



**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
DIAMOND D RANCH, PHASE 1  
A SUBDIVISION IN JEFFERSON COUNTY, TEXAS**

**STATE OF TEXAS** §  
 COUNTY OF JEFFERSON §

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Declaration") is made and executed on the date hereinafter set forth by **Doguet's Diamond D Ranch, Ltd.** (the "Declarant"), a Texas limited partnership.

**WHEREAS**, Declarant is the owner of a certain tract of land containing 51.38 acres, more or less, out of and a part of the James Gerish Jr. League, Abstract 25 and the James Gerish Sr. League, Abstract 24, in Jefferson County, Texas, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

**AND WHEREAS**, Declarant has caused the Property to be subdivide an platted into a subdivision in Jefferson County, Texas, known and to be known as "**Diamond D Ranch, Phase 1**" a Subdivision in Jefferson County, Texas (the "Subdivision"), in accordance with the Final Plat of said Subdivision prepared by Fittz & Shipman, Inc. and filed or to be filed for record in the office of the County Clerk of Jefferson County, Texas (the "Plat"); and

**AND WHEREAS**, Declarant desires to create within the Subdivision a planned community with residential lots, open spaces, landscaping, streets, common lighting, and other common improvements for the benefit of the entire Subdivision and community;

**AND WHEREAS**, Declarant desires to provide for, among other matters, the preservation of the values and amenities in said community and for the maintenance of said open spaces, landscaping, streets, common lighting, and other common improvements; and, to this end, desires to subject the Property, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and for every owner of any part thereof;

**AND WHEREAS**, Declarant desires to reserve in favor of itself and of the Association herein established certain easements on and across the Lots in the Subdivision;

**AND WHEREAS**, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create a property owners' association to which would be delegated and assigned the powers of (i) maintaining and administering the common

properties and facilities, (ii) administering and enforcing the covenants and restrictions contained herein and (iii) collecting and disbursing the assessments and charges hereinafter created;

**AND WHEREAS**, Declarant has caused or will cause a non-profit corporation to be incorporated under the laws of the State of Texas for the purpose of effecting the intents and objectives herein set forth;

**AND WHEREAS**, Declarant does hereby agree that the Property is to be subdivided into numbered lots according to the Plat and that all of the lots of the Property shall be held, sold and conveyed subject to the covenants, conditions, stipulations and restrictions hereinafter set forth; and

**NOW THEREFORE**, for the purposes of creating and carrying out a uniform plan for the improvement and sale of the Property as a restricted subdivision, Declarant hereby adopts the Plat of the Subdivision and hereby imposes on the Lots in the Subdivision the basic restrictions set forth in the Plat.

For the purpose of enhancing and protecting the value, attractiveness and desirability of the Lots in the Subdivision, and for the purpose of providing for the orderly development, use and enjoyment of the Lots in the Subdivision, Declarant hereby declares that all of the Property and all Lots in the Subdivision shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions hereinafter set forth, which shall constitute covenants running with the land and shall be binding upon all parties having any right, title or interest in the Property or in any of the Lots in the Subdivision, or any part thereof, and upon such parties' respective heirs, successors, legal representatives, devisees, lessees and assigns, and shall inure to the benefit of such parties and their respective heirs, successors, legal representatives, devisees, lessees and assigns, and shall henceforth be made a part by appropriate reference to this instrument, of each and every contract, deed and lease covering the numbered lots set forth on said Plat and same shall be considered a part of each contract, deed and lease, as though fully incorporated therein.

## **ARTICLE I.**

### **DEFINITIONS**

**1.01 "Architectural Control Committee" and "Committee"** shall mean the architectural control committee established and referred to in this Declaration in Article VI hereof.

**1.02 "Architectural Control Guidelines"** shall mean the guidelines, rules and specifications promulgated, established and set forth from time to time by the Architectural Control Committee defining requirements for construction, maintenance, alterations and repairs of any and all structures and improvements within the Property and setting forth all other applicable rules and regulations pertaining to any matter over which the Architectural Control Committee has been granted control under this Declaration. The Architectural Control

Guidelines may be prepared and filed of record at any time by the Architectural Control Committee and may be amended, modified and restated from time to time as determined in the discretion of the Architectural Control Committee.

**1.03 “Association”** shall mean and refer to **DIAMOND D RANCH PROPERTY OWNERS ASSOCIATION, INC.**, its successors and assigns.

**1.04 “Commercial Lots”** shall mean the lots shown on the Plat as commercial tracts that are immediately adjacent to U.S. Highway 90 and specifically include Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 that are within the area shown in the Plat as being commercial tracts.

**1.05 “Common Area” and “Common Properties”** shall mean all real property owned by the Association, regardless of when acquired, that is for the common use and enjoyment of the Owners, and shall include streets, roads, lighting, drainage structures, drainage easements, access easements and other common improvements. The Common Area to be owned by the Association shall initially consist of all the streets, drainage easements, lighting, access easements and other common improvements. In certain circumstances, Common Area may not be owned by the Declarant or the Association in fee, but may, in some instances, be held as an easement, be leased or may simply be areas of land that are not owned or leased by Declarant or the Association but which are maintained by the Association or the Declarant for the use and benefit of the Owners.

**1.06 “Declarant”** shall mean and refer to **DOGUET’S DIAMOND D RANCH, LTD.**, a Texas limited partnership, its successors and assigns.

**1.07 “Lot”** shall mean and refer to each of the lots described or shown on the Plat, as amended from time to time.

**1.08 “Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, or portion of a Lot, but excluding those having such interest merely as security for the performance of an obligation.

**1.09 “Property”** shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**1.20 “Residential Lots”** shall mean all of the Lots in the Subdivision other than those designated in the Plat as Commercial Lots or Commercial Tracts.

## ARTICLE II.

### RESERVATIONS AND DEDICATION

**2.01 Roads and Streets.** There is hereby reserved unto Declarant, its successors and assigns, perpetual easements and rights-of-way in, along, under, over, across and through roads and streets of every type shown on the Plat or map of the Subdivision to construct, operate,

maintain, inspect, reconstruct and repair roads and streets, together with the right to connect such roads and street with other roads and streets. The roads and streets are not dedicated to the public in any manner, but Declarant reserves for itself and its successors and assigns the right to dedicate such roads and streets to the public at any time, in whole or in part, as determined in the discretion of the Declarant.

**2.02 Utilities.** There is hereby reserved unto Declarant, its successors and assigns, the exclusive right and easement into the streets and areas shown on the recorded Plat of the Property and also into any area designed as a utility easement on the recorded Plat of the Property, to lay, construct, maintain, operate, repair, replace and remove utility lines (including but without limitation, water lines, sewer lines, gas lines, electric lines, telephone and communication lines, and cable television lines, whether located above or below ground); and, further Declarant reserves for itself and its successors and assigns the exclusive right and easement, without further assent or permit from any Owner, to grant franchises and easements to any public or private utility company, municipality, cable service provider company, telephone company or water company, to lay, construct, maintain, operate, repair, replace and remove any type of public and private utility lines (including but not limited to, any electric, gas, water, sewer, cable service line, telephone line and any other type of utility line approved by Declarant) in said roads, streets, easements and drives. For purposes hereof, Declarant and its successors and assigns shall have the right of access to and across each Lot in the Subdivision for the purpose of laying, constructing, maintaining, repairing and replacing the public and/or private utility lines. Any claims for damages, if any, by the construction, maintenance, repair thereon or replacement thereof on account of temporary or other inconvenience caused thereby against the Declarant or any public or private company or any other agent or servants, are hereby waived by any Owner and any Owner's heirs, successors and assigns.

**2.03 Assignment and Transfer of Reservations.** It is further reserved unto the Declarant, the exclusive right to transfer unto the Association or to any other person or company, by deed or other legal means, the Common Area, and the reservations as designated unto Declarant in this Article II.

### ARTICLE III.

#### USE RESTRICTIONS

The Property and each Lot situated thereon shall be constructed, developed, reconstructed, repaired, occupied and used as follows and subject to the following terms and restrictions:

**3.01 Residential Purposes.** Each Residential Lot (including land and improvements) shall be used and occupied for single family residential purposes only and no Owner or other Occupant shall use or occupy such Owner's Residential Lot, or permit the same or any part, thereof to be used or occupied, for any purpose other than as a private single family residence for the Owner or such Owner's tenant and their families and domestic servants employed on the premises. As used herein the term "single family residential purposes" shall be deemed to

prohibit specifically, but without limitation, the use of any Residential Lot for a duplex apartment, garage apartment, or other apartment use; provided, however, if the design and specifications thereof are approved by the Architectural Control Committee, an Owner may construct a second residence on a Residential Lot for private use as an apartment by a member of the Owner's family or by a domestic servant employed by the Owner.

**3.02 Commercial Purposes.** Except for the Commercial Lots, no Lot shall be used for any business or commercial use. The Commercial Lots may be used for business and commercial purposes; subject, however, to the following restrictions:

(a) No Commercial Lot may be used for operating any type of sexually oriented business, including but not limited to, a nude or semi-nude strip club, adult book store, a massage parlor or the sale of sex novelties or other sexual related products.

(b) No Commercial Lot may be used as a junk yard, salvage yard or for the dumping of any type of garbage or waste, or for the incineration or storage of any garbage or waste materials.

(c) No Commercial Lot may be used for the raising, breeding or feeding of any animals, nor as a feed lot, slaughter house, meat or chicken processing plant, nor as a seafood processing plant.

(d) No Commercial Lot shall be used in any manner which is offensive to the other Owners in the Subdivision by reason of odor, fumes, dust, smoke, noise or pollution, or which is hazardous by reason of extensive danger of fire or explosion, of which otherwise constitutes a nuisance, or which is reasonably viewed as being dangerous or unsafe, or which is in violation of any city, county, state or federal law, ordinance or regulation.

(e) No Commercial Lot shall be used for the operation of a bar or nightclub. Restaurant use is permissible and restaurant use with alcohol sales including a bar with alcohol sales is permissible as long as the percentage of alcohol sales does not exceed more than 40% of the restaurant's total revenues.

(f) No Commercial Lot shall be used for the commercial excavation of building or construction materials (but not including excavation in connection with the construction of improvements on the lot).

(g) No Commercial Lot shall be used for the refining of petroleum or any petroleum products, or for the smelting of iron, tin, zinc or other ores; or for the drilling, mining or production of oil, gas or other minerals.

