UTILITY AGREEMENT

BY AND BETWEEN

WILBOW-WESTLEIGH LLC AND

THE CITY OF LEAGUE CITY, TEXAS

STATE OF TEXAS §

COUNTY OF GALVESTON §

THIS UTILITY AGREEMENT (the "Agreement") made and entered into as of the 28th day of April, 2020 by and between WILBOW-WESTLEIGH LLC, a Texas limited liability company ("Developer"), a Texas corporation on behalf of GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 80, a body politic and corporate and governmental agency to be created and operated under the provisions of Chapters 49 and 54, Texas Water Code, and pursuant to Article XVI, Section 59, Texas Constitution (hereinafter collectively the term "District" shall refer to both Developer and Galveston County Municipal Utility District No. 80, as the intent of this Agreement is for Developer to assign all rights and responsibilities to said District. Thus, the representations herein by said Galveston County Municipal Utility District No. 80 at this time represent Developer's commitment to cause or direct the same to occur); and the CITY OF LEAGUE CITY, TEXAS, a municipal corporation and home rule city.

WITNESSETH

For and in consideration of the mutual promises, obligations, covenants, and benefits set forth, the District and the City contract and agree as follows:

ARTICLE I
Background and Representations

Section 1.01. Background.

The District is being created by Order of the Texas Commission on Environmental Quality (the "TCEQ") and will operate under Chapters 49 and 54 of the Texas Water Code for the purpose of providing water distribution, wastewater collection, and storm sewer and drainage facilities, park and recreational facilities, and roads, in each case to serve the land within its boundaries. The District will contain approximately 157.63 acres of land in Galveston County, Texas. The boundaries of the District are described by metes and bounds in **Exhibit "A"** which is attached hereto and incorporated herein by reference for all purposes.

The District will acquire and construct a water distribution system and a sewage collection system to serve the future residents within the District and works and improvements necessary to properly drain the area within its boundaries. Additionally, the District will acquire and construct certain parks and recreational facilities, storm water detention facilities, and roads. The District will make adequate arrangements so that it will have the financial capability to enable it to acquire and construct the needed facilities and to discharge any obligations incurred in acquiring and constructing such facilities.

The City is a municipal corporation and is operating under a Home Rule Charter adopted under the laws of the State of Texas. The City has the power under the laws of the State of Texas to acquire, own, and operate a water and sanitary sewer system and works and improvements necessary for the drainage of the lands in the City. The City also has the authority, pursuant to Article 402.014 et seq., Local Government Code, as amended, to contract with a district organized under the authority of Article XVI, Section 59, of the Constitution of Texas, whereby the district will acquire or construct, for the City water supply or treatment systems, water distribution systems, sanitary sewer collection or treatment systems or works or improvements necessary for the drainage of lands in the City.

The District is located entirely within the City's limits. As a result, both the City and the District function in a common orbit and have some common duties and responsibilities to the present and future landowners.

In order to provide a water distribution system, sanitary sewer collection system, drainage works and improvements, park and recreational facilities, and roads to serve that portion of the City which lies within the boundaries of the District; in order to assure that the District will have the financial capabilities to extend the services to the present and future landowners within the boundaries of the District; in order to secure the commitment of the District to extend the services without discrimination and on the same basis as extension of services made to all other landowners in the District; and in consideration of the District acquiring and constructing the System (hereinafter defined), the City is willing to commit and obligate itself to accept title to portions of the System as provided herein and to operate and maintain the portions of the System as set forth herein.

The District plans to proceed at the earliest possible time, in an expeditious manner, with the acquisition and construction of the necessary water, sanitary sewer, and drainage systems to serve all the land within the District without discrimination and without preference toward any particular landowner or landowners. The District is willing to commit to extend utilities as required by this Agreement.

In order to assure the continuing and orderly development of the land and property within the District, the District and the City desire to enter into this Agreement whereby the District will acquire and/or construct local and general benefit systems, improvements, facilities, equipment, and appliances necessary for a water distribution, sanitary sewer collection, and drainage system, and will purchase, in the form of capital recovery fees, water and wastewater treatment capacities to serve the area within the District, as provided in this Agreement in accordance with all requirements of the City, in order for all of the land and property in the District to be placed in the position ultimately to receive adequate water, sanitary sewer, and drainage services from the City. This Agreement further sets forth the terms and conditions pursuant to which the District may fund, design, and construct certain road and park and recreational facilities.

Section 1.02. Definitions.

(a) **Approving Bodies.** The term "Approving Bodies" shall mean the City, the TCEQ, the Texas Department of Health, and any other federal, state, county, or local agency having jurisdiction.

(b) **Bonds and Bond Date**. The term "Bonds" as used in this Agreement shall mean the District's bonds, notes, or lease obligations payable from ad valorem taxes, which it issues from time to time. The term "Bond Date" shall mean the date of issuance of a series of Bonds.

(c) **Capital Recovery Fees**. The term "Capital Recovery Fees" shall have the same meaning as such term is used in Section 114-161 of City's Code of Ordinances, as hereafter amended, or such similar capital recovery fee ordinance then in effect.

(d) **City**. The term "City" shall mean the City of League City, Texas, a municipal corporation and home rule city.

(e) **Construction Funds**. The term "Construction Funds" shall mean money required by this Agreement to be deposited into the Construction Fund to be created pursuant to Section 3.09 of this Agreement.

(f) **Developer**. The term "Developer" is initially WPC Acquisition, Inc., a Texas corporation, and thereafter shall be any individual, partnership, corporation, or other entity that develops land for subdivision and resale within the District and/or applies to use General Benefit Facilities within the City.

(g) **District**. The term "District" shall mean Galveston County Municipal Utility District No. 80, a body politic and corporate and governmental agency to be created and operated under the provisions of Chapters 49 and 54, Texas Water Code, as amended, and pursuant to Article XVI, Section 59 and Article III, Section 52 of the Texas Constitution and, where appropriate, by the Board of Directors thereof.

(h) **District Engineer**. The term "District Engineer" shall mean the independent engineering firm which may be employed by the District. The District's initial engineering firm is anticipated to be LJA Engineering.

(i) **Drainage System**. The term "Drainage System" shall mean the District's Drainage System as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way, and sites required for same.

(j) **Engineering Report**. The term "Engineering Report" shall mean a study, analysis, or report of the District Engineer describing the needed water, sewer, and drainage facilities to serve the area within the District.

(k) **General Benefit Facilities**. The term "General Benefit Facilities" shall be defined as such term is defined in Section 114-161(a)(3) of the City's Code of Ordinances, as hereafter amended, or such similar capital recovery fee ordinance then in effect.

(l) **Local Benefit Facilities**. The term "Local Benefit Facilities" shall be defined as such term is defined in Section 114-161(a)(2) of the City's Code of Ordinances, as hereafter amended, or such similar capital recovery fee ordinance then in effect.

(m) **Phase or Proposed Extension**. The term "Phase" or "Proposed Extension" shall mean any part of the System to be acquired or constructed to serve an area that it is economically feasible to serve.

(n) **Sanitary Sewer System**. The term "Sanitary Sewer System" shall mean the District's sanitary sewer system as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way, and sites required for same.

(o) **Security Interest**. The term "Security Interest" means the security interest granted pursuant to Section 6.01 hereof in the System to serve property within the District.

(p) **System**. The term "System" shall mean the Water System, Sanitary Sewer System, and/or Drainage System described in Section 2.01 of this Agreement and/or the water supply and sewage treatment capacities described in Section 6.03 of this Agreement. The System will also include park and recreational facilities and road facilities to be constructed or acquired by the District so designated by the District to serve lands within and near its boundaries, and all improvements, appurtenances, additions, extensions, enlargements, or betterments thereto, including any pro rata interest or share in such facilities, together with all contract rights, permits, licenses, properties, rights-of-way, easements, sites, and other interests related thereto.

(q) **Water System**. The term "Water System" shall mean the District's water system as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way, and sites required for same.

Section 1.03. Representations by the District

The District makes the following representations:

a. The District will be a body politic and corporate and a governmental agency created and operated under the provisions of Chapters 49 and 54, Texas Water Code, pursuant to Article XVI, Section 59 and Article III, Section 52, Texas Constitution, and will be authorized and empowered by the provisions of Chapter 54, Texas Water Code, and Section 402.0 14 et seq., Local Government Code, as amended, to enter into this Agreement. Upon creation and by action of its Board of Directors, a certified copy of which will be provided to the City and made a part hereof, the President and Secretary of the District shall be duly authorized to execute and deliver a complete acceptance of the terms and conditions of this Agreement.

b. The District has the power and authority to acquire and construct the System and has the power and authority, subject to the approval of the Approving Bodies and its duly qualified electors at an election called for such purposes, to issue and sell unlimited tax bonds to acquire and construct the System to serve the present and future landowners within the District.

c. The District proposes to issue and sell its bonds from time to time, to acquire and construct the System to serve the area within the District, and shall use its best efforts to procure from the appropriate federal, state, county, municipal, and other authorities the necessary permits and approvals to issue and sell its bonds and to acquire and construct the System.

d. It is currently contemplated that the System will be acquired and constructed in integral and operational stages sufficient to provide service to the area within the District as development proceeds. As the acquisition and construction of each such integral stage of the System is completed and becomes fully operational, the District shall transfer such stage of the System (except for its parks and recreational facilities and storm water detention facilities) to the City free and clear of all liens, except for easements, restrictions, minerals, oil and gas and mining rights and reservations, and zoning laws and defects in title; provided, however, that such easements, restrictions, minerals, oil and gas and mining rights and reservations do not individually or in the aggregate materially interfere with the operation of the System. The City and the District recognize that, in the event that System components are financed and constructed as described in the first paragraph of Section 4.01, the District cannot acquire the System from the Developer until the TCEQ has approved the purchase and the District has sold its Bonds. As provided herein, the City upon completion of construction and its acceptance of the System has the right and duty to operate and maintain the System. The District agrees to formally convey the System within 30 days from the date of completion and acceptance of the System, or, in the event of a Developer-constructed facility, 30 days after the delivery of its Bonds used to finance purchase thereof. In the event that the District fails to formally convey the System and such failure remains uncorrected after 10 days' written notice, the City may, at its option, transfer operation and maintenance responsibility to the District. The formal conveyance to the City shall be subject to the Security Interest retained by the District, more particularly described in Section 6.01 of this Agreement, for the purpose of securing the performance of the City under Section 6.01 of this Agreement. At such time as the principal, interest, and redemption premium, if any, on the District's Bonds issued to acquire and construct the applicable integral stage of the System have been paid or provided for in full, the District shall execute a release of such Security Interest with respect to such integral stage and the City shall own such integral stage of the System free and clear of such Security Interest. All warranties of contractors and subcontractors, if any, and all other rights beneficial to the operation of the System will be transferred by the District to the City. Notwithstanding anything contained in this Agreement to the contrary, the City shall have no obligation to accept ownership or maintenance responsibility of park and recreational facilities or storm water detention facilities. **THE DISTRICT AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL CLAIMS ASSERTED BY CONTRACTORS OR SUBCONTRACTORS (OR EMPLOYEES OF CONTRACTORS OR SUBCONTRACTORS) OF THE DISTRICT WITHOUT REGARD TO CAUSE OR CAUSES AND EXPRESSLY INCLUDING, TO THE EXTENT PERMITTED BY LAW, THE NEGLIGENCE OF THE CITY.**

Section 1.04. Representations of City.

The City makes the following representations:

a. The City is a home rule city operating under the laws of the State of Texas and is authorized and empowered by Article 402.014 et seq., Local Government Code, as amended, to enter into this Agreement. By Ordinance of the City Council, the Mayor has been duly authorized to execute and deliver this Agreement.

b. The City has the authority to levy, assess, and collect ad valorem taxes on property within the District and to use the taxes collected by it from property within the City, including the area within the District, as provided in this Agreement.

c. The City presently has, or will have, the power and authority to obtain the water supply and sanitary sewer treatment facilities necessary to properly serve the System to be acquired and constructed by the District.

d. The City will accept conveyances, as provided for herein, of the completed integral stages of the System (except for parks and recreational facilities and storm water detention facilities), which have been acquired or constructed by the District in accordance with the terms and provisions of this Agreement.

e. The City does not propose to use taxes to be derived from residents of the District to finance, elsewhere in the City, services of the type that the District proposes to provide and therefore a rebate of City taxes is not necessary.

ARTICLE II
Description of System

Section 2.01. Description of System.

Preliminary plans and specifications of the System shall be prepared by the District Engineer in accordance with the requirements of the City. The System may include structures or improvements outside of the boundaries of the District if reasonably necessary to serve the area within the District. All final plans and specifications for the System shall be submitted to the designated member of City staff for approval thereof. The final plans and specifications for each integral stage of the System shall be prepared in accordance with the standards of the City in effect as of the date of submission thereof to the City staff for approval.

Section 2.02. Design of the System.

The District shall design the System in accordance with sound engineering principles and in compliance with all requirements of the Approving Bodies. If necessary, the City shall join or cooperate in obtaining necessary permits, provided that all costs of obtaining such permits are paid by the District. If appropriate, such permits shall be in the name of the City.

Section 2.03. Quality of Materials.

Only material satisfactory for the intended purpose and meeting any requirements of the Approving Bodies shall be used by the District.

Section 2.04. Construction.

The District shall construct the System in accordance with the final plans and specifications. All changes of the final plans and specifications shall be submitted to City staff for approval. Written approval of the designated member of City staff shall be required for all General Benefit Facilities.

ARTICLE III
Construction of the System

Section 3.01. Policy of Extension.

The District shall construct or extend the System in such stages as is economically feasible. The District shall proceed with the construction or extension of the System in an expeditious manner in such stages as is economically feasible from time to time in order for all of the areas within the District to eventually receive the benefits of water, sanitary sewer, and drainage services. Such extension shall be accomplished by the District in accordance with prudent and sound management principles. Accordingly, the District's duty to proceed with the construction or extension of the System shall be subject to and consistent with existing development trends within the District and surrounding areas, the marketability of developed lots and acreage within the District, the need for expansions to the System to serve areas within the District, the limitations imposed by Section 5.01 and 5.02 hereof, existing economic conditions, and existing conditions in the municipal bond market. When any party hereto determines that it is economically feasible to extend the System, or any part thereof, to a particular area, it shall so notify the other in writing or by the submission of new plats and construction plans. If either the District or the City does not agree with the determination of the other that it is economically feasible to extend the System or any part thereof to a particular area, then it shall so notify the other in writing. Such dispute concerning the economic feasibility shall be resolved by arbitration under Section 9.02. In the event that the decision of the arbitrator or arbitrators favors economic feasibility, the District's obligation to extend the System or any part thereof shall remain limited by Article VI.

Section 3.02. Preparation of Final Plans and Specifications.

When the determination is made that it is economically feasible to construct or extend the System (a "Phase"), the District shall direct the District Engineer to prepare final plans and specifications of the Phase.

Section 3.03. Approval of Final Plans and Specifications.

Before the commencement of construction within the District, the District shall submit to the designated City staff member all final plans and specifications of each integral stage of the System, or any part thereof, and secure the City's approval thereto. Whenever feasible, plans for interrelated or dependent systems should be submitted at the same time.

If the City finds such plans and specifications to be in accordance with the City's standards existing at the time of review of any proposed plans and specifications, it shall approve the same. The construction of the System shall conform to the approved plans and specifications and to such standards and specifications as may be established from time to time by the City. Without limiting the generality of the foregoing, all water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto installed or used within the District shall conform to the specifications of the City. Without limiting the generality of the foregoing, all water service lines and sewer service lines, lift stations, sewage treatment facilities, and appurtenances thereto installed or used within the District shall comply with the City's standard plans and specifications. The final plans and specifications of any Phase shall be submitted to such Approving Bodies as may require such submission and the District shall use its best efforts to obtain any necessary approvals. After the final plans and specifications have been approved by all Approving Bodies, the District shall be authorized to proceed with construction as provided herein.

Section 3.04. Advertisement for Bids.

Construction contracts shall be let on a competitive bidding basis in accordance with the applicable requirements of Chapters 49 and 54, Texas Water Code, as amended, or any successor provisions. After preparation of final plans and specifications and their approvals as required by this Agreement, the District shall advertise for or solicit bids (as required) for the construction of the Phase described in the final plans and specifications. All bids shall include evidence of the financial condition of the bidders. The City's representatives shall be notified of and invited to attend each pre-bid conference and the bid opening in accordance with the notice provisions of Section 9.04 of this Agreement. All bids received by the District shall be reviewed by designated representatives of the District and the designated representatives of the City, and such representatives shall recommend to the District within 20 days that one of the bids received and submitted by the District on each phase of the construction be accepted or that all bids be rejected. The City and District shall designate from time to time in writing the persons who shall be their designated representatives. In the event of the failure of the City to designate representatives, the City Manager shall review the bids on behalf of the City.

Section 3.05. Re-advertisement for Bids.

The District reserves the right to re-advertise for bids if the first bids are not acceptable to the District.

Section 3.06: Award of Construction Contract; Certain Contract Provisions.

If the District has on deposit Construction Funds in a sum sufficient to pay the construction costs of the proposed work or has reasonable assurance that such funds will be forthcoming, then the District shall enter into a contract or contracts with the contractor or contractors whose bids have been accepted by the District. The District shall award all construction contracts on the basis of the most advantageous bid by a responsible, competent contractor, in accordance with Chapters 49 and 54 of the Texas Water Code, as amended, and the rules of the TCEQ. The District may not award a contract for General

Benefit Facilities to a contractor other than the contractor submitting the lowest responsible bid unless such award complies with the statutory requirements regarding the award of public bids and is approved by the City. Each contract with the District shall comply with Chapters 49 and 54, Texas Water Code, as amended, provide for retainage in accordance with Section 49.273, Texas Water Code, as amended, or any successor provision, require a performance bond and a payment bond in accordance with applicable requirements of Texas Government Code, Ch. 2253, as amended, and/or Texas Property Code, as applicable, require workers' compensation insurance, builders' risk insurance, and public liability insurance in such sums as the District shall determine, and require a covenant and warranty to diligently prosecute the work in a good and workmanlike manner and in accordance with the final plans and specifications.

