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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
QUAIL SPRINGS RANCH

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<u>Subject Matter</u>	<u>Exhibit</u>
Land Initially Submitted to this Declaration	"A"
Land Subject to Annexation	"B"
Resolution of Board and By-Laws of Quail Springs Ranch Property Owners Association	"C"

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS****FOR****QUAIL SPRINGS RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the date on the signature page hereof by Bluegreen Southwest One, L.P., a Delaware limited partnership, duly authorized to do business in the State of Texas, acting through its general partner, Bluegreen Southwest Land, Inc., a Delaware corporation, authorized to do business in the State of Texas (the "Declarant").

Declarant is the owner of the real property described in **Exhibit "A"**, attached and incorporated by reference, or, if Declarant is not the owner, such owner has consented to this Declaration. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the Quail Springs Ranch Property Owners Association to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines. (Capitalized terms are defined in Article 1 below.)

Declarant hereby declares that all of the property described in Exhibit "A" and any Additional Property subjected to this Declaration by Supplemental Declaration (as defined in Article 1 below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Properties, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

**Article 1.****DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.1 **"ACC"**: The Architectural Control Committee, as described in Section 9.2.
- 1.2 **"Accessory Building"**: shall mean and refer to a subordinate building, attached to or detached from the Dwelling (as hereinafter defined).
- 1.3 **"Act"**: The Texas Residential Property Owners Protection Act, Title 11, Chapter 209 of the Texas Property Code, as such act may be amended.
- 1.4 **"Additional Property"**: shall mean and refer, without limitation, to any property adjacent to or in the proximity of the Subdivision.
- 1.5 **"Adjacent Properties"**: Any residential, nonresidential, or recreational areas, including, without limitation, which are located adjacent to, in the vicinity of, or within the Properties.
- 1.6 **"Area of Common Responsibility"**: The Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract, or agreement. The Area of Common Responsibility shall include any real property and improvements which are designated as areas to be maintained by the Association on a recorded subdivision plat for any portion of the Properties.
- 1.7 **"Articles of Incorporation" or "Articles"**: The Articles of Incorporation of Quail Springs Ranch Property Owners Association, as filed with the Secretary of State of the State of Texas.
- 1.8 **"Association"**: Quail Springs Ranch Property Owners Association, a Texas nonprofit corporation, its successors or assigns.
- 1.9 **"Board of Directors" or "Board"**: The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Texas corporate law.

1.10 "Boat Dock" or "Pier": shall refer to any structure extending into the Lake where boats are docked.

1.11 "Builder": Any Person who purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

1.12 "By-Laws": The By-Laws of Quail Springs Ranch Property Owners Association, attached as **Exhibit "B"**, as they may be amended.

1.13 "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a Majority of the Members of the Board of Directors as provided in the By-Laws.

1.14 "Common Area": All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners.

1.15 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.16 "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the ACC.

1.17 "Contractor": shall mean and refer to the person or entity with which an Owner contracts to construct a residential dwelling on such Owner's Lot.

1.18 "Days": Calendar days; provided, however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.19 "Declarant": Bluegreen Southwest One, L.P., a Delaware limited partnership, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, there shall be only one Person entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.20 "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article 9.

1.21 "Developer": shall mean and refer to Bluegreen Southwest One, L.P. and its successors and assigns.

1.22 "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration, or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1.

The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public records.

1.23 "Dwelling": shall mean and refer to a building having accommodations for and occupied by not more than one family.

1.24 "Front Line": shall mean and refer to any boundary line of a Lot which is adjacent to a public road and the front of the proposed improvements face.

1.25 "General Assessment": The Assessment levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Section 8.1 and the By-Laws.

1.26 "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, the Design Guidelines and rules of the Association and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.

1.27 "Guest House": shall mean and refer to detached living quarters located upon any Lot in the Subdivision.

1.28 "Height": shall mean and refer to the measurement from the building line or highest point on the lot, whichever is greater, to the highest point of the improvement being measured.

1.29 "Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land which is part of the Lot as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public.

1.30 "Member": A Person entitled and subject to membership in the Association pursuant to Section 3.1 and the By-Laws.

1.31 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

1.32 "Mortgagee": A beneficiary or holder of a Mortgage.

1.33 "Owner": One (1) or more Persons who hold the record title to any Lot, including the Declarant and any Builder but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded land sales contract, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.34 "Person": A natural person, a corporation, a partnership, a limited liability company, a

1.35 "Properties": The real property described on Exhibit "A", as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.36 "Public Records": The Official Public Records of Parker County, Texas.

1.37 "Rear Line": shall mean the opposite of Front Line.

1.38 "Side Line": shall mean and refer to any boundary line of a Lot which is not a Front Line or a Rear Line.

1.39 "Quail Springs Ranch": That certain planned community located in Parker County, Texas which is commonly known and referred to as Quail Springs Ranch.

1.40 "Special Assessment": Assessments levied in accordance with Section 8.2.

