

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIVE COVENANTS OF  
**WESTFIELD DEVELOPMENT, PHASE II**  
a subdivision in Temple, Bell County, Texas

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

KIELLA DEVELOPMENT, INC. ("Declarant"), is the owner of that certain tract of land situated in Bell County, Texas, more particularly described by metes and bounds in an exhibit entitled "Legal Description" attached to this Declaration, and designated as **WESTFIELD DEVELOPMENT, PHASE II**, a subdivision in Temple, Bell County, Texas (sometimes referred to as the "Subdivision").

Declarant does make and impose the following covenants, conditions and restrictive covenants upon the Subdivision, according to the above referenced plat, which will be covenants running with the land, for the purposes set forth as follows:

**PREAMBLE AND DECLARATION**

Declarant has created a subdivision with designated "Lots" (as defined below) for the benefit of the present and future owners of the Lots within the Subdivision, and desires to create and carry out a uniform plan for the improvement, development and sale of the Lots.

Declarant desires to ensure the preservation of the values and amenities of the Subdivision and the maintenance of the "Common Areas" (as defined below), and to this end desires to further subject the Subdivision to the assessments, charges, fines and late fees (sometimes collectively referred to as "Charges"), conditions, covenants, easements, reservations and restrictions, and liens set forth below, each and all of which is and are for the benefit of the Subdivision and the owners thereof.

Declarant has deemed it desirable for the enforcement of the "Declaration" (as defined below) to create an "Association" (as defined below) to which will be delegated and assigned the power of administering and maintaining the Common Area in the Subdivision and of administering enforcing the Charges, conditions, covenants, easements, reservations and restrictions, and liens, including levying, collecting and disbursing the Charges.

There has been or will be incorporated, one or more non-profit corporations created under the law of the State of Texas, including the first being the "**TEMPLE WESTFIELD PROPERTY OWNERS' ASSOCIATION, INC.**", whose directors will establish the By-Laws by which the Association will be governed through its Board of Directors, for the purpose of exercising the functions mentioned in this Declaration. No more than one such non-profit corporation will be in existence at any one time.

Declarant declares that additional land within the "Properties" (as defined below) may be annexed into the Association in stages, as provided below and in accordance with Declarant's scheme of Properties. The annexed land will not be dependent upon future stages of the development, but will be subject to this Declaration.

**ARTICLE I  
PURPOSE**

The Subdivision is encumbered by this Declaration of Covenants, Conditions and Restrictions for the following reasons:

- a) to ensure the best and highest use and most appropriate development of the property;
- b) to protect lot owners against improper use of surrounding lots;
- c) to preserve so far as practicable the natural beauty of the property;
- d) to guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials;
- e) to encourage and secure the erection of attractive improvements on each lot with appropriate locations;
- f) to secure and maintain proper setbacks from streets and adequate free space; and
- g) in general, to provide for development of the highest quality to enhance the value of investment made by Owners of Lots.

**ARTICLE II  
DEFINITIONS**

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

- (1) "ARC" and "Architectural Review Committee" means the Architectural Review Committee.
- (2) "Association" means **TEMPLE WESTFIELD PROPERTY OWNERS' ASSOCIATION, INC.**, a Texas non-profit corporation, its successors and assigns as provided for herein, which has the power, duty and responsibility of maintaining and administering the Common Area; and administering and enforcing the restrictive covenants contained in this Declaration and any Amended or Supplemental Declaration.

The Association is a "homeowners' association" as that term is defined in Texas Property Code §202.001(2).

- (3) "Board of Directors" and "Board" means the Board of Directors of **TEMPLE WESTFIELD PROPERTY OWNERS' ASSOCIATION, INC.**, a Texas non-profit corporation. The election and procedures of which shall be as set forth in the Articles of Incorporation and By-Laws of the Association. The Board of Directors shall be the elected body having its normal meaning under the Texas non-profit corporate law.

- (4) "Builder Guidelines" means a publication of the ARC that sets forth general guidelines as to various standards, including but not limited to construction types, aesthetics, and exterior harmony of any and all improvements placed upon or constructed on any Lot, which may be amended by the ARC without notice to the Owners. If the Subdivision Plat designates Commercial Lots and/or Multi-Family in addition to

Residential Lots, then there may be specific Builder Guidelines that relate to the Commercial Lots, specific Builder Guidelines that relate to the Multi-Family Lots and specific Builder Guidelines that relate to the Residential Lots.

(5) "Builder Member" means such builders approved by Declarant for construction within the Subdivision and who own one or more Lots for construction of a single family residential dwelling or Living Unit and resale to others.

(6) "Commercial Lot" means any lot designated as commercial in the Subdivision.

(7) "Commercial Unit" means a commercial structure containing office or retail space located on a Commercial Lot.

(8) "Common Area" means any easements or any real and personal property leased, owned, or maintained by the Association for the common use and benefit of the Members of the Association. Common Area may also include any entrance monuments, security gates, perimeter walls, drainage facilities and detention ponds, esplanade and right-of-way landscaping, any improvement areas lying within indicated public easements or rights-of-way as deemed appropriate by the Board of Directors of the Association for the preservation, protection and enhancement of the property values and the general health, safety or welfare of the Owners, safety lanes, marinas, and other areas as shown on the Subdivision Plat.

(9) "Customer" means an individual or entity that buys or deals with an established business owned or leased by Operator of a Commercial Unit.

(10) "Declarant" means **KIELLA DEVELOPMENT, INC.**, its successors or assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign. No person or entity purchasing one or more Lots from the Declarant in the ordinary course of business shall be considered a "Declarant."

(11) "Declaration" means this Declaration of Covenants, Conditions and Restrictions for **WESTFIELD DEVELOPMENT, PHASE II** and any amendments and supplements hereto made in accordance with the terms hereof. The term "Declaration" will also include Restrictive Covenants, Rules and Regulations, Builder Guidelines and By-Laws of the Association, if applicable.