In addition to any other construction contract provisions, any construction contract for District's facilities shall include: (i) the construction contractor's one year warranty of work performed under the contract, (ii) at a minimum, the insurance coverage required by the City for similar public works contracts, with the City named as an additional insured on such insurance policies, (iii) the contractor's indemnification of the City meeting the express negligence and conspicuousness doctrines and covering all claims by contractors, their employees, subcontractors and their employees, and (iv) the contractor's waiver of its workers compensation carrier's subrogation rights. The District shall provide the City Secretary with the additional insured endorsements.

Section 3.07. The District to Pursue Remedies Against Professional Consultants, Contractors, and Subcontractors and Their Sureties.

In the event of any errors or omissions of any professional consultant, or a default of any contractor or any subcontractor under any contract made by it in connection with the Phase, or in the event of breach of warranty with respect to any materials, workmanship or performance guarantee, the District will promptly proceed (subject to agreement by the parties to the contrary) either separately or in conjunction with others, to exhaust the remedies of the District against the professional consultant, contractor or subcontractor responsible for such default, error, or omission, and against each such surety for the performance of such contract. The District agrees to advise the City of the steps it intends to take in connection with any such default, error, or omission. Any amounts recovered by way of damages, refunds, adjustments, or otherwise in connection with the foregoing, after the deduction of the costs and expenses of collection, shall be deposited into the Construction Fund to be used by the District for constructing future extensions of the System.

If the District fails to take action, or if the City deems that the action taken by the District was inappropriate, the City may, in its own name, or in the name of the District, prosecute or defend any action or proceeding or take any other action involving any such professional consultant, contractor, subcontractor, or surety that the City deems reasonably necessary and, in such event, the District hereby agrees to cooperate fully with the City and take all action necessary to effect the substitution of the City for the District in any such action or proceeding. Any amounts recovered by way of damages, refunds, adjustments, or

otherwise in connection with the foregoing, after the deduction of the costs and expenses of collection, shall be deposited into the Construction Fund to be used by the District for constructing future extensions of the System. If the City brings an unsuccessful action against a professional consultant, contractor, subcontractor, or surety, the expenses of such action shall be borne equally by the City and District.

Section 3.08. Inspection During Construction.

The City Engineer may request reasonable increases in the frequency and duration of District inspections and the District Engineer shall comply with such requests and shall make reports to the City Engineer as often as the City Engineer shall request and at least weekly, and shall recommend final acceptance of the facilities to the District's Board of Directors when appropriate. The District's Engineer shall file all required documents with the TCEQ. The City's representative and the District's Engineer shall meet as often as the City reasonably requests, and the District's Engineer shall provide such representative the preceding week's daily inspection reports on a weekly basis, and more frequently when requested by the City's representative. If the City Engineer discovers that the construction, the District's inspection or the materials are materially deficient, or not in substantial conformance with the approved plans, specifications, or sound engineering or construction practices, the City Engineer shall notify and consult with the District's Engineer regarding the problem. The District's Engineer shall have a reasonable period of time in which to cure the problem or cause the problem to be cured. If the City Engineer and the District's Engineer are unable to resolve the problem and the District's Engineer is unable to the cure the problem, the City Engineer reserves the right to require the District's Engineer to halt construction until problems are resolved. If it becomes necessary for the City to retain outside professional help to resolve such dispute, and if the cause of the dispute is the fault of the District, its suppliers, consultants or contractors, the District shall reimburse the city for the direct expense of such services to the extent allowed by law, otherwise the City shall bear such expenses.

Section 3.09. Proceeds of District's Bonds.

Proceeds of the District's Bonds may be used by the District for the following purposes:

(1) Payment of monies not to exceed the first two years' interest on any series of the District's Bonds. Capitalized interest is allowed only in amounts which are prudent and necessary to stabilize debt service requirements and the District's tax rates.

(2) Payment of accrued interest on any series of Bonds from their date to the date of their delivery.

(3) Except as provided in paragraphs (1) and (2) above, proceeds received from the sale of any series of Bonds shall be deposited into the Construction Fund as Construction Funds and shall be used solely as provided in this Agreement, as it may be amended from time to time.

Section 3.10. Disbursement from Construction Fund.

Monies in the District's Construction Fund shall be used only as authorized by Chapters 49 and 54, Texas Water Code, as amended, by the rules of the TCEQ, or by this Agreement, for the following purposes:

(1) Payment for labor, services, materials, and supplies used or furnished in the construction of the System, or any part thereof, all as provided in the final plans and specifications therefore or as provided in change orders relating to the System, or any part thereof, that have been approved by the District, the District's Engineer, and the City with regard to payments for General Benefit Facilities, including payment for such labor, services, materials, and supplies used as herein specified whether said improvements are located within or without the District as long as the same is for the benefit of the District, payment for labor, services, materials, and supplies used or furnished to make any and all necessary improvements, extensions, additions, and repairs to the System, and payment for miscellaneous expenses incidental to any of the foregoing items.

(2) Payment of legal and engineering fees and expenses relating to the creation and organization of the District, relating to the construction of the System, or any part thereof, and payment of the premiums on any required surety bond and payment of the premiums of all insurance required to be taken out and maintained during the construction of the System, or any part thereof, if not paid by the contractor pursuant to his contract with the District.

(3) Payment of expenses incurred in seeking to enforce any remedy against any professional consultant, contractor, subcontractor or surety or any claim pursuant to Section 3.07.

(4) Payment of the District's expenses in issuing and selling its Bonds, including legal and fiscal expenses.

(5) Payment for all necessary lands, rights-of-way, easements, sites, equipment, buildings, structures, and facilities related to the System or any part thereof. The quantity of land needed for such site and the particular site selected must be approved by the City. If the City determines that the proposed costs of land are excessive or unreasonable, the District must provide an appraisal of the site selected from an independent appraiser who has been approved by the City. The purchase price of land shall be in accordance with the rules of the TCEQ, i.e., at the "developer's cost" which shall include taxes and carrying costs and shall be approved by the City. For purposes of this requirement, the City's approval of the plans related to the particular project in question shall constitute approval of both the quantity of land needed for such site and the particular site itself.

(6) Payment of reasonable administrative and operating expenses incurred during construction of the System or any part thereof.

(7) Payment to acquire the System, or any part thereof, as contemplated by Article IV of this Agreement, including a sum which may be allowed by the TCEQ as the cost of money

to any third party constructing the System, or any part thereof, pursuant to Article IV of this Agreement.

(8) Payment of such other fees, expenses, and items as may be approved by the District and the City with respect to General Benefit Facilities.

Except for payments under paragraphs 5 and 8 hereinabove and with regard to payments made under this Section, if a disbursement has received the approval of the TCEQ and the District, as applicable, the approval of the City shall not be required, provided such disbursement is in accordance with this Agreement.

Section 3.11. Authorization for Withdrawals from Construction Funds.

No money shall be withdrawn from the District's Construction Fund except by check, wire transfer, warrant, or voucher executed by three members of the Board of Directors of the District and accompanied by a certificate from the Board of Directors certifying, as follows: (1) that none of the items for which payment is proposed to be made has formed the basis for any payment heretofore made from the Construction Fund, (2) that such item for which payment is proposed to be made is or was necessary in connection with the construction of the System, or any part thereof, and, (3) if Construction Funds are transferred to the Operating Fund such payment constitutes a transfer from Construction to Operations necessary for the administration of the District. No construction funds shall be used by the District except as is authorized by the following as applicable: Chapters 49 and 54, Texas Water Code, as amended; Chapter 7931, Texas Special District Local Laws Code; the rules of the TCEQ; and by this Agreement.

Section 3.12. Investment of Construction Funds.

Pending their use, the Construction Funds may be invested and reinvested as determined by the District in direct or fully guaranteed obligations of the United States of America or its agencies or the obligations of political subdivisions rated "A" or better by Moody's Investors Service, Inc. All investments of the District shall comply with the Public Funds Investment Act and the District's duly adopted Investment Policy. The District shall invest the Construction Funds so that it preserves its capital and liquidity and the maximum earnings and profits thereon can be obtained, provided that such investment does not cause the Bonds to become arbitrage bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended. Earnings and profits from investing Construction Funds shall be deemed to be Construction Funds and shall be deposited into the Construction Funds. Nothing herein shall preclude the District from complying with the terms and conditions of its Bond Order or Resolution nor prohibit the District from making investments in accordance with the requirements of law.

Section 3.13. Surplus Construction Funds.

Surplus Construction Funds, if any, shall be used for future extension of the System pursuant to this Agreement or for such other purposes as approved by the TCEQ.

Section 3.14. Construction Audit.

The District shall have the construction costs of the System or any part thereof audited in accordance with the rules of the TCEQ and the requirements of law. The District shall file with the City a copy of the Developer Reimbursement Audit and each annual audit. All District records, except as otherwise provided by law, shall be public records and shall be made available to the City during normal business hours.

ARTICLE IV
Construction by Third Parties and Acquisition by the District Section 4.01. Construction by Third Parties.

The rules and regulations of the TCEQ allow, under certain circumstances, the construction of water, sanitary sewer, and drainage facilities by a "developer" of property within a district for subsequent sale to the District. These rules as presently adopted would allow a Developer of property in the District to construct the System in stages and sell the same to the District. Any such third party must construct the System, or portion thereof, in accordance with the final plans and specifications approved by the City and in accordance with the provisions of this Agreement insofar as the same may be applicable. Without limiting the generality of the foregoing, any third party constructing facilities for sale to the District must comply with the applicable provisions of Article III of this Agreement.

Under the provisions of 30 Texas Administrative Code, Section 293.47, a third party is required to contribute 30 percent of construction costs as defined therein. It is, however, the policy of the City to encourage reasonable tax rates and bond issuance practices that foster the prudent issuance of Bonds and the long-term commitment of the Developer to achieve the development goals and economic feasibility projected in a particular bond issue. The City will allow those districts legally entitled to 100 percent reimbursement (30 TAC 293.47) to include such reimbursement in bond issues provided the costs qualify as permissible expenditures under the provisions of Section 3.10 of this Agreement and comply with the rules of the TCEQ, including the "Economic Feasibility" requirements as set forth herein and defined in 30 Texas Administrative Code 293.59 and is judged economically feasible in accordance with the process outlined in Paragraph (h) of this Section and based upon an evaluation of the criteria in Paragraphs (a) through (g) of this Section. The District hereby covenants and warrants that it will undertake the following to insure the economic feasibility of its bond issues:

(a) Each ending debt service balance (cumulative balance) as shown in the District's cash flow analysis will be not less than 25 percent of the following year's debt service requirements.

(b) All underground facilities to be financed with the proceeds from a proposed bond issue shall be at least 95 percent substantially completed as certified by the District Engineer.

(c) All street and road construction to provide access to areas provided with utilities to be financed with bond proceeds shall be 95 percent substantially completed as certified by the District Engineer.

(d) For the District's first Bond issue, at least 25 percent of the projected value of homes, buildings, and/or other improvements shown on the District's tax rate calculation shall be completed prior to advertising the sale of Bonds.

(e) For second and subsequent Bond issues, the District shall have homes, buildings, or other improvements equal to 75 percent of the value of homes, buildings, or other improvements used in the projected tax rate calculations contained in all prior Bond issues. This value can be located in areas developed from prior Bond issues or a combination of prior Bond issue areas, proposed Bond issue areas, or future Bond issue areas.

(f) For any Bond issue, the combined projected debt service tax rate, as defined in 30 TAC 293.59 referenced above, shall not exceed $1.00.

(g) For each Bond sale, the District shall demonstrate that, at final buildout, the District's projected net direct debt as a percentage of current and estimated certified assessed value will not exceed ten percent (10%); provided however, that consistent with the definition of acceptable credit rating set forth in 30 TAC 293.47(b)(4), if and when the District has obtained an acceptable credit rating of Baaa3 or higher from Moody's Investor Service, Inc., BBB- or higher from Standard and Poors Corporation, or BBB- or higher from Fitch IBCA, the ten percent (10%) limitation set forth in this subsection shall not apply. Such rating must be obtained by the District independent of any municipal bond guaranty insurance, guarantee, endorsement, assurance, letter of credit, or other credit enhancement technique furnished by or obtained through any other party. Notwithstanding anything in this subsection, in the event that the TCEQ amends, supplements, or modifies 30 TAC 293.47(b)(4), the District shall be obligated to meet the then-current TCEQ requirements to satisfy the acceptable credit rating requirement set forth herein.

(h) The District, as required in Section 5.02, will obtain the City's approval prior to the advertisement and sale of Bonds. Whenever the District request such approval, the District will provide the City with a copy of the Engineering Report and will certify to the City that the District has complied with the above listed requirements. The City's approval process shall include all of the matters listed herein to the extent that they reasonably relate to judging the economic feasibility of each Bond issue.

The District may acquire a partially completed System or partially completed part of such System and complete the same in accordance with the provisions of Article III of this Agreement; provided, however, that nothing therein shall require the City to accept or maintain the System, or any part thereof, until the same has been completed and accepted by the City in accordance with the provisions of this Agreement.

Section 4.02. Contract with Third Party.

In acquiring the System, or any part thereof, which has been constructed, in whole or in part, by a third party, the District may acquire such System, or part thereof, on such terms and conditions from such third party as the TCEQ shall allow or require and the parties hereto shall agree. Although the District may contract to acquire the System, or a part thereof, from a third party, it shall not issue Bonds for such purpose if it would contravene

the limitations imposed in Section 5.02 of this Agreement and if it does not have the concurrence of the City Council.

ARTICLE V
Obligations to Extend the System

Section 5.01. Obligations of District.

The District shall construct and extend the System in stages to serve the future users in the District so ultimately all the landowners within the District will be in a position to receive services from the System. Notwithstanding the foregoing, however, the District's obligation is subject to the provisions of Section 3.01 hereof. Furthermore, the District shall not be obligated to extend the System into an area if any of the following conditions exist:

(1) The City is in default under the provisions of this Agreement.

(2) The ratio of the District's bonded indebtedness to its assessed valuation after the issuance of the Bonds requested for the Phase based on 100 percent of the appraised value as set by the Galveston Central Appraisal District exceeds:

(a) 20 percent during the first 24 months after the Bond date;

(b) 15 percent during the 24 months following the expiration of the initial 24 month period; and

(c) 10 percent thereafter.

(3) The ratio of the District's bonded indebtedness in connection with extending service to an area, to the projected assessed valuation of property in such area at full development, as estimated by the District's Engineer at 100 percent of the appraised value as set by the Galveston Central Appraisal District, is more than 10 percent.

(4) The District is unable to sell its Bonds pursuant to the provisions of this Agreement.

(5) The Attorney General of the State of Texas refuses to approve the District's Bonds, if such approval is required.

(6) If the District's projected tax rate exceeds or would exceed the rate of $1.00 per $100 assessed valuation of taxable property assessed at 100 percent of fair market value.

Section 5.02. Limitation on District's Bond Indebtedness and Covenant to Sell Bonds.

The District will issue and sell its Bonds for the purpose of acquiring and constructing the System as permitted herein; provided, however, that the District shall not issue and sell its Bonds if the ratio of the District's indebtedness to its assessed valuation at the time of issuance or sale based on 100 percent of the appraised value as set by the Galveston Central Appraisal District exceeds: (a) 25 percent during the first 24 months after the Bond Date; and (b) 15 percent thereafter. For purposes of computing the limitation hereunder, the most current certificate of value issued by the Galveston Central Appraisal District shall control. On January 1 of each year and at such other times as the parties may agree, the assessed

valuation shall be estimated by the Galveston Central Appraisal District for the purpose of computing the limitation hereunder with the consent of the Board of Directors of the District and the City Council of the City. After the assessed valuation is finalized in any year by the Galveston Central Appraisal District, such assessed valuation shall control for purposes of making the computations hereunder, unless the parties otherwise agree. The only debt to be considered in making the computation under Section 5.01 and this Section 5.02 is that debt occasioned by the issuance of Bonds as defined herein, and no other debt of the District shall be considered in making the calculations hereunder. The terms and conditions of the Bonds which the District shall sell from time to time for the purpose of constructing the System shall be reviewed and approved by the City Council. The District's Bonds shall expressly provide that the District shall reserve, at a minimum, the right to redeem said Bonds on any interest payment date subsequent to the 10 anniversary of the date of issuance or on any date thereafter without premium. Bonds (other than refunding bonds and bonds sold to a federal or state agency) shall only be sold after the taking of public bids therefore, and no Bonds shall be sold for less than 97 percent of par provided the net effective interest rate on Bonds so sold, taking into account any discount or premium as well as the interest rate borne by such Bonds, shall not exceed two percent above the highest average interest rate reported by the Daily Buyer in its weekly "20 Bond Index" during the 30-day period next preceding: (1) the date notice of the sale of the Bonds is given; or (2) the date of sale of the Bonds, whichever is greater. Bonds may be advertised or sold by the District only with the prior approval of the City Council. The Bonds of the District shall be sold to the lowest and best bidder after the District has advertised for and solicited bids. All Bonds of the District shall be approved by the Attorney General of the State of Texas.

Section 5.03. Grants.

The City shall reasonably cooperate with the District and any third parties in any application to obtain any governmental grants for the acquisition and construction of the System. Unless otherwise agreed, the costs of applying for a governmental grant shall be borne by the District and, furthermore, the District shall bear all direct and indirect expenses related to all grant applications and studies.

ARTICLE VI
Ownership and Operation

Section 6.01. Ownership by City.

As the acquisition and construction of each integral stage of the System (except for parks and recreational facilities and storm water detention facilities) are completed and each integral stage of the System becomes operational, the District shall convey the same to the City, reserving, however, a security interest (the "Security Interest") therein for the purpose of securing the performance of the City under this Agreement. Performance shall include, but not be limited to, (1) providing the adequate maintenance and operation of the System; (2) providing the water and wastewater treatment capacity resulting from water and wastewater Capital Recovery Fees; (3) providing reasonable and timely review and approval as required herein; and (4) maintaining the water distribution and wastewater collection line capacity as constructed by the District. At such time as the principal of and

interest on the Bonds issued to acquire and construct the System, and redemption premium, if any, have been paid or provided for, the District shall execute a release of such Security Interest and the City shall own the System free and clear of such Security Interest. For purposes of this Article VI, the term "System" shall not apply to parks and recreational facilities and storm water detention facilities and the City shall have no duty to accept ownership or maintenance obligations related thereto. Any parks and recreational facilities and storm water detention facilities located within the District will be maintained by the District or the homeowners association serving land within the District.

Section 6.02. Operation by City.