1.41 "Street": shall mean and refer to the roadways dedicated by the Developer to Parker County, Texas, by the Plat and accepted by Parker County, Texas as public streets and roadways.

1.42 "Supplemental Declaration": An instrument filed in the Public Records which subjects additional property to this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.43 "Streams": Shall refer to Dry Creek and its major tributaries, more particularly defined as the Streams at the rear of the following tracts: 20 – 62, 107 – 119, 132 – 152 and tracts 127 – 131.

## **Article 2.**

### **PROPERTY RIGHTS**

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

- (a) This Declaration and all Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area pursuant to Section 4.3;

(e) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;

(f) The right of the Board and the Declarant to permit use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;

(g) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(h) The right of the Declarant to conduct activities within the Common Area, such as tournaments, charitable events, and promotional events and to restrict Owners from using the Common Area during such activities, provided such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Owners' use and enjoyment of the Common Area and shall not exceed seven (7) consecutive Days; and

(i) The right of the Association to rent, lease or reserve any portion of the Common Area to any Owner for the exclusive use of such Owner or Owner's respective lessees, invitees, and guests upon such conditions as may be established by the Board.

Any Owner may extend his or her right of use and enjoyment to the Members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights appurtenant to the leased Lot to the lessee of such Lot; provided, however, the Owner shall remain responsible for payment of all assessments and other charges.

2.2 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney in fact for all Owners in such matters. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) Days after such taking the Declarant, during the Development Period, and at least sixty-seven percent (67%) of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ACC.

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

### Article 3.

#### MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner of a Lot shall be a Member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all Persons shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in the By-Laws. The membership rights of any Member which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the



Association. The Association shall have Class "A" and Class "B" Memberships, and any such other classes of membership as further set forth in the By-Laws.

3.2 Voting. Members shall be entitled to vote in accordance with the procedures set forth in the By-Laws.

#### Article 4.

#### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Texas.

4.2 Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A", personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake, pond or other body of water that may be conveyed. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.3 Enforcement. The Board, or any committee established by the Board, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall constitute a lien upon the Lot of the violator. (In the event that any occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);
  - (b) filing liens in the Public Records for nonpayment of any assessments or fees;
  - (c) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
  - (d) suspending an Owner's right to vote;
  - (e) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;
  - (f) levying Specific Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Section 8.3(b);
  - (g) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association; and
  - (h) filing suit to enforce any of the above sanctions; provided, however, compliance with the notice and hearing procedures set forth in Section 3.24 of the By-Laws is not required prior to filing suit
- (i) to collect a General, or Special Assessment, (ii) to foreclose the Association's lien for assessments set forth in Article 8 of this Declaration, (iii) to obtain a temporary restraining order or temporary injunctive relief, or (iv) that includes foreclosure as a cause of action.

In the event that any occupant, guest or invitee of a Lot violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Lot that the violator is occupying or visiting.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by entering the Lot and exercising self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules or the correction of any maintenance, construction or other violation of the Governing Documents) or by suit at law or in equity to enjoin any violation or to foreclose a lien or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county, city, state and federal ordinances, if applicable, and permit local and other governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. During the Development Period, the Declarant may designate sites within the Properties for public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

4.6 Indemnification. The Association shall indemnify every officer, director, ACC member and committee member against all damages, liability, and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ACC member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Texas law.

The officers, directors, and ACC and other committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and ACC and other committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors or ACC or other committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and ACC and other committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ACC or other committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of or Grant of Easement on Common Area. The Association may dedicate portions of the Common Area to Parker County, Texas, or to any other local, state, or federal governmental or quasi-governmental entity or private utility provider.

4.8 Security. Each Owner and occupant of a Lot and their respective lessees, invitees, licensees, and guests shall be responsible for their own personal safety and security on their Lot and on the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of

security measures undertaken. No representation or warranty is made that any security system or measure, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers or guarantors of security within the Properties, and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

4.9 Relationship with Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.10 Presence and Management of Wildlife. Each Owner and occupant, and each tenant, guest and invitee of any Owner or occupant acknowledges that the Properties include and/or are located adjacent to and in the vicinity of wetlands, bodies of water and other natural areas. Such areas may contain wildlife. Neither the Association, the Board, the original Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the original Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife and fishery management plans and practices on the Properties to the extent that such practices are permitted by applicable state and federal law. For the purpose of illustration and not limitation, and notwithstanding the general prohibition against the use of firearms in Section 10.14, this includes the right to manage and control any populations of wildlife through a variety of techniques, including organized hunting, shooting and trapping. The Declarant hereby reserves the right to assign these management rights to the Association.