(h) Prior to conducting any business on a Commercial Lot, the owner must construct and thereafter maintain in good repair and condition a privacy fence or a berm at least eight (8) feet tall. The fence or berm must be constructed out of cinder block or other materials approved by the Architectural Control Committee, that runs along the boundary line of the Commercial Lot that is nearest to the Residential Lots in the Subdivision, and further, if required

by the Architectural Control Committee, that runs along the side boundary lines of the Commercial Lot so as to screen the Commercial Lot from view of the Residential Lots.

**3.03 Replatting.** No Residential Lot shall be replotted or resubdivided; provided, however, that Declarant shall have and reserves the right, at any time, or from time-to-time, upon compliance with applicable law, to file a replat of the Plat to effect a resubdivision or reconfiguration of any Lots then owned by Declarant without the necessity of getting the approval or signature of any of the Owners. Owners shall not unreasonably withhold or delay any necessary joinder in or consent to the replat or amendments to the Plat, but nothing herein shall require that Declarant obtain of such consent, joinder or approval of the Owners. The privilege to replat Lots owned by the Declarant reserved in this section shall be exercisable only by Declarant.

**3.04 Minimum and Maximum Floor Space.** Each and every dwelling and other improvements constructed on any Residential Lot shall contain such minimum square feet and shall not exceed such maximum square feet as established and required by the Architectural Control Committee (as provided in Section 3.12 and Article VI hereof). In the absence of any determination by the Architectural Control Committee of the minimum and maximum square footage requirements, then each dwelling shall contain a minimum of 2,200 square feet of living space and a maximum of 7,200 square feet of living space. For purposes hereof, living space shall mean the interior of the premises for which ventilation, heating and air conditioning is provided.

**3.05 Combining Lots.** If approved by the Architectural Control Committee, any person owning two or more adjoining Residential Lots may consolidate such Residential Lots into a single building location for the purpose of constructing one (1) residential structure on a Residential Lot (the plans and specifications therefor must be approved as set forth in this Declaration) and such other improvements as are permitted herein; provided, however, any such consolidation must comply with the requirements and guidelines imposed by the Architectural Control Committee and the rules, ordinances and regulations of any governmental authority having jurisdiction over the Property. In the event of any such consolidation, the consolidated Lots shall be deemed to be a single Residential Lot for purposes of applying the provisions of this Declaration; provided, however, such Owner shall continue to pay assessments on such Residential Lots and shall be entitled to the number of votes as if such Residential Lots had not been consolidated. Any such consolidation shall give consideration to easements as shown and provided for on the Plat and any required abandonment or relocation of any such easements shall require the prior written approval of Declarant as well as the prior written approval of any utility company having the right to the use of such easements. Combining of portions of Residential Lots into a single building site is prohibited. Commercial Lots may be combined and subdivided in any manner approved by Declarant.

**3.06 Setback Requirements and Building Location.** The location of the main residence and any other building of any kind on each Residential Lot shall be subject to the prior written approval of the Architectural Control Committee. No building or structure of any type shall be erected on any Residential Lot nearer to the property lines than indicated by the minimum building setback line on the Plat, and in no case nearer than fifty feet (50') to the

street. All front, side and rear setbacks must be approved by the Architectural Control Committee, and must meet the requirements of the Plat. No dwelling structures, including attached or detached garage or other accessory building, shall be located nearer to the front Residential Lot line or nearer to a side Residential Lot line than the building set back line shown on the recorded Plat or Plats of the Subdivision. However, with the prior written approval of the Architectural Control Committee (as part of its plan approval), open and unenclosed terraces or porches and eave and roof overhangs may project across the building set back line. Further, no dwelling structure, including any attached or detached garage or other accessory building, shall be located nearer the rear lot line than what is approved by the Architectural Control Committee. The Architectural Control Committee shall determine in which direction a dwelling or other building shall face on a Residential Lot. With limiting the generality of the foregoing, the Architectural Control Committee may impose requirements that each main residence and any other structure on each lot must be located substantially the same distance from the street as all other residences and structures in order to provide for and promote uniformity in the Subdivision.

**3.07 Height.** No building or structure on any Residential Lot shall exceed, in height, the maximum height allowed by the Architectural Control Committee.

**3.08 Driveways.** Each Residential Lot must be accessible to the adjoining street by a driveway suitable for such purposes and approved in writing as to design, materials and location by the Architectural Control Committee before the structure located on such Residential Lot may be occupied or used.

**3.09 Access.** No driveways or roadways may be constructed on any Residential Lot to provide access to any adjoining Residential Lot except as expressly provided on the Plat, or otherwise approved in writing by the Architectural Control Committee.

**3.10 Drainage.** Neither the Declarant nor its successors or assigns shall be liable for any loss of, use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, walks, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters. After the structure to be constructed on a Lot has been substantially completed, the Lot will be graded so that surface water will flow to streets, ditches, canals, drainage easements, or Common Properties, and in conformity with the general drainage plans for the Subdivision as determined and established by Declarant and the Architectural Control Committee.

**3.11 Utilities.** Each residence situated on a Residential Lot shall be connected to the water and utility lines as soon as practicable after same are available at the Lot line. The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except portable gas grills), on any Residential Lot shall require the prior written approval of the Architectural Control Committee, and, if so approved, the Architectural Control Committee may require that such tank, bottle or cylinder be installed underground or be screened from view. Without limiting the generality of the foregoing, each residence situated on a Residential Lot shall be connected to the water line providing water service to the Subdivision. Private water wells are prohibited and no Owner of a Residential Lot may elect to opt out of or

refuse to use the water system that is available to the entire Subdivision. Sewer service shall be by private septic system installed on each Lot at the Owner's expense, and each private septic system, including the type and specifications of such system and the location thereof on the Residential Lot must be approved in writing by the Architectural Control Committee prior to installation. Each Owner shall be required to maintain the private septic system installed on such Owner's lot in good operating condition, and in compliance with all applicable laws and regulations, and in compliance with all rules imposed by the Architectural Control Committee. Each Owner shall be required to pay all applicable fees and charges relating to the use of the water systems as may be established and assessed from time to time. Any such fees and charges may be billed directly to the Owner or the Association may elect to contract to have the Association pay the total fees and charges to the provider of the system and in turn the Association may assess each Owner and Member his proportionate share of such fees and charges, which assessments shall become part of the annual maintenance assessments made upon the Members as provided in Article V of these Declarations.

### **3.12 Construction Requirements.**

(a) The building plans and exterior design, color and appearance of all dwellings and all other structures and improvements of any kind to be constructed or erected on any Residential Lot must be approved by the Architectural Control Committee prior to the start of construction. The exterior surface of all dwellings, buildings and all other structures and improvements of any kind shall be constructed of materials and shall be of an appearance and color approved by the Architectural Control Committee. The Architectural Control Committee will only approve building materials which are of a grade and quality acceptable to the Architectural Control Committee. The roof pitch of any structure must be approved in writing by the Architectural Control Committee. Exterior paint and stain colors and the color of any bricks, exterior surfaces, doors and roofs must be approved by the Architectural Control Committee. The Architectural Control Committee may impose any rules and restrictions it determines are reasonable and desire regarding requirement of building materials, appearance, color and building specifications in order to provide for and promote general uniformity in the Subdivision. The minimum elevation of each foundation shall be thirty feet (30'), or such greater height as required under any applicable law or regulation, and the Declarant makes no representation or warranty regarding the minimum elevation requirements required by law or necessary to protect a structure from flooding.

(b) All improvements of any kind shall be constructed in accordance with the Architectural Control Guidelines adopted and approved by the Architectural Control Committee. All buildings and improvements of any kind must be constructed by a builder approved by the Architectural Control Committee. The Architectural Control Guidelines may be amended from time to time by the Architectural Control Committee. The Architectural Control Guidelines, as may be amended from time to time, may, but are not required to



be, filed of record and may be published and made public in any way determined by the Architectural Control Committee, including but not limited to, filing them of record, publishing them on any website maintained by the Declarant, the Association or the Architectural Control Committee, or providing them in paper form to any person who requests them. The Architectural Control Guidelines, as adopted and amended from time to time by the Architectural Control Committee, may prohibit or restrict the construction or installation of certain types of structures, facilities or other improvements, including but not limited to, swimming pools, spas, outbuildings, boat sheds, RV sheds, fences, ponds and other improvements.

(c) Upon the sale of any Residential Lot in the Subdivision by the Declarant to any third party, the third party who purchases such Residential Lot (the "Initial Purchaser") must start construction of the residence to be built on such Residential Lot within twelve (12) months from the date the Initial Purchaser acquired ownership of the Residential Lot; provided, however, Declarant in its discretion may modify this requirement and extend the period that such construction must start. Such construction must be completed in accordance with all of the requirements set forth in these restrictions and in strict compliance with the standards and specifications established by the Architectural Control Committee, as may be published and amended from time to time, and without limiting the generality of the foregoing, once construction is started the owner must diligently proceed with completion of construction and must substantially complete the construction of the improvements within twelve (12) months after construction has started. Unless otherwise approved by the Architectural Control Company, if the Residential Lot is sold by the Initial Purchaser, there shall be no extension of time granted to any subsequent buyer and owner to start construction of the residence and such construction must still start within twelve (12) months from the date the Initial Purchaser acquired ownership of the Residential Lot. If the owner of the Residential Lot fails to start construction of the residence within the time required by these restrictions, then the Declarant or any assignee designated by the Declarant shall have the option to repurchase the Residential Lot from the then current owner for a cash purchase price equal to eighty-five percent (85%) of the original purchase price paid to the Declarant by the Initial Purchaser, which option may be exercised by the Declarant any time before construction of the residence has started on such Residential Lot. If the owner of the Residential Lot fails to timely start construction or fails to diligently proceed with completion of construction of the residence on the Residential Lot in accordance these restrictions and the standards and specifications established by the Architectural Control Committee, then a special assessment shall be imposed on the owner and the Residential Lot in the amount of FIFTY DOLLARS (\$50.00) per day for each day that the owner is in breach of these restrictions, which assessment shall be payable to the Association, and which assessment shall be secured by a lien on the Residential Lot that is enforceable in the same manner as all other assessments provided for in Article V of these restrictions.

**3.13 Landscaping.** All Residential Lots shall be landscaped in accordance with the landscaping requirements established by the Architectural Control Committee. Any and all plans for the landscaping of front yards and of side yards not enclosed by solid fencing, including alterations, changes or additions thereto, shall be subject to the written approval of the Architectural Control Committee. Weather permitting, each Lot shall be fully landscaped within the time required by the Architectural Control Committee. Each Residential Lot Owner shall be responsible for maintaining his own landscaping in a healthy condition and in accordance with the requirements established from time to time by the Architectural Control Committee. Prior to occupancy of a residence constructed on any Residential Lot, the front yard, side yards and rear yards must be planted with sod grass acquired from Doguet Grass Farm in Jefferson County, Texas and landscaped in a manner acceptable to the Architectural Control Committee, and there must be at least two (2) living shade trees planted in the front yard. Each shade tree shall be an existing tree or newly planted tree at least six feet (6') in height and at least two inches (2") caliper measured eighteen inches (18") from the ground. Newly planted trees must be oaks, pines, elms, sycamores or other similar native shade tree species or such other shade tree species as shall be approved from time to time by the Architectural Control Committee.