As construction of each integral stage of the System is completed, representatives of the City shall inspect the same and, if the City finds that the same has been completed in accordance with the final plans and specifications, or any modifications thereof, and in accordance with all applicable laws, rules, and regulations, the City will accept the same whereupon such portion of the System shall be operated and maintained by the City at its sole expense as provided herein. Notwithstanding anything contained in this Agreement to the contrary, the City shall have no obligation to accept ownership or maintenance responsibility of park and recreational facilities or storm water detention facilities. Such acceptance shall be subject to (i) the District providing the City with the District Engineer's Certificate of Substantial Completion and the Affidavit of Bills Paid; (ii) the District providing the City with one reproducible Mylar polyester film print of the "as-built" drawings for each constructed Phase; and (iii) the District providing the City with any manuals or other material relating to the proper operation of the System. Prior to acceptance by the City, the City may require a final joint inspection of the System by the City representatives, the District Engineer, the contractor, and the Approving Bodies. The City shall not be responsible for the cost of any repair of the System identified by the City as in need of repair prior to the City's acceptance. Thereafter, the City shall formally accept the System and such acceptance shall operate to transfer to the City all bond and warranties of the contractor and subcontractor. The City may accept temporary facilities under certain circumstances satisfactory to the City. Before such temporary facilities may be put in place, written agreements containing the criteria under which the temporary facilities will be removed must be executed by the City and the District. Nothing herein shall be deemed to require the City to accept or maintain any portion or part of the System that is not functionally integrated and operational (e.g., sewer lines not connected to an operating sewage treatment plant or paving not complete), until the City deems the System is operating in an acceptable manner. In the event the System has not been completed in accordance with the final plans and specifications, the City will advise the District in what manner said System does not comply and the District shall correct the same, whereupon the City shall again inspect the System and accept the same if the defects have been corrected. During the term of this Agreement, the City will operate the portions of the System which the City has accepted and provide service to all users within the District without discrimination consistent with current City service policy. The City's obligation to provide water supply to the System and treatment of sewage collected in the System shall be subject to the water supply and sewage treatment capacity paid for by the District by the payment

of water and wastewater Capital Recovery Fees, subject to the rules, policies and ordinances of the City and the capacity of the System. The City agrees to reserve the capacities constructed by or paid for by the District to serve persons within the District.

Section 6.03. Water Supply and Sewage Treatment.

As a part of the operation of the portions of the System which have been accepted by the City, the City shall supply, in such quantities as the District has paid for (or is entitled to by City Ordinance or Agreement), to the District all of its requirements of potable water of such quality and in such quantity and at such pressure as may be required by the TCEQ or the Fire Insurance Commission and subject to the rated capacity of the water supply lines constructed by the District as may be agreed upon by the parties and subject to the availability of water supplied to the City by the City of Houston and other sources. Water from the City's existing water supply system shall be delivered to the System at a point to be agreed upon by the District and the City. The City may use water and wastewater capacities in the System paid for by the District to serve other City customers outside of the District, so long as the City protects and makes available to customers within the District the capacities that the District has within the System. The parties anticipate that the City will, as development occurs within the District and other areas, make the necessary modifications and enlargements to the City's water supply and wastewater treatment facilities in order for it to have sufficient capacity to supply such development. To enable the City to effectively manage water and wastewater treatment capacity needs, the District shall provide to the City by December 31 of each year during the term of this Agreement, a written projection of new improvements and System Phases to be connected to the City's facilities during the next year and to provide such other information as the City may reasonably require to evaluate its future water supply and wastewater treatment capacity needs. However, it is within the City's discretion to determine if and when the City may expand such facilities.

Section 6.04. Rates.

The City shall fix such rates and charges for customers of the System as the City, in its sole discretion, determines is necessary; provided that the rates and charges for services afforded by the System will be equal and uniform to those charged other similar users within the City. All revenue from the System shall belong exclusively to the City.

Section 6.05. Connection Charges.

The City may impose a charge for connection to the System at a rate to be determined from time to time by the City, provided the charge is equal to the sums charged other City users for comparable connections. The Connection charge shall belong exclusively to the City.

Section 6.06. Special Conditions.

The District and the City both recognize that the District is a "City Service District" and that the City may impose special conditions on the operation, financing, and management of the District. The District and the City agree as follows:

1. This Agreement requires no rebate of City taxes to the District based upon the City's representation in Section 1.04 (e).

2. Bond issues shall include 70 percent or 100 percent reimbursement as provided by TCEQ rules and regulations.

3. Bonds shall be issued in series with a minimum limit on each series of Bonds being $1,000,000.00, except the District's last bond issue.

4. The parties agree that economic and development factors may change significantly over the duration of this Agreement. Accordingly, the parties agree that in the event of unforeseen significant changes, they will, upon request of one of the parties, engage in bona fide negotiations to amend the Agreement to respond to changed circumstances which are beyond the control of any of the parties. This provision shall not be construed as imposing on any of the parties an obligation, per se, to amend the Agreement.

5. The final maturity of all Bonds issued shall not exceed 30 years from the date of the initial series of Bonds; provided, however, that unless otherwise agreed to in writing by the City, the final maturity on any series of Bonds shall not extend beyond December 31, 2055.

6. The District shall establish an office, either inside or outside the District, within the corporate limits of the City of League City, Texas and all District meetings shall be held at a District office inside the City and shall comply with Section 49.062 of the Texas Water Code, as amended.

7. The District shall, as specified herein, obtain the City's approval prior to advertising the sale of its Bonds. Whenever possible, the District's sale of bonds shall be scheduled so as not to conflict with a City sale of bonds.

8. The District meetings shall be open to the public and City personnel shall be able to attend any and all meetings. The District agrees to provide to the City for informational purposes or for posting at City Hall or elsewhere, as deemed appropriate by the City, copies of all notices of meetings of the Board. Such notices shall be furnished by the District to the City sufficiently in advance of such meeting as may be necessary to permit posting thereof by the City for the time required by law for notices of public meetings of the Board.

9. The District shall post signs at two entrances to the District notifying the public that it is a municipal utility district regulated by the TCEQ. The Developer shall use its best efforts to insure that all homebuilders provide prospective purchasers with the notices required by Section 49.452 of the Texas Water Code, as amended.

10. Refunding Bonds may be issued, as herein provided, but said Bonds shall not extend the final maturity of the Bonds being refunded. The City may grant a waiver of this requirement in its sole discretion.

11. The District will exercise reasonable control over consultant fees to insure that said fees and charges are competitive and reasonable. In addition to the foregoing, the District hereby agrees to utilize the Galveston County Tax Assessor's Office ("County Tax Assessor") for collection of District taxes so long as: (i) the County Tax Assessor provides

the entirety of the necessary services related to assessment, collection, and provision of supporting materials necessary in conjunction with the sale of Bonds (collectively, the "Tax Collection Services"); and (ii) the County Tax Assessor's rates and fees are the most economical choice for Tax Collection Services related to the District's needs.

12. All Bonds issued by the District shall meet the debt to assessed valuation ratio as defined in Section 4.01(g) of this Agreement.

13. The City and the District agree that the District, in order to complete full development, will issue Bonds in series and that the District will not be dissolved until development is substantially complete.

Section 6.07. Ad Valorem Tax by District.

The parties to this Agreement recognize that the District, in order to pay the principal and interest on its Bonds and establish and maintain the interest and sinking fund and reserve fund required by the District's Bond Order or Resolution authorizing the issuance of its Bonds and that it will be necessary for the District to levy an ad valorem tax for such purposes. The parties further recognize that the District may levy a maintenance tax as authorized by the Texas Water Code, as amended.

Section 6.08. Limit of City's Liability.

Unless the City abolishes the District and assumes the assets and liabilities of the District, the Bonds or any other obligations of the District shall never become an obligation of the City. The City's obligations under this Agreement shall not extend beyond its obligation to operate and maintain the System and make water and sewer capacity and services available to the District.

Section 6.09. Maintenance of the System.

Subject to the limitations, if any, which may be provided by law and after acceptance of each integral stage of the System, the City shall at all times maintain the System in the City's ownership, or cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner at a reasonable cost and in accordance with sound business principles. Each party hereto will comply with all contractual provisions and agreements entered into by it and with all the valid rules, regulations, directions, or orders by any governmental, administrative, or judicial body promulgating same. If either party violates any such rule, regulation, direction or order, it shall be solely responsible for any fine, penalty, or sanction imposed on it.

ARTICLE VII
Default Provisions

Section 7.01. Default and Remedies in Event of Default.

Default shall mean the failure by either party to comply with the terms and conditions of this Agreement. Provided, however, that upon creation of the District, a default by one District shall not be a default by the non-defaulting District.

In addition to all the rights and remedies provided by the laws of the State of Texas, because of the peculiar damage each party hereto might suffer by virtue of a breach by the other party, each party shall be entitled to the equitable remedy of specific performance or mandamus.

Section 7.02. Interruption of Services.

As part of the consideration for this Agreement, and in the mutual interest of maintaining amicable relations between governmental entities operating within the same sphere, the District waives the right to sue the City for damages for claims arising from interruption of services.

ARTICLE VIII
Developer Provisions

Section 8.01. Developer Indemnity.

THE DEVELOPER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL CLAIMS (OTHER THAN CLAIMS FOR BREACH OF THIS AGREEMENT) ASSERTED BY THE DEVELOPER AGAINST THE CITY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT WITHOUT REGARD TO CAUSES OR THE BASIS FOR SUCH CLAIMS, EXPRESSLY INCLUDING THE NEGLIGENCE OF THE CITY.

Section 8.02. City Legal Fees.

The Developer agrees to pay the City's reasonable legal fees incurred in connection with the negotiation and drafting of this Agreement.

Section 8.03. Certain Road Construction.

In order to provide major thoroughfare access to the development and as a condition of City acceptance of the first section of lots south of West League City Parkway, the Developer shall design and construct: (i) the portion of the extension (including all four lanes) of League City Parkway in the location designated on **Exhibit "B"**; and (ii) a four-lane parkway into the development divided by a customary median, as designated as "Westleigh Blvd" on **Exhibit "B**". Developer hereby agrees to dedicate the necessary right of way owned by Developer within the boundaries of the District for completion of League City Parkway and Westleigh Boulevard at no cost to the City; provided, however, that the City will be responsible for obtaining (via purchase or by exercise of eminent domain) any necessary right of way not otherwise owned by Developer for completion of League City Parkway contemplated in this Section both inside and outside the boundaries of the District. Developer agrees to promptly pursue obtaining the necessary right of way not otherwise owned by Developer in order to proceed with construction of the League City Parkway extension. In the event that Developer is unable to secure the necessary property rights following good faith efforts to negotiate with the current property owner, the City agrees to commence and diligently pursue the eminent domain process within forty-five (45) days following receipt of written notice from the Developer.

In order to allow for a second point of entry into the development from League City Parkway and as a condition of approval of City acceptance for any section that causes the total number of developed lots within the District to exceed 150, the Developer shall design and construct a road upon the McFarland Drive Right of Way along the eastern boundary of the development, as designated as "McFarland Drive" on **Exhibit "B**" ("McFarland Drive"). Following the completion of such construction, the Developer shall formally dedicate McFarland Drive to the City of League City.

In addition to the foregoing, as a condition of approval of City acceptance for any section that causes the total number of developed lots within the District to exceed 150, the Developer agrees to design and construct the portion of the extension of League City Parkway in the location designated on **Exhibit "C"** outside of the boundaries of the District (the "Additional Extension Project") in conjunction with Developer's design and construction of the League City Parkway extension reflected on **Exhibit "B."** The Additional Extension Project will include the additional two-lanes necessary to make League City Parkway four lanes wide. In consideration of this commitment and completion thereof, the Parties agree to enter into a separate Development Agreement (the "Development Agreement") whereby the City shall award Impact Fee Credit to Developer equal to the costs associated with design and construction of the Additional Extension Project in the location designated on **Exhibit "C."** The Parties hereby agree that the Development Agreement shall contain the following terms and conditions regarding the funding, design, and completion of the Additional Extension Project. The City will confirm that the existing storm sewer system constructed in the median of League City Parkway is functional and does not require additional rehabilitation, repair or other work in conjunction with the Additional Extension Project. At such time the builders within the District obtain the required building permits, the roadway portion of the City's impact fees (currently $4,880 per home) will be credited against Developer's cost to design and construct the Additional Extension Project. If the actual cost of the design and construction of the Additional Extension Project is greater than $1,986,160, the City will reimburse the Developer for any overage from the City's roadway impact fee funds within sixty (60) days of completion and certification of costs. To the extent that remaining road impact fees to be generated by development within the District remain following completion of the Additional Extension Project, the City agrees that such amounts shall be credited against Developer's cost to design and construct the portion of League City Parkway as shown on **Exhibit "B."** The portion of the Additional Extension Project from Maple Leaf Drive to Westover Park Avenue will be constructed concurrently with the Section 1 improvements for the District. However, if the Developer chooses to develop a model home park of less than 20 lots as Section 1, then the construction of this first segment of the Additional Extension Project shall coincide with the development of Section 2 (or the first section of production lots within the District). The portion of the Additional Extension Project from Westover Park Avenue to the current terminus east of Magnolia Creek will be constructed concurrently with the Section of the District that causes the total lot count within the community to exceed 150 lots. Improvements within the median and south side right-of-way behind the curb shall be limited limited to restoring grading and hydromulch seeding

of disturbed areas (no irrigation, sidewalks, trees, or other landscaping improvements). In conjunction with the Additional Extension Project, the City will confirm that no environmental approvals are required for working within the Mag Creek waterway, as well as secure and fund (as necessary via purchase or by exercise of eminent domain) all of the required real estate rights/rights of way not otherwise owned by the Developer needed in order to complete the Additional Extension Project.

The parties shall collaborate to complete all of the road construction contemplated in this Section 8.03 in a manner that does not materially interfere with or delay the progress of construction of the development. Furthermore, the parties agree that the road construction contemplated in this Section 8.03 must conform with the City's standards and specifications for road construction.

Section 8.04. Stormwater Matters

The Developer shall cause the construction of an outfall channel at the point of termination in the southeastern portion of the southernmost storm water detention facility in the development, as designated as "Outfall" on **Exhibit "B**". Furthermore, the Developer shall dedicate an easement or fee parcel, as appropriate and in any event at least 200 feet in width, to the south of and parallel with the southern boundary of the development, in order to allow for the future westward extension of Magnolia Creek, designated on **Exhibit "B**", by third parties.

Section 8.05. Park Dedication Requirements

Consistent with the provisions set forth in the City's Parks Ordinance (the "Parks Ordinance"), the City requires certain park and recreation areas be dedicated by the developer during the development of the District. In order to provide planning certainty and ensure that the City's goal of designating parks and open space throughout the City is satisfied, the City and the Developer desire to designate the areas that will fulfill the City's acreage requirements in the Parks Ordinance. The City hereby agrees that the park and recreation areas set forth on **Exhibit "D"** attached hereto meet or exceed the City's requirements set forth in the Parks Ordinance, including but not limited to, requirements related to acreage thresholds and intended recreational use. Similarly, Developer hereby agrees to dedicate the property designated on **Exhibit "D"** in order to fulfill the Parks Ordinance requirements. In the event that the Developer desires to materially alter the property to be dedicated pursuant to this Section, the Developer shall obtain approval of such substitution from the City's Parks Board.

Section 8.06. Restrictive Covenants

Developer has provided the intended form of Declaration of Covenants, Conditions and Restrictions (the "CCRs") and Builder Guidelines (the "Builder Guidelines") to the City for review in conjunction with the negotiation and entry into this Utility Agreement. In conjunction with the approval of this Agreement, the City hereby approves the form of

CCRs and Builder Guidelines submitted and attached hereto as **Exhibit "E"**; provided, however, the Developer hereby agrees that all proposed amendments to the CCRs and substantive changes to the Builder Guidelines must be approved by the City's Planning Director for the entirety of the Development Period (as such term is defined in the CCRs).

ARTICLE IX
Miscellaneous Provisions

Section 9.01. General Benefit/Oversized Facilities.

In conjunction with the District's design and construction of the System, as described in Article III, the City may determine, from time to time, that certain facilities should be sized to serve areas outside the District, as well as areas within the District or the City may determine that the District should construct certain water, sewer, drainage facilities, or road facilities (as such road facilities are reflected on the City's master thoroughfare plan) to serve areas both inside and outside the District (in either case, facilities sized to serve areas outside the District shall be called "Oversized Facilities" or "General Benefit Facilities"). Subject to the terms and conditions of this Section 3.03, the District hereby agrees that, in conjunction with the District's design and construction of the System as set out in this Agreement, the District shall cooperate with the City to include the Oversized Facilities as required by the City. The City, in turn, hereby agrees that as between the District and the City, the City shall fund its share of the construction costs of the Oversized Facilities. In order to carry out the design and construction of the Oversized Facilities, the City and the District agree to enter a development agreement providing for the terms and conditions of the Oversized Facilities. If the Oversized Facilities are designed and constructed by the District as part of the design and construction of its System (collectively, the Oversized Facilities and the System, the "Project"), the construction costs of the Oversized Facilities shall be determined in accordance with TCEQ rules and regulations so the Project construction costs will be shared by the City and the District on the basis of benefits received which are generally the design capacities in the Project for the City and the District respectively. The City hereby agrees that the District, subject to TCEQ rules, may elect to agree upon Capital Recovery Fee Credits in lieu of the payment of construction costs by the City in an amount equal to one dollar for each dollar expended by the District on the City's portion of the construction costs for the Oversized Facilities.

Section 9.02. Arbitration.

Any controversy, dispute, or claim arising out of or relating to this Agreement, or any breach thereof, shall be settled by binding arbitration in accordance with the Texas Arbitration Act. No arbitrator shall have the jurisdiction or authority to add to, take from nullify, or modify any of the terms of this Agreement, either directly or indirectly under the guise of interpretation. The arbitrator shall be bound by the facts and evidence submitted to him in the hearing and may not go beyond the terms of this Agreement as herein expressly set forth, and no arbitrator shall have the power to base any award on any alleged practices or oral understandings not incorporated herein. Any award rendered in arbitration proceedings under this Agreement shall be subject to judicial review at the instance of either

party for the purpose of determining whether the arbitrator exceeded his power as herein limited, and neither party shall be deemed to have waived its right to such review by proceeding to arbitration without compulsion of a judicial decree. Within his power as herein limited, the arbitrator may enter an award based upon any remedy available to the parties as provided in Section 9.01 of this Agreement. Judgment upon the award may be entered in any court having jurisdiction thereof. Any such arbitration proceeding shall be held at the principal offices of the City, or such other place in Galveston County as is designated by the City. Each party represents that this Agreement was concluded upon the advice of counsel below. The provisions of this section are subject to and shall not be considered as attempting to exclude the jurisdiction of the TCEQ or any other governmental regulatory authority to arbitrate or settle disputes, hold hearings, or enter orders relating to the subject matter of this Agreement.