4.11 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include garbage collection, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

## Article 5.

### MAINTENANCE

#### 5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) Common Area;
- (ii) all landscaping and other flora, parks, lakes, ponds, structures, and improvements, including any entry features, private streets, bike and pedestrian pathways/trails, situated upon the Common Area;

- (iii) all furnishings, equipment and other personal property of the Association;
- (iv) any street trees, landscaping and other flora, buffers, parks, bike and pedestrian pathways/trails, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;
- (v) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, Agreement, or any contract or agreement for maintenance thereof entered into by the Association;
- (vi) all streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith
- (vii) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. For example, the Association may maintain any fence, wall, entry feature or sign serving to enhance or designate the entry to Quail Springs Ranch regardless that such improvements are not located within the Common Area or the Properties.

(b) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (a) such maintenance responsibility is otherwise assumed by or assigned to an Owner, (b) such property is dedicated to any other local, state or federal governmental or quasi-governmental entity; provided, however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(c) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation. Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Cost Sharing Agreements, any recorded covenants, or any agreements with the owner(s) thereof.

(e) The Association shall have the right, but not the obligation, to maintain the grass and other landscaping on each unimproved Lot. For purposes of this Section, unimproved Lot shall mean a Lot without a dwelling.

(f) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and, in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Lot, and all structures, parking areas, landscaping and other flora and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association. With respect to any Lot upon which a dwelling has not yet been constructed, such maintenance responsibility shall include, but is not limited to, the removal of all litter and trash on a regular basis. In

addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.3. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association or its designee under this Section shall not constitute a trespass.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association, any Owner, shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

#### Article 6. INSURANCE AND CASUALTY LOSSES

##### 6.1 Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect such types of insurance as required by Texas law, including the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all affected improvements and other insured property or the maximum limit of coverage available, whichever is less.

**Article 7.**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1 Annexation by Declarant. Until twenty (20) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2 Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

7.3 Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

**Article 8.**  
**ASSESSMENTS**

8.1 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be two (2) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.2; and (d) Specific Assessments as described in Section 8.3. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and fees, together with interest, late charges, costs of collection, and reasonable attorneys' fees as allowed by the Act, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in this Section below and in Section 8.4. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees as allowed by the Act, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage or through a deed in lieu of foreclosure shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon written request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer setting forth whether such assessment has been paid. Such statement shall be furnished within ten (10) business Days after receipt of the request and shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first (1st) day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. Notwithstanding the above or anything herein to the contrary, however, (a) the obligation to pay assessments shall not commence until the Lot is conveyed to a Person other than the Declarant, as set forth in Section 8.5; (b) no Owner shall be obligated to pay more General, or Special Assessments in any one fiscal year than the amount allocated to two (2) Lots, irrespective of the number of Lots owned by such Owner in Quail Springs Ranch; and (c) if an

Owner owns more than two (2) Lots in Quail Springs Ranch, the lien rights set forth herein shall attach to each and every Lot owned by said Owner in Quail Springs Ranch for the full amount of all assessments and charges due and owing. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Association or Board.

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

8.2 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Lots, if such Special Assessment is for Common Expenses. Special Assessments shall be allocated equally among all Lots subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting of Members representing at least sixty-seven percent (67%) of the total Class "A" votes allocated to Lots which will be subject to such Special Assessment and by the Declarant during the Development Period. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.3 Remedies for Non-Payment of Assessments. Any assessments or other charges which are not paid when due shall be delinquent. Delinquent assessments shall bear interest from the due date at the rate established by the Board of Directors of the Association, or, if not set by the Board, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association may file a lien of record against any Lot where there remains an assessment unpaid for a period of thirty (30) Days or longer. Said lien shall be filed in the Public Records in a manner provided therefor by Title 5, Chapter 12 of the Texas Property Code. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may bring an action at law against any Owner personally obligated to pay any assessments, charges, interest or other costs. Costs and reasonable attorneys' fees for the prosecution of any such action, as allowed by the Act, shall be added to the amount due. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of Texas.

The Association's lien may be foreclosed by judicial or nonjudicial foreclosure in like manner as a Mortgage on real estate under power of sale under Title 5, Chapter 51 of the Texas Property Code. All fees, charges, late charges, fines, and interest are enforceable as assessments.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The registered agent of the Association shall be the trustee for all purposes of the foreclosure proceeding, and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the Lot subject to the lien at public action for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for Mortgages, and upon such sale and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Title 5, Chapter 51 of the Texas Property Code. The trustee shall be authorized to retain an attorney to represent such trustee in such proceedings. The proceeds of the sale shall, after the trustee retains its commission, together with any additional attorneys' fees incurred by the trustee, be applied to the costs of the sale, including but not limited to costs of collection, taxes, assessments, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the Lot, and any advancements made by the Association in the protection of the security.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

8.4 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the date that such Lot is conveyed to a Person other than Declarant. The first annual General Assessment levied on each Lot shall be adjusted according to the number of Days remaining in the fiscal year at the time of assessments commence on the Lot.