(12) "Improved Lot" means a Lot upon which a Commercial Unit, Living Unit, or Multi-Family Unit has been constructed and such Commercial Unit, Living Unit, or Multi-Family Unit is occupied by the Owner or its tenants. The term "Improved Lot" will also include model homes constructed by Declarant or a Builder Member.

(13) "Living Unit" means a single family residence and its garage situated on a Residential Lot, except where the Residential Lot is designated specifically as a Multi-Family Lot. On a Multi-Family Lot, the "Living Unit" means a structure containing separate living facilities for two (2) or more Nuclear Families, (i.e. duplexes, fourplexes, and apartments.)

(14) "Lot" means any of the plots of land as shown on the Subdivision Plat.

(15) "Member" mean all those Owners who are members of the Association as provided herein.

- (16) "Multi-Family Unit" means a multi-family structure and parking situated on a Multi-Family Lot.
- (17) "Multi-Family Lot" means a Residential Lot specifically designated as multi-family on the Subdivision Plat.
- (18) "Nuclear Family" means a group related by blood, adoption, or marriage, or a number of unrelated roommates equal to the number of bedrooms in a Living Unit times 2.
- (19) "Operator" means each Owner or Lessee of a Commercial Unit. Lessee is a bona fide lessee who has an enforceable lease agreement with an Owner of a Commercial Unit.
- (20) "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot, within the Properties, including contract sellers.
- (21) "Properties" means the properties collectively known as **WESTFIELD DEVELOPMENT** and all additions to the Subdivision, as are subject to this Declaration or any amendments or supplemental declarations thereto.
- (22) "Resident" means each Owner or occupant of a Living Unit or Multi-Family Unit, or any individual who is otherwise lawfully domiciled in a Living Unit. Occupant is a bona fide lessee who has an enforceable lease agreement with an owner and who resides in a Living Unit, their guests and invitees.
- (23) "Residential Lot" means any Lot designated as residential on a Subdivision Plat or any Lot with no designation. Residential Lot includes usage for both single family residences and multi-family structures as set out on the Subdivision Plat.
- (24) "Restrictive Covenants" means the restrictive covenants contained in the Declaration or attached to the Declaration as an exhibit, or the restrictive covenants set forth in instruments filed prior to or subsequent to the filing of this Declaration, together with all amendments of the foregoing. If the Subdivision Plat designates Commercial Lots and Residential Lots, then there may be specific Restrictive Covenants that relate to Commercial Lots and Residential Lots specific and separate from each.
- (25) "Rules and Regulations" means the rules and regulations promulgated by the Board of the Association from time to time and which may be filed in the Real Property Records of Bell County, Texas.
- (26) "Subdivision" means the Subdivision as defined above.
- (27) "Subdivision Plat" collectively means the map or plat of the Subdivision, filed of record in - Cabinet \_\_\_\_\_, Slide \_\_\_\_\_, of the Plat Records of Bell County, Texas; and any amendment, replat, or modification to the Subdivision Plat, and any master plat or plan, as may be amended or modified from time to time, for additional properties that may be added from time to time as provided by this Declaration. A copy of the master plat or plan may be attached to this Declaration as an exhibit entitled "Master Plat or Plan".
- (28) "Unimproved Lot" means a Lot upon which no improvements have been constructed.

**ARTICLE III  
PROPERTY RIGHTS**

Every Owner, guest, invitee, customer and tenant will have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a) the right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed or situated upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities;
- b) the right of the Association to suspend an Owner's voting rights and the right to use any facility for any period during which any assessment of the Association against that Owner's Lot remains unpaid, and for infractions by an Owner of the Restrictive Covenants contained in this Declaration and/or the Association's Rules and Regulations for the duration of the infraction;
- c) the right of the Association to grant easements in and to the Common Areas to any public agency, authority or utility for such purposes as benefits the Properties or portions thereof and Owners or Lots contained therein;
- d) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided a majority of each Class of Members present or represented by proxy at a meeting called for such purpose shall approve; provided however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or Owner, or the holder of any mortgage irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Subdivision;
- e) the right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer will be effective unless an instrument agreeing to such dedication or transfer has been approved by a majority of the votes which those of the Class A members of the Association which are present or represented by proxy are entitled to cast at a meeting duly called for such purpose, and by the Class B member so long as the membership shall exist;
- f) the right of the Association to convey small portions of the Common Area to adjacent Owners when, in the sole opinion of the Board, the portion of the Common Area to be conveyed is so small in size, amount and value that it will have no material consequence to or impact upon the Association or the Subdivision or negatively affect the overall usage of the Common Area by the Owners as a result of such conveyance. In such an event, the Board may authorize such conveyance without the joinder of any other Owner; and
- g) the right of the Association to prescribe Rules and Regulations as they may be expanded, amended or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of the Owner's Lot may be affected by this provision and that the Rules and Regulations may change from time to time. The Board shall

have the authority to enforce the Rules and Regulations by all appropriate means, including but not limited to the imposition of fines, if notice and an opportunity to be heard are given, and a member found to have violated the Rules and Regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees.

#### **ARTICLE IV ARCHITECTURAL REVIEW**

In order to protect the overall integrity of the development of the Subdivision as well as the value of improvements of all Owners, a committee of representatives designated as the Architectural Review Committee is hereby established to carry out all duties as noted herein. The ARC will have full authority to approve and disapprove; change, modify or waive; and ultimately control all construction, development and improvement activities of any kind (including, without limitation, structures, buildings, building materials, and the placement thereof) within the Subdivision. The ARC will insure that all such activities are constructed in accordance with good workmanship-like manners and standard industry trade practices. The ARC will further require that all improvements are architecturally, aesthetically and ecologically designed to be compatible with Declarant's conceptual plan for the overall Subdivision and/or is decided by the ARC.