Prior to arbitration, the parties hereto agree to present all matters in dispute to the City Council in open session in an attempt to informally resolve disagreements hereunder. Each party hereto shall be provided copies of all relevant documents concerning matters at issue as well as copies of all documents filed with the TCEQ and the State Attorney General.

Section 9.03. Force Majeure.

In the event either party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is being affected by force majeure and to the extent that the due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockages, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machinery or pipelines, and any other inabilities of either party whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by exercise of due diligence and care such party could not have avoided.

Section 9.04. Approval.

Whenever this Agreement requires or permits approval or consent to be hereafter given by either party, such approval or consent shall be evidenced by resolution adopted by the governing body of the party by an appropriate certificate executed by a person, firm, or entity previously authorized to determine and give such approval or consent on behalf of the governing body. The parties agree that no such approval or consent shall be unreasonably withheld. Notwithstanding the foregoing, any approval or consent from the

City contemplated under this Agreement related to the plans and specifications for the System may be provided by a designated member of City staff.

Section 9.05. Address and Notices.

Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by either party to the other must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegraph, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three days after it is so deposited.

Notice given in any other manner shall be effective only if and when received by the party to be notified. However, in the event of service interruption or hazardous conditions, neither party will delay remedial action pending the receipt of formal Notice. For the purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City:
City Manager
City Hall
300 West Walker
League City, TX 77573

If to the District:
Galveston County Municipal
Utility District No. 80
c/o Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: David Oliver

If to Developer:
Wilbow-Westleigh LLC
1790 Hughes Landing Blvd., Suite 400
The Woodlands, Texas 77380
Attention: Becky Ullman

with a copy to:
Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attention: Mr. David Oliver

Telephone: (713) 860-6400
Fax: (713) 860-6401

The parties shall have the right from time to time and any time to change their respective addresses and each shall have the right to specify as its address any other address in Galveston County or Harris County, Texas, upon at least 15 days written Notice to the other party.

Section 9.06. Assignability.

This Agreement shall bind and benefit the respective parties and their legal successors, but shall not otherwise be assignable, in whole or in part, by either party without first obtaining written consent of the other. Notwithstanding the foregoing, by execution of this Agreement, the City hereby consents to the Assignment (the "Assignment") of this Agreement to the District including all of the rights and obligations set forth herein, provided that: (i) such Assignment shall be in the form and substance as the form of Assignment attached hereto as **Exhibit "F"**; and (ii) the District shall provide the City with a copy of the fully executed Assignment within ten (10) business days of execution thereof.

Section 9.07. Regulatory Agencies.

This Agreement shall be subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction.

Section 9.08. No Additional Waiver Implied.

The failure of either party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by the other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

Section 9.09. Captions.

The captions appearing at the first of each numbered Section in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provision hereof, or in connection with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

Section 9.10. Severability.

The provisions of this Agreement are severable, and if any provisions or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement of other persons or circumstances shall not be affected thereby.

Section 9.11. Merger.

This Agreement embodies the entire understanding between the parties and there are no prior effective representations, warranties, or agreements between the parties except as set forth in the City ordinances consenting to the creation of the District.

Section 9.12. Construction of Agreement.

The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author this Agreement.

Section 9.13. Term.

This Agreement shall be in force and effect from the date of execution hereof for a term of 40 years unless otherwise previously terminated pursuant to some term or condition of this Agreement or dissolution of the District. Notwithstanding the foregoing, Developer's obligation to perform the obligations set forth in Article VIII of this Agreement shall only become effective at such time Developer has closed on the purchase of the real property included in **Exhibit "A"** attached hereto.

Section 9.14. Agreement not an "Allocation Agreement."

The parties agree that this Utility Agreement is not an Allocation Agreement for purposes of Water Code Section 54.016(f).

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, this the 3rd day of March 2020

WILBOW-WESTLEIGH LLC,
a Texas limited liability company

By: _____
Lawrence A. Corson, President

RAL 3/2/20

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 3rd day of March, 2020, by Lawrence A. Corson, President of WILBOW-WESTLEIGH LLC, a Texas limited liability company, on behalf of said limited liability company.

Jennifer Turner
NOTARY PUBLIC
ID 13084306-0
State of Texas
Comm. Exp. 09-29-2020

_____
Notary Public, State of Texas

(NOTARY SEAL)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, this the _____ day of _____ 2020.

THE CITY OF LEAGUE CITY, TEXAS

By:_____
John Baumgartner, P.E.,
City Manager

ATTEST:

By:_____
City Secretary

Exhibit "A"
(Metes and Bounds Description of the Land 157.63 acres)

County: Galveston
Project: Westleigh
Job No. 199801
MBS No. 19-156

FIELD NOTES FOR 157.63 ACRES

Being a tract containing 157.63 acres of land situated in the I.&G.N.R.R. Co. Survey Section 3, Abstract 614, and the I.&G.N.R.R. Co. Survey Section 4, Abstract 608, both in Galveston County, Texas. Said 157.63 acres being a call 160.3463 acre tract of land recorded in the name of Kazem Khonsari and Mohamad J. Javadi under Galveston County Clerk's File (G.C.C.F.) No. 9432458 and Baham Interests Limited Partnership under G.C.C.F. No. 2012065409, LESS AND EXCEPT that certain call 2.750 acre tract being Texas-New Mexico Power Company Seminole Station, a subdivision recorded in Plat Record 2003A, Map Number 140 of the Galveston County Map Records (G.C.M.R.). Said 157.63 acres of land being more particularly described by metes and bounds as follows (Bearings are referenced to the Texas Coordinate System of 1983, South Central Zone, based on GPS observations):

BEGINNING at a 5/8-inch iron rod found at the upper northeast corner of said 160.3463 acre tract, the northwest corner of a call 10 acre tract of land recorded in the name of Jimmie L. Rathburn under G.C.C.F. No. 8712908, the southwest corner of a call 1.3347 acre tract of land recorded in the name of City of Friendswood under G.C.C.F. No. 2018040688, and being on the south line of Slone Subdivision out of the B.W. Camp Rice Farms recorded in Volume 3, Page 61A of the G.C.M.R.;

THENCE, with the west line of said Rathburn 10 acres and the upper east line of said 160.3463 acres, South 03 degrees 46 minutes 29 seconds East, a distance of 499.71 feet to a 5/8 inch iron rod found at the southwest corner of said Rathburn 10 acres;

THENCE, with the south line of said Rathburn 10 acres and the lower north line of said 160.3463 acres, North 86 degrees 16 minutes 02 seconds East, a distance of 876.05 feet to the lower northeast corner of said 160.3463 acres, the southeast corner of said Rathburn 10 acres and being on the west Right-of-Way (R.O.W.) line of McFarland Road aka Algoa Friendswood Road (60 feet wide), from which a found 5/8 inch iron rod (disturbed) bears South 86 degrees 16 minutes 02 seconds West, a distance of 0.73 feet and a found 5/8 inch iron rod bears South 86 degrees 16 minutes 02 seconds West, a distance of 5.72 feet;

THENCE, with the common line between said 160.3463 acres and McFarland Road, the following two (2) courses:

1.) South 04 degrees 54 minutes 30 seconds East, a distance of 2,069.75 feet to a 5/8 inch iron rod found;

2.) South 04 degrees 58 minutes 21 seconds East, at a distance of 128.44 feet passing a found 5/8 inch iron rod and continuing for a total distance of 1,077.97 feet to a 5/8 inch capped iron rod stamped "GBI Partners" set at the northeast corner of aforesaid Texas-New Mexico Power Company Seminole Substation;

THENCE, with the north, west and south lines of said Texas-New Mexico Power Company Seminole Substation, the following four (4) courses:

1.) South 87 degrees 39 minutes 22 seconds West, a distance of 400.28 feet to a 5/8 inch iron rod found;

2.) South 04 degrees 58 minutes 21 seconds East, a distance of 297.91 feet to a 5/8 inch capped iron rod stamped "GBI Partners" set;

3.) North 89 degrees 19 minutes 22 seconds East, a distance of 60.30 feet to a 5/8 inch capped iron rod stamped "CL Davis" found;

4.) North 87 degrees 39 minutes 22 seconds East, a distance of 340.09 feet to a 5/8 inch capped iron rod stamped "CL Davis" found at the southeast corner of said Texas-New Mexico Power Company Seminole Substation and being on the common line between aforesaid 160.3463 acres and McFarland Road;

THENCE, with said common line, South 04 degrees 58 minutes 21 seconds East, a distance of 117.22 feet to a 5/8 inch capped iron rod stamped "GBI Partners" set at the southeast corner of said 160.3463 acres and northeast corner of a call 50.7003 acre tract of land (styled "Third Tract") recorded in the name of West West Cattle Company under G.C.C.F. No. 9205621;

THENCE, with the common line between said 160.3463 acres and said 50.7003 acres, the following three (3) courses:

1.) South 80 degrees 21 minutes 55 seconds West, a distance of 26.66 feet to a point from which a found 3/8 inch capped iron rod stamped "Landtech" (disturbed) bears North 59 degrees 27 minutes 16 seconds West, a distance of 0.43 feet;

2.) South 89 degrees 37 minutes 02 seconds West, a distance of 1,433.33 feet to a 3/8 inch capped iron rod stamped "Landtech" found;

3.) South 89 degrees 45 minutes 39 seconds West, a distance of 484.46 feet to a 3/8 inch capped iron rod stamped "Landtech" found at the southwest corner of said 160.3463 acres, the northwest corner of said 50.7003 acres and being an easterly line of a call 941.89 acre tract of land (styled "First Tract") recorded in the name of West West Cattle Company under G.C.C.F. No. 9205621;

THENCE, with the common line between said 160.3463 acres and said 941.89 acres, the following two (2) courses:

1.) North 02 degrees 21 minutes 31 seconds West, a distance of 1,257.26 feet to a 5/8 inch iron rod found;

2.) North 02 degrees 20 minutes 31 seconds West, a distance of 2,696.88 feet to a 3/8 inch capped iron rod stamped "Landtech" found at the northwest corner of said 160.3463 acres and being on the south line of aforesaid Slone Subdivision;

THENCE, with the common line between said 160.3463 acres and said Slone Subdivision, North 86 degrees 16 minutes 02 seconds East, a distance of 894.13 feet to the **POINT OF BEGINNING** and containing 157.63 acres of land.

THIS DESCRIPTION WAS PREPARED BASED ON A SURVEY MADE ON THE GROUND UNDER THE DIRECTION OF KYLE B. DUCKETT, RPLS 6340, FILED UNDER JOB NO. 199801 IN THE OFFICES OF GBI PARTNERS, L.P.

GBI Partners, L.P.
TBPLS Firm #10130300
Ph: 281.499.4539
May 24, 2019

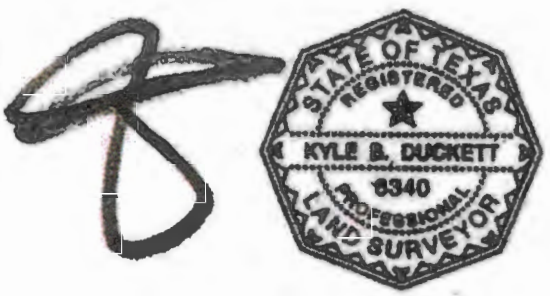

Exhibit "B"

Certain Road and Channel Construction Items

WEST BOULEVARD

W LEAGUE CITY PARKWAY

West Ranch

Lake Friendswood

Lake Friendswood Park

25' Landscape Buffer

DRILL SITE
±2.3 Ac.

PARK
±0.5 Ac.

MODEL HOMES

PHASE 1

WESTLEIGH BLVD.

PARK
±0.7 Ac.

MCFARLAND RD

REC CENTER
±1.5 Ac.

LAKE/ DETENTION
±2.2 Ac.

PHASE 2

LS

PHASE 4

LAKE/ DETENTION
±10.3 Ac.

PHASE 4

PHASE 3

DRILL SITE
±2.2 Ac.

PHASE 3

PARK / DETENTION
±11.3 Ac.

DETENTION
±9.9 Ac.

American Canal

Roadway Legend

- LEAGUE CITY PARKWAY - ±20,700 SY
- WESTLEIGH BLVD. - ±9,700 SY
- McFARLAND DRIVE - ±4,350 SY

0 100 200 400

an Exhibit for

WESTLEIGH TRACT

±157.63 Acres of Land

League City , Texas

Prepared For:

WILBOW CORPORATION

Reference Date: 04.03.2020

Planning & Landscape Architecture

Land & Master Planning
Land Use/Feasibility Studies
Sustainable Design
Urban Design
Landscape Architecture

LJA Engineering, Inc.
2929 Briarpark Drive, Suite 600
Houston, Texas 77042-3703
713.953.5200

This exhibit is an illustrative representation for presentation purposes only and should not be used for computation or construction purposes. The information provided within should be considered a graphic representation to aid in determining plan components and relationships and is subject to change without notice. All property boundaries, easements, road alignments, drainage, flood plains, environmental issues and other information shown is approximate and should not be relied upon for any purpose. No warranties, express or implied, concerning the actual design, accuracy, location, and character of the facilities shown on this exhibit are intended.

Exhibit "C"
Additional Expansion Project


LEAGUE CITY PKWY
Proposed Lanes
PROPOSED LEAGUE CITY PARKWAY EXPANSION
March 2, 2020
City of League City - GIS Department
The City of League City makes no claims to the accuracy of the map
It is intended for demonstrational purposes only.
League City
TEXAS

Exhibit "D"

Park and Greenspace Requirements

Single Family Residential Yield

	MODEL	PHASE 1	PHASE 2	PHASE 3	PHASE 4	TOTALS
50′ x 140′	5 Lots	53 Lots	85 Lots	62 Lots	45 Lots	250 Lots
60′ x 140′	6 Lots	44 Lots	40 Lots	23 Lots	29 Lots	142 Lots
TOTAL	**11 Lots**	**97 Lots**	**125 Lots**	**85 Lots**	**74 Lots**	**392 Lots**

Parks Dedication

Required Parks Dedication = 4.5 acres

Proposed Parks Dedication

Recreation Center	1.5 acres
Parks	1.2 acres
Park/Detention at 25% credit	2.8 acres
Total Proposed Parks Dedication*	**5.5 acres**

** - The proposed Parks Dedication shown on this exihibit includes 1.0 acres more than what is required by the Parks Ordinance which takes into consideration a contemplated possible future annexation into the project.*

Trails Legend

Required 10′ Trail (Per League City Trails Master Plan)

Proposed Project Trail

0 100 200 400

an Exhibit for

WESTLEIGH TRACT

±157.63 Acres of Land

League City , Texas

Prepared For:

WILBOW CORPORATION

Reference Date: 04.03.2020

LJA

Planning & Landscape Architecture

Land & Master Planning
Land Use/Feasibility Studies
Sustainable Design
Urban Design
Landscape Architecture

LJA Engineering, Inc.
2929 Briarpark Drive, Suite 600
Houston, Texas 77042-3703
713.953.5200

Exhibit "E"

Declaration of Covenants, Conditions and Restrictions

and Builder Guidelines

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WESTLEIGH

This Declaration of Covenants, Conditions and Restrictions for Westleigh is made on the date hereinafter set forth by the Declarant (hereinafter defined).

Declarant is the owner of the Property (as herein defined). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. This Declaration (as defined herein) is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property. In furtherance of such plan, Declarant has caused or intends to cause Westleigh Homeowners Association, Inc. to be formed as a Texas nonprofit corporation to own, operate, and maintain the Common Areas (as defined herein) and to administer and enforce the provisions of this Declaration.

Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, covenants and conditions contained in this Declaration, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of Declarant, the Association (hereinafter defined), the ACA (hereinafter defined) and each owner of any portion of the Property.

ARTICLE I
DEFINITIONS

1.1 "**Annexable Property**" means real property that may be added to the Property and subjected to this Declaration by Declarant.

1.2 "**ACA**" or "**Architectural Control Authority**" shall have the meaning provided such terms in **Section 6.2** herein.

1.3 "**ACA Standards**" means standards adopted by the ACA regarding architectural and related matters, including, without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which may be either recommended or required by the ACA for use within the Property.

1.4 "**Association**" means Westleigh Homeowners Association, Inc., a Texas nonprofit corporation established for the purposes set forth herein.

1.5 "**Association Fencing**" means that certain fencing installed by Declarant, if Declarant so elects, including, without limitation, the screening wall and/or fence around the perimeter of the Property, which shall be part of the Common Area which the Association shall have the obligation to maintain, repair and replace.

1.6 "**Board of Directors**" means the board of directors of the Association.

1.7 "**Builder**" means any person or entity who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business.

1.8 "**Common Area**" and "**Common Areas**" means all areas (including the improvements thereon) within the Property owned or to be owned by the Association, or which the Association has the right to use by easement, license or other right for the common use and enjoyment of the Members, including, without limitation, the Association Fencing. It is understood that Common Area may be used by other persons or entities pursuant to easement agreements in favor of the Association and/or such other persons or entities.

1.9 "**Common Expenses**" means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas, but excluding any expenses incurred during the Development Period for the initial or original construction of improvements.

1.10 "**Common Maintenance Areas**" means the Common Areas, if any, and any areas within public rights-of-way, easements (public and private), portions of a Lot, public parks, private streets, landscaping, entry feature, fence or similar areas that the Board of Directors deems necessary or appropriate to maintain for the common benefit of the Members.

1.11 "**County**" means the County of Galveston.

1.12 "**Declarant**" means _____, a _____, and its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign in a document that is Recorded. There may be more than one Declarant if Declarant makes a partial assignment of the Declarant status.

1.13 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for Westleigh and any amendments and supplements thereto made in accordance with its terms.