8.5 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.6 Exempt Property. The following property shall be exempt from payment of General Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;
- (b) Any property dedicated to and accepted by any governmental authority or public utility;
- (c) Any property that is owned by a charitable organization or nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of open spaces for public benefit, and which is held by such agency or organization for such recreational or open space purposes.
- (d) Developer shall not pay assessments on unsold Lots owned by the Developer.

8.7 Default Interest Rate; NSF Checks; Late Fees. Except as otherwise provided in the Governing Documents, any assessment levied upon an Owner which is not paid within fifteen (15) Days after the date upon which it is due shall bear interest at the lesser of (a) the rate of eighteen percent (18%) per annum; or (b) the maximum rate of interest permissible under the laws of the State of Texas. In addition, if any Owner pays any assessment (General or Special) with a check on an account that has insufficient funds ("NSF"), the Board may, in its sole discretion, demand that all future payments be made by certified check or money order along with imposing a reasonable processing charge. Finally, the Association may charge a delinquent Owner an administrative/late fee in an amount determined by the Board of Directors for each installment due to the Association which is delinquent. Any payment received by the Association shall be applied first to any attorneys' fees and other costs of collection, then to any interest accrued on the late installment, then to any administrative late fee, and then to the delinquent assessment.

## **Article 9.**

### **ARCHITECTURAL STANDARDS**

9.1 General. No exterior structure or improvement, as described in Section 9.4, shall be placed, erected, installed or made (a) upon any Lot, or (b) adjacent to any Lot where the purpose of the structure is to service such Lot, and no improvements shall be permitted except in compliance with this Article, and with the prior written approval of the appropriate reviewing body under this Article, and Parker County, Texas (if required by law, rule or other regulation) unless exempted from the application and approval requirements pursuant to Section 9.3.

Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval. However, modifications to the interior of porches, screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion.

This Article shall not apply to the activities of the Declarant, or to improvements to the Common Area by or on behalf of the Association.



This Article may not be amended without the Declarant's written consent during the Development Period.

9.2 Architectural Review. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that all structures and improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of the Properties or the Additional Property. Therefore, the Declarant may, on its behalf, establish an Architectural Control Committee to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. During the Class "B" Control Period, the members of the ACC need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ACC. The ACC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ACC in having any application reviewed by architects, engineers or other professionals.

The ACC shall have, during the Class "B" Control Period, exclusive jurisdiction over all construction on any portion of the Properties. During the Class "B" Control Period, the Declarant retains the right to appoint all members of the ACC which may consist of one (1) or more Persons, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to expiration of the Class "B" Control Period except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the elected Board shall constitute and be the members of the ACC (and shall, further, have authority to delegate the responsibilities of the ACC to a committee of Members subject to appointment and removal by the Board). The ACC shall thereafter have jurisdiction only over modifications, additions or alterations of Lots, including existing structures and landscaping, made after completion of initial construction on the Lot.

Upon expiration of the Declarant's right to appoint the members of the ACC, the Declarant, or a committee of persons appointed by the Declarant which may consist of the same persons who previously constituted the ACC and who need not be Members of the Association, shall retain all architectural control authority set forth in this Article pertaining to the initial construction on each Lot until ninety-five percent (95%) of the Lots have been developed and conveyed to Owners other than Builders, and initial construction on each Lot has been completed in accordance with the Design Guidelines, unless such right is earlier surrendered in a written instrument in recordable form executed by Declarant.

9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare and adopt the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from any lake, pond, river, stream or other body of water. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the committees in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the committees and compliance with the Design Guidelines does not guarantee approval of any application.

During the Development Period, the Declarant shall have sole authority to adopt and amend the Design Guidelines. Thereafter, or at such earlier time as the Declarant may surrender such right in a written instrument in recordable form, the ACC shall have authority to amend the Design Guidelines. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the Declarant or ACC, as appropriate, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. The ACC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the Declarant or ACC, as appropriate, for review and approval (or disapproval). In reviewing each submission, the Declarant or ACC may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. In reviewing and acting upon any request for approval during the Class "B" Control Period, the ACC shall be acting solely in Declarant's interest and shall owe no duty to

any other Person. Decisions of the Declarant or ACC may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time.

In the event that the appropriate reviewing body fails to approve or to disapprove any application within thirty (30) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the appropriate reviewing body pursuant to Section 9.7.

Notwithstanding the above, the appropriate reviewing body by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Approval by the Declarant or ACC, as appropriate, shall be effective for a period of one (1) year from the date the approval is given. If work has not commenced within the one (1) year period, the approval shall expire, and no work shall thereafter commence without resubmitting plans to the appropriate reviewing body.