The ARC may prescribe Builder Guidelines as they may be expanded, amended or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of the Owner's Lot may be affected by this provision and that the Builder Guidelines may change from time to time. The ARC has the authority to enforce the Builder Guidelines by all appropriate means, including but not limited to the imposition of fines, subject to the review of the Board, if notice and an opportunity to be heard are given, and a Member found to have violated the Builder Guidelines will be liable to the Association for all damages and costs, including reasonable attorney's fees. The Board will have the authority to enforce the Builder Guidelines in accordance with this provision in the event the ARC fails to enforce the Builder Guidelines.

No building, structure, fence, residence, house, garage, accessory building, outbuilding or construction of any kind will be erected, placed, constructed, maintained, modified, redecorated or altered, until a complete set of plans and specifications shall have been formally submitted to the ARC with a written request for approval and the ARC's written approval received. Plans and specifications which are submitted shall contain and include, but not necessarily be limited to the following information: floor plans, including finished floor and ground elevations; exterior elevations for any building, fence or other structure; a plat or site plan showing easements and the location of any building, fence or other structure (including location of light poles, if applicable); exterior lighting and location; samples of exterior finish materials and color samples; and any other plans, specifications or information deemed pertinent by the Architectural Review Committee and/or Declarant.

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

respond. If the ARC again fails to respond within ten (10) days of receipt of such notice, approval will be deemed granted.

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

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

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

Regardless of any language to the contrary, Declarant and any Builder Member approved by Declarant will not be required to submit plans, specifications or other information to the ARC for approval or obtain the ARC's written approval prior to construction of any improvements on a Lot.

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

The number and initial ARC members will be decided by Declarant. So long as there is a Class B membership, in the event of the death or resignation of any member of the ARC, Declarant shall have full power and authority to appoint a successor committee member or members, chosen in its sole discretion, with like authority. Upon the expiration of the Class B membership, the Board of Directors shall appoint the members of the ARC, which shall consist of at least three (3) members.

#### **ARTICLE V FILING OF MANAGEMENT CERTIFICATE**

It is the intent of the Association to comply with all provisions of the Texas Property Code, and specifically Section 209, including but not limited to the filing of a management certificate in the Real Property Records of Bell County, Texas.

#### **ARTICLE VI RESTRICTIVE COVENANTS**

(1) Restrictive Covenants. The Restrictive Covenants are set out in an exhibit entitled "Restrictive Covenants" attached to this Declaration, or may be a separate instrument filed prior to or subsequent to the filing of this Declaration, together with all amendments of the foregoing.

(2) Character of Lots. Lots within the Subdivision designated as Residential Lots refers, not only to the architectural design of the Living Unit, but to the permitted number of inhabitants, which will be limited to a Nuclear Family per Living Unit. Multi-Family Units will be limited to Multi-Family Lots, if any, designate on the Subdivision Plat, and no Multi-Family unit may be constructed on any Residential Lot not designated for use as multi-family. It is not the intent of the Declarant to exclude from a Living Unit any individual who is authorized to so remain by any state or federal law. If it is found that his paragraph, or any other provision contained in this Declaration is in violation of any law, then this Section will be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

(3) Business or Commercial Purpose. No Multi-Family Lot or Residential Lot may be used for business or commercial purposes. This provision will not prohibit an Owner's conduct of business activities that are merely incidental to the Owner's residential use within a Living Unit or Multi-Family Unit so long as:

- a) the existence or operation of the business activity is not apparent, detectable or visible by sight, sound, or smell from outside the Living Unit or Multi-Family Unit;
- b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property;
- c) the business activity does not involve visitation of the Living Unit or Multi-Family Unit by clients, customers, suppliers or other business invitees or door-to-door solicitation of the Owners; and
- d) the business activity is consistent with the residential character of the Subdivision and of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners, as may be determined in the sole discretion of the Board.

The terms "business" and "trade" as used in this paragraph 2 of Article VI will be construed to have their ordinary, generally accepted meanings and will include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the manufacture or provision of goods and/or services for or to other persons other than the provider's family, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does not generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of the entire Living Unit or Multi-Family Unit will not be considered a trade or business within the meaning of this paragraph 3 of Article VI. This paragraph 3 of Article VI does not apply to any activity conducted by the Declarant, or by a Builder Member, with respect to its development and sale of its Lots.

(4) Animals and Pets. No animals, livestock, poultry, or Exotic or Dangerous Animals (as defined below) of any type may be raised, bred or kept on any Lot within the Subdivision, except for cats, dogs, or other generally recognized household pets (collectively "Pets"). And "Exotic or Dangerous Animal" is an animal that may pose a safety or health threat to the Owners of the Subdivision, their guests, invitees, Customers, or tenants, and includes:

- a) dog breeds of pit bull, rotweiler and Doberman pincher, regardless of whether the animal is purebred, a mixed breed or registered with the AKC or similar registration organizations;
- b) poisonous insects, amphibians, or reptiles;
- c) boa constrictors and other constrictor reptiles;



- d) swine
- e) animals considered “feral” or wild by nature except guinea pigs, hamsters and gerbils; and
- f) alligators

Additional breeds of animals may be added to the definition of Exotic or Dangerous Animals from time to time, as determined necessary by the Board, in the Board’s sole discretion, and the Rules and Regulations will be amended to include such breed of animals.

No more than four (4) Pets (in any combination, but in no event will the combination include more than 2 dogs and 2 cats) may be kept on a Residential Lot designated for single family residences. No more than one (1) Pet may be kept per living facility of a Multi-Family Lot.