**3.14 Fences, Walls and Hedges.** No fence, wall or hedge shall be erected, placed or altered on any Residential Lot unless otherwise approved and permitted by the Architectural Control Committee. The Architectural Control Committee may establish requirements for the types of materials that may be used for fences, walls and hedges, the minimum and maximum heights of fences, walls and hedges, the location of fences, walls and hedges on any Residential Lot, and requirements for maintaining and repairing fences, walls and hedges.

**3.15 Trash Receptacles, Collection and Waste Materials.** Each Residential Lot Owner shall make or cause to be made appropriate arrangements with a waste disposal company approved by the Association for collection and removal of garbage and trash on a regular basis. If the Owner fails to make such provisions, the Association may do so and assess the costs thereof to the Owner. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the Association in connection with the storage and removal of trash and garbage. Garbage cans and other receptacles shall (except when placed on a street or drive for regular collection purposes) be hidden or screened from public view. All Residential Lots shall at all times be kept in a healthful, sanitary and attractive condition. No Residential Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter, nor for the storage of any junk vehicles and nor for the repair of any motor vehicle, boat or marine vessel. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly-fitting lids, or other containers approved by the Association, and which shall be maintained in a clean and sanitary condition. No Residential Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Residential Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which the materials shall either be removed from the Residential Lot or stored in a suitable enclosure on the Residential Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Residential Lot

and no open fires or burning shall be permitted upon any Residential Lot without the prior approval of the Association.

**3.16 Exterior Lighting.** No exterior light, including landscape lighting, Christmas lights and any other exterior lighting, shall be installed or maintained on any Residential Lot without the prior written approval of the Architectural Control Committee. Further, and notwithstanding such prior written approval, upon being given notice by the Architectural Control Committee that any exterior light is objectionable, the Owner of the Residential Lot on which same is located will immediately remove said light or shield the same in such a way that it is no longer objectionable. Exterior Christmas lights and decorations, and all other holiday decorations, must be displayed in a manner and at times approved by the Architectural Control Committee.

**3.17 Window Coolers and Window Treatments.** No window or wall type air-conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any residential building on any Residential Lot without the prior written approval of the Architectural Control Committee. No aluminum foil, reflective film or similar treatment shall be placed on any windows or glass without the prior written approval of the Architectural Control Committee.

**3.18 Antennas Restrictions and Satellite Dishes.** No radio or television aerial wires or antennas shall be maintained on the outside of any building on any Residential Lot nor shall any freestanding antennas of any style be permitted on any Residential Lot. All radio or television aerial wires or antennas must be built within the main structure and must not be visible from outside of such structure. No satellite dish shall be permitted on any Residential Lot or structure constructed on any Residential Lot without the prior written approval of the Architectural Control Committee.

**3.19 Temporary Structures and Vehicles.** No temporary structure of any kind shall be erected or placed upon any Residential Lot. No trailer, mobile, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residence to be built thereon, shall be placed on any Residential Lot, either temporarily or permanently, and no residence, house, garage or other structure appurtenant thereto shall be moved upon any Residential Lot from another location, except for a sale, pre-sale or construction trailer; provided, however, that Declarant reserves the exclusive right to erect, place and maintain and to permit builders and real estate agents to erect, place and maintain such facilities in and upon the Property as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements on the Property. Such facilities may include, but not necessarily be limited to, a temporary office building, trailers, storage area, signs, portable toilet facilities and sales office. Declarant and builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with the construction and sales operations on the Property, but in no event shall a builder have such right for a period in excess of one (1) year after the date of substantial completion of his last residence on the Property. Any truck, bus, recreational vehicle, boat, boat trailer, jet ski, motorcycle, trailer, mobile home, campmobile, camper, tractor, farm equipment, lawn equipment or any vehicle

other than conventional automobile shall, if brought within the residential area of the Subdivision, be stored, placed or parked within the garage of the appropriate Owner or concealed from view from adjoining Lots, Common Properties, or public streets, unless approved in writing by the Architectural Control Committee. Temporary permits for any such type of vehicle or equipment may be granted in the discretion of the Architectural Control Committee.

**3.20 Parking.** On-street parking is restricted to approved deliveries, pick-up or short-time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the Association. Parking on streets overnight is not allowed. Parking in driveways is permitted.

**3.21 Signs, Fountains and Yard Decorations.** Other than a standard "for sale" sign of a size and design approved by the Architectural Control Committee, no signs or flags shall be displayed to the public view on any Residential Lot without the prior written approval of the Architectural Control Committee. With the prior written approval of the Architectural Control Committee, a sign or signs identifying the owner, builder and any architect or designer may be displayed during construction, but no other signs will be allowed. Further, no fountains or other yard decorations shall be constructed, installed or placed on any Residential Lot, nor shall any flags, banners or pennants be displayed on any Lot, without the prior written approval of the Architectural Control Committee.

**3.22 Removal of Dirt.** The digging of dirt or the removal of any dirt from any Residential Lot is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

**3.23 Drilling and Mining Operations.** No oil drilling, water drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Residential Lot, nor shall oil wells, water wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Residential Lot. No derrick or other structure designed for use in boring for oil, natural gas or water shall be erected, maintained or permitted upon any Lot.

**3.24 Driveway Requirements.** Prior to the first occupancy of a dwelling constructed on any Residential Lot, there must be constructed and completed in accordance with the Driveway Construction Guidelines promulgated by the Architectural Control Committee, a driveway proving access to the residence. The required driveway shall be constructed using materials and in accordance with specifications determined and approved by the Architectural Control Committee.

**3.25 Offensive Activities.** No noxious or offensive activity shall be conducted on any Residential Lot nor shall anything be done thereon which is or may become an annoyance or nuisance to the other Owners. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets [not to exceed two (2) adult animals] may be kept, provided that they are not kept, bred or maintained for commercial purposes. No radio, stereo, broadcast or loud speaker units and no amplifiers of any kind shall be placed upon or outside any Residential Lot, or be directed to the outside of any building on any Residential Lot, without prior written approval and authorization of the Association. No

garage sales, estate sales or similar activities or events shall be conducted on any Residential Lot unless approved by the Association. No open fires or burning shall be permitted on any Lot unless approved by the Association. Repairs and maintenance of vehicles, lawn equipment, appliances and other equipment on driveways and other areas open to view by the public is prohibited on any Residential Lot or in any residential area in the Subdivision.

**3.26 Renting and Timesharing.** No Residential Lot or residence or other improvement constructed thereon shall be rented to any third party except for rentals made to a single family for a minimum period of at least six months. No Residential Lot or residence or other improvement constructed thereon shall be subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Residential Lot or residence constructed thereon rotates among members of a program on a fixed or floating time schedule.

**3.27 Duty of Maintenance.**

(a) Owners and occupants (including lessees) of any Residential Lot shall, jointly and severally, have the duty and responsibility, at their sole cost and expense, to keep the Residential Lot so owned or occupied, including buildings, improvements, fences, landscaping, grounds and drainage easements and other rights-of-way incident thereto, and vacant land, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (i) Prompt removal of all litter, trash, refuse and waste;
- (ii) Lawn mowing on a regular basis;
- (iii) Tree and shrub pruning;
- (iv) Watering landscaped areas;
- (v) Keeping exterior lighting and maintenance facilities in working order;
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive;
- (vii) Keeping parking areas, driveways, sidewalks, curbs and roads in good repair;
- (viii) Complying with all government health and police requirements and all requirements of the Association and the Architectural Control Committee;
- (ix) Repair of exterior damages to improvements;

(x) Cleaning of landscaped areas lying between street curbs and Lot lines, and mowing and cleaning of drainage ditches, unless such streets, landscaped areas or drainage ditches are expressly designated to be Common Properties maintained by applicable governmental authorities or the Association; and

(xi) Cleaning and repainting the exterior of buildings, fences and other improvements as often as required under the terms of the Architectural Control Guidelines and also as requested from time to time by the Association to maintain the exterior in a clean, neat and fresh condition.

(b) If, in the opinion of the Association, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the repairs and maintenance or make arrangements with the Association for making the repairs and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such repair and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person.

(c) Notwithstanding the provisions above, if, at any time, an Owner shall fail to control weeds, grass and/or other unsightly growth, the Association shall have the authority and right to go onto the Residential Lot of such Owner for the purpose of mowing and cleaning said Residential Lot and shall have the authority and right to assess and collect from the Owner of said Residential Lot a sum up to three (3) times the cost incurred by the Association for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. If, at any time, weeds or other unsightly growth on the Lot exceed six inches (6") in height, the Association shall have the right and authority to mow and clean the Lot, as aforesaid.

(d) The Owners and occupants (including lessees) of any Residential Lot on which work is performed pursuant to this Section shall, jointly and severally, be liable for the cost of such work [such costs constituting a special individual assessment] and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all said persons, jointly and severally, and shall constitute a lien against that portion of the Property on which said work was performed. Such lien shall have the same attributes as the lien for Assessments and special assessments set forth in this Declaration, and the Association shall have the identical powers and rights in all, respects, including but not limited to the right of foreclosure.

**3.28 Maintenance of Common Area and Common Properties.** All landscaping and improvements placed or erected on the Common Area or Common Properties by Declarant or the Association shall be owned and maintained by the Association. For purposes hereof, the Association may contract with Declarant, any person or company affiliated with or related to Declarant, and any other person or company to maintain the Common Area and Common Properties on behalf of the Association, which contracts may be for such term and on such conditions as the Board of Directors of the Association may approve.

**3.29 Hunting and Firearms.** No hunting and no use or discharge of firearms will be allowed from or in the Subdivision.

**3.30 Boats, RV's, Campers and Similar Property.** No boat, jet ski, watercraft, recreational vehicle, camper or other vehicle or vessel will be allowed to be kept on any Residential Lot except in an enclosed garage, unless otherwise approved by the Association.

**3.31 Propane Tanks.** Propane Tanks may only be erected, installed and maintained on a Residential Lot in accordance with the requirements established by the Architectural Control Committee.

