger. The surviving or consolidated Association shall administer the

covenants and restrictions applicable to the properties of the merging or consolidating associations as one (1) entity. No such merger or consolidation shall effect any revocation, change or addition to the provisions of this Declaration.

## **ARTICLE IX** **Golf Course Lots**

**SECTION 9.1. DISCLAIMER.** Each Owner who acquires a Golf Course Lot acknowledges, accepts and assumes the risk of the special benefits and burdens associated with the Golf Course and agrees, by virtue of the acceptance of a deed to a Golf Course Lot and other Lots in the vicinity of the Golf Course, to release any and all claims such Owner, or any guest, invitee, or relative of such Owner, may have against the Fund as a result of any of the common risks associated with owning property adjacent to the Golf Course.

**SECTION 9.2. ERRANT GOLF BALLS.** Owners of Golf Course Lots and Lots in the vicinity of the Golf Course acknowledge the inherent risk of errant golf balls and assume and accept such risk. Owners of Golf Course Lots and Lots in the vicinity of the Golf Course acknowledge and accept the risk that golfers may attempt to retrieve errant golf balls from a Golf Course Lot. Each Owner agrees to release and waive any claims Owner may have against the Fund as a result of errant golf balls. Under no circumstances shall the Fund or the owner of the Golf Course be held liable for any damage or injury resulting from errant golf balls or the retrieval of golf balls by golfers. The Fund and the owner of the Golf Course shall not be liable for any damage caused by anyone using the Golf Course, with or without permission, including, without limitation, damage to fences, windows, vehicles, Residential Dwellings or other Improvements, landscaping or any other property on or within any Golf Course Lot. No Owner of a Golf Course Lot or Lots in the vicinity of the Golf Course shall erect any barrier on the Golf Course Lot for the purpose of preventing errant golf balls from going onto the Golf Course Lot.

**SECTION 9.3. TREATED WASTEWATER.** Each Owner of a Golf Course Lot acknowledges that the owner of the Golf Course may use reclaimed and treated wastewater to irrigate the Golf Course.

**SECTION 9.4. PESTICIDES AND FERTILIZERS.** Each Owner of a Golf Course Lot acknowledges that pesticides, fertilizers and other chemicals may be utilized in connection with the maintenance and operation of the Golf Course.

**SECTION 9.5. OVERSPRAY.** Each Owner of a Golf Course Lot acknowledges that such Owner may experience "overspray" from the Golf Course irrigation system.

**SECTION 9.6. NOISE AND LIGHT.** Each Owner of a Golf Course Lot acknowledges that such Owner may be exposed to lights, noise or activities

resulting from the use of the clubhouse at the Golf Course for dining and entertainment and the use of the Golf Course parking lot(s).

**SECTION 9.7. ACCESS.** Access to the Golf Course is controlled by the owner of the Golf Course.

**SECTION 9.8. MAINTENANCE.** Golf courses require daily maintenance, including mowing, irrigation and grooming, during early morning and late evening hours, including, without limitation, the use of tractors, blowers, pumps, compressors and utility vehicles. Each Owner of a Golf Course Lot and Lots in the vicinity of the Golf Course acknowledges that such Owner may be exposed to the noise and other effects of such maintenance.

## **ARTICLE X** **Miscellaneous**

**SECTION 10.1. SEVERABILITY.** In the event of the invalidity or partial invalidity or partial unenforceability of any provision in this Declaration, the remainder of the Declaration shall remain in full force and effect.

**SECTION 10.2. NUMBER AND GENDER.** Pronouns, whenever used herein, and of whatever gender, shall include natural persons and corporations, entities and associations of every kind and character, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

**SECTION 10.3. ARTICLES AND SECTIONS.** Article and section headings in this Declaration are for convenience of reference and shall not affect the construction or interpretation of this Declaration. Unless the context otherwise requires references herein to articles and sections are to articles and sections of this Declaration.

**SECTION 10.4. DELAY IN ENFORCEMENT.** No delay in enforcing the provisions of this Declaration with respect to any breach or violation thereof shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time.

**SECTION 10.5. LIMITATION OF LIABILITY.** Notwithstanding anything provided herein to the contrary, neither the ACC, the Fund, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed, or approved in accordance with the provisions of Article III above, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by an Owner for approval pursuant to the provisions of Article III, (d) the construction or performance of any work related to such plans,

drawings and specifications, (e) bodily injuries (including death) to any Owner, occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or occupant, or other damage to any Residential Dwelling, Improvements or the personal property of any Owner, occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or occupant, which may be caused by, or arise as result of, any defect, structural or otherwise, in any Residential Dwelling or Improvements or the plans and specifications thereof or any past, present or future soil and/or subsurface conditions, known or unknown and (f) any other loss, claim, damage, liability or expense, including court costs and attorney's fees suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, Residential Dwelling, or any other Improvements situated thereon.

**SECTION 10.6. ENFORCEABILITY.** The provisions of this Declaration shall run with the Lots and shall be binding upon and inure to the benefit of and be enforceable by the Fund, each Owner and occupant of a Lot in the Subdivision, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. If notice and an opportunity to be heard are given, the Fund shall be entitled to collect reimbursement of actual attorney's fees and other reasonable costs incurred by it relating to violations of the provisions of this Declaration. Such fines, fees and costs may be added to the Owner's assessment account and collected in the manner provided in Article V of this Declaration.

**SECTION 10.7. REMEDIES.** In the event any one or more persons, firms, corporations or other entities shall violate or attempt to violate any of the provisions of this Declaration, the Fund, each Owner or occupant of a Lot within the Subdivision, or any portion thereof, may institute and prosecute any proceeding at law or in equity to abate, preempt or enjoin any such violation or attempted violation or to recover monetary damages caused by such violation or attempted violation.

IN WITNESS WHEREOF, the President of the Association on behalf of its Board of Directors executes this instrument acknowledging that the Consents attached hereto and incorporated herein as Exhibit "A" represent the approval of this amendment to the Prior Restrictions by at least a majority of the owners in the Subdivision to be effective upon the date of filing in the Official Public Records of Real Property of Fort Bend County, Texas.

**QUAIL VALLEY FUND, INC.**

ATTEST:

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: President

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared \_\_\_\_\_, President of Quail Valley Fund, Inc., known to 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 capacities stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_day of \_\_\_\_\_, 2007.

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

135307