No Pet may be bred, kept or maintained for any commercial purpose on a Multi-Family or Residential Lot. However, this provision will not prohibit an Owner of a Commercial Lot from providing animal-related services or using the Commercial Lot for such commercial activity so long as:

- a) the activity conducted on the Commercial Lot is the primary business of the Owner or its tenant, such as a grooming service, veterinary office or pet store;
- b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property;
- c) the business activity is consistent with the neighborhood service character of the Commercial Lots of the Subdivision and of the Properties; and
- d) the business activity does not constitute a nuisance, or a hazardous or offensive use, or threaten the security of other Owners, as may be determined in the sole discretion of the Board.

All Pets must be kept in strict accordance with all local and state laws and ordinances (including leash laws), and in accordance with all rules established by the Association. All Pets must be vaccinated in accordance with local custom and laws. Each Pet should wear a tag provided by a licensed veterinary to evidence the up-to-date rabies vaccination. All Pets must be kept indoors, in a fenced area (fenced with standard material or by an electronic animal control device), or on a leash. It will be the responsibility of the owner of the Pet to prevent the animal from running loose or becoming offensive or a nuisance to other Owners or occupants. Offensive barking or howling is considered an “offensive activity” and is not permitted. It will be the responsibility of the owner of the Pet to clean up after their Pet when in the Common Area or on private property of others.

No Pets will be permitted in the Common Area except on a leash.

The Association may notify the Owner, in writing, of any offensive activity or other violation of the covenants of this Declaration and the steps required by Owner to correct the violation. If the Owner does not correct the violation and the violation continues; or if any Pet endangers the health of an Owner, his guests, invitees, Customers, or tenants, or creates a nuisance or an unreasonable disturbance, or is not a common household pet, as may be determined by the Board, in the Board’s sole discretion, the Pet must be permanently removed from the Subdivision within seven (7) days from receipt of written notice by the Board to the offending Owner. The Board may exercise all of its remedies allowed under this Declaration of by law to have the Pet or animal permanently removed from the Subdivision. If the offending Owner

does not correct a violation and the violation continues, or does not remove the Pet of animal upon written request by the Board, the offending Owner will be in violation of the covenants of the Declaration and subject to any Fine imposed by the Board in accordance with the Declaration.

**ARTICLE VII  
ANTENNAS**

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

**ARTICLE VIII  
MODIFICATIONS AND VARIANCES**

The ARC has the authority to modify or waive any and all of the Restrictive Covenants that would not, in the ARC's sole discretion, impair or detract from the quality of the Subdivision. In addition, the ARC has the authority to reduce the floor area requirements contained herein by 10% and to modify any building material requirements. Such modification or waiver may by written instrument in recordable form.

The ARC, in its sole discretion, has the authority to grant variances of any setback line, to alter any setback line, and to waive any encroachment across or into any setback line, Common Area, or easement, to the extent that the ARC has the authority to waive such encroachment into an easement, as the ARC deems necessary. Such variance or waiver will be by written instrument in recordable form.

**ARTICLE IX  
BY-LAWS**

The By-Laws are operational documents of the Association and may be attached to this Declaration as an exhibit entitled "By-Laws", or may be a separate instrument filed prior to or subsequent to the filing of this Declaration, together with all amendments of the foregoing, in accordance with Texas Property Code Sections 202.001 and 202.006.

**ARTICLE X  
EASEMENTS AND ACCESS**

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

There is hereby created a right of ingress and egress across, over, and under the Common Area in favor of Declarant and the Association, for the sole purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, cable TV, electricity, gas, and appurtenances thereto.

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

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

Easements for drainage throughout the Subdivision are reserved as shown on the Subdivision Plat. Owner of any Lot in the subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such easements. More specifically and without limitation, no Owner, guest, invitee, customer or tenant may:

- a) alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements;
- b) alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without the prior written approval of the ARC;
- c) construct, erect or install a fence or other structure of any type or nature within or upon such drainage easements;
- d) permit storage, either temporary or permanent, of any type upon or within such drainage easements; or
- e) place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

The failure of any Owner to comply with the provisions of this Article shall in no event be deemed or construed to impose liability of any nature on the Association, ARC and/or Declarant, and such

Committee and/or Declarant shall not be charged with any affirmative duty to police, control or enforce such provisions.

## **ARTICLE X LOT CONSOLIDATION**

Any Owner owning 2 or more adjoining Lots or portions of two or more such Lots may consolidate such Lots or portions thereof into a single building site for the purpose of constructing 1 Living Unit and such other improvements as are permitted herein, provided, however, that the Lot resulting from such consolidation shall bear, and the Owner thereof shall be responsible for, all assessments theretofore applicable to the Lots which are consolidated and each such building site shall meet, all lawful requirements of any applicable statute, ordinance or regulation.

## **ARTICLE XI ENFORCEMENT**

If the Owner of any Lot, or its heirs, executors, administrators, successors, assigns or tenants, shall violate or attempt to violate any of the restrictions and covenants set forth in this Declaration, it shall be lawful for the Association, Declarant, or any Owner subject to this Declaration, to prosecute any proceedings against the person or persons violating or attempting to violate any such restrictions and covenants. The failure of any Owner, guest, invitee, customer or tenant to comply with any restriction or covenant will result in irreparable damage to Declarant and other Owners of Lots in the Subdivision; thus the breach of any provision of this Declaration may not only give rise to an action for damages at law, but also may be enjoined or may be subject to an action for specific performance in equity in any court of competent jurisdiction. In the event an action is instituted to enforce the terms hereof or prohibit violations hereof, and the party bringing such action prevails, then in addition to any other remedy herein provided or provided by law, such party shall be entitled to recover court costs and reasonable attorney's fees. Neither the Architectural Review Committee, Association, nor Declarant shall be charged with any affirmative duty to police, control or enforce the terms of this Declaration and these duties shall be born by and be the responsibility of Lot Owners.

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

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

(1) Classes of Membership. The Association has 2 classes of membership:

- a) **Class A** members shall be all Owners and Builder Members of a Lot or Lots within the Subdivision, with the exception of Declarant, and shall be entitled to 1 vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than 1 vote be cast with respect to any Lot.