**3.32 Mailboxes.** Unless Declarant or the Association establishes a central mail center and receptacle for all mail, each Owner of a Residential Lot shall construct a mailbox providing for mail service in accordance with the requirements of the Architectural Control Committee, which will establish a uniform standard for all mailboxes.

**3.33 Utility Service and Meters; Mechanical Equipment Screening.** All utility service lines between meter points and dedicated utility easements shall be underground unless otherwise approved in writing by the Architectural Control Committee. Meters for utilities shall be screened from view from any street in the Subdivision unless otherwise approved in writing by the Architectural Control Committee. Air conditioning compressors and other external mechanical equipment must be screened from view from the streets in the Subdivision in a manner acceptable to the Architectural Control Committee unless otherwise approved in writing by the Architectural Control Committee.

**3.34 Conflict Between Ordinances and Restrictions.** In the event of any conflict between the restrictions contained in this Declaration and any ordinances, laws, rules, or regulations of any municipal or other governmental authorities having jurisdiction over the Subdivision or the construction of improvements therein, then such ordinances, laws, rules and regulations, shall control, except however, that if these restrictions contained herein are in any respect more restrictive than such ordinances, laws, rules, or regulations, than the restrictions contained herein shall control.

**3.35 Variances.** The Board of Directors of the Association may, in its discretion, approve a variance of any of the use restrictions or other restrictions contained in this Declaration in order to overcome practical difficulties and prevent unnecessary hardships in the

application of the restrictions set forth herein, provided that such variance will not be materially detrimental or injurious to the other Lots and the Subdivision.

**3.36 Application of Restrictions to Commercial Lots.** Except for the restrictions set forth in Section 3.02 above, the restrictions set forth in this Article III shall not be applicable to the Commercial Lots. The Commercial Lots shall be subject to the restrictions contained in Section 3.02 and shall be subject to any other restrictions as may be imposed on any one or more of the Commercial Lots as determined and established from time to time by the Declarant.

## ARTICLE IV.

### PROPERTY OWNERS ASSOCIATION

**The following terms and provisions contained in this Article IV shall be applicable only to the Residential Lots, and thus shall not be applicable to any of the Commercial Lots.**

**4.01 Property Owners Association.** Declarant will organize or cause to be organized an association which will be organized for the purposes hereinafter mentioned, and such Association shall be called "**DIAMOND D RANCH PROPERTY OWNERS ASSOCIATION, INC.**" The Association shall have the right and obligation to maintain the Common Area and Common Properties once Declarant turns over and assigns such right and obligations to the Association. The Association shall administer the maintenance fund hereinafter provided within these restrictions. The Association shall have all of the powers and authority set forth in its Articles of Incorporation and Bylaws, together with the general powers of a nonprofit corporation, and together with the powers and authority set forth in this Declaration, and shall have the power and authority to do any and all lawful things which may be authorized, required or permitted to be done by applicable law.

**4.02 Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any Residential Lot shall be a member of the Association. Each Residential Lot shall carry with it one vote in the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Residential Lot. Owners of Commercial Lots shall not be members of the Association, but the owners of the Commercial Lots may form their own association to govern matters pertaining to the Commercial Lots.

**4.03 Suspension of Voting Rights.** The Association may suspend the voting rights of any Owner for any period during which any assessment against that owner's Lot remains unpaid.

**4.04 Bylaws.** The Association shall have Bylaws that set forth such other and further rules and regulations governing the Association and its operation.

**4.05 Limitation on Voting Rights of Members.** Notwithstanding the provisions of Section 4.02, no Member and no owner of any Lot shall be entitled to exercise any voting rights with respect to the Association until Declarant transfers and assigns control of the Subdivision and the Association to the Board of Directors of the Association by written



instrument executed by Declarant and filed for record in the Office of the County Clerk of Jefferson County, Texas. Until such time, Declarant shall retain all voting rights with respect to the Association and Declarant shall be in sole control of the Association and of the Association's Board of Directors and each owner of a Lot hereby irrevocably appoints and designates Declarant as its sole agent to exercise all voting rights on behalf of the owner with respect to the owner's membership interest in the Association. Declarant agrees that it will relinquish its control and transfer and assign control of the Subdivision and the Association to the Board of Directors and its members not later than 45 days after Declarant has sold all of the Lots within the Subdivision (including any additional lots that are added to and become subject to this Declaration pursuant to the provisions of Section 10.01 hereof).

## ARTICLE V.

### COVENANTS AND MAINTENANCE ASSESSMENTS

**The following terms and provisions contained in this Article V shall be applicable only to the Residential Lots, and thus shall not be applicable to any of the Commercial Lots.**

**5.01 Creation of the Lien and Personal Obligation of Assessments.** Each purchaser and Owner of any Residential Lot, by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the Lot), to pay to the Association (or to an entity or collection agency designated by the Association): (1) annual maintenance assessments or charges (as specified in Section 5.04 hereof), such assessments to be fixed, established and collected from time to time as herein provided; (2) special assessments for capital improvements and other purposes (as specified in Section 5.05 hereof), such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual special assessments levied against one or more Owners to reimburse the Association for any reasonable expenses incurred in enforcing these Restrictions against any Owner and for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of such Owner or Owners, his Tenants (if applicable), and their respective family, agents, guests and invitees, and not caused by ordinary wear and tear (as specified in Section 5.05 hereof), all of such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual maintenance, special capital, and special individual assessments described in this Section 5.01 (hereinafter, the "Assessment" or the "Assessments") together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which any such Assessment is made. Each such Assessment, together with interest thereon, attorneys' fees, court costs, and other costs of collection thereof shall also be the continuing personal obligation of the Owner of such Lot at the time when the Assessment fell due. Further, no Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the

Assessments by non-use of the Common Properties or abandonment of his Lot. Existing obligations of an Owner to pay Assessments and other costs and charges shall not pass to bona fide first lien mortgagees which become Owners by reason of foreclosure proceedings or an action at law subsequent to the date the Assessment was due; provided, however, any such foreclosure proceeding or action at law shall not relieve such new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment.

**5.02 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for (i) the purpose of enforcing these restrictions and for the promotion of the recreation, comfort, health, safety and welfare of the Owners and/or the residents of the Subdivision; (ii) managing the Common Area and Common Properties; (iii) enhancing the quality of life in the Subdivision and the value of the Lots; (iv) improving and maintaining the Common Area and Common Properties, the properties, services, improvements and facilities devoted to or directly related to the use and enjoyment of the Common Area and Common Properties, including, but not limited to, the payment of taxes on the Common Area and Common Properties and insurance in connection therewith and the repair, replacement and additions thereto; (v) paying the cost of labor, equipment (including, the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Area and Common Properties; (vi) carrying out the powers and duties of the Board of Directors of the Association as set forth in this Declaration and the Bylaws; (vii) paying the contractual obligations, debts and liabilities of the Association; (viii) carrying out the purposes of the Association as stated in its Articles of Incorporation; (ix) pay all costs associated with the operating the Common Areas, including but not limited to, utilities, landscaping and maintenance; and (x) carrying out the powers and duties relating to the Architectural Control Committee, after Declarant has delegated or assigned such powers and duties to the Association.

**5.03 Improvement and Maintenance of the Common Area and Common Properties Prior to Conveyance to the Association.** Initially, all improvement of the Common Area and Common Properties shall be the responsibility of the Declarant and shall be undertaken by Declarant at its sole cost and expense with no right to reimbursement from the Association. After the initial improvements to the Common Area and Common Properties are substantially completed and until the date of the conveyance of the title to the Common Area and Common Properties to the Association, the Declarant, on behalf of the Association, shall have the responsibility and duty (but with right of Assessment against all Owners) of maintaining the Common Area and Common Properties, including, but not limited to, the payment of taxes on and insurance in connection with the Common Area and Common Properties and the cost of repairs, replacements and additions thereto, and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Area and Common Properties. In this regard, and until such time as the Common Area and Common Properties are conveyed to the Association, all Assessments collected by the Association (less such amount required for the operation of the Association) shall be forthwith paid by the Association to Declarant, to the extent that such Assessments are required by Declarant to maintain the Common Area and Common Properties as set forth in this Paragraph. The Association may rely upon a certificate executed and

delivered by the Declarant with respect to the amount required by Declarant to maintain the Common Area and Common Properties hereunder.

**5.04 Annual Maintenance Assessments.** Each Residential Lot and property owner shall be subject to an annual maintenance assessment to provide and pay for any of the purposes set forth in Section 5.02 above (herein sometimes referred to as the "Annual Maintenance Assessment"). The following provisions shall apply for the Annual Maintenance Assessment:

(a) Commencing with the year beginning **January 1, 2009**, and each year thereafter, each Member shall pay to the Association an annual maintenance assessment in such amount as set by the Board of Directors, at its annual meeting next preceding such **January 1, 2009**, and each successive January 1 thereafter, except that the meeting setting forth the first year's assessment may take place at any time during 2009. Notwithstanding any provision herein to the contrary, the annual maintenance assessment shall not exceed \$300 per Lot per year until additional common areas and amenities have been added to and become part of the Subdivision or until Declarant has brought into the Subdivision additional phases and lots not currently included in the Plat shown for Section 1, and at no time shall the annual maintenance assessment ever be greater than \$600 per Lot per year unless a greater amount is approved by the vote of a majority of the Owners of all Lots in the Subdivision.

(b) Subject to the limitations in Section 5.04(a) above and the provisions of Section 5.04(c) below, the rate of annual maintenance assessments may be increased by the Board. The Board may, after consideration of current maintenance, operational and other costs and the future needs of the Association, fix the annual maintenance assessments for any year at a lesser amount than that of the previous year.

(c) An increase in the rate of the annual maintenance assessments as authorized by Section 5.04(b) hereof in excess of twenty-five percent (25%) of the preceding year's annual maintenance assessments must be approved by the majority vote of the Members of the Association.

(d) When the annual maintenance assessment is computed for Lots, all or a portion of such annual maintenance assessment shall be payable to the Association by the Member; provided, however, notwithstanding anything herein to the contrary, Declarant shall not be liable for or obligated to pay regular annual assessments on any unimproved Lot, nor on any improved Lot until thirty (30) days after improvements have been substantially completed thereon. Furthermore, notwithstanding anything herein to the contrary, a Builder (as that term is hereinafter defined) shall not be liable for or obligated to pay regular annual assessments on any Lot owned by such Builder until the earliest of (i) the substantial completion of improvements thereon, (ii) the conveyance by such Builder of the Lot (except a reconveyance to Declarant), or (iii) one year after

such Builder has acquired record title to such Lot. For the purposes of this paragraph, the term "Builder" shall be construed to mean a person or entity who shall purchase or acquire from Declarant one or more unimproved Lots for the purpose of construction of improvements thereon for sale to the public.