#### 9.4 Specific Guidelines and Restrictions

(a) Single Family Residential Construction. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) Dwelling per each Lot to be used for single family residential purposes. Detached garages, work shops and other Accessory Buildings may be constructed on the Lot prior to the time the main Dwelling is being built so long as they are of good construction, kept in good repair and are not used for residential purposes. Notwithstanding the above, all Dwellings, detached garages, work shops and Accessory Buildings must be approved in writing by the ACC prior to being erected, altered or placed on the Lot. The term "Dwelling" does not include single or double wide or other manufactured homes, and said manufactured homes are not permitted within the Subdivision. All Dwellings must have at least one eighteen hundred (1800) square feet of heated and cooled living area, excluding porches, and a minimum of a one (1) car garage. No structure shall exceed Thirty-Five (35') feet in height as defined in Section 1.28. Carports are allowed so long as the carport is attached to and connected with the Dwelling with its roof being an extension of the roof of the Dwelling. All improvements, with the exception of workshops on Lots three (3) acres or larger, must be built with new construction materials with exterior walls being eighty percent (80%) masonry, glass or natural wood (i.e. no aluminum, asbestos siding, vinyl siding, plywood siding, or masonite siding). Cement fiber siding is considered masonry. Storage buildings may also be built and placed on the Lot as long as they are at least one hundred fifty feet (150') from the Front Line and are approved by the Architectural Control Committee. All Guest houses must have a minimum of five hundred (500) square feet of living area, excluding porches. All Guest houses must be built simultaneously as the main Dwelling or after construction of the main Dwelling, kept in good condition and must be of similar exterior construction as the main Dwelling. Any building, structure or improvement commenced on any Lot shall be completed as to exterior finish and appearance within six (6) months from the commencement date. As used herein, the term "single family residential purposes" shall be construed to prohibit manufactured housing, mobile homes or trailers being placed on said Lots, or the use of said Lots for duplex houses, condominiums, townhouses, or apartment houses. All Lots shall be for single family residential purposes and all homes must be site constructed.

(b) On-Site Sewage Facilities. Sanitary sewage treatment will be provided by onsite sewage facilities. A private sewage facility permit must be obtained for each Lot within the Subdivision from Parker County.

When an on-site sewage facility is used, only one single-family residence shall be located on a Lot and only one residence shall be connected to said facility.

All on-site sewage facilities must be designed in accordance with the rules established by the County and the TNRCC. Design shall be based on the results of a site evaluation performed on each Lot.

Septic tank performance cannot be guaranteed, even though all provisions of the County rules for private sewage facilities are complied with.

Inspection and/or acceptance of a private sewage facility by the County shall indicate only that the facility meets the minimum requirements and does not relieve the property owner of the responsibility to comply with County, State and Federal regulations.

On-site sewage facilities, although approved of meeting minimum standards, must be upgraded by the property owner at the property owner's expense if the normal operation of the facility results in objectionable odors, if unsanitary conditions are created or if the facility, at any time, does not comply with governmental regulations.

A properly designed and constructed on-site sewage facility, situated in suitable soil, may malfunction if the facility is not properly maintained and controlled. Therefore, it shall be the property owner's responsibility to maintain and operate the on-site sewage facility in a satisfactory manner.

(c) Composite Building Site. Any Owner of one or more adjoining Lots (or portions thereof) may, with the prior written approval of the ACC and Parker County consolidate such Lots or portions into one building site (hereinafter referred to as a "Composite Building Site"), with the privilege of placing or constructing improvements on such resulting site, in which case the side set-back lines shall be measured from the resulting side property lines rather than from the Lot lines as indicated to the Plat.

(d) Walls and Fences. Walls and fences, if any, must be approved by the ACC prior to construction and shall be no closer to the Front Line than the front line of the house on Lots less than three (3) acres. Lots three (3) acres or greater are permitted to fence along the Front Line, however fences fronting roadways must be approved by the ACC, no barbed wired is allowed. A maximum Height of any fence shall not exceed ten feet (10'). See Design Standards.

(e) Easements and Building Setbacks. A forty foot (40') building setback exists from all Front Lines. A five foot (5') utility easement exists inside all Side and Rear lines of all Lots. A ten foot (10') building setback requirement exists for all buildings inside the Side and Rear Lines of all Lots.

(f) Boat Docks/Piers. Lots adjacent to Lake may construct a boat dock into the water from the owners Lot. All plans for the construction of boat docks must be approved in writing by the ACC prior to construction. Boat docks are limited to sixty-four (64') square feet, not including the walkway if less than four feet in width. Covered docks are prohibited, docks may only have railing with a maximum height restricted to five (5') feet. Docks shall not extend further than ten (10') feet from the natural shore line into the body of water. The top surface of the Dock entrance cannot extend more than twelve (12") inches about the natural water level.