- b) **Class B** members shall be Declarant who shall be entitled to 3 votes for each Lot owned. Class B membership shall cease and be converted to Class A membership at such time as the Declarant has conveyed and/or dedicated and/or sold 100% or more of the land area of the Subdivision, whether in a single or multiple transaction, to an Owner or to any governmental authority for public use.

(2) Suspension of Voting Rights. All voting rights of an Owner may be suspended by the Board of Directors during any period in which such Owner is delinquent in the payment of any duly established assessment or is otherwise in default and/or in violation under the By-laws or rules and regulations of the Association.

(3) Registration with the Association. In order that the Declarant and the Association can properly determine voting rights and acquaint every Lot purchaser and every Owner and Member with these Covenants and the day-to-day matters within the Association's jurisdiction, each Owner and Member shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within 15 days after a material change has occurred, various items of information to the Association such as:

- a) the full name and address of each Owner and Member, and Fiduciary;
- b) the business address, occupation and telephone number of each Owner and Member;
- c) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Owner or Member cannot be located) in case of an emergency; and
- d) such other information as may be reasonably requested from time to time by the Association.

In the event any Owner or Member fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner and Member shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

### ARTICLE XIII COVENANTS FOR MAINTENANCE ASSESSMENTS

Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Builder Member and every Owner of a Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

- a) annual assessments or charges;
- b) special assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided; and
- c) Member Charges levied against individual Owners to reimburse the Association for extra or unusual costs incurred by the Association for curing the Owner's violation of a restrictive covenant contained in this Declaration.

The annual and special assessments, together with such interest thereon, reasonable attorney's fees and costs of collection thereof, as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon, reasonable attorney's fees and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the obligation accrued.

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

1) Annual Assessments. The annual assessments for Class A membership for both improved and unimproved Lots shall be determined by the Board of Directors in the manner provided for herein after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made.

The maximum annual assessment may be adjusted by a majority vote of the Board of Directors, without membership vote, but shall not be increased to more than the greater of: (i) 110% above the prior year's annual assessment (ii) the result of multiplying said rate by a fraction, the numerator of which is the latest Consumer Price Index published on or before the 60th day prior to the date the Board sets the new maximum annual assessment rate and the denominator of which is the Consumer Price Index published on the year prior to the one used in the numerator. Consumer Price Index is the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers. In the event the compilation and/or publication of the Consumer Price Index is substantially revised, transferred to any other governmental department or bureau or agency or shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices most nearly the same as the Consumer Price Index shall be used to make the calculations

The Association may increase the maximum annual assessment rate by more than the amount specified in the preceding sentence only upon receipt of a 2/3's approving vote of the Owners at a meeting called for vote on such a proposed increase.

The annual assessment shall be an amount equal to the lesser of (i) the total amount of the annual budget multiplied by a fraction, the numerator of which is the number of Lots attributable to that Owner and the denominator of which is the total number of Lots in the Subdivision.

Notwithstanding any language to the contrary contained in this Section, annual assessments, together with special assessments hereinafter described, shall not apply to Declarant, as owner of or holder of title of any such Lots, until a Living Unit is constructed upon such Lot and is occupied by Declarant.

2) Special Assessments. In addition to the annual assessments provided for above, the Association may levy, in any assessment year, a Special Assessment on Class A membership on improved Lots only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Area, respond to the unusual emergency needs of the Association as may be expected to appear from time to time, or for such other lawful purpose related to the use of the Properties as the Board of Directors or the Owners may determine, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Lot owners and shall set forth the purpose of the meeting.

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

4) Due Dates, Budget and Late Charges. The annual assessments provided for herein shall become due and payable and shall be collected as the Board of Directors of the Association shall determine. The amount of the annual assessment shall be an amount which bears the same relationship to the annual assessment provided for above as the remaining number of months in that year bear to 12. The Board shall use reasonable efforts to provide each Owner with an invoice statement as of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation. The due date of any special assessment under the provisions hereof shall be fixed in the resolution authorizing such assessment. The special assessments are due and payable on the date fixed in the resolution authorizing the special assessment. Member charges are due and payable within thirty (30) days after the Owner was served with notice by the Association of the amount of such Member Charge.

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

Any assessment not paid within 30 days after the due date shall bear interest from the due date at a rate to be determined, from time to time, by the Board, not to exceed the maximum permitted by law. If the Board shall refuse or fail to determine a rate of interest, the rate of interest shall be eighteen percent (18%) per annum. If applicable state law provides or requires an alternate ceiling under Vernon's Annotated Texas Civil Statutes Article 5069-1.04, then that ceiling shall be the indicated rate ceiling.

5) Remedies and Lien for Assessments. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, and grants to the Association the power of sale in connection with said lien. The President of the Board of Directors shall have the right to appoint Agents, to mail and file the notices required by Texas Property Code § 51.002, and if applicable, by Texas Property Code Section 209, to conduct the sale, and to otherwise comply with the statutes. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

In addition to the foregoing charges for delinquent accounts, each Owner shall be obligated to pay to the Association all actual costs of collection incurred by the Association, including attorney's fees and such

reasonable late charges and collection charges as the Board of Directors may establish, all of which shall also be subject to the liens of the Association.

In the event of a delinquent account, the Association will provide all notices to the delinquent Owner as required by Texas Property Code § 209. A summary of the relevant parts of Texas Property Code § 209 will be maintained by the Association for review by each and every Owner upon request.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

Notice of the lien may be given, but is not required, by the recordation in the Real Property Records of Bell County, Texas an Affidavit of Delinquent And Notice Of Assessment Lien, duly executed by an officer, managing agent, attorney or officer of the Association, setting forth the amount owed, the name of the last known Lot Owner or Owners of record, and the legal description of the Lot.