(e) The Board of Directors may provide that annual maintenance assessments shall be paid monthly, quarter-annually, semi-annually or annually on a calendar year basis. No later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall (i) estimate the total common expenses to be incurred by the Association for the forthcoming fiscal year, (ii) determine, in a manner consistent with the terms and provisions of this Declaration, the amount of the annual maintenance assessments to be paid by each Member, and (iii) establish the date of commencement of the annual maintenance assessments. Written notice of the annual maintenance assessments to be paid by each Member and the date of commencement thereof shall be sent to every Member, but only to one (1) joint Owner. Each Member shall thereafter pay to the Association his annual maintenance assessment in such manner as determined by the Board of Directors.

(f) The annual maintenance assessments shall include reasonable amounts, as determined by the Members or by the Board, collected as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Area and Common Properties. Assessments collected as reserves shall not be considered to be advance payments of regular annual maintenance assessments.

#### **5.05 Special Capital Assessments and Special Individual Assessments.**

(a) In addition to the annual maintenance assessments authorized in Section 5.04 hereof, the Board of Directors of the Association may levy in any calendar assessment year a special capital assessment for the purpose of (i) defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Property or Common Area or Common Properties, including the necessary fixtures and personal property related thereto (ii) maintaining portions of the Common Area and Common Properties and improvements thereon, including but not limited to, maintaining, repairing and replacing streets, roads, lights, ditches and landscaping or (iii) carrying out other purposes of the Association; provided, however, that any such special capital assessment levied by the Association must be approved by at least two-thirds (2/3) vote of each class of Members who are voting, either in person or by proxy, at a meeting duly called for that purpose at which a quorum of Members is present. Any special capital assessment levied by the Association shall be paid by the Members directly to the Association on such date or dates as determined by the Board of Directors. All such amounts collected by the Association may only be used for the purposes set forth in this Section 5.05. Written notice of any meeting of the Members called for the purpose of taking action to approve a proposed special capital assessment shall be sent to all Members not less than ten (10) days and not more than sixty (60) days, in advance of

such meeting. Such notice shall state that the purpose (or one of the purposes) of the meeting is to vote upon a special assessment, specifying the purpose of the proposed special assessment. At the first such meeting called, the presence of Members, either in person or by proxy, entitled to cast fifty percent (50%) of more of all of the votes of each class shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at such second meeting shall be one-half (1/2) of the required quorum for the first meeting. Such second meeting shall be held not more than sixty (60) days after the first called meeting.

(b) The Board of Directors of the Association may levy special individual assessments against one or more Owners for (i) reimbursement to the Association of the costs for repairs to the Property or Common Area or Common Properties and improvements thereto occasioned by the willful or negligent acts of such Owner or Owners and not ordinary wear and tear; (ii) for payment of fines, penalties or other charges imposed against an Owner or Owners relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws of the Association or any rules or regulation promulgated hereunder; and (iii) to reimburse the Association for all reasonable expenses incurred to enforce these Restrictions, including but not limited to, attorney's fees and litigation expenses. Any special individual assessment levied by the Association shall be paid by the Owner or Owners directly to the Association. All amounts collected by the Association as special individual assessments under this Section 5.05 shall belong to and remain with the Association.

**5.06 Uniform Rate of Annual Maintenance Assessments and Special Capital Assessments.** Both annual maintenance assessments and special capital assessments (excepting therefrom special individual assessments) must be fixed at a uniform rate for all Lots, and be payable as set forth herein. In determining the uniform rate for all Lots, the Board may determine to set and assess such rates in any way that is reasonable and uniform to all Lot owners, including setting a flat per for each Residential Lot and a separate flat fee for each Commercial Lot, a rate based on the size of each Lot, a rate based on the frontage each Lot may have to the streets, or under any such other method as determined by the Board. Such rates may differ for different assessments.

**5.07 Date of Commencement of Assessments; Due Dates; No Offsets.** The annual maintenance assessments provided for herein shall commence on the date fixed by the Board of Directors to be the date of commencement and, except as hereinafter provided, shall be payable monthly, quarter-annually, semi-annually or annually, in advance, on the first day of each payment period thereafter, as the case may be and as the Board of Directors shall direct. The first annual maintenance assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual maintenance assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual maintenance assessment provided for in Section 5.04 hereof as the remaining number of months in that year bears to twelve; provided, however, that if the date of commencement falls on other than the first day of a month, the annual maintenance assessment for such month shall be prorated by the number of days remaining in the month. The due date or dates, if to be paid in installments, of any special capital assessment or special individual assessment under Section 5.05 hereof shall be fixed in the respective resolution authorizing such

assessment. Annual maintenance, special capital and special individual assessments may be established, collected and enforced by the Declarant at any time prior to the incorporation of the Association. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason. Notwithstanding anything contained herein to the contrary, the regular annual assessments provided for in this Declaration shall not attach to any Lot until the first to occur of the following (i) the conveyance of a Lot by Declarant to an Owner (other than a Builder), (ii) thirty (30) days following the substantial completion of a residence upon a Lot owned by Declarant, or (iii) with respect to a Lot conveyed by Declarant to a Builder, the earlier of the substantial completion of a residence thereon, the conveyance by the Builder of such Lot (except for conveyance to Declarant), or two hundred seventy (270) days after the Builder has acquired title to such Lot. A Builder for purposes hereof shall be a person or entity who acquires a Lot for purposes of construction thereon a residence for sale for a profit and who is in the home construction business. Accordingly, the annual maintenance assessment shall not be applicable to any Lot while it is owned by Declarant.

#### **5.08 Duties of the Board of Directors with Respect to Assessments.**

(a) The Board of Directors shall fix the date of commencement and the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

(b) Written notice of all assessments shall be delivered or mailed to every Owner subject thereto. Such notice shall be sent to each Owner at the last address provided by each Owner, in writing, to the Association.

(c) The omission of the Board of Directors to fix the assessments within the time period set forth above for any year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

(d) The Board of Directors shall upon demand at any time furnish to any Owner liable for said assessment a certificate signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

#### **5.09 Non-Payment of Assessment.**

(a) Delinquency. Any Assessment, or installment thereof, which is not paid in full when due shall be delinquent on the day following the due date (herein, "delinquency date") as specified in the notice of such Assessment. The Association shall

have the right to reject partial payment of an Assessment and demand full payment thereof. If any Assessment or part thereof is not paid within ten (10) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from and after the delinquency date until paid at a rate equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum lawful rate.

(b) The unpaid amount of any Assessment not paid by the delinquency date shall, together with the interest thereon as provided in Section 5.09(a) hereof and the cost of collection thereof, including reasonable attorneys' fees, become a continuing lien and charge on the Lot of the non-paying Owner, which shall bind such Lot in the hands of the Owner, and his heirs, executors, administrators, devisees, personal representatives, successors and assigns. The lien shall be superior to and other liens and charges against the Lot, except only for tax liens and the lien of any bona fide first mortgage or first deed of trust now or hereafter placed upon such Lot. A subsequent sale or assignment of the Lot shall not relieve the Owner from liability for any Assessment made prior to the date of sale or assignment and thereafter becoming due nor from the lien of any such Assessment. The Board shall have the power to subordinate the lien securing the payment of any Assessment rendered by the Association to any other lien. Such power shall be entirely discretionary with the Board. As hereinbefore stated, the personal obligation of the Owner incurred at the time of such Assessment to pay such Assessment shall remain the personal obligation of such Owner and shall not pass to such Owner's successors in title unless expressly assumed by them in writing. Liens for unpaid Assessments shall not be affected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his lot.

To evidence any lien, the Association shall prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot covered by such lien. Such notice shall be executed by one of the officers of the Association and shall be recorded in the Office of the County Clerk of Jefferson County, Texas.

(c) Remedies. The lien securing the payment of the Assessments shall attach to the Lot belonging to such non-paying Owner with the priority set forth in this Section. Subsequent to the recording of a notice of the lien, the Association may institute an action at law against the Owner or Owners personally obligated to pay the Assessment and/or for the foreclosure of the aforesaid lien. In any foreclosure proceeding the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. In the event an action at law is instituted against the Owner or Owners personally obligated to pay the Assessment there shall be added to the amount of any such Assessment:

- (i) the interest provided in this Section,
- (ii) the costs of preparing and filing the complaint in such action,

(iii) the reasonable attorneys' fees incurred in connection with such action, and

(iv) any other costs of collection;

and in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided in this Section and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents or trustees the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also suspend the Association membership and voting rights of any Owner who is in default in payment of any Assessment in accordance with this Declaration and/or the Bylaws. To secure and enforce the payment of all assessments provided for in this Declaration, together with all interest accrued or accruing thereon and attorney's fees and other costs reasonably incurred by the Association in collecting the same, and for the auxiliary and cumulative enforcement of said lien, and in consideration of the sum of \$1.00 to Declarant in hand paid by the Trustee hereinafter named, and for the further consideration of the uses, purposes and trusts hereinafter set forth, Declarant has granted, sold, and conveyed, and by these presents does grant, sell, and convey unto Lance Fox, Trustee, of Jefferson County, Texas, whose mailing address is P. O. Box 1751, Beaumont, Texas 77704, and any substitute or successor trustee appointed hereunder by Declarant or the Association (each of whom shall have the power to appoint a successor trustee), each of the Lots in the Subdivision, to have and to hold the said Lots unto the said Trustee, and to his substitutes or successors forever. Declarant does hereby bind itself, its successors and assigns, to warrant and forever defend the Lots unto the said Trustee, his substitutes, successors and assigns forever, against the claim or claims of all persons claiming or to claim the same, or any part thereof by, through, or under Declarant, and so subject to any superior liens and all items of record in the office of the County Clerk of Jefferson County, Texas on the date hereof affecting the Lots, for and upon the following trusts, terms, covenants, and agreements, to-wit:

(i) This conveyance, however, is made in trust to secure the payment of all assessments provided for in this Declaration (whether now owed or hereafter ever accruing to the Association). Should Declarant, its successors and assigns, make full payment of the assessments hereby secured as the same shall become due and payable, then this conveyance shall become null and void and of no further force and effect.

(ii) In the event, however, of default in the payment of any assessment hereby secured, in accordance with the terms of this Declaration, it shall thereupon, or at any time thereafter, be the duty of the Trustee or his successor or substitute, at the request of the Association (which request is hereby conclusively presumed), to enforce this trust against the Lot against which the assessment is due and owing in the manner provided in §51.002 of the Texas Property Code, as then amended; and after giving



notice and advertising the sale as provided in said §51.002 (but without any other action than is required by said §51.002 as then amended) and otherwise complying with that statute, the Trustee shall sell the Lot (including any improvements thereon) at public sale as provided in said §51.002 and make due conveyance to the purchaser or purchasers thereof, with covenants of general warranty binding upon the then Owner of such Lot and such Owner's heirs, executors, administrators and successors.