(g) Finish Floor Elevations. Parker County regulations stipulate that residential structures adjacent to a 100-year floodplain must be located at or above the base flood elevation (BFE) of the 100-year floodplain but a detailed study to determine the BFE of Dry Creek has not been performed. In order to comply with Parker County requirements, base flood elevations for lots adjacent to Dry Creek floodplain have been determined using the simplified methodology described by FEMA in the above referenced manual. The following table lists the affected lot numbers with the corresponding minimum finish floor elevations:

Lot Number	Approx. BFE of Dry Creek Adjacent to Lot	Minimum Finish Floor Elevation
20	1045	1047
21	1045	1047
22	1050	1052
23-35	1055	1057
52-59	1055	1057
60	1050	1052
61	1045	1047
62	1045	1047

9.5 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.6 Variance. The Declarant or ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations or other reasons require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c)

prevent the Declarant or ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

**9.7 Limitation of Liability.** The criteria and requirements established by the ACC for approval of architects, Builders and contractors are solely for the Declarant's protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved architect, Builder or contractor. Owner's selection of an architect, Builder or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such architect, Builder or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in the future, against the ACC or the Declarant. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the ACC nor Declarant shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, or for ensuring compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property Owners. Neither the Declarant, the Association, the Board, the ACC, nor any committee or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

**9.8 Enforcement.** The Declarant, any member of the ACC or the Board, or the representatives of each, shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant or ACC, the Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, any authorized agent of Declarant, the ACC or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant or the ACC by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law and attorneys' fees as allowed by the Act, may be assessed against the benefited Lot and collected as a Specific Assessment.

Unless otherwise specified in writing by the ACC or Declarant all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

Neither the ACC or any member of the foregoing, nor the Association, the Declarant, or their members, officers or directors, shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the Declarant or the ACC from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ACC.

## **Article 10.**

### **USE RESTRICTIONS**

**10.1 General.** This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Lot. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices for Builders, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B", offices for a property manager retained by the

Association, business offices for the Declarant or the Association or related parking facilities) consistent with this Declaration and any Supplemental Declaration.

10.2 Residential Use. All Lots may be used only for residential purposes of a single family and for ancillary business or home office uses. A business or home office shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the activity limits the number of employees on the premises to not more than (2) at any given time; provided, further, that there is reasonable parking to accommodate such employees; (c) the activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No real estate brokerage firms, real estate sales offices, or any other business directly or indirectly selling and/or managing real property or improvements shall be permitted within the Properties except with the Declarant's prior written approval which may be denied in Declarant's sole discretion. No other trade or business activity shall be conducted upon a Lot without the prior written approval of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties.

### 10.3 Vehicles.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Lots unless otherwise approved by the ACC; provided, however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties.

(b) Recreational vehicles shall be parked or stored only as set forth in the Design Guidelines. The term "recreational vehicles," as used herein, shall refer to a vehicle designed for recreational use, professionally made, (not including converted school buses or homemade trailers). This shall include, without limitation, motor homes, travel trailers, boats, jet skis or other watercraft, trailers, other towed vehicles, motorcycles, "all terrain" vehicles, minibikes, scooters, go-carts, golf carts, campers and buses. Any recreational vehicle parked or stored in violation of this provision shall be considered a nuisance and may be removed from the Properties.

(c) Recreational vehicles may be operated on the streets within the Properties only by a licensed driver in accordance with Texas law.

(d) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt, including, without limitation, the right to limit the number of vehicles permitted on each Lot.

(e) Owners may locate motor homes, travel trailers, and tents on their Lots within set back lines temporarily, not to exceed seven (7) consecutive days in any calendar month or up to 6 months while residence is being constructed. Motor Homes and travel trailers remaining on the Lot beyond the set time restriction are subject to removal by the Property Owners Association. Developer, or any member of the ACC shall have the right, which Owners hereby gives Developer or such ACC member(s), to enter upon the Owner(s) Lot and to remove any such temporary structure which is placed on any Lot in violation of these restrictions, and in doing so, Owner agrees neither Developer nor such member(s) shall be liable, and each is hereby expressly relieved from any liability for trespass or other tort in connection therewith, or arising from such removal. No trash shall be left on Lot. No clothes lines, hanging of clothing, towels, etc. will be permitted. During a non "burn ban", camp fires are allowed but must be contained within a steel camp fire ring and not left unattended.

10.4 Leasing. Lots may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board.

10.5 Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner.

10.6 Animals and Pets. No hogs, pigs or poultry of any kind shall be raised, bred or kept on any Lots. On Lots three (3) acres or greater, Owners shall be limited to one (1) horse, cow, goat or other large animal per acre, only if property is fenced with fencing capable of containing such animals. Dogs, cats, or other common household pets may be kept on a Lot. There shall be no more than four (4) adult dogs per household. Dogs must be kept in a kennel, dog run, or fenced in area that confines said dog(s) to that area. Dogs will not be permitted to run loose in the subdivision and must be vaccinated for rabies according to State law once a year and registered with Parker County once a year.

10.7 Nuisance. No Activity, whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes, unless said activity meets the following criteria: (a) no additional exterior sign of activity is present, (b) it is the type of action that usually happens in a home, (c) no additional traffic, that would not be there normally, is created, (d) the entity or activity maintains an office or place of business elsewhere, and (e) no hazardous or dangerous materials may be stored in bulk on the Lot. This restriction is waived in regard to the customary sales activities required to sell Lots or homes in the Subdivision. The discharge or use of firearms is expressly prohibited. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

10.8 Streams. No streams which run across any Lot may be dammed, as defined in Section 1.43 or the water therefrom impounded, diverted or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 11.