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

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

#### **ARTICLE XIV REQUIREMENTS OF TEXAS PROPERTY CODE 209**

- 1) The Association must give notice to Owners under the following circumstances:
  - a) when charging an owner for property damage;
  - b) when levying a fine for a violation of the Declaration;
  - c) when filing a lawsuit except for:
    - (i.) Lawsuits to collect regular or special assessments;
    - (ii.) Lawsuits where one of the causes of action is foreclosure under an Association lien;
    - (iii.) Lawsuits for a temporary restraining order or temporary injunction;



In the event notice is given for any of the foregoing, Owner must first receive advance notice of his responsibility and obligation to pay attorney's fees in accordance with Texas Property Code Section 209 ("Section 209")

- d) when suspending an Owner's right to use a Common Area, except for:
    - (i.) a temporary suspension of a person's right to use a Common Area if the violation involved a significant and immediate risk of harm to others in the Subdivision.
- 2) Each notice required under Section 209 must contain the following:
- a) A description of any violation of the Declaration, property damage, or imposition of any Charges;
  - b) State any amount due the Association; and
  - c) A statement which informs the Owner that:
    - (i.) The Owner is entitled to a reasonable time to cure the violation and avoid the fine or suspension and state what the reasonable time is to cure the violation and avoid the fine or suspension (unless Owner has already been given notice & opportunity to cure a similar violation within the preceding 6 months); and
    - (ii.) The Owner may request in writing a hearing before the Board or designated committee on or before the 30th day after the date the Owner receives the notice;
    - (iii.) If the hearing is before a designated committee, then the Owner has the right to appeal the decision of the committee to the Board by written notice to the Board.
- 3) If a hearing is requested by an Owner as provided above, then the Association must:
- a) Hold a hearing within 30 days from the date of receipt of the Owner's request for a hearing.
  - b) Notify the Owner of the date, time and place of the hearing not later than the 10th day before the hearing.
  - c) Must grant a postponement of the hearing for a period of not more than 10 days if a postponement is requested by either the Board or Owner, however, additional postponements may be granted by agreement of both parties.
  - d) Allow the Owner or the Association to make an audio recording of the hearing.
  - e) Give the Owner the opportunity to attend the hearing, however, an Owner need not be present in order to hold a hearing.
- 4) The Association may receive reimbursement of its attorneys fees and costs relating to collection and damages for enforcement of the Declaration, but only if it first gives the Owner written notice stating that attorney fees and costs will be charged to the Owner if the delinquency or violation continues after a date certain.
- 5) An Owner will not have to pay for attorney fees that are incurred before the conclusion of the Hearing or the date by which an Owner could have requested a hearing (which is 30 days after the date the Owner receives the notice). Consequently, if an attorney sends letters prior to a hearing requested by an Owner or an attorney participates at such a hearing, attorney fees will not be reimbursable to the Association by the Owner.

- 6) All attorney fees, costs, and other amounts collected from an Owner must be deposited into an account maintained at a financial institution in the name of the Association or its managing agent.
- 7) Upon written request from an Owner, an Association must provide copies of invoices for attorney fees and other costs relating to the matter for which the Association is seeking reimbursement of fees and costs.
- 8) In the event of a non-judicial foreclosure, the amount of attorney fees the Association may seek reimbursement for is limited to the greater of:
  - a) 1/3 of the amount of all actual costs and assessments, excluding attorney fees, plus interest and court costs if those amounts are permitted to be included by law or by the Declaration; or
  - b) \$2,500.
- 9) The Association may not foreclose an assessment lien if the debt consists solely of fines or attorney fees associated with the fines.
- 10) If the Association conducts a foreclosure sale on a Lot, the Association must send written notice to the Owner by certified mail, return receipt requested, to the last known address as reflected on the records of the Association. This notice must be sent regardless of whether the foreclosure is non-judicial or judicial. The notice must be sent no more than 30 days after the foreclosure sale date informing the Owner of the following:
  - a) The date and time of the sale and a statement informing the Owner that the Owner has 180 days from the date of the notice to redeem the Lot.
  - b) Not later than the 30th day after the date the notice described above is sent, the Association must record an Affidavit in the Official Public Records of Real Property of Bell County, Texas stating:
    - (i) The date the Notice was sent to the Owner; and
    - (ii) A legal description of the Lot sold.
- 11) If a foreclosure sale occurs, then the Owner is required to file an affidavit conforming to the provisions of Section 209. Failure to file the affidavit within the redemption period of 180 days from the date of the foreclosure sale will result in a conclusive presumption that the Owner did not redeem the Lot.
- 12) An Owner will have 180 days to redeem the property following the date the Association mails written notice of sale to the owner. Additionally, the Purchaser at foreclosure may not transfer ownership of the property to anyone other than the redeeming owner during the 180 day redemption period.
- 13) If the purchaser of the Lot at the foreclosure sale is the Association, in order to redeem the Lot, the Owner must pay to the Association:
  - a) All amounts due the Association at the time of the foreclosure sale;
  - b) Interest from the date of sale to date of redemption on all amounts owed to the Association at the rate stated in the Declaration or 10% (if no rate is stated);
  - c) Costs incurred by the Association in foreclosing and conveying the Lot to the Owner including reasonable attorney fees;
  - d) Any assessments coming due on the Lot since the foreclosure;