(iii) Out of the money arising from such sale, the Trustee acting shall first pay all expenses of advertising said sale and making the conveyance (including a Trustee's fee of 5% of the gross sales proceeds), and then to the Association the full amount of assessments owing, together with interest thereon and reasonable attorneys' fees and expenses, rendering the balance of the sale price, if any, to the Owner of said Lot prior to such sale, his heirs or assigns, or to such other person or persons as may be legally entitled thereto. The recitals in the conveyance to the purchaser or purchasers of such Lot shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner of such Lot prior to such sale, his heirs, executors, administrators, successors and assigns.

(iv) It is agreed that in the event foreclosure should be commenced by the Trustee, or his substitute or successor, the Association, as beneficiary hereunder, may at any time before the sale of the Lot direct the abandonment of the sale and may then institute suit for the collection of the assessments, interest and collection costs then owing to the Association, and, at the election of the Association, for judicial foreclosure of the assessment lien. It is further agreed that if the Association should institute suit for collection and for judicial foreclosure of the assessment lien, the Association may, at any time prior to the entry of a final judgment in said suit, dismiss the same and require the Trustee, or his substitute or successor, to sell the Lot against which the assessment is then owing in accordance with the provisions of this Section 5.09(c).

(v) In case of the absence, resignation, death, inability, failure or refusal of the Trustee herein named or of any substitute trustee appointed hereunder to act, or in the event that the Association shall deem it desirable to remove without cause the Trustee or any substitute trustee and appoint another to execute this trust, then in any of such events, the Association shall have the right and is hereby authorized and empowered to appoint a successor and substitute without any formality other than an appointment and designation in writing; and this appointment shall vest in him, as substitute or successor trustee, the estate and title in and to all said Lots, and he shall thereupon hold, possess, and execute all the rights, title, powers and duties herein conferred upon the Trustee named herein. The right to appoint a successor substitute trustee shall exist as often and whenever from any of said causes any trustee, original or substitute, cannot or will not act, resigns, or has been removed with or without cause.

(vi) The exercise or attempted exercise of the power of sale herein contained shall not exhaust the power of sale and shall not prevent and subsequent exercise thereof.

(vii) The Association, as beneficiary hereunder, if it is the highest bidder, shall have the right to purchase at any sale of a Lot pursuant hereto and to have the amount for which such Lot is sold credited against the indebtedness then owing on such Lot to the Association.

(viii) It is especially agreed that in the event of a foreclosure under the powers granted herein, the person in possession of the Lot sold shall thereupon become a tenant at will of the purchaser or purchasers at the foreclosure sale. Should such tenant then refuse to surrender possession of the Lot upon demand, the purchaser or purchasers shall be entitled to institute and maintain a statutory action for forcible detainer of said Lot in the justice of the peace court for the justice precinct in which the Lot is situated. The bringing of an action for forcible detainer shall not preclude the bringing of any other action for the possession of said Lot, and the bringing of one character of action shall not preclude the other and same may be exercised separately or simultaneously.

(d) Notice to Mortgages. The Association may, and upon the written request of any mortgagee holding a prior lien on any part of the Property, shall report to said mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the delinquency date of such Assessment.

**5.10 Subordination of the Lien to Mortgages.** The lien securing the payment of the Assessments shall be subordinate and inferior to the lien of any perfected First Mortgage granted by an Owner in good faith now or hereafter recorded against any Lot. A First Mortgage is defined as (a) a mortgage or deed of trust which has first and paramount priority under applicable law, (b) a mortgage or deed of trust securing an "equity loan" pursuant to §50(a)(6) of Article XVI of the Texas Constitution, or (c) a mortgage or deed of trust securing a "reverse mortgage" pursuant to §50(a)(7) of Article XVI of the Texas Constitution, provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale, whether public or private, of such property pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve the new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent assessment.

**5.11 Exempt Property.**

The following property subject to this Declaration shall be exempted from the assessments, charges and liens created in Section 5.04 and Section 5.05(a) hereof:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use; and
- (b) All Common Properties.

**5.12 Estoppel Information from Board with Respect to Assessments.** The Board shall upon demand at any time furnish to any Owner liable for an Assessment, a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board of Directors of the Association for the issuance of such certificates. Within ten (10) days after the date a written request for subdivision information is received from an Owner, Owner's agent, or a title insurance company or its agent acting on behalf of an Owner, the Association shall deliver to the Owners, Owner's agent, or the title insurance company or its agents, (i) a current copy of the Declaration applying to the Addition, (ii) a current copy of the By-laws and rules of the Association, and (c) a resale certificate that complies with §207.003(b) of the Texas Property Code, as amended. The Association may establish and collect a reasonable charge to assemble, copy, and deliver the information required by §207.003 of the Texas Property Code, as amended.

## ARTICLE VI.

### ARCHITECTURAL REVIEW

**The following terms and provisions contained in this Article VI shall be applicable only to the Residential Lots, and thus shall not be applicable to any of the Commercial Lots.**

**6.01 Approval Required by Architectural Control Committee.** No building, structure, fixture or improvement of any kind may be erected or constructed, and no exterior addition to or change in any structure may be made (including repainting or re-roofing involving a change in exterior color scheme), and no building, outbuilding, fence, wall, hedge, room addition, residence, structure, porch, terrace, antenna or other projection from a structure (whether of a temporary or permanent nature, and whether or not such structure shall be affixed to the ground) nor any other improvement (including but not limited to, swimming pools, hot tubs, spas, fountains, fences, outdoor kitchen, sport courts, basketball goals, landscaping, light fixtures, mailbox nor any other type of improvement) may be constructed, commenced, erected, maintained, improved or altered, nor may any grading, excavation, tree removal, planting, change or exterior color or other work which in any way alters the exterior color or other work which in any way alters the exterior appearance of any Lot or improvement be done on any Lot, until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall have been submitted in writing and approved in writing by the Architectural Control Committee (hereinafter sometimes called the "Committee" regarding (a) the harmony of its exterior design and location in relation to, and its effect upon surrounding structures, vegetation, topography, and the overall community design of the Property, (b) the type and quality of the exterior materials, (c) the quality of the exterior workmanship, (d) the location of the planned improvements with respect to topography and in relation to other existing or planned structures in the Subdivision, and (e) compliance with the terms of this Declaration and guidelines adopted by the Architectural Control Committee. The plans submitted to the Committee shall at a minimum show the (a) kind, shape, size, height and exterior color scheme,

(b) the locations of all improvements, including driveways, sidewalks, and off-street parking, (c) utility installations, (d) the kind, nature, and quality of materials, (e) finished grade, topography, and elevation, and (f) site landscaping.

**6.02 Appointment of Committee.** The Committee shall be composed of at least three (3) members. The initial members of the Committee shall be appointed by Declarant. The Declarant shall have the right, in its sole discretion, to remove any existing member of the Committee and to increase the number of members of the Committee and to appoint such additional member(s) as may be required to fill the vacancy or vacancies resulting from the increase in the number of the members thereof, such action to be taken and effected by Declarant's (or its successor's) executing a written instrument reflecting such action and filing it for record in the office of the County Clerk of Jefferson County, Texas. Upon the failure to appoint an Architectural Control Committee, the Board of Directors of the Association shall serve as the Architectural Control Committee. Persons serving on the Committee shall not be entitled to compensation for services performed on the Committee; provided, however, the Board of Directors may approve and authorize the payment of reasonable compensation for service on the Committee by any architect, engineer, attorney or other licensed professional. In addition, the Committee, with the approval of the Board of Directors, may employ one or more architects, engineers, attorneys, or other consultants to assist the committee in carrying out its duties hereunder; and the Association shall pay such consultants for such services as they render to the Committee.

**6.03 Regulation.** The Architectural Control Committee shall regulate the external design, appearance and location of the Property and of improvements thereon in such a manner as (a) to comply with the terms and restrictions set forth in this Declaration, (b) to promote those qualities in the environment which bring value to the Property, and (c) to foster the attractiveness and functional utility of the community as a place to live, including a harmonious relationship among structures, vegetation and topography.

**6.04 Failure to Respond.** In the event that the Architectural Control Committee fails to respond in writing to an application within thirty (30) days after the plans and specifications in writing have been submitted to the secretary, in accordance with adopted procedures, approval will be deemed granted.

**6.05 Guidelines.** The Architectural Control Committee shall develop and promulgate policy Architectural Control Guidelines for the application of the architectural review provisions in this Declaration. The policy guidelines shall include (a) review procedures, (b) aspects and objectives of review, and (c) principles and criteria used as standards in determining the achievement of the required objectives. The policy guidelines may also include specific design objectives. The policy guidelines may also include specific design practices that, though optional, are generally acceptable methods for achieving the required objectives in particular design problems frequently encountered in the Property. The Policy guidelines are intended to assist the Architectural Control Committee and the Owners of Lots in the ongoing process of community design. They may be modified and supplemented from time to time in the discretion of the Architectural Control Committee.

**6.06 Vacancies.** In the event of the death or resignation of any member of the Committee, the remaining member(s) of the Committee, even though less than a majority may appoint a successor to the Committee by written instrument executed by the remaining member(s) of the Committee and filed for record in the Office of the County Clerk of Jefferson County, Texas. If all of the members of the Committee die, resign or refuse or are unable to serve, then the Declarant (or its successor) shall have the authority to appoint successor members of the Committee by written instrument executed by the Declarant (or its successor) and filed for record in the Office of the County Clerk of Jefferson County, Texas. However, if all members of the Committee die, resign, or refuse or are unable to serve and the Declarant (or its successor) has not appointed successor members within one hundred eighty (180) days after the death, resignation, or refusal or inability to serve of the last of the Committee members, then the Association, through its Board of Directors, shall exercise the authorities herein granted to the Committee. In addition, at any time after thirty-five (35) years from the date of this Declaration, the Association, by written instrument approved by its Board of Directors and recorded in the real property records of Jefferson County, Texas, may change the membership of the Committee or withdraw powers and duties from or restore powers and duties to the Committee. The Declarant may at any time assign its right to control and appoint members to the Committee to the Board of Directors of the Association.