1.14 "**Designated Interest Rate**" means the interest rate designated by the Board of Directors from time to time, subject to any interest limitations under Texas law. If the Board of Directors fails to designate an interest rate, then the interest rate shall be the lesser of 18% per annum or the highest rate permitted by Texas law. The Designated Interest Rate is also subject to the limitations in **Section 11.6** herein.

1.15 "**Development**" means the Property and the Annexable Property.

1.16 "**Development Period**" means the period commencing upon the date of this Declaration and expiring upon the earlier of (i) when Declarant does not own any real property within the Property, or (ii) when Declarant executes a document stating the Development Period has terminated, which termination document may be executed during the period when Declarant still owns real property within the Property.

1.17 "**Dwelling**" means any residential dwelling situated upon any Lot.

1.18 "**Lot**" or "**Lots**" means any separate residential building parcel(s) shown on a recorded subdivision plat of the Property or any part thereof, but only if such parcel(s) has in place the infrastructure (including utilities and streets) necessary to allow construction of a single-family home thereon. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.

1.19 "**Member**" means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in **Article III** herein.

1.20 "**Owner**" means the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract for sale, then the purchaser (rather than the fee Owner) will be considered the Owner.

1.21 "**Property**" means the real property described on **Exhibit "A"** attached hereto (other than areas dedicated to the County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.

1.22 "**Record,**" "**Recording**" **or** "**Recorded**" means the filing of a legal instrument in the County or such other place as may be designated as the official location for filing deeds, plats, and similar documents affecting title to real property.

1.23 "**Subdivision Plat**" means the plat of the Property recorded or to be recorded in the Plat Records of the County.

1.24 "**Supplemental Declaration**" means a Recorded instrument, which subjects additional property to this Declaration and/or imposes restrictions and obligations on the land described in the instrument.

1.25 "**Vacant Lot**" means a Lot that does not have thereon a Dwelling that has been occupied at any time (past or current) for residential purposes.

ARTICLE II
PROPERTY RIGHTS

2.1 **Owners' Easements of Use and Enjoyment.** Every Owner shall have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to any limitations set forth herein, including, without limitation, the following:

a. **Rules.** The right of the Association to establish and publish rules and regulations governing the use of the Common Areas and/or the Lots.

b. **Suspension of Voting Rights.** The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner, subject to Section X

below, for any period during which any assessment against such Owner's Lot remains unpaid.

c. **Conveyance of Common Area.** The right of the Association, subject to the provisions hereof, to dedicate, sell or transfer all or any part of the Common Areas. However, no such dedication, sale or transfer will be effective unless there is an affirmative vote of 67% or more of the outstanding votes entitled to be cast approving such action.

d. **Mortgage Common Area.** The right of the Association, subject to the provisions hereof, to mortgage all or any part of the Common Areas or encumber the same with a lien. However, the Common Areas cannot be mortgaged or encumbered by a lien unless there is an affirmative vote of 67% or more of the outstanding votes entitled to be cast approving such action.

2.2 **Prohibitions on Easement of Use and Enjoyment.** Each Owner's right and easement of use and enjoyment in and to the Common Areas is further limited as follows:

a. **No Transfer without Lot.** An Owner's right and easement of use and enjoyment in and to the Common Areas shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot and such right and easement of use and enjoyment in and to the Common Areas shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Areas.

b. **No Partition.** Except as provided in **Section 2.1.c** herein, the Common Areas shall remain undivided and no action for partition or division of any part thereof shall be permitted.

2.3 **Right to Delegate Use and Enjoyment of Common Areas.** Any Owner may extend his or her right of use and enjoyment of the Common Areas to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the Bylaws of the Association (the "**Bylaws**"), and any reasonable rules of the Board of Directors. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

ARTICLE III
MEMBERSHIP AND VOTING

3.1 **Membership - Owners.** Every Owner by virtue of ownership of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot.

3.2 **Voting Rights.** The Association shall have the following two classes of voting membership:

a. **Members other than Declarant**. Except as provided in Section 3.2(b) below, Members shall be entitled to one vote for each Lot owned. However, when more than one person or Member holds an interest in any Lot, only one vote in total may be cast per Lot as the Owners of such Lot determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Member is the person designated to cast the Lot's vote. If the Members fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.

b. **Declarant**. Declarant shall be entitled to ten (10) votes for each Lot owned by Declarant, regardless of whether the period is within or after the Development Period.

ARTICLE IV
ASSESSMENTS

4.1 **Obligation to Pay Assessments.** Subject to the terms of this **Article IV**, the Declarant, for each Lot it owns, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not such covenant will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, (ii) special assessments as provided in **Section 4.5** herein, and (iii) specific assessments as provided in **Section 4.9** herein.

4.2 **Personal Obligation to Pay Assessments.** Each such assessment, together with interest at the Designated Interest Rate, late charges, costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded mortgage or beneficiary of a Recorded deed of trust shall be liable for unpaid assessments, which accrued prior to such acquisition of title. In addition, no mortgagee shall be required to collect assessments.

4.3 **Purpose of Annual and Special Assessments.** Annual assessments and special assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Maintenance Areas.

4.4 **Maximum and Actual Annual Assessment.** Until January 1st of the year immediately following the conveyance of the first Lot to an Owner other than Declarant or a Builder, the maximum annual assessment shall be **$800.00** per Lot. The Board of Directors may fix the actual annual assessment at an amount not in excess of the specified maximum annual assessment. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner other than Declarant or a Builder, the maximum annual assessment may be increased as follows:

a. **Maximum Increase Without Vote.** Without a vote of the Members in accordance with **Subsection b** below, the Board of Directors may increase the maximum annual assessment each year by up to 15% above the maximum annual assessment for the previous year. The Board of Directors may increase the maximum annual assessment with or without increasing the actual annual assessment.

b. **Maximum Increase With Vote.** The maximum annual assessment may not be increased more than 15% above the prior year's maximum annual assessment amount unless there is an affirmative vote of 67% or more of the outstanding votes entitled to be cast approving such action.

c. **Lots Owned by Declarant – Exempt**. Notwithstanding any provision herein, during the Development Period all Lots owned by Declarant shall be exempt from all assessments (annual assessments, special assessments and/or specific assessments) and Declarant shall not be obligated to pay any assessments for the Lots.

4.5 **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to cover expenses that the Board of Directors determines, in its sole discretion, would more appropriately be handled outside of the regular operating budget, provided that any such special assessment must be approved by an affirmative vote of 67% or more of the outstanding votes entitled to be cast approving such action.

4.6 **Uniform Rate of Assessment – Reduced for Vacant Lots.** Both annual assessments and special assessments shall be fixed at a uniform rate for all Owners, including Declarant and Builders.

4.7 **Declarant's Payment of Full Assessments for Vacant Lots or Shortfall Amount.** During the period that Declarant owns any Vacant Lot, if the Association's revenues are insufficient to pay the expenses of the Association, then Declarant, at its election, shall pay to the Association the lesser of: (i) the difference between the revenues and the expenses, or (ii) the difference between the total amount of assessments paid by Declarant for Vacant Lots (assessed at the reduced assessment rate) and the total amount that Declarant would have paid for such Vacant Lots if such Vacant Lots were assessed as Lots at the full (100%) rate. Declarant shall make its election within 30 days of receipt of a request for payment thereof from the Association, provided that if the budget deficit is the result of the failure or refusal of an Owner or Owners to pay their annual assessment or special assessments, the Association will diligently pursue (and the Declarant may also pursue at its option) all available remedies against such defaulting Owner or Owners and will promptly reimburse the Declarant the amounts, if any, so collected up to the amount of Declarant's additional contribution. Declarant's election to pay more than the amounts required hereunder shall not obligate Declarant to pay any such sums in the future.

4.8 **Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to a Builder or an entity that assumes Declarant status as provided herein), unless the Board of Directors elects to commence the annual assessment

earlier. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each assessment period. Written notice of the annual assessment shall be sent to an Owner of every Lot subject thereto. The due dates shall be established by the Board of Directors. The Board of Directors shall also establish whether the annual assessment shall be paid annually, quarterly or monthly.

4.9 **Specific Assessments.** The Association shall have the power to levy specific assessments against a particular Lot to (i) cover costs incurred in bringing a Lot into compliance with this Declaration, (ii) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests, and/or (iii) collect any sums due by the Owner to the Association (other than annual assessments or special assessments or interest or late charges related thereto), including, without limitation, fines and transfer fees.

4.10 **Personal Obligation to Pay Assessments**. Each assessment provided herein, together with interest at the Designated Interest Rate, late charges, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded first purchase money mortgage or beneficiary of a Recorded first deed of trust (meaning any Recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust), shall be liable for unpaid assessments which accrued prior to mortgagee's acquisition of title. In addition, no mortgagee shall be required to collect assessments.

4.11 **Capitalization of Association.** Upon acquisition of record title to a Lot by every subsequent Owner thereof (other than Declarant or a Builder), at the election of the Board of Directors, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to six (6) months of the full annual assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be disbursed to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws. In the event annual assessments have been assessed for less than a full year, in calculating the foregoing ceiling amount, the Board of Directors may annualize assessments for such partial year to determine an annual assessment amount for the entire year for purposes of this calculation.

4.12 **Certificate of Assessment Status.** The Association will, promptly after written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

4.13 **Failure to Pay Assessments; Remedies of the Association.** With respect to any assessment or other sum due herein not paid within thirty (30) days after the due date, the Association shall have the right to: (i) charge a late fee, in an amount determined by the Board of Directors; (ii) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; and/or (iii) charge costs and fees related to the collection of

the sum due. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of his or her Lot. The failure to pay assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

4.14 **Payment Plans.** If an Owner is unable to pay any assessment or other sum due herein, then upon written notice to the Association delivered no later than two (2) business days following the due date of such payment, the Association shall extend to such Owner a payment plan on the following terms (a "Payment Plan"):

a. The amount due herein may be paid in three equal partial payments, due one (1) month, two (2) months and three (3) months following the original due date of such payment.

b. Such amounts shall be subject to (i) interest at the Designated Interest Rate from the due date until the date the sum is paid; and/or (ii) reasonable costs related to the collection of the sum due.

The Association is not obligated to extend a Payment Plan to an Owner who failed to honor the terms of a previous Payment Plan during the two (2) years following such Owner's default under the previous Payment Plan.

4.15 **Lien.**

a. **Creation of Lien.**

(i) The Association shall hereby have and is hereby granted a continuing lien against each Lot to secure payment of delinquent assessments (annual assessments, special assessments and specific assessments) and capitalization contributions, as well as interest at the Designated Interest Rate, late fees, and costs of collection, including, without limitation, court costs and attorneys' fees. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot, the amount of delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

(ii) Each Owner, by his acceptance of a deed or other conveyance of a Lot and regardless of whether or not such deed or other conveyance expressly contains such a provision, does hereby grant and convey unto the Board of Directors, in trust as Trustee (the "**Trustee**"), for the benefit of the Association, the Lot owned by such Owner, subject to all easements and other encumbrances affecting such Lot; provided, that each such grant shall be subordinate to the lien of any mortgage or deed of trust only to the extent provided in this **Section 4.13**;

and for these purposes the provisions of this **Section 4.13(a)(ii)** shall be deemed to have created a deed of trust (the "**Deed of Trust**") covering all of the Lots with a power of sale granted to the Trustee in accordance with the provisions of Chapter 51 of the Texas Property Code (the "**Code**") as it may be amended from time to time. The Deed of Trust created hereby shall be upon the same terms and conditions, and shall provide to the Association all of the rights, benefits and privileges, as the Deed of Trust promulgated by the State Bar of Texas for use by lawyers (appropriately conformed to comply with the terms of this Declaration), and all amendments, modifications and substitutions thereof, which form is hereby incorporated by reference for all purposes hereof. The Association, acting through its president, shall have the right in its sole discretion at any time, and from time to time, to appoint in writing a substitute or successor trustee who shall succeed to all rights and responsibilities of the then acting Trustee.

(iii) Without limitation of the remedies available to the Association and to the other Owners upon the occurrence of a default by any Owner in the payment or performance of the obligations set forth in **Section 4.1**, the Association may, at its election and by and through the Trustee, sell or offer for sale the Lot owned by the defaulting Owner to the highest bidder for cash at public auction in accordance with the provisions of the Code. The Association may, at its option, accomplish such foreclosure sale in such manner as permitted or required by the Code or by any other present or subsequent laws relating to the same. After the sale of any Lot in accordance with the provisions of this **Section 4.13**, the Owner of such Lot shall be divested of any and all interests and claims thereto, and the proceeds of any such sale shall be applied in the following order of priority: (i) to the payment of the costs and expenses of taking possession of the Lot, (ii) to the payment of reasonable Trustee's fees, (iii) to the payment of costs of advertisement and sale, (iv) to the payment of all unpaid assessments and other amounts payable by such Owner to the Association hereunder, and (v) to the defaulting Owner or to any other party entitled thereto. The Association shall have the right to become the purchaser at the sale of any Lot pursuant to the Deed of Trust and shall have the right to be credited on the amount of its bid therefor all of the assessments due and owing by the defaulting Owner to the Association as of the date of such sale.

(iv) The Association may at any time notify the first mortgagee of any Lot of the nonpayment of assessments and other amounts payable by the Owner of such Lot to the Association hereunder.

b. **Subordination of Lien.** The lien of the assessments provided for herein is subordinate to the lien of any Recorded first mortgage or first deed of trust against a Lot.

c. **Enforcement of Lien**.

(i) The lien may be enforced by judicial foreclosure or, if an owner agrees in writing at the time the foreclosure is sought to waive judicial foreclosure

pursuant to Section 209.0092 of the Texas Property Code, by nonjudicial foreclosure. The Board of Directors may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a meeting of the Board of Directors. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code, as amended. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, as amended, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the Bylaws and applicable law, such as Chapter 209 of the Texas Property Code, as amended. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

(ii) Upon compliance with the notice provisions set forth in **Section 4.13(c)(ii)**, the Association may, at its option, foreclose the lien against the Lot, as provided in this Section. There shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include said interest and a reasonable attorney's fee, together with costs of court. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or the collection of such delinquent assessments. Under no circumstances, however, shall the Declarant, the Association or the Board of Directors be liable to any Owner or to another person or entity for failure or inability to enforce or attempt to enforce any assessments. In addition, to the extent permitted by law, Declarant reserves and assigns to the Association, without recourse, a vendor's lien against each Lot to secure payment of regular assessments and special assessments which are levied pursuant to the terms hereof. Such liens may be enforced by appropriate judicial or non-judicial proceedings and the expenses incurred in connection therewith, including interest, costs and reasonable attorney's fees shall be chargeable to the Owner in default.

(iii) No action shall be brought to foreclose said lien provided for herein or to proceed under the power of sale herein provided less than thirty (30) days after the date a notice of claim of lien is deposited with the postal authority, certified or registered mail, postage prepaid, addressed to the Owner of said Lot, and a copy thereof is Recorded by the Association; said notice of claim must cite a good and sufficient legal description of any such Lot, the record Owner or reputed owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment at the interest rate provided for in this Declaration, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

(iv) Upon the timely curing of any default for which a notice of claim of lien was Recorded by the Association, the Board of Directors is hereby authorized to Record an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release.

(v) Upon written request by a first mortgagee, the Board of Directors shall provide the first mortgagee with written notice of any default by the Owner in the performance of such Owner's obligations hereunder, including payment of assessments, which is not cured within thirty (30) days after default; provided that any such requirements of notice shall not impair or affect any rights or remedies of the Association, including exercise of the same, provided for in this Declaration.

(vi) The lien provided for herein and the right to foreclosure sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its successors or assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

d. **Effect of Conveyance.** An Owner that conveys title to a Lot shall not be liable for assessments that are attributable to the period after the conveyance of the Lot, except as provided in the following paragraph. However, a conveyance of title to a Lot shall not affect the assessment lien or relieve the Owner that conveys the Lot from personal liability for any assessments attributable to the period prior to the date of the conveyance, except as provided in the following paragraph.

e. **Effect of Foreclosure.** The foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will extinguish the lien of such assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof shall not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term "**first**" in connection with a mortgage or deed of trust shall refer to the lien priority as compared to other mortgages or deeds of trust.

4.16 **Capitalization Fee**. Each Owner, other than Declarant or a Builder, (whether one or more Persons and regardless of whether such Owner holds the fee interest singly or jointly), at the time it purchases a Lot from the previous owner (i.e. at every sale beginning with the first homebuyer to purchase the Lot from a Builder or Declarant), shall be obligated to pay at the closing of the purchase a capitalization fee in the amount of fifty percent (50%) of the then Annual Assessment to the Association, which funds shall be used to defray operating costs and

other expenses of the Association and to keep the Association well capitalized, as the Board of Directors shall determine in its sole discretion. This amount may be changed prospectively by the Board of Directors, but not retroactively, if the Board of Directors determines it to be in the best interest of the Association. Such capitalization fee shall be deemed an Assessment under this Declaration and all remedies for nonpayment of an Assessment shall be available for nonpayment of the capitalization fee

ARTICLE V
THE ASSOCIATION

5.1 **The Association - Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Certificate of Formation of the Association (the "**Certificate of Formation**"), Bylaws and this Declaration. The Association shall continue to exist until the Association is dissolved, regardless if the corporate status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Certificate of Formation and the Bylaws.

5.2 **Board of Directors.** The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint, in accordance with the Certificate of Formation and the Bylaws. The Board of Directors shall have the powers granted in this Declaration, the Certificate of Formation and the Bylaws, all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein.

5.3 **Limitation on Liability.** The liability of an officer, director or committee member of the Association shall be limited as provided in the Certificate of Formation.

5.4 **Indemnification.** Subject to the limitations and requirements of the Texas Business Organizations Code, as amended, and of the Bylaws, the Association shall indemnify every officer, director and committee member (including, without limitation, the Member(s) of the ACA) against all damages and expenses, including, without limitation, attorneys' fees, reasonably incurred in connection with any threatened, initiated or filed action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or committee member, except that such obligation to indemnify shall be limited as provided under the Certificate of Formation. Additionally, subject to the limitations and requirements of the Texas Business Organizations Code, as amended, and of the Bylaws, the Association may voluntarily indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against such person in that capacity and arising out of that capacity.