10.9 Drainage and Grading. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains.

Natural established drainage patterns of streets, Lots or roadway ditches will not be impaired by any person or persons. Driveway culverts must be installed and will be of sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow and/or to pass the 5-year storm. A driveway culvert must not be less than twelve inches (12") in diameter. The driveway above the culvert should be constructed such that the driveway is at least six inches (6") below the outside edge of the main roadway. Drainage culvert installation is subject to the inspection and approval of Parker County and must be installed prior to any construction on the Lot. All natural drain patterns must remain opened and must not be blocked by ponds or dams.

No Person shall alter the grading of any Lot without prior approval pursuant to Article 9 of this Declaration. No Person may fill in or pipe any roadside or lot-line swale, except as necessary to provide a minimum driveway crossing, nor may any Person pipe, fill in or alter any lot line swale used to meet Parker County regulations. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

10.10 Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

10.11 Storage of Materials, Garbage, Dumping, etc. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash and

garbage shall be placed in appropriate containers at a designated location as directed by the Board from time to time and regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake within the Properties, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff. No hazardous materials shall be treated, deposited, stored, disposed of, or used in or on any Lot or the improvements thereon. "Hazardous materials" shall be defined as materials, substances, gases, or vapors identified as hazardous, toxic or radioactive by any applicable federal, state or local laws, regulations or ordinances.

No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Lot, except during the initial construction period of the improvements to the Lot. In addition, during construction the building materials on any Lot shall be placed and kept in an orderly fashion. Any Lot on which construction is in progress shall be policed prior to each weekend and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed.

10.12 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed after a subdivision plat including such Lot has been approved and filed in the Public Records without the Declarant's written consent and approval from Parker County. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots which it or any Builder owns, with the written prior consent of the owner of the Lot or Lots affected. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.13 Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration to enforce this restriction, but shall not be obligated to exercise self-help to prevent any such discharge.

10.14 Combustible Liquid. There shall be no storage of gasoline, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and for operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the ACC or as provided for in the Design Guidelines. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.15 Incidental Bodies of Water. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within or adjacent to the Properties. In addition, the Association shall not be responsible for maintaining, increasing or decreasing the water level within any lake or other water body or removing vegetation from any lake or other water body. Pumping of water from any lake or other water body is prohibited.

10.16 Irrigation Systems and Wells. Sprinkler or irrigation systems shall be installed only in accordance with the Design Guidelines. Declarant shall have the right to install sprinkler or irrigation systems or nonpotable wells within or abutting the Properties which draw upon ground water within the Properties, and the Declarant and the Association shall have the right to draw water from such source within the Properties.

10.17 Signs. No signs, advertisement, billboards or advertising structure of any kind may be erected or maintained on any Lot without the consent in writing of the Architectural Control Committee and/or Developer except one (1) standard sign adopted by the Developer and Association not more than twenty-four inches by thirty-six inches, advertising an Owner's Lot for sale or rent. During construction of the home or accessory building, Contractors or Builders are permitted to have one (1) professionally made sign, not more than thirty-six inches wide by thirty-six inches long for advertising purposes, but shall be required to remove said sign upon completion of contracted construction. All other signs are prohibited. Developer, or any member of such Committee shall have the right, which Owners hereby gives Developer or such committee member(s), to enter upon the Owner(s) Lot and to remove any such sign, advertisement or billboard or structure which is placed on any Lot in violation of these restrictions, and in doing so, Owner agrees neither Developer nor such member(s) shall be liable, and each is hereby expressly relieved from any liability for trespass or other tort in connection therewith, or arising from such removal. Notwithstanding the foregoing, this provision shall not apply to entry, directional, or other signs installed by the Developer or its duly authorized agent as may be necessary or convenient for the marketing and development of the Property, including, without limitation, "for sale" signs installed by Developer.

10.18 Mineral Development. No commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted. No derrick or other structures

designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot other than those permitted by the Railroad Commission under the bona-fide oil leases.

10.19 Approved Watercraft. All watercraft must meet Texas Registration requirements and be registered with the Property Owners Association.

10.20 Use of Temporary Structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other accessory building shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently; provided, however, that Developer reserves the exclusive right to erect, place and maintain such facilities in or upon any property in the Subdivision that it owns as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements within the Subdivision.

## Article 11. EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, the Owners, and their successors-in-title.

### 11.1 Easements for Utilities, etc.

(a) There are hereby reserved to the Declarant during the Development Period, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including but not limited to, sewer telephone, gas and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across and through the Properties, as necessary, to exercise the easements described above.

Declarant specifically grants to the local water supplier, sewer service provider, electric company, telephone company, cable company, and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant during the Development Period, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A".