**6.07 Manner of Approval.** Plan approval or disapproval by the Committee as required in this Declarant shall be approved by at least a majority of the members of the Committee, be in writing and be signed by at least one (1) member of the Committee. Approval of Plans (whether actual or deemed) shall not be valid or effective for more than one hundred twenty (120) days, and if, within one hundred twenty (120) days after plan approval, the construction, reconstruction, addition, change, or alteration for which plan approval was obtained has not commenced, then plans must be resubmitted and approved by the Committee before any such construction, reconstruction, addition, change, or alteration may be commenced. There shall be no review of any action of the Committee, except by procedures for injunctive relief when such action is patently arbitrary or capricious, and under no circumstances shall the Committee, any member of the Committee, or any representative of the Committee be subject to any suit by anyone for damages for any action or failure to act on the part of the Committee, any member of the Committee or any representative of the Committee.

**6.08 Liability.** Neither the Committee, nor any member of the Committee or any representative thereof shall be liable to any person or entity under any theory or under any circumstance in connection with the Committee's approval (whether actual or deemed) of any plans submitted to the Committee for approval, including without limitation, any liability based upon the soundness of construction or adequacy of plans and specifications, mistake of judgment, negligence or nonfeasance, or for any other reason. Neither the Committee nor any member or representative thereof shall have any liability to any person or entity by reason of the construction of buildings or the making of other improvements which shall depart from or be at variance with the plans approved by the Committee.

## ARTICLE VII.

### GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

**7.01 Powers and Duties.** The affairs of the Association shall be conducted by its Board of Directors. Prior to the incorporation of the Association, the Declarant shall select and appoint the Board of Directors. From and after the effective date of the Association's incorporation, the Board of Directors shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association, subject, however, to the provisions of Section 4.05 hereof. The Board, for the benefit of the Property, the Common Properties and the Owners, shall provide, and pay for, out of the funds(s) collected by the Association pursuant to Article V above, the following:

(a) Care and preservation of the Common Properties and the furnishing and upkeep of any desired personal property for use in the Common Properties. Expenditures for the repair or installation of capital improvements, not included in the annual maintenance budget, may be paid from the reserve fund as specifically provided in Section 7.05 herein.

(b) Care and maintenance of the private streets, landscaping, screening walls and entry features which may be constructed by Declarant on the Common Properties or on private property. Maintenance includes a repair, rebuilding or cleaning deemed necessary by the Board of Directors.

(c) Should the Board so elect, maintenance of exterior grounds, drives, parkways, private streets and access areas, including care of trees, shrubs and grass, the exact scope of which shall be further specified by the Board from time to time. In particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the maintenance of landscaping, trees, shrubs, grass and like improvements which are located on the Common Properties and/or the Lots, except for landscaping, and other like improvements which are located within rear yards or side yards enclosed by solid fence, which shall be maintained by the individual Lot Owner. Maintenance services contracted or by the Board in accordance with this paragraph shall be paid for out of Association funds.

(d) The Association shall have the right to control access to and prevent persons from coming onto the Property. The Association may in its discretion, but shall not be required to, maintain an access control facility located at the entrance of the subdivision and may retain a private security service for the subdivision for the purpose of preventing persons from entering onto the Subdivision without the prior approval of an Owner or Declarant. The access control facility may be operated by the Association, its employee or agent, at such hours and times as the Board may determine from time to time. Nothing

contained herein shall be construed so as to hold Declarant or the Association, or any of their employees or agents, responsible for the prevention, nor liable for any loss or losses due to theft, burglary, or damage, or any injury to persons or property caused by persons gaining access to the subdivision. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE SUBDIVISION AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT NOR ANY OF THEIR RESPECTIVE PARTNERS, OWNERS, EMPLOYEES, AGENTS, MEMBERS OR OFFICERS SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND RESIDENTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE ARCHITECTURAL CONTROL COMMITTEE DO NOT MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO ANY SECURITY SYSTEM, FIRE PROTECTION SYSTEM, OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO ARCHITECTURAL STANDARDS BULLENNS AND DESIGN GUIDELINES ESTABLISHED BY THE DECLAPANT OR THE ARCHITECTURAL CONTROL COMMITTEE. EACH OWNER AND RESIDENT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, THE, BOARD OF DIRECTORS, THE ARCHITECTURAL CONTROL COMMITTEE, THE DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND RESIDENT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, THE ARCHITECTURAL CONTROL COMMITTEE, THE DECLARANT, OR ANY SUCCESSOR DF,CLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, RESIDENT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO SECURITY SYSTEM OR ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. Controlled access services and maintenance of the controlled access system (including, but not limited to, a guard house, guard service and controlled access gates) which may be constructed by Declarant on the Common Properties or on private property. Maintenance may include, but not be limited to, all repairs, rebuilding and cleaning as required. The exact scope of security services shall be

further specified by the Board from time to time. In particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the operation and maintenance of the controlled access system, including guard service. Controlled access services contracted for by the Board in accordance with this paragraph shall be paid for out of Association funds.

(e) The services of a person or firm to manage and/or provide consultation to the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(g) A policy or policies of insurance ensuring the Association, its officers and directors against any liability to the public or to the Owners (and/or their invitees or tenants) incident to the operation of the Association, including, without limitation, officers' and directors' liability insurance.

(h) Workers' compensation insurance to the extent necessary to comply with any applicable laws.

(i) Such Fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

(j) Any other materials, supplies, insurance or property owned by the Association, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

(k) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Properties and any other property of the Association.

(l) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on one or more Lots with respect to: (i) taxes on the Common Properties and (ii) insurance coverage of the Common Properties, as they relate to the assessment, collection and disbursement process envisioned in this Declaration.

(m) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(n) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and



management of the Association and the Common Properties, expressly including the power to enter into management and maintenance contracts.

(o) If, as, and when the Board, in its sole discretion, deems necessary it may take action to protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements.

(p) To make reasonable rules and regulations for the operation and use of the Common Properties and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Property, by a majority of the Members in the portions affected.

(q) Subsequent to incorporation, to make available to each Owner, one hundred twenty (120) days after the end of each year, an unaudited annual report.

(r) Pursuant to Article VII herein, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(s) If, as and when the Board, in its sole discretion, deems necessary, it may take action to enforce the provisions of this Declaration, the provisions of any Supplementary Declaration, the provisions of any additional restrictive covenants placed upon all or any part of the Property, and any rules made hereunder, and to enjoin and/or seek damages from any Owner for violation of such provisions or rules.

**7.02 Board Powers.** From and after the date on which the title to the Common Properties has been conveyed to the Association, the Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

**7.03 Maintenance Contracts and Other Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with the Declarant, any person or company related to or affiliated with Declarant, and any Owner for the performance by the Association of services for and on behalf of the Board and the Association, with such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association. The Board shall also have the power and authority to enter into any contract that that the Board determines will benefit the Association, the Owners or the Subdivision, with such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association. Without limiting the generality of the foregoing, the Board shall have the power to

enter into a contract with any public or private person, company or entity to obtain water service, sewer service, waste disposal service and any other service for the Owners and the Subdivision.

**7.04 Liability Limitations.** No Member, officer of the Association or member of the Board of Directors shall be personally liable for debts contracted for, or other-wise incurred by the Association, or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor any of their respective partners, directors, officers, agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same.

The Common Properties may be subject to storm water overflow, natural bank erosion and other natural or man-made events or occurrences to extents which cannot be defined or controlled. Under no circumstances shall Declarant nor the Association nor any of their respective partners, members, employees, officers, directors, or agents ever be held liable for any damages or injuries of any kind or character or nature whatsoever resulting from: (i) the occurrence of any natural phenomena; (ii) the failure or defect of any structure or structures situated on or within the Common Properties; and (iii) any act, conduct, omission or behavior of any individual, group of individuals, entity or enterprise occurring on, within or related to the Common Properties.

**7.05 Reserve Funds.** The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the subdivision, and maintaining the subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors. Capital expenditures from this fund may include by way of example, but not be limited to, private street and street light repair, drainage improvements and improvements to bodies of water or other repair of major damage to the Common Properties not covered by insurance.

## ARTICLE VIII.

### INSURANCE; REPAIR AND RESTORATION

**8.01 Right to Purchase Insurance.** The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, the improvements thereon and appurtenant thereto, for the interest of the Association and of all Members thereof, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use to the subject property. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.

(b) Public liability and property damage insurance on a broad form basis.

(c) Fidelity bond for all directors, officers and employees of the Association having control over the receipt or the disbursement of funds in such penal sums as shall b-c determined by the Association in accordance with its Bylaws.

(d) Officers and directors liability insurance.

**8.02 Insurance Proceeds.** Proceeds of insurance shall be disbursed by the insurance carrier to the Association or contractors designated by the Association as the Board of Directors may direct. The Association shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

**8.03 Insufficient Proceeds.** If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in Article V of this Declaration to cover the deficiency. If the insurance proceeds are insufficient to repair or replace any loss or damage for which an Owner is bound hereunder, such Owner shall, as such Owner's undivided responsibility, pay any excess costs of repair or replacement.

**8.04 Mortgagee Protection.** There may be attached to all policies of insurance against loss or damage by fire and other hazards, a mortgagee's or lender's loss payable clause; provided, however, that amounts payable under such clause to the mortgagee may be paid to the Association to hold for the payment of costs of repair or replacement, subject to the provisions of Section 8.02 hereof. The Association shall be responsible to hold said monies or to collect additional monies if the proceeds are insufficient to pay for the cost of all repairs or replacements and shall ensure that all mechanics', materialmen's and similar liens which may result from said repairs or replacements are satisfied.

**8.05 Destruction of Improvements on Individual Lots.** In the event of destruction (total or partial) to the improvements on any individual Lot due to fire or any other cause each Owner covenants and agrees to clear and remove any and all debris resulting from such damage within two (2) months after the date that the damage occurs and to complete all necessary repairs or reconstruction of the damaged improvements within one (1) year after the date that the damage occurs.

## ARTICLE IX.

### USE OF COMMON PROPERTIES

The Common Properties may be occupied and used as follows:

**9.01 Restricted Actions by Owners.** No Owner shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increasing of any insurance carried by the Association. No waste shall be committed in or on the Common Properties.

**9.02 Damage to the Common Properties.** Each Owner shall be liable to the Association for any damage to the Common Properties caused by the negligence or willful misconduct of the Owner or such Owner's family, guests, pets, tenants or invitees.

**9.03 Rules or the Board.** All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be able to the Association for all damages and costs, including reasonable attorney's fees, incurred by the Association in connection therewith.