5.5 **Limitations on Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless there is a 75% or greater vote of the Members (all classes counted together) approving such action. This **Section 5.5** shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to ad valorem taxation;

(d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions to enforce written contracts between the Association and a third party. Except as authorized by said vote, the Board of Directors shall not be liable for failing or refusing to commence litigation.

5.6 **Insurance.**

a. **Required Coverages.** The Association, acting through its Board of Directors or its duly authorized agent, shall obtain and continue in effect, at a minimum the following insurance coverage, if reasonably available or, if not, the most nearly equivalent coverages as are reasonably available:

(i) **Property Insurance.** Blanket property insurance covering loss or damage on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Areas and within the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits and/or endorsement related thereto sufficient to cover the full replacement cost of the insured improvements. The Association shall obtain endorsements to the property insurance policy to the extent the Board of Directors determines that particular endorsements are advisable and reasonably available to the Association. Such endorsements may include, without limitation: (i) a Replacement Cost Endorsement with an Agreed Amount Endorsement; (ii) a waiver of the insurer's right to repair and reconstruct instead of paying cash, if reasonably available; (iii) an Inflation Guard Endorsement; (iv) a Building Ordinance or Law Endorsement; and (v) a Steam Boiler and Machinery Coverage Endorsement.

(ii) **General Liability Insurance.** Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on the Association's behalf. Such coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage. The Board of Directors may obtain a higher policy coverage if the Board of Directors determines that such additional coverage is advisable.

b. **Additional Insurance.** The Board of Directors may obtain additional insurance as the Board of Directors determines advisable, including, without limitation, the insurance set forth below. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary, the Board of Directors shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

(i) **Directors and Officers Liability Insurance.** Directors and officers liability insurance.

(ii) **Fidelity Insurance.** Fidelity insurance covering all parties responsible for handling Association funds in an amount determined by the Board of Directors. If fidelity insurance coverage is obtained, the policy should contain, if reasonably available, a waiver of all defenses based upon the exclusion of persons serving without compensation.

(iii) **Flood Insurance.** Flood insurance covering any improvements located on the Common Areas to the extent that the Board of Directors determines that the improvements have significant enough value and the risks related thereto justify the cost of such insurance.

(iv) **Workers Compensation Insurance.** Workers compensation insurance and employers liability insurance.

c. **Policy Requirements.** All insurance coverage obtained by the Association shall: (i) be written in the name of the Association and shall provide for a certificate of insurance to be furnished to the Association; (ii) contain a reasonable deductible; (iii) contain an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation of insurance; (iv) contain a provision or endorsement excluding Owners' individual policies from consideration under any other insurance clause, if reasonably available; and (v) contain a waiver of subrogation as to any claims against the Board of Directors and the Association's officers, employees and manager, and the Owners and their tenants, servants, agents and guests, if reasonably available.

d. **Review of Policies.** The Board of Directors shall periodically review the types and amounts of insurance coverage for sufficiency.

e. **Compliance with Federal Agencies and Secondary Mortgage Market Requirements.** In addition to the foregoing insurance in **Section 5.6**, the Board of Directors may obtain such insurance coverage that the Board of Directors determines desirable to satisfy any applicable insurance requirements of any federal agency or secondary mortgage market entity, including, without limitation, the Federal Home Loan Mortgage Corporation ("**FHLMC**"), the Federal National Mortgage Association ("**FNMA**"), the U.S. Department of Veterans Affairs ("**VA**"), and the U.S. Department of Housing and Urban Development ("**HUD**"), to the extent applicable.

5.7 **Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board of Directors. The Board of Directors may employ for the Association a management agent or agents, at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties

but shall not delegate policymaking authority. The Association may enter into contracts with Declarant or affiliates of Declarant provided that such contracts are on market terms.

5.8 **Books and Records.** The books and records of the Association shall be made available to the Members for inspection as provided in the Bylaws. In addition, Members may obtain copies, at a reasonable cost, of the books and records of the Association as provided in the Bylaws.

5.9 **Dissolution of Association; Conveyance of Assets.** If the Association is dissolved other than incident to a merger or consolidation, the assets both real and personal of the Association shall be conveyed as provided in the Certificate of Formation.

5.10 **Enforcement.** The Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to this Declaration) in accordance with the applicable procedures set forth in this Declaration, the Bylaws and applicable law, including Chapter 209 of the Texas Property Code, as amended. Specifically, written notice and opportunity for a hearing must be given prior to the Association exercising its remedies if such notice and hearing is required by this Declaration, the Bylaws and applicable law, including Chapter 209 of the Texas Property Code, as amended. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

a. **Fines.** The Board of Directors may impose reasonable monetary fines, which shall constitute a lien on the Lot, upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest or invitee of the Owner of such Lot.

b. **Suspension of Voting Rights.** The Association may suspend an Owner's right to vote, except with respect to any election (i) of members of the Board of Directors or (ii) concerning such Owner’s rights and responsibilities.

c. **Suspension of Rights to Use Common Area.** The Board of Directors may suspend any person’s or entity’s right to use any recreational facilities within the Common Areas; provided, however, nothing herein shall authorize the Board of Directors to limit ingress or egress to or from a Lot.

d. **Right of Self-Help.** The Board of Directors may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration.

e. **Right to Require Removal.** The Board of Directors may require an Owner, at the Owner’s expense, to remove any structure or improvement on such Owner’s Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the Lot, remove the violation, and restore the property to substantially the same condition as previously existed, without such action being deemed a trespass.

f. **Levy Specific Assessment.** The Board of Directors may levy a specific assessment to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration.

g. **Lawsuit; Injunction or Damages.** The Board of Directors has the right, but not the obligation, to bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

h. **Perform Maintenance.** In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Association may record a notice of violation in the public records of the County and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific assessment.

The decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Board of Directors' sole and absolute discretion, except that the Board of Directors shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board of Directors may determine that, under the circumstances of a particular case, (i) the Association's position is not strong enough to justify taking any or further action; or (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

ARTICLE VI
ARCHITECTURAL CONTROLS

6.1 **No Improvements Unless Approved by Architectural Control Authority - Except Improvements by Declarant.** No building, fence, wall, outbuilding, landscaping, pool, detached building, athletic facility, structure or improvement will be erected, altered, added onto or repaired upon any portion of any Lot without the prior written consent of the ACA. However, ACA approval is not required for (i) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant to be exempt from the ACA approval requirements; (ii) any improvements to the interior of a Dwelling, except as provided herein; (iii) the painting or re-bricking of the exterior of any Dwelling in accordance with the color and design scheme approved by the ACA; or (iv) improvements for which this Declaration expressly states that the ACA's prior approval is not required. Any improvements pursuant to clauses (iii) and (iv) immediately preceding must be in compliance with any applicable ACA Standards.

6.2 **Architectural Control Authority.** The ACA shall have the sole and exclusive authority to perform the functions contemplated by the ACA in this Declaration. The purpose of the ACA is to enforce the architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The ACA will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The "**ACA**" or "**Architectural Control Authority**" shall be the following entity:

a. **Declarant - During Development Period.** The Declarant shall be the ACA during the Development Period, unless the Declarant in writing has terminated its rights as the ACA and designated the ACA in its place.

b. **Architectural Committee - After the Development Period.** The Architectural Committee (as defined herein) shall be the ACA after the Declarant's right to act as the ACA has either expired or voluntarily been terminated.

6.3 **Architectural Committee.** A committee to be known as the "**Architectural Committee**" consisting of a minimum of three members will be established after the Declarant's right to act as the ACA has terminated. The members of the Architectural Committee will be appointed, terminated and/or replaced by the Board of Directors. The Architectural Committee will act by simple majority vote.

6.4 **Submission of Plans.** Prior to the initiation of construction of any work required to be approved by the ACA as provided in **Section 6.1** above, the Owner (excluding Declarant and any Builder designated in writing to be exempt from the ACA approval requirements as provided herein) will first submit to the ACA a complete set of plans and specifications for the proposed improvements, including site plans, landscape plans, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACA for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. This approval process is separate and independent of any approval process required by a governmental entity.

6.5 **Plan Review.**

a. **Timing of Review and Response.** Upon receipt by the ACA of all of the information required by this **Article VI**, the ACA will have 45 days in which to review said plans. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACA in form satisfactory to the ACA. If the ACA requests additional information and the applicant fails to provide such information prior to the date stated in the ACA's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACA consider the request. If the ACA fails to issue its written approval within 45 days after the ACA's receipt of all materials requested by the ACA to complete the

submission, then such failure by the ACA to issue its written approval shall be deemed disapproval. The ACA may charge a reasonable fee for reviewing requests for approval.

b. **Approval Considerations - Aesthetics.** The proposed improvements will be approved if, in the sole opinion of the ACA: (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements in the Development; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property. Decisions of the ACA may be based on purely aesthetic considerations. The ACA shall have the authority to make final conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and its members change over time.

6.6 **Timing of Completion of Approved Items.** All work approved by the ACA shall be completed within one year after the approval by the ACA or such shorter period that the ACA may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACA. All work and related improvements shall be in compliance with the items approved by the ACA.

6.7 **Improvements' Impact on Drainage.** With respect to any improvements performed on a Lot and/or any alterations to the yard, the Owner shall take proper precautions to insure that such improvements do not (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling, or (ii) allow water to collect near the foundation of the Dwelling. Although the ACA may comment on and/or deny the approval of plans because of the impact of the proposed improvements or alterations on surface water drainage, the ACA's comments or approval shall not constitute or be construed as a representation, warranty or guaranty that adverse surface water drainage problems will not occur and shall not be relied upon as such. The Owner is responsible for taking the necessary actions in order to avoid any surface water drainage problems, including, without limitation, engaging the services of a qualified consultant.

6.8 **No Waiver.** The approval by the ACA of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACA under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

6.9 **Variances.** The ACA may authorize variances from strict compliance with the requirements herein, in any ACA Standards or any required procedures: (i) in narrow circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence; or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. For purposes of this **Section 6.9**, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing as the sole

or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance shall be contrary to the terms of this Declaration and no variance shall be effective unless in writing. No variance shall estop the ACA from denying a variance in other circumstances.

6.10 **Architectural Control Authority Standards.** The ACA may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent of members of the ACA, the ACA Standards. The ACA Standards may not conflict with the terms of this Declaration.

6.11 **Enforcement; Non-Conforming and Unapproved Improvements.** If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACA in its sole and absolute discretion, such improvements will be in violation of this **Article VI** to the same extent as if made without prior approval of the ACA. The Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alternation to any improvement on any Lot that is not approved by the ACA.

6.12 **Limitation of Liability.** Neither the Declarant, the Association, the Board of Directors nor the ACA shall have any liability, individually or in combination, for (i) decisions made by (or failed to be made by) the Declarant, the Association, the Board of Directors or the ACA, or (ii) decisions in connection with the approval or disapproval or failure to disapprove or approve any plans and specifications submitted. Neither the Declarant, the Association, the Board of Directors nor the ACA shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board of Directors, the ACA nor any member of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling and/or Lot. The ACA and its members shall be defended and indemnified by the Association as provided in **Section 5.4** herein.

ARTICLE VII
USE RESTRICTIONS AND COVENANTS

7.1 **Single Family Residential Use.** All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to any zoning requirements for the Property; (iii) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees; and (iv) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (i) through (iv) above shall be made by the Board of

Directors in its sole and absolute discretion. The business activity prohibition will not apply to the use of any Dwelling by Declarant or any Builder as a model home, construction office and/or sales office; or the use of any Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot by Declarant or any Builder. Unless otherwise approved by the ACA and subject to any zoning requirements, the size of each Dwelling, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be no less than 1,200 square feet. The foundation slab for each Dwelling shall be not less than twenty-nine (29) feet wide, and shall be centered on the applicable Lot.

Unless otherwise approved in writing by the ACA, (i) Dwellings with the same floor plan but different elevations must be separated by at least two (2) Lots, and (ii) Dwellings with the same floor plan and same elevation must be separated by at least two (2) Lots.

7.2 **Parking of Motor Vehicles.** No vehicles or similar equipment will be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such vehicle (i) has less than one ton carrying capacity; (ii) has less than three axles; (iii) is in operating condition; and (iv) is generally in daily use as a motor vehicle on the streets and highways of the State of Texas. Trucks with tonnage in excess of one ton and any vehicle with a painted advertisement shall not be permitted to park overnight within the Development except those used by a Builder during the construction of improvements. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement; provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board of Directors as intended for such vehicular use. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot or a street within the Property, except within an enclosed garage. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or portions of any Lot that are visible from any street within the Property.

7.3 **Trailers, Boats, Commercial and Recreational Vehicles.** No campers, boats, marine crafts, hovercraft aircrafts, pick-up campers, trailers, motor homes, travel trailers, camper bodies, golf carts, recreational vehicles, non-passenger vehicles, vehicles with three or more axles or greater than one ton carrying capacity, and/or equipment or accessories related thereto may be kept on any Lot, unless such item is in operable condition and such item is (i) kept fully enclosed within a garage located on such Lot; (ii) kept fully screened from view by a screening structure or fencing approved by the ACA, but in no event shall the item be in front of the Dwelling; (iii) temporarily parked on any street within the Property or on a Lot for the purpose of loading or unloading; or (iv) a commercial vehicle that is in use for the construction, maintenance or repair of a Dwelling or Lot in the immediate vicinity. The Board of Directors will have the absolute authority to determine from time to time whether an item is in operable condition and complies with the requirements in clauses (i) through (iv) above. Upon an adverse determination by the Board of Directors, the Owner will cause the item to be removed and/or otherwise brought into compliance with this paragraph. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. Notwithstanding any

provision herein, no trucks or vehicles of any size that transport inflammatory or explosive cargo may be kept in the Development at any time.

7.4 **Fences.**

a. **Required Fencing.** The backyard of each Lot must be enclosed with a perimeter fence. All wooden fencing that faces a street or is located on a corner Lot shall be a wooden fence six (6) feet in height and capped on the top as approved by the ACA.

b. **Type of Fencing.** All perimeter fences will be wood, brick, stone, masonry and/or wrought iron appearance except for the Association Fencing. All perimeter fences (except Association Fencing, which fencing shall be no less than four feet in height) shall be six feet in height unless another height is approved by the ACA and shall be a color approved by the ACA. No fences may be painted, unless otherwise approved in writing by the ACA. Except for Association Fencing, no chain-link, metal, cloth or agricultural fences may be built or maintained on any Lot unless such fence is located within the perimeter fence in such a manner that it is not visible from any street, alley, park, Common Area or public area, unless otherwise approved by the ACA. Except for Association Fencing, the portion of all fences which exterior or side faces a street adjoining such Owner's Lot (front, side or rear streets, but not alleys) or which exterior or side faces Reserves A, B, E, or H, a Common Area, or an open space, park or other recreational area adjoining such Owner's Lot (which area may be separated by an alley), shall have the smooth surface of the fence materials facing the applicable street, reserve, or Common Area unless otherwise approved by the ACA. The fence posts and bracing boards on such front, side and rear fences shall face the interior of the fenced yard. Owners shall not construct a second fence (a parallel fence) along or near the Common Fence or the Association Fencing.

c. **Location of Fence.** No fence, wall or hedge will be placed on any Lot in a location nearer the street than the front building setback line for such Lot. The foregoing shall not limit or restrict fences erected in conjunction with model homes or sales offices. In addition to the foregoing, easements may also restrict the placement of fences. The side fence on a Lot shall match the length and appearance of the side fence on the other side of the Lot. No fence that runs parallel to a road and connects a side fence on its Lot to the Dwelling on such Lot may be located farther from the street than the rear corner of such Dwelling.

d. **Maintenance of Fencing.** Except for the Association Fencing, each Owner shall maintain the portion of fencing on such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto, except that Owners adjoining a Common Fence (as provided in **Section 7.4.e**) shall share in the cost of such maintenance as provided in **Section 7.4.e**. The Association shall be responsible for maintaining the Association Fencing. All repairs and replacements to the perimeter fencing and/or Association Fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in the foregoing sentence, perimeter fencing and/or Association Fencing shall

not be changed or modified without the prior written consent of the ACA. This includes the prohibition against changing the height of the fencing and the fencing materials.

e. **Common Fencing.** Side and rear yard fences that are installed by Declarant or a Builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "**Common Fence**") shall be maintained jointly by the Owners whose Lots adjoin such Common Fence and the costs associated therewith shall be shared equally by said Owners. All Common Fences shall be "good neighbor" fences, meaning alternating sections are to occur at regular fence post intervals only, so that an entire panel is dedicated to one Lot and the following panel is dedicated to the adjacent Lot and so forth. In this manner, both Lots receive approximately the same exposure to finished sides of a picket fence structure. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of one-half of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of one-half of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term "**Arbitration**" shall mean binding arbitration pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners.

f. **Sight Lines.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three and six feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet from the intersection of the street right-of-way lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any lot within ten feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. Declarant or the Association may direct the Owner to trim any hedge, shrub planting or tree that does not comply with the foregoing provisions, and upon Owner's failure to do so, Declarant or the Association may, at its option, perform such trimming, whereupon the Owner shall be obligated, when presented with an itemized statement, to reimburse Declarant or the Association (as applicable) for the cost of such work.

7.5 **Outbuildings, Sheds and Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages, storage buildings and sheds shall be erected, placed or constructed upon any Lot, unless (i) the item is approved by the ACA prior to the installation or construction of the item; (ii) such item is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition; (iii) the exterior paint and roofing materials of such outbuildings shall be consistent with the existing paint and roofing materials of the Dwelling; (iv) the outbuilding is located within a backyard that has a fence that completely encloses the backyard; (v) the height of the structure roof at the highest point shall not be greater than six (6) feet; (vi) the outbuilding shall not have more than thirty-two (32)

square feet of floor space; and (vii) the outbuildings cannot be seen from the street. This includes the prohibition against changing the height of the fencing and the fencing materials.

7.6 **Animals.** No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that so long as they do not exceed two (2) in number in the aggregate, cats, dogs or other generally recognized household pets may be permitted on any Lot; however, those pets that are permitted to roam free or that, in the sole discretion of the Board of Directors, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board of Directors. If the animal owner fails to remove the animal from the Lot after the Board of Directors' request, the Board of Directors may remove the animal, in addition to imposing such other sanctions as are authorized by this Declaration and the Bylaws. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the property so that no person shall quarter on the Property cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other non-domesticated animals that may interfere with the quietude, health or safety of the community. All animals will be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal.