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.2 Easement for Slope Control, Drainage and Waterway Maintenance. The Declarant, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, hereby establishes and reserves a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon each Lot for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion;

(b) drainage of natural or man-made water flow and water areas from any portion of the Properties;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot or Common Area;



(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and

(e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties.

11.3 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.4 Easement for Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents, employees and managers of the Association, any member of its Board or committees, and its officers, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Any entry by the Association or its authorized agents, employees or managers of the Association, any member of its Board or committees, or its officers onto a Lot for the purposes specified herein shall not constitute a trespass.

11.5 Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot to (a) perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass.

The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees as allowed by the Act, may be assessed against the violator as a Specific Assessment.

11.6 Easements for Lake and Pond Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Declarant and its designees shall have an access easement over and across any of the Properties abutting or containing any portion of any pond, stream or wetland to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself and its successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within fifty feet (50') of ponds, streams and wetlands in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the ponds, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such ponds, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release

all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.7 Easement for Special Events. Declarant hereby reserves for itself, its successors, assigns and designees a perpetual, non-exclusive easement over the Common Area for the purpose of conducting educational, cultural, entertainment or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.8 Rights to Stormwater Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

11.9 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

## **Article 12.**

### **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or Occupant which is not cured within sixty (60) Days;

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

12.4 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.5 Construction. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Texas law for any of the acts set out in this Article.

**Article 13.****DECLARANT'S RIGHTS**

13.1 Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2 Development and Sales. The Declarant and Builders authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the development of the Properties and/or the construction or sale of Lots or homes, such as sales activities, tournaments, charitable events and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant and authorized Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and Builders authorized by Declarant may establish within the Properties, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the development of the Properties and/or the construction or sale of Lots or homes, including, but not limited to, business offices, signs, model homes, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Properties for access, ingress and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

13.3 Improvements to Common Areas. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

13.4 Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, By-Laws or Articles.

13.5 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written consent of the Declarant, during the Development Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

**Article 14.****GENERAL PROVISIONS****14.1 Duration.**

(a) Unless terminated as provided in Section 15.1(b), this Declaration shall run with the land and shall be binding on all parties and Persons claiming under them for a period of twenty (20) years from the date this Declaration is recorded. This Declaration shall automatically be extended at the expiration of such period for successive periods of ten (10) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Texas law, in which case such law shall control, this Declaration may not be terminated within twenty (20) years of the date of recording without the consent of all Owners. Hereafter, it may be terminated only by an instrument signed by Owners of at least seventy-five percent (75%) of the total Lots within the Properties and by the Declarant, if the Declarant owns any portion of the Properties, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

#### 14.2 Amendment.

(a) By Declarant. Until termination of the Class "B" membership, the Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. In addition, so long as the Declarant owns property which is subject to this Declaration or which may be unilaterally subjected to the Declaration by the Declarant, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes held by Members other than the Declarant and, during the Development Period, with the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of a affirmative votes required for a action to be taken under that clause.

(c) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one (1) year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member or the assignee of such right or privilege.

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

14.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4 Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules or the Articles through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation subject to any limitations set forth elsewhere herein and in the By-Laws.

14.5 Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot Owners shall remain

as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.6 Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

14.7 Use of the Term "Quail Springs Ranch". No Person shall use the term "Quail Springs Ranch" or any logo of Quail Springs Ranch or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the term "Quail Springs Ranch" in printed or promotional matter where such term is used solely to specify that particular property is located within Quail Springs Ranch and the Association and any other community association located in Quail Springs Ranch shall be entitled to use the term "Quail Springs Ranch" in its name.

14.8 Compliance. Every Owner and occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

14.9 Exhibits. Exhibits "A and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this \_\_\_\_ day of \_\_\_\_\_, 2003.

DECLARANT:

Bluegreen Southwest One, L.P.,  
a Delaware limited partnership

By: Bluegreen Southwest Land, Inc., a Delaware  
Corporation, its general partner

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

Title: Vice President, Bluegreen Southwest Land, Inc.

STATE OF TEXAS  
COUNTY OF DALLAS

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2003, by Oscar Rohne, Vice President of Bluegreen Southwest Land, Inc., a Delaware corporation, the general partner of Bluegreen Southwest One, L.P., a Delaware limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

Commission Expiration Date:

**EXHIBIT "A"****Land Initially Submitted to this Declaration**

ALL THOSE TRACTS or parcel of land, together with the improvements and appurtenances belonging thereto, lying and being in Parker County, Texas, as shown on a plat of survey made by Baird, Hampton Brown, Inc., dated February 20, 2003. A copy of which purchase was recorded on May 12, 2003, in the real property records of Parker County, Texas in Volume 2106, Page 704 and to which plat reference is hereby made for a more particular description of said land.

**EXHIBIT "B"**

**Land Subject to Annexation**

Any property located within a five (5) mile radius of the perimeter boundary of the land described on Exhibit "A" of this Declaration.