- e) Any reasonable costs incurred by the Association including mortgage payments, costs of repair, maintenance or leasing of the Lot; and
  - f) The purchase price paid by the Association at the foreclosure sale less any amounts in the first item above which were satisfied out of the foreclosure sale.
- 14) If the purchaser of the Lot at the foreclosure sale is a person other than the Association ("Purchaser"), in order to redeem the Lot:
- a) Owner must pay to the Association:
    - (i.) All amounts due the Association at the time of the foreclosure sale less the sales price received by the Association from the purchaser;
    - (ii.) Interest from the date of foreclosure through date of redemption on all amounts owed to the Association at the interest rate as stated in the Declaration or if no rate is stated then an annual interest rate of 10%;
    - (iii.) Costs incurred by the Association foreclosing the lien and conveying the property back to the redeeming owner, including reasonable attorney fees;
    - (iv.) Any unpaid assessments coming due after the foreclosure; and
    - (v.) Any taxable costs.
  - b) Owner must pay to the Purchaser at foreclosure sale:
    - (i.) Any assessments levied on the Lot after the foreclosure that were paid by the Purchaser at sale;
    - (ii.) The purchase price paid by the Purchaser at sale;
    - (iii.) The amount of the deed recording fee;
    - (iv.) Any ad valorem taxes, penalties and interest on the Lot that were paid by the Purchaser at sale after the date of foreclosure;
    - (v.) Any taxable costs.
- 15) If the Owner redeems the Lot, then the Purchaser at foreclosure must immediately give the Owner a deed transferring the Lot back to the redeeming Owner. If the Purchaser at foreclosure does not comply, then the redeeming Owner may file a suit against the Purchaser to recover reasonable attorney fees.
- 16) A Lot that is redeemed remains subject to all liens and encumbrances on the Lot before foreclosure.
- 17) If the Purchaser at sale enters into a lease on the Lot and the Owner redeems, that Owner will have the right to re-occupy the property immediately upon redemption.
- 18) If an Owner makes a partial payment of amounts due the Association at any time during the redemption period, but fails to pay all amounts necessary to redeem, the Association must refund any partial payments no later than the 30th day after the expiration date of the redemption period (or 210 days after the notice of foreclosure). Such payment will be mailed to the Owner's last known address as shown on the Association records.
- 19) If an Owner sends a written request by certified mail, return receipt requested, wanting to redeem the Lot on or before the last date of the redemption period, the Owner's right of redemption is extended until 10 days after the Association and the Purchaser at foreclosure provides written notice to the Owner of the amounts that must be paid to redeem the Lot.

20) The Association or Purchaser at foreclosure sale must record an affidavit in the Official Public Records of Real Property of Bell County, Texas stating that the Owner did not redeem the Lot during the redemption or extended redemption periods.

21) The Association or Purchaser at foreclosure sale must state in the affidavit filed of record in the Official Public Records of Real Property of Bell County, Texas the date the citation was served in a lawsuit to foreclose (if applicable), a legal description of the property, and any other relevant facts relating to the foreclosure sale. Any person may then conclusively rely upon the information contained in the affidavit.

**ARTICLE XV  
MAINTENANCE FUND AND GENERAL POWERS AND DUTIES  
OF THE BOARD OF DIRECTORS OF THE ASSOCIATION**

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

- a) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.
- b) Care and preservation of the Common Area.
- c) The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board of Directors, (provided that any contract for management of the Association shall be terminable by the Association, with no penalty upon ninety (90) days prior written notice to the managing party) and the services of such other personnel as the Board of Directors or by the manager.
- d) Legal and accounting services.
- e) A policy or policies of insurance insuring the Common Area, the Association, its Directors, and Officers against any liability to the public or to the Owners (and/or guests, invites, customers or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors.
- f) Workers compensation insurance to the extent necessary to comply with any applicable laws.
- g) Such fidelity bonds as may be required by the By-Laws or as the Board of Directors may determine to be advisable.
- h) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board of Directors is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.
- i) Perpetual maintenance and enhancement of all Common Area including walls, gates, grounds, landscaping, lights, irrigation and electric for right-of-way and all entry monuments, walls, and signs owned or maintained by the Association.

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

- a) To execute all declarations of Ownership for tax assessment purposes and with regard to the Common Areas, if any, on behalf of all Owners.
- b) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board see fit.
- c) To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.
- d) To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.
- e) To make reasonable Rules and Regulations for the operation of the Common Areas and to amend them from time to time; provided that, any Rule or Regulation may be amended or repealed by an instrument signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Common Areas, by the Owners in the portions affected.
- f) To make available for inspection by Owners within 60 days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.
- g) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.
- h) To enforce the Builder Guidelines established by the ARC and enjoin and seek damages from any Owner for violation of such Builder Guidelines.
- i) To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.
- j) To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.
- k) To establish a monetary "fines" system which shall include due process hearings and a discretionary range of fine amounts, which, when levied, shall constitute a permitted Member Charge assessment secured by the lien herein established.
- l) To establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses.

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

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

Not later than 60 days after conveyance of 25% of the Lots to Owners other than Declarant, not less than 25% of the members of the Board of Directors shall be elected by Owners other than Declarant. Not later than 60 days after conveyance of 50% of the Lots to Owners other than Declarant, not less than 33 1/3% of the members of the Board of Directors shall be elected by Owners other than Declarant.

#### **ARTICLE XVI TITLE TO COMMON AREAS**

All initial Common Area within the Properties shall be conveyed to the Association free of lien prior to the conveyance of the first Lot by the Declarant. The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Areas which may be hereafter established. Nothing contained herein shall create an obligation on the part of Declarant to establish any Common Area.

However, any and all Common Areas will be for the common use and benefit of each Member of the Association

There shall be no physical partition of the Common Area or any part thereof. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

The Association may develop certain amenities for the benefit of its members. Upon the approval of the Board of Directors of the Association and payment of appropriate user's fees, the Board of Directors may allow the amenities to be used by members of the Westwood Temple Homeowners' Association, Inc.

#### **ARTICLE XVII INSURANCE AND CONDEMNATION**

1) Fire, Hazard and Casualty Insurance. Owners of Lots hereby covenant and agree with all other Owners and the Association to carry all-risk casualty insurance on their Lot. Each Owner of a Lot further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original Living Unit. In the event the Living Unit is totally destroyed and the Owner determines not to rebuild or reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of the construction.