7.7 **Signs.**

a. **Sign Restrictions.** Except for Entry Signs (as defined in **Section 7.7.b**) and signs advertising a Builder's model home, no signs, billboards, posters or advertising devices of any character shall be erected on any Lot except (i) one sign of not more than five (5) square feet, advertising the property for sale or rent, (ii) signs used by a builder to advertise the property for sale during the construction and sales period and (iii) one sign advertising a political candidate or ballot item for an election (a "Political Sign"). No sign may be mounted on a structure or placed in a window of a Dwelling so as to be visible from any other Dwelling or a street. Any Political Sign may only be displayed on or after the 90th day before the election to which the sign relates and for 10 days after such election. All Political Signs must be ground-mounted, and may not:

(1) contain roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component;

(2) be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object;

(3) include the painting of architectural surfaces;

(4) threaten the public health or safety;

(5) be larger than four feet by six feet;

(6) violate a law;

(7) contain language, graphics, or any display that would be offensive to the ordinary person; or

(8) be accompanied by music or other sounds or by streamers or otherwise be distracting to motorists.

Declarant shall have the right to remove any nonconforming sign, advertisement or billboard or structure which is placed on a Lot and in so doing shall not be subject to any liability or damages for trespass, tort or otherwise in connection therewith arising from such removal. The right is reserved for builders, provided consent is obtained from the Declarant, which will not unreasonably be withheld, to construct and maintain signs, billboards, or advertising devices for the purpose of advertising for sale dwellings constructed by the builders and not previously sold by such builder.

b. **Entry Signs.** The term "**Entry Signs**" shall mean any entry feature signs for the name of the subdivision that are placed by the Declarant or its agents on the Property. The Association shall be responsible for maintaining the Entry Sign.

7.8 **Trash; Containers and Collection.** No Lot or other area in the Development shall be used as a dumping ground for rubbish. No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept, placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except on the day designated for removal of garbage; then such containers may be placed in the designated location for pick-up of such garbage, provided that the container will be removed from view before the following day. All incinerators or other equipment for the storage or other disposal of garbage or trash shall be kept in a clean and sanitary condition. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any builder designated by Declarant.

7.9 **Nuisances.** No noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics, will be carried on upon any Lot, nor will anything be done thereon which the Board of Directors determines, in its sole and absolute discretion, is or may become an unreasonable source of annoyance or nuisance to the Property.

7.10 **Antennae and Satellite Dishes.** Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of the Lot outside the Dwelling, except that (i) antennas, satellite dishes one meter or less in diameter designed to receive transmissions other than television broadcast signals shall be permitted; and (ii) antennas or satellite dishes designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACA (a "**Permitted Device**") must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot

where an acceptable quality signal can be obtained. In all cases except as may be approved by the ACA, no Permitted Device of any style shall be (a) erected as a free-standing structure, (b) permitted to extend outside the roof of the main residential structure or (c) maintained on any portion of the Lot forward of the front building line. The ACA in the ACA Standards may include rules or provisions regarding the type of additional Permitted Devices and/or the placement of Permitted Devices, provided that such ACA Standards do not conflict with the terms of this **Section 7.10** and do not unreasonably increase the cost of installation, maintenance or use of the Permitted Device. A Permitted Device that complies with the provisions of this paragraph and the ACA Standards shall not require the ACA's approval prior to installation. However, the ACA shall be the sole and exclusive authority for purposes of determining if the item or device complies with the provisions of this paragraph and the ACA Standards.

7.11 **Air-Conditioning Units.** Air-conditioning apparatus must be installed on the ground behind the rear of the Dwelling or on the ground near the side of the Dwelling. No air-conditioning apparatus or evaporative cooler may be attached to any wall, window or roof of any Dwelling.

7.12 **Solar Collectors; Roofing.** During the Development Period, no "Solar Energy Device" (herein so called) as defined in Section 171.107 of the Texas Tax Code, may be installed on any Lot without the approval of the ACA. Thereafter, an Owner may install a Solar Energy Device on a Lot with the prior approval of the ACA, which will be granted unless the Solar Energy Device:

(1) as adjudicated by a court:

(A) threatens the public health or safety; or

(B) violates a law;

(2) is located on property owned or maintained by the Association;

(3) is located on property owned in common by the Members of the Association;

(4) is located in an area on the Owner's property other than:

(A) on the roof of the home or of another structure allowed under this Declaration; or

(B) in a fenced yard or patio owned and maintained by the Owner;

(5) if mounted on the roof of the home:

(A) extends higher than or beyond the roofline;

(B) is located in an area other than an area designated by the Association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by

more than 10 percent above the energy production of the device if located in an area designated by the Association;

(C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or

(D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;

(6) if it is located in a fenced yard or patio, is taller than the fence line;

(7) as installed, voids material warranties;

(8) was installed without prior approval by the Association or by the ACA; or

(9) the ACA determines in writing that placement of the device as proposed by the Owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. For purposes of making a determination under this subsection, the written approval of the proposed placement of the device by all Owners of adjoining property constitutes prima facie evidence that such a condition does not exist.

7.13 **No Temporary Structures as a Residence**. No structure of a temporary character, including, without limiting the generality thereof, any trailer, basement, tent, shack, garage, barn, or other out-building will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent that is erected in the back yard behind a fully screened fence is permitted provided that such activity does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board of Directors in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

7.14 **No Garage as a Residence.** No garage, garage house or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person as a residence.

7.15 **No Temporary Structures on Lot.** No temporary dwelling, shop, trailer or mobile home of any kind or any improvements of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, which may be placed on a lot only in places which are not visible from any street on which the lot fronts) shall be permitted on any Lot except that the Builder or contractor may have temporary improvements (such as sales office and/or construction trailer) on a given Lot during the entire time that construction activities within the Development are underway. No building material of any kind or character shall be placed or stored upon the property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected.

7.16 **Sidewalks.** The Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot.

7.17 **Landscaping Maintenance.** All yards must be sodded or grassed within a reasonable time period not to exceed three months after the initial conveyance of a Lot with a Dwelling thereon to an Owner other than a Builder. The front lawn of each completed residence, and all lawn areas visible from streets, shall be completely sodded with St. Augustine grass. Seeding, and/or sprigging is prohibited. The front lawn of each completed residence shall contain a minimum of twelve (12) bushes. Decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front and side yards may not exceed 10% of the total area of the front and side yards. All landscaping located on any Lot, including grass lawns, must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board of Directors, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass and plantings of every kind on his or her Lot cultivated, pruned and free of trash and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flowerbeds and planter areas. Removal of live native trees is not permitted without the approval of the ACA. If any trees (including dead trees) are removed by an Owner from the Owner's Lot, the Owner shall replace the removed tree with a tree of a similar type and quality within thirty (30) days following any such removal (or if weather or seasonal growing considerations are not conducive to the planting of the new tree within such 30-day period then the new tree shall be planted as soon as the weather or seasonal conditions permit).

7.18 **Exterior Improvement Maintenance.** All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board of Directors, in its sole and absolute discretion.

7.19 **Garages.** Each Dwelling must have a garage that will accommodate a minimum of two (2) automobile(s). Garages may be used as Declarant's or a Builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant or Builder as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot.

7.20 **Clothes Hanging Devices.** No clothes hanging devices exterior to a Dwelling are to be constructed or placed on the Lot.

7.21 **Window Treatment.** No aluminum foil, newspaper, reflective film or similar treatment will be placed on windows or glass doors of a Dwelling. Bed sheets and similar linens may only be used during the first 30 days after the Owner acquires title to the Lot.

7.22 **Mining.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted in the Development, nor will oil wells, tanks, tunnels, mineral excavations or shafts be permitted in the Development. No derrick or other structure designed for use in boring for oil or natural gas will be erected, maintained or

permitted in the Development. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

7.23 **Mailboxes.** Mailboxes shall be of similar type as originally installed, unless the ACA approves additional types of mailboxes.

7.24 **Athletic and Recreational Facilities.** No outdoor athletic and recreational facilities such as playscapes, basketball goals, recreational equipment, swing sets and sport courts may be placed on a Lot unless such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed ten feet in height.

7.25 **No Above Ground Pools.** Above ground-level swimming pools shall not be installed on any Lot.

7.26 **Lighting; Exterior Holiday Decorations.** Lighting and/or decorations on a Lot may not be used or placed in a manner that, in the Board of Directors' sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Dwelling that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

7.27 **Lawn Decorations and Sculptures.** The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags and similar items on any portion of such Owner's Lot except the interior of the Dwelling, unless (i) such item is placed within a backyard completely enclosed by a fence which blocks the view of the item at ground level; and (ii) such item is no taller than the fence.

7.28 **Flags, Flagpoles**. Except as permitted herein, without the approval of the ACA an Owner may not install a flagpole or fly a flag or banner on such Owner's Lot. Without the approval of the ACA an Owner may display (i) a flag of the United States of America in accordance with U.S.C. Sections 5-10, (ii) a flag of the State of Texas in accordance with Chapter 3100, Texas Government Code, and (iii) an official or replica flag of any branch of the United States armed forces. Any of the flags described in the foregoing sentence are referred to herein as "Official Flags".

Official Flags may be displayed only in accordance with the following requirements:

(1) a flagpole attached to a dwelling or a freestanding flagpole must be constructed of permanent, long-lasing materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(ii) the display of a flag, or the location and construction of the supporting flagpole, must comply with applicable zoning ordinances, easements, and setbacks of record;

(iii) a displayed flag and the flagpole on which it is flown must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced, or removed;

(iv) an Owner may only install or erect one flagpole per Lot and it may not exceed 20 feet in height;

(v) the size of a displayed flag must be approved by the ACA;

(vi) the size, location, and intensity of any lights used to illuminate a displayed flag must be approved by the ACA;

(vii) the ACA may adopt reasonable restrictions to abate noise caused by an external halyard of a flagpole; and

(viii) an Owner may not locate a displayed flag or flagpole on property that is:

(A) owned or maintained by the Association; or

(B) owned in common by the members of the Association.

7.29 **Decorations**. No Lot may contain any items intended to be decorative (except for (i) flags and banners as approved above or by the ACA, (ii) Religious Items approved below, and (iii) landscaping permitted by this Declaration) which are visible from any street, without the approval of the ACA. Items which are intended to be decorative shall include, but not be limited to, plastic birds or flamingos, artificial plants or flowers, fountains, windsocks, lawn jockeys, topiaries, more than six (6) plant containers and statuary.

Notwithstanding the foregoing to the contrary, an Owner may place decorations on their Lot in connection with the celebration of a holiday approved by the ACA provided such decorations are removed within thirty (30) days after the holiday and are set up no sooner than forty-five (45) days prior to the holiday.

7.30 **Display of Religious Items**. An Owner may display or affix on the entry to the Owner's dwelling one or more religious items "Religious Items" the display of which is motivated by the Owner's sincere religious belief. The display or affixing of a Religious Item on the entry to the Owner's dwelling shall not threaten the public health or safety, violate a law, contain language, graphics, or any display that is patently offensive to a passerby, be in a location other than the entry door or door frame or extend past the outer edge of the door frame of the Owner's dwelling, or individually or in combination with each other Religious Item displayed or affixed on the entry door or door frame have a total size of greater than 25 square inches. Except as otherwise provided by this Section, this Section does not authorize an Owner to use a material or color for an entry door or door frame of the Owner's dwelling or make an alteration to the entry door or door frame that is not authorized by this Declaration. The Association may remove an item displayed in violation of this Section.

7.31 **No Lot Consolidation or Division.** No Owner, other than Declarant, may divide any Lot and/or consolidate any adjoining Lots and/or any portion thereof.

7.32 **Drainage Alteration Prohibited.** Unless approved by the ACA, no Owner will: (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling; or (ii) install landscaping or other improvements that may interfere with, obstruct or divert drainage flows established by the Declarant or any Builder. The foregoing shall not prevent or limit the Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot.

7.33 **Construction Activities.** This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board of Directors in its sole good faith judgment, the Board of Directors will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board of Directors may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

7.34 **No Individual Water Supply System.** No individual water supply system shall be permitted in the Development.

7.35 **No Individual Sewage Disposal System.** No individual sewage disposal systems shall be permitted in the Development.

7.36 **New Construction Only.** Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment (no higher than six feet and not visible from street level), no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.

7.37 **No Burning.** Except within fireplaces in the Dwelling and except for outdoor cooking, no person shall be permitted to burn anything within the Development.

7.38 **No Interference with Easements.** Within easements on each Lot, no structure, planting or materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities.

7.39 **Declarant and Builder Development and Construction.** Notwithstanding any other provision herein, Declarant, and its successors and assigns, and any Builders, will be entitled to conduct on the Property all activities normally associated with, and convenient to, the development of the Property and the construction and sale of Dwellings on the Property.

7.40 **Burglar Bars.** No burglar bars or similar attachments may be made to any Dwelling at any time.

7.41 **Leases**. No Owner shall lease less than all of such Owner's Lot and all improvements thereon. In addition, no Owner shall enter into a lease of such Owner's Lot and the improvements thereon for a term of less than thirty (30) days. The intent of the last sentence is to prohibit Owners from entering into short-term leases of less than thirty (30) days, and no Owner shall violate such prohibition by circumventing the intent thereof by entering into longer term leases that permit termination after thirty (30) days or less.

7.42 **Exterior Walls**. No Dwelling shall have less than one hundred percent (100%) brick or equivalent masonry construction on the front exterior wall area of the Dwelling and no Dwelling shall have less than fifty percent (50%) brick or equivalent masonry construction on the side and rear elevations of the Dwelling. The ACA may grant variances from the requirement of this Section 7.42 for structural or architectural considerations, in addition to the reasons set forth in Section 6.9 above.

7.43 **Roof Materials**. Unless otherwise approved in accordance with the last sentence of this section, the roof of all buildings on the Property shall be constructed or covered with asphalt or fiberglass composition 3-tab shingles with a minimum manufacturer guarantee of twenty-five (25) years. The color of any composition shingles shall be charcoal, and shall be subject to written approval by the ACA prior to installation. Any other type roofing material may be used only if approved in writing prior to installation by the ACA. The minimum roof pitch of each Dwelling shall be not less than six (6) vertical feet per twelve (12) horizontal feet.

7.44 **Driveways.** Unless the ACA agrees otherwise, each Lot shall have driveway access to the street that the Dwelling constructed thereon faces. The Owner of each Lot shall construct and maintain at his or her expense a driveway from the garage on such Owner's Lot to an abutting street. Side-to-side garages and driveways are permitted.

7.45 **Address Markers.** Each Dwelling shall include a precast address block set into the front façade of such Dwelling.

ARTICLE VIII
COMMON AREAS

8.1 **Association to Hold and Maintain.** The Association will either own all Common Areas in fee simple title or have the right to use same by easement, license or other right. The Association shall maintain the Common Areas and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas to the extent the Board of Directors determines that such maintenance is desirable. The costs of such maintenance for the Common Areas and Common Maintenance Areas shall be the Association's responsibility, regardless if such cost was incurred during the Development Period.

8.2 **Use of Common Areas at Own Risk.** Each Owner, by acceptance of a deed to a Lot, acknowledges that the use and enjoyment of any Common Area recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any Builder are not insurers

of personal safety and that each person using the Common Areas assumes all risks of personal injury and loss of or damage to property, resulting from the use and enjoyment of any recreational facility or other portion of the Common Areas. Each Owner agrees that neither the Association, the Board of Directors and any committees, any Builder, nor Declarant shall be liable to such Owner or any person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from or otherwise relating to the use of any recreational facility or other portions of the Common Areas, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant or any Builder. **THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE**.

8.3 **Condemnation of Common Areas.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board of Directors determines, in its business judgment, including, without limitation, (i) to purchase additional Common Areas to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Areas any improvements that were on the condemned Common Areas, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

8.4 **Damage to Common Areas.** If the Common Areas or improvements on the Common Maintenance Areas are damaged and if there are insurance proceeds sufficient to repair such damage to its prior condition, then the Association shall cause such damage to be repaired or reconstructed unless there is a 67% or greater vote of Members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (all classes counted together) within 90 days after the loss not to repair or reconstruct. If said 67% vote is cast not to repair or reconstruct such damage and no alternative improvements are authorized, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

8.5 **Conveyance of Common Areas by Declarant to Association.** Declarant shall have the right to convey title to any portion of the Property owned by Declarant, or any easement interest therein, to the Association as Common Area, and the Association shall be required to accept such conveyance. Property conveyed by Declarant to the Association as Common Area shall be conveyed free and clear of monetary liens and encumbrances other than taxes and assessments imposed by governmental entities or districts authorized by Texas law. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the public land records of the County.

8.6 **Annual Inspection of Common Area - Budget**. From the period commencing at the expiration of the Development Period until 10 years thereafter, the Association shall at least annually examine the condition of the Common Area to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts

hired by the Association for this purpose, such as a professional property manager, an engineer, or professional contractors such as landscapers and brick masons. Within 15 days after performing the inspection, the expert should submit to the Board of Directors a written report with findings and recommendations. The Board of Directors should evaluate the Association's operating budget and reserve accounts for maintenance, repair, and replacement in light of the expert's findings and recommendations. Any decision by the Board of Directors to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. An expert's report is a record of the Association that is available to Owners for inspection and copying.

ARTICLE IX
EASEMENTS

9.1 **Easement for Utilities on Common Areas.** During the period that Declarant owns any real property within the Development, the Declarant, on behalf of itself, reserves the right to grant perpetual, nonexclusive easements as reasonably necessary for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Areas for the construction, installation, use and maintenance of utilities, including, without limitation, water, sewer, electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements. The Association will also have the right to grant the easements described in this paragraph.

9.2 **Easement to Correct Drainage on Property.** During the period that Declarant owns any real property within the Development, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where the Dwelling is located) as reasonably necessary to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.3 **Easement for Right to Enter Lot.** If an Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association will have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is caused by the Association’s willful misconduct or gross negligence. **THE FOREGOING RELEASE IS INTENDED TO RELEASE THE ASSOCIATION FROM LIABILITY FOR ITS OWN NEGLIGENCE.**

9.4 **Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of Declarant, its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be

expedient or necessary for the construction, servicing and completion of Dwellings and landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot 24 months after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.5 **Easement for Association Fencing.** Declarant hereby reserves for the benefit of Declarant and the Association an exclusive easement for the purpose of placing and maintaining the Association Fencing on the perimeter boundary of all Lots where Declarant has installed Association Fencing.