## ARTICLE X.

### ADDITIONS TO PROPERTY SUBJECT TO THIS DECLARATION

**10.01 Additions to Property.** Additional land(s) may become subject to this Declaration in any of the following manners:

(a) The Declarant may add or annex additional real property (including residential and commercial property) to the scheme of this Declaration by filing of record a Supplemental Declaration of Covenants, Conditions and Restrictions ("Supplemental Declaration") which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property; provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration (including without limitation modification and amendment of Exhibit "A") as may be necessary to reflect the different character, if any, of the added properties and as are not materially inconsistent with this Declaration in a manner which adversely affects the plan of development of this Declaration.

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such proposed annexation must have the prior written consent and approval of the majority of the outstanding votes within each voting class of the Association.

(c) Any additions made pursuant to Paragraphs (a) and (b) of this Section 10.01, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added.

(d) The Declarant shall have the right and option, without the joinder, approval or consent of any person(s) or entity(ies), to cause the Association to merge or consolidate with any similar association then having jurisdiction over real property located (in whole or in part) within one mile of any real property then subject to the jurisdiction of the Association. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants and Restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme.

## ARTICLE XI.

### GENERAL PROVISIONS

**11.01 Enforcement.** The Association, the Declarant, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including the right of the Association to recover reasonable attorney's fees in connection with the enforcement hereof. Failure by the Association, by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association, the Declarant or the Owner seeking to enforce these Restrictions shall first notify the Owner, in writing, of the violation of this Declaration, which has occurred and provide said Owner a reasonable opportunity to remove or correct such violation. If, after being provided adequate notice and a reasonable time to cure the violation, the Owner shall fail or refuse to do so, the Association, the Declarant or the Owner seeking to enforce these Restrictions may proceed with appropriate legal action. If the violation is cured voluntarily or mandatory after the Association, the Declarant or the Owner seeking to enforce these Restrictions has incurred any reasonable expenses for attorney's fees or other costs of pursuing the matter to completion, such fees or other costs of pursuing the matter to completion, such expenses as are reasonably related to the resolution of the dispute including but not limited to fees for consultation, counseling, inspection and correspondence, shall become a charge against the property to attach as a lien in the same manner as provided in Article V. hereof unless paid by the Owner on demand.

The delay, forbearance or failure of enforcement of any restriction herein contained for any violation or proposed or attempted violation of any restriction herein contained shall not constitute a waiver of the right of Declarant, the Association or any Owner to thereafter enforce such restriction as to any subsequent violation or proposed or attempted violation.

**11.02 Invalidity.** Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**11.03 Term, Duration and Amendments.** The covenants and restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant, or the Owner of any Lot subject to this Declaration, his respective legal representatives, heirs, successors, and assigns, for a term of seventy-five (75) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this declaration may be amended or terminated at any time and from time to time by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment or termination must be properly recorded in Jefferson County, Texas.

**11.04 Use of Terms.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**11.05 Headings.** Tie headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

**11.06 Notices to Member/Owner.** Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

**11.07 Notices to Mortgagees.** If a holder of a mortgage on a Lot shall notify the Association of its address and the identity of the Lot and Owner covered by and granting such mortgage, then such holder(s) shall be entitled to receive, written notification from the Association of any default by the respective Owner in the performance of such Owner's obligations as established by this Declaration.

**11.08 Disputes.** Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Bylaws of the Association shall be determined by the Board of Directors, whose determination shall be final and binding upon all Owners.

**11.09 Termination of and Responsibility of Declarant.** If Declarant shall convey all of its right, title and interest in and to the Properties and assign all its rights, benefits and

obligations as Declarant hereunder to any partnership or partnerships, individual or individuals, corporation or corporations, limited liability company or limited liability companies, or other entity or entities, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

**11.10 Joinder of Lienholder.** Texas First Bank-Winnie (“Lienholder”), being the holder of a lien on the Property, joins with Declarant in the execution of this Declaration for the purposes of: (a) consenting to and adopting the Plat of the Subdivision, (b) consenting to the grant or dedication by Declarant of all streets and utility and other easements shown and reflected on the Plat, together with all other easements granted or reserved by Declarant in this Declaration, (c) subordinating its lien to all of the aforementioned easements and easement rights, and (d) subordinating its lien to the restrictions, covenants, and conditions imposed by Declarant on the Subdivision by this Declaration. However, Lienholder joins herein solely as a lienholder and only for the purposes set forth above in this Section, and it does not assume any of the liabilities, duties, covenants, warranties or obligations of Declarant, if any, nor does Lienholder make any warranties, representations, or guaranties, whether express or implied, by execution of this Declaration.

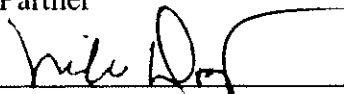
EXECUTED this 4<sup>th</sup> day of September, 2008.

Declarant:

**DOGUET'S DIAMOND D RANCH, LTD.**

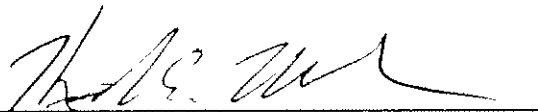
By: GP DIAMOND D RANCH, L.L.C.

Its: General Partner

By:   
Mike Doguet, Manager

LIENHOLDER:

**TEXAS FIRST BANK-WINNIE**

By:   
Kenneth E. Holbrook, Vice President



STATE OF TEXAS §

COUNTY OF JEFFERSON §

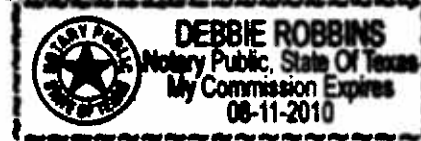
This instrument was acknowledged before me on September 4<sup>th</sup>, 2008, by Mike Doguet, Manager of **GP Diamond D Ranch, L.L.C.**, general partner of **Doguet's Diamond D Ranch, Ltd.**, a Texas limited partnership.

Debbie Robbins  
Notary Public, State of Texas

My Commission Expires:

8-11-2010

Debbie Robbins  
(Printed or Typed Name of Notary)



STATE OF TEXAS §

COUNTY OF JEFFERSON §

This instrument was acknowledged before me on September 4<sup>th</sup> 2008, by Kenneth E. Holbrook, Vice President of **Texas First Bank-Winnie**, on behalf of said entity.

Debbie Robbins  
Notary Public, State of Texas

My Commission Expires:

8-11-2010

Debbie Robbins  
(Printed or Typed Name of Notary)



AFTER RECORDING RETURN TO:

Lance Fox  
Orgain, Bell & Tucker, L.L.P.  
P.O. Box 1751  
Beaumont, TX 77701

**EXHIBIT "A"**

**See attached legal description.**

**FIELD NOTE DESCRIPTION  
FOR A  
51.38 ACRE TRACT  
OUT OF THE  
JAMES GERISH JR. LEAGUE, ABSTRACT 25  
AND THE  
JAMES GERISH SR. LEAGUE, ABSTRACT 24  
JEFFERSON COUNTY, TEXAS  
MAY 28, 2008**

That certain 51.38 acre tract out of the James Gerish, Jr. League, Abstract 25 and the James Gerish Sr. League, Abstract 24, Jefferson County, Texas, and being out of a called 79.90 acre tract conveyed to Michael D. Doguet and wife, Lisa Doguet as recorded in Clerks File No. 2007008392 of the Official Public Records of Jefferson County, Texas and a called 77.71 acre tract conveyed to Mike Doguet and Darby Doguet as recorded in Film Code 103-82-0630 of the Real Property Records Jefferson County, Texas, said 51.38 acres being more particularly described by metes and bounds as follows:

*Note:* The Basis of Bearing is the south right-of-way line of U. S. Highway 90 and the north line of the said 79.90 acre tract having been called North 81°29'03" East 1735.78 feet.

**BEGINNING** at a concrete monument found in the south right-of-way of U. S. Highway 90 for the northwest corner of West Glen Subdivision, a plat recorded in Volume 14, Page 154 of the Map Records of Jefferson County, Texas and the northeast corner of the said 79.90 and 51.38 acre tracts from which a concrete monument found for the northeast corner of the said West Glen Subdivision bears North 81°30'33" East 424.60 feet (called North 81°29'00" East 424.51 feet);

THENCE South 00°59'10" West along the west line of said West Glen Subdivision and the east line of the said 79.90 and 51.38 acre tracts a distance of 1034.76 feet (called South 00°59'10" West) to a ½" capped iron rod set for the southeast corner of the said 51.38 acre tract;

THENCE along the south line of the said 51.38 acre tract with the following courses and distances:

North 89°51'09" West a distance of 916.19 feet to a set ½" capped iron rod;  
South 83°18'45" West a distance of 180.09 feet to a set ½" capped iron rod;  
South 84°29'49" West a distance of 190.26 feet to a set ½" capped iron rod;  
South 69°06'11" West a distance of 156.42 feet to a set ½" capped iron rod;  
South 59°18'37" West a distance of 125.20 feet to a set ½" capped iron rod;  
South 45°01'42" East a distance of 56.01 feet to a set ½" capped iron rod;  
South 44°58'18" West a distance of 272.69 feet to a set ½" capped iron rod;  
North 42°34'19" West a distance of 39.99 feet to a set ½" capped iron rod;  
South 49°15'27" West a distance of 122.58 feet to a set ½" capped iron rod;  
South 73°12'10" West a distance of 108.73 feet to a set ½" capped iron rod;


North 88°50'05" West a distance of 310.00 feet to a ½" capped iron rod set for the southwest corner of the said 51.38 acre tract;

THENCE North 01°09'55" East along the west line of the said 51.38 acre tract a distance of 1165.37 feet to a ½" capped iron rod set in the said south right-of-way line of U. S. Highway 90 and the north line of the said 77.71 acre tract for the northwest corner of the said 51.38 acre tract;

THENCE North 81°16'25" East along the said south right-of-way line of U.S. Highway 90 and the north line of the said 77.71, 79.90 and 51.38 acre tracts, at a distance of 406.86 feet (called North 81°24'56" East) pass a ¾" iron pipe found for the northeast corner of the said 77.71 acre tract and the northwest corner of the said 79.90 acre tract, and continuing a total distance of 508.64 feet (called North 81°16'25" East) to a TxDot concrete monument found for an angle point;

THENCE North 81°29'03" East continuing along the said south right-of-way line of U.S. Highway 90 and the said north line of the 79.90 and 51.38 acre tracts, a distance of 1735.78 feet (called North 81°29'03" East 1735.78 feet) to the **POINT OF BEGINNING** and containing 51.38 acres of land, more or less.

This Field Note Description is based on a survey performed by Fittz & Shipman, Inc. during February 2007 and May 2008.



Walter J. Ksiazek  
Registered Professional Land Surveyor No. 5321