Each Owner shall be responsible, at his own cost and expense, for personal liability insurance to the extent not covered by the Association and public liability insurance acquired by the Association on behalf of all Owners with respect to the Common Area. Each Owner shall be responsible, at his own cost and expense, to obtain and maintain hazard and/or liability insurance on the Lot once the Living Unit has been constructed on a Lot.

2) Property and Public Liability Insurance With Respect to Common Area, Errors, omissions and Indemnification:

- a) The Board of Directors of the Association shall obtain and continue in effect property insurance, to insure the buildings and structures in the Common Area, naming the Association as beneficiary with an endorsement to the mortgagee, if any, against risks of loss or damage by fire and other hazards as are covered under standard fire and extended coverage provisions, and said insurance to included coverage against vandalism.
- b) The Board of Directors of the Association shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its agents and employees, and each Owner, from and against liability in connection with the Common Area.
- c) The Board of Directors of the Association shall obtain liability insurance covering errors and omissions of directors, officers, managers, employees and representatives of the Association, and fidelity bonds for all officers and employees which have control over the receipt or disbursement of funds.
- d) The Association may indemnify directors, officers, employees and agents and may purchase indemnity insurance in accordance with the provisions of Article 2.22A of the Texas Non-profit Corporations Act.

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

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

5) Condemnation. If part or all of the Common Area shall be taken or condemned by any authority having the power of eminent domain, any compensation and damages shall be paid to the Association. The Board of Directors shall have the exclusive right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation issues affecting such Common Area. The Owners may, by vote of 75% or more of the total voting power, agree to distribute the proceeds of any condemnation or taking by eminent domain, to each Owner and his mortgagee, if any, as their interest may appear. In event that the Owners shall not so agree, such proceeds shall be added to the funds of the Association, and the Association shall decide on whether or not to replace or restore, as far as possible, the Common Area so taken or damaged.

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

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

**ARTICLE XVIII  
AMENDMENT AND ANNEXATION**

This Declaration shall remain in force and effect for a period of 30 years after this Declaration is recorded, at which time, and each tenth anniversary thereafter, this Declaration shall be renewed for a period of ten years unless amended as provided herein. This Declaration may be amended by written instrument approved by the affirmative vote of the Members of the Association holding at least 75% of the total votes. The amendment shall be effective when it is certified by the President of the Association as to the requisite number or votes and recorded in the Official Public Records of Bell County, Texas. Any amendment so certified and recorded shall be conclusively presumed to have been duly adopted. Declarant shall have the right to file an amendment to this Declaration, for any reason, without the necessity of joinder by any other Owner of Lots, or any interest therein, at any time during the construction period of the Subdivision and/or the Properties, and for so long as Declarant is developing the Properties. Notwithstanding the foregoing, after Declarant has ceased to develop the Properties, Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by any other Owner of Lots, or any interest therein, for the limited purposes of correcting a clerical error, clarifying an ambiguity, removing any contradiction in the terms hereof, or for the purpose of making such additions or amendments hereto as may be required by FHA, HUD or VA to qualify the Properties for mortgage guaranties issued by FHA and/or VA.

During the construction period of the Subdivision and/or the Properties and for so long as Declarant is developing the Properties, Declarant shall have the right, privilege and option to annex additional land to make it subject to this Declaration until Declarant no longer owns a Lot by filing in the Official Public Records of Bell County, Texas an amendment annexing such property. Additional property may be thereafter annexed and made subject to this Declaration, or property may be withdrawn, by written instrument approved by the affirmative vote of the Members of the Association holding at least 75% of the total votes and filed of record in the Official Public Records of Bell County, Texas.

**ARTICLE XIX  
GOVERNMENTAL REQUIREMENTS**

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



occasioned by the failure to abide by any applicable governmental statute, rule, regulation or permit related to the Properties.

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

## ARTICLE XX GENERAL PROVISIONS

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

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

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

2) Notices. Any notice required to be given to any Owners or Member shall be complete when the notice is deposited in the United States Mail, postage prepaid, and addressed to the Owner or Member at the last known address as shown by the records of the Association.

3) Headings. The headings contained in this Declaration are for reference purpose only and shall not in any way affect the meaning or interpretation of this Declaration. Invalidation of any one or more of these covenants, restrictions, conditions and limitations by judgment or court order, shall in no way affect any of the other provisions hereof which shall remain and continue in full force and effect.

These covenants, restrictions, conditions and limitations are in all respects subject to any applicable zoning regulations lawfully in force or hereafter adopted.

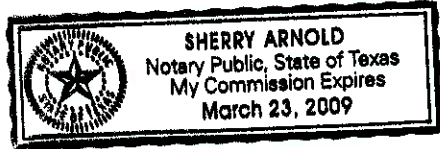
EXECUTED TO BE EFFECTIVE May 1st, 2006.

KIELLA DEVELOPMENT, INC.

By: [Signature]  
JOHN R. KIELLA, President

THE STATE OF TEXAS §  
  §  
      COUNTY OF BELL §

This instrument was acknowledged before me on this the 1st day of May, 2006,  
by JOHN R. KIELLA, in his capacity as President of KIELLA DEVELOPMENT, INC.



[Signature]  
NOTARY PUBLIC

**FEE SCHEDULE**

Member Classification	Initial Membership Assessment*	Annual Dues Assessment*	Transfer Membership Assessment (All Subsequent Purchasers)
Residential	\$ 80.00	\$ 80.00	\$ 100.00
Commercial	\$0	\$0	\$0

\*Initial Membership and Annual Dues Assessments are due and payable in accordance with the Minutes and Declaration, on a per Lot basis, beginning with the calendar year.

FILED FOR RECORD  
 2006 AUG 8 PM 3 53  
 VALUATION  
 BY: [Signature]  
 ONYX/CLERK/BELL, ONYX TX,  
 DEPUTY

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