9.6 **Easement for Right to Enter and Inspect Common Area**. For a period of 10 years after the date of the expiration of the Development Period, Declarant shall have the right, but not the obligation, to enter upon the Common Area for purposes of inspecting and repairing the Common Area and/or any improvements thereon at Declarant's expense; provided; however, nothing contained herein shall obligate Declarant to make any inspections or repairs.

ARTICLE X
ANNEXATION AND WITHDRAWAL

10.1 **Annexation by Declarant.** Until fifteen (15) years after the Recording of this Declaration, Declarant may, at its sole option, annex the Annexable Property or any portion thereof into the Association and subject such Annexable Property or portions thereof to the terms hereof and to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. The annexation shall not require the approval of any person other than the owner of the property being annexed. In the annexation document, Declarant may amend the Declaration to cause the terms Common Area, Entry Signs, Association Fencing and other terms necessary to appropriately address and describe the new applicable areas of land within the real property being annexed. The foregoing amendment shall not require the approvals set forth in **Section 11.2** herein.

10.2 **Annexation by Association.** The Association may annex any real property into the Association and subject such real property to the terms hereof by an affirmative vote of 67% or greater of all outstanding votes that are entitled to be cast, provided that the Association obtains the prior written consent of the Board of Directors.

10.3 **Recording of Annexation**. The annexation of any portion of the Annexable Property shall be evidenced by a Recorded written document. This Declaration shall not burden any portion of the Annexable Property until such time, if any, as the Annexable Property is annexed into this Declaration as herein provided and evidenced by a Recorded written instrument.

10.4 **No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any portion of the Annexable Property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

10.5 **Withdrawal of Property.** Declarant may withdraw real property without a Dwelling thereon from the definition of the Property and from the coverage of this Declaration, provided that (i) the withdrawal is not unequivocally contrary to the overall, uniform scheme of development of the Property; (ii) the owner of real property to be withdrawn must consent. Such withdrawal shall not require the consent of any other person, Member or Owner, except a 67% or greater vote approving such action is required if the real property to be withdrawn is a Common Area.

ARTICLE XI
MISCELLANEOUS

11.1 **Declaration Term - Perpetual.** Unless the Members holding 90% of the votes (all classes counted together) approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless Recorded.

11.2 **Amendments to Declaration.** This Declaration may be amended by a written consent by Members holding 67% of the votes (all classes counted together), except that Declarant, at its sole discretion and without a vote or the consent of any other party, may modify, amend or repeal this Declaration: (i) at any time prior to expiration of the Development Period; (ii) as necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation or judicial determination; (iii) as necessary to comply with the requirements of the VA, HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency or secondary mortgage market entity; or (iv) as necessary to clarify or to correct technical, typographical or scrivener's errors; provided, however, any amendment pursuant to clause (ii), (iii) and/or (iv) immediately above must not have a material adverse effect upon any right of any Owner. Any amendment to this Declaration shall be effective upon Recording.

11.3 **Enforcement by Association and/or Owner.** The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

11.4 **Remedies; Cumulative.** In the event any Lot does not comply with the terms herein or any Owner fails to comply with the terms herein, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

11.5 **Notice to Association of Sale or Transfer.** Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board of Directors

written notice of the name and address of the purchaser or transferee within 30 days after the date of such transfer of title and such other information as the Board of Directors may reasonably require. The Association may charge a transfer fee upon the conveyance of title to a Lot for purposes of covering the reasonable administrative costs to change the records.

11.6 **Limitation on Interest.** All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to the Owner.

11.7 **Construction and Interpretation.** This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

11.8 **Notices.** Except as otherwise provided in the Bylaws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given three days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice.

11.9 **Not a Condominium.** This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

11.10 **Severability.** Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions, which will remain in full force and effect. Any invalidated provision shall be automatically reformed in such a way so as to be legal and to carry out as near as possible such invalidated provision.

11.11 **Rights and Obligations Run With Land.** The provisions of this Declaration are covenants running with the land and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be

bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed.

11.12 **Assignment of Declarant's Rights**. Declarant may assign, in whole or in part, its rights as Declarant by executing a document assigning such rights. There may be more than one Declarant, if Declarant makes a partial assignment of the Declarant status.

11.13 **Disclaimer Regarding Security.** Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees and licensees that the Association, its Board of Directors and committees and Declarant are not insurers and that each person using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

11.14 **Street Lights.** Street lights within the Property are anticipated to be maintained by the electric utility provider. The operational costs for the street lights are anticipated to be paid by the Association.

11.15 **Attorneys' Fees and Court Costs.** If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

11.16 **Gender.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

11.17 **Headings.** The headings contained in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

11.18 **Conflicts.** In the event of conflict between this Declaration and any Bylaws, rules, regulations or Certificate of Formation of the Association, this Declaration will control.

11.19 **Exhibits.** All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on this ____ day of _____, 2020 (the "**Effective Date**").

DECLARANT:

_____,
a Texas limited partnership

By: _____, LLC,
its general partner

By: _____

Its: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me on this the ____ day of _____, 2020, by _____, _____ of _____, LLC, a Texas limited liability company, on behalf of said company in its capacity as the general partner of _____, a Texas limited partnership, on behalf of said partnership.

_____
Notary Public in for
the State of Texas

AFTER RECORDING RETURN TO:
John G. Cannon
Coats Rose, P.C.
9 Greenway Plaza, Suite 1000
Houston, Texas 77046

MORTGAGEE CONSENT AND SUBORDINATION

The Property is encumbered by certain liens (the "***Liens***") securing a Promissory Note executed by Declarant in favor of the undersigned (the "Mortgagee").

The Mortgagee joins in the execution of this Declaration solely for the purpose of evidencing its consent to the Declaration and the subordination of the Liens to the Declaration such that the provisions of the Declaration will survive a foreclosure of the Liens.

MORTGAGEE:

_____

By: _____
Name: _____
Title: _____

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me on the _____ day of _____, 2020, by _____, the _____ of _____, a _____, on behalf of said _____.

_____
Notary Public, State of _____

[Notary Stamp/Seal]

WESTLEIGH BUILDER GUIDELINES
* * * THESE GUIDELINES ARE SUBJECT TO CHANGE WITHOUT NOTICE * * *

ALL IMPROVEMENTS TO PROPERTY ARE REQUIRED TO BE SUBMITTED TO THE ARCHITECTURAL REVIEW COMMITTEE FOR WESTLEIGH (ARC) FOR REVIEW AND APPROVAL PRIOR TO THE INCEPTION OF ANY CONSTRUCTION.

FURTHER, IT IS THE APPLICANT'S RESPONSIBILITY TO ENSURE COMPLIANCE WITH THE LATEST REVISIONS TO THESE GUIDELINES. COPIES WILL BE MADE AVAILABLE UPON REQUEST TO THE ARC

I. INTRODUCTION

Westleigh is a residential development of WPC Acquisition, Inc., a Texas Corporation ("Declarant" or "Developer"). Westleigh encompasses approximately 158 acres of land and is located in Galveston County, Texas.

Intent of Guidelines

The objective of these Builder Guidelines is to achieve quality and uniformity in building construction and to address certain items and areas which are common to residential construction and which the Westleigh Homeowner Association Inc. will exert strict control.

These Builder Guidelines are supplemental to the Declaration of Covenants, Conditions and Restrictions for Westleigh (CCRs) and are to be used in the architectural review of Builder plans. Non-compliance with these guidelines shall be grounds for disapproval of plans.

Builders within Westleigh are responsible for compliance with all applicable city, county, state and federal regulations.

The Builder Guidelines are intended for the use of the various Builders in Westleigh and the design professionals they employ. They are aimed at providing an attractive, coordinated physical environment both during and after construction. Design diversity is encouraged in order to create a pleasing street scene and to provide a separation of product line. However, certain standards have been adopted for key elements to provide continuity throughout the project.

The Builder Guidelines contain the construction and development standards adopted by the Architectural Review Committee for Westleigh and are subject to change without notice. However, lots or tracts purchased prior to any changes shall be grandfathered and not subject to the revisions unless agreed to in writing by Declarant as the developer for Westleigh and the Builder. These guidelines do not necessarily represent all of the restrictions which may be imposed on a specific lot or parcel of land. Failure to submit the required applications to the ACA (Architectural Control Authority) for review shall be construed as a violation of the Westleigh Builder Guidelines.

Prior to commencing design of a project, the property deed, the recorded subdivision plat and the CCRs should be referred to. In addition, Westleigh is located within the City of League City and is subject to League City's development ordinance and any other ordinance which League City may, by law, extend outside its corporate limits. The City of League City should be contacted prior to initial development to ensure compliance with all applicable regulations.

League City is located in Galveston County, Texas, and must adhere to any and all development regulations, including road paving and construction standards. In addition, Galveston County should be contacted regarding plan approval and permit procedures.

The Builder shall develop and maintain individual lots in a manner prescribed by the CCRs, recorded plats/replats, rules and regulations of the Westleigh Homeowners Association, Inc. and by these Builder Guidelines and standards. Compliance with building setback lines, lot layouts, driveways, sidewalks, garages, wiring requirements, etc. are the responsibility of the Builder.

WESTLEIGH
BUILDER GUIDELINES FOR NEW RESIDENTIAL CONSTRUCTION

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WESTLEIGH

BUILDER GUIDELINES FOR NEW RESIDENTIAL CONSTRUCTION

I. AREAS OF APPLICATION; ARCHITECTURAL REVIEW PROCEDURES

A. Areas of Application

These Builder Guidelines ("Guidelines") outline design goals, design criteria and the design review process for new home construction in Westleigh by Declarant.

It is anticipated that each Builder shall enter into a Builder's Lot Purchase Agreement (the "Sales Contract") with Developer. For previously purchased lots without improvements, these Guidelines and the Declaration of Covenants Conditions and Restrictions will apply.

All new home construction be must reviewed and approved by the Architectural Control Authority (the "ACA") appointed by Declarant prior to commencement of any building or construction activity. This approval can be secured in a timely fashion if applicable criteria specified in Sections II, III and V of this guide are met to the satisfaction of the ACA.

New home construction must conform to these Guidelines, to the Declaration of Covenants Conditions and Restrictions (the "Declaration"), to Sales Contract provisions; and to state and local building codes, zoning ordinances, or other governmental regulations (collectively "the Applicable Codes"). If provisions of these Guidelines are more restrictive than the Declaration, the Sales Contract or the Applicable Codes, the provisions of these Guidelines apply. If these Guidelines conflict with the Declaration, Sales Contract, or Applicable Codes; the provisions of the Declaration, Sales Contract or Applicable Codes apply. These Guidelines may be amended by addition, deletion, or re-issuance at any time by Declarant without consent of the Members.

Subsequent construction, exterior remodeling and/or expansion, and items not covered in these Builder Guidelines will be reviewed and approved by the ACA.

B. Architectural Review Procedures

The design for each home must be approved in writing by the ACA before construction of the home may begin. Any deviation from approved plans during construction, without the ACA's written approval, constitutes a violation. Corrections of such deviations may be required. Notice of approval shall be in the form of a letter from the ACA to the party submitting the plans. Copies of approved plans and approval letters will be kept on file by the ACA until completion of the development section. The ACA will review submissions and make every effort to give notice of approval or disapproval within five (5) working days following receipt and review of submissions.

The ACA meets as necessary to review design submittals. The Developer's Residential ACA Administrator will screen all submittals before calling a meeting of the ACA. The ACA will only review completed submittals. All drawings must be accurate enough to be scaled reliably. Faxed materials will be accepted for preliminary home design and plot plan approvals. Any variances, however, must be requested and granted in writing. Faxes will not be accepted in place of normal submission procedures. Submittals shall be sent to:

Westleigh Homeowners Association, Inc.

_____

_____

_____

_____

Only complete submittals will be reviewed. All drawings shall be drawn to scale. Faxed materials will be accepted for preliminary home design (approval of master set of plans) and plot plan change approvals only. Variances/Deviations must be requested in writing.

A. Plan Design: The ACA requires one set of the following for production home plan submittals

1. Floor Plans on 11" x 17" sheets.

2. Front Elevations on 11" x 17" sheets; all elevations must be shown and must include complete notations of all exterior materials (including but not limited to walls, doors, roof, windows, fascia, dormers, chimneys and decorative elements).

3. Notation of square footage.

It is the Builder's responsibility to assure that foundation plans are designed by a licensed professional engineer experienced in residential home construction.

Upon approval of a production home floor plan and series of elevations, only site/plot plan approvals are required for each home.

B. Site/Plot Plan: Each Site/Plot Plan must be approved in writing before construction of the residence can begin. Submittal must depict:

1. Locations, dimensions, and materials notations for walkways, driveway, patios, and all other exterior flatwork, including setbacks, easements, and building lines.

2. Lot coverage calculation, including the total area of all footprint areas of impervious cover as listed below, including all building foundations, walks, sidewalks, patios and driveways.

3. Proposed location, height, and material of each exterior fence or wall.

4. Lot number, block number, section number, and Builder name must be clearly printed on the first page of the submittal.

C. Disclaimers

These Guidelines are intended to describe a general level of conformance for development. The Guidelines and the procedures set forth herein may be modified or waived from time to time by the ACA and do not supersede compliance with applicable federal, state, county, or local laws and regulations.

These Guidelines set forth the requirements, procedures, and technical criteria used by the ACA for the review of site development plans and exterior building designs. Approval by the ACA does not constitute approval of or satisfaction of any governmental agency requirements. Compliance with these guidelines does not provide exemption from required state, county or local approval procedures.

All structures must conform to any state or local building codes, zoning ordinances, or other governmental regulations. If any provisions of these Guidelines are more restrictive than other applicable codes, the provisions of these Guidelines apply.

Neither the Declarant, Developer, ACA, nor their individual members, partners, employees, agents, or the successors or assigns of any of them shall be liable in damages to anyone submitting to them for approval of any plans and specifications or request for variances from the Guidelines, or to any owner or occupant of any parcel of land affected by the Guidelines, or to any third party, and the submission of plans or requests constitutes an express waiver and release of these third parties to the fullest extent permitted by law.

II. Site Planning

A. Minimum Building Setbacks

Site plans must conform to restrictions set forth in the Declaration; the recorded subdivision plat which shows building setback lines; easements dedicated by separate instruments; and all applicable government ordinances. In some cases, different setbacks may be enforced by deed restrictions, neighborhood architectural guidelines, and/or the ACA for aesthetic reasons. Developer reserves the right to modify setback requirements.

Typical building guidelines and easements are depicted in accordance with the recorded plat. In addition to these requirements, other setbacks are enforced by deed restrictions for aesthetic reasons.

Front yard building setback lines will be in accordance with the recorded plat.

The side yard building setbacks are 5 feet (5') on each side. Corner lot building lines are fifteen feet (15') from the side street property line unless otherwise shown on the recorded plat.

The rear yard building setback is ten feet (10'), or the width of the utility easement, whichever is greater. No building shall be located nearer than ten feet (10'), or the width of the utility easement from the rear property line. Encroachment by residential structures and garages is prohibited in utility easements. All setbacks shall be measured to the edge of building walls and not to the edge of the respective overhangs.

Front and side setbacks of lot varying sizes shall be determined on an as-needed basis and incorporated into these Guidelines by addendum.

Prior to placement of any forms, builder should review the most recently recorded plat and any recorded encumbrances for the specific lot to verify all setback requirements.

B. Lot Coverage

Total site coverage of building, walks/sidewalks, patios and driveways may not exceed 45% for two-story homes and 55% for one-story homes. These percentages are approximations and apply to all areas within the property lines. Lot coverage does not include flat work such as patio, driveways, sidewalks, walkways, swimming pools, pool decks and spas are not considered in the calculation for lot coverage for the purposes of these Builder Guidelines.

The open space on a lot must be left natural if in a wooded area. Regardless of whether a lot is located in a wooded area or plains area, the landscape criteria in Section II, Paragraphs H. and I. of these Guidelines must be met.

C. Square Footage & Dimensions

The following table represents the minimum square footages for each product line in Westleigh.

50-Foot Lot:	Minimum:
One Story	1,800
Two Story	2,100
Maximum	3,000

60-Foot Lot:	Minimum:
One Story	2,200
Two Story	2,600
Maximum	N/A

D. Corner Lots and Intersections

1. Corner Lots

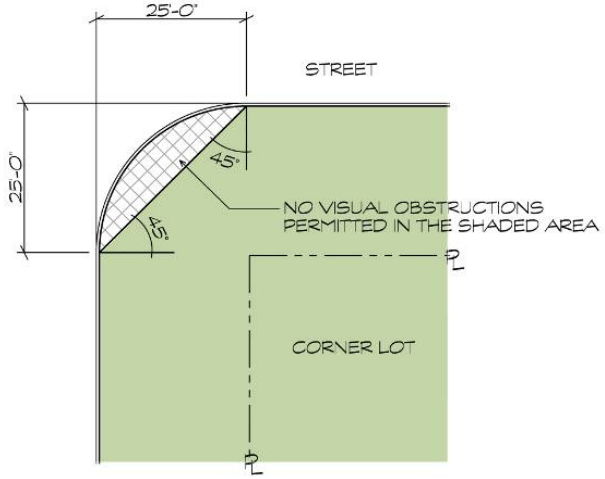
Lots siding on standard interior street corners shall have a fifteen foot (15') side street building setback (unless otherwise shown on the recorded plat), a twenty foot (20') front building setback (unless otherwise shown on the recorded plat), and a five feet (5') building line on the interior lot side.

The rear yard building setback is ten feet (10), or the width of the utility easement, whichever is greater. No building shall be located nearer than ten feet (10'), or the width of the utility easement from the rear property line. Encroachment by residential structures and garages is prohibited in utility easements. All setbacks shall be measured to the edge of building walls and not to the edge of the respective overhangs.

Garages and driveways on corner lots shall be located adjacent to the interior property line not the property line adjacent to the side street. "Side out" garages to a side street are prohibited.

2. *Intersections*

An area of open space is required at all corner lots where intersections occur. These intersections shall be unobstructed to permit pedestrian and vehicular view when near an intersection. No trees or other potentially opaque landscaping is permitted in this area. This shall be twenty-five feet (25) in distance from each street at the corner **[Figure 1]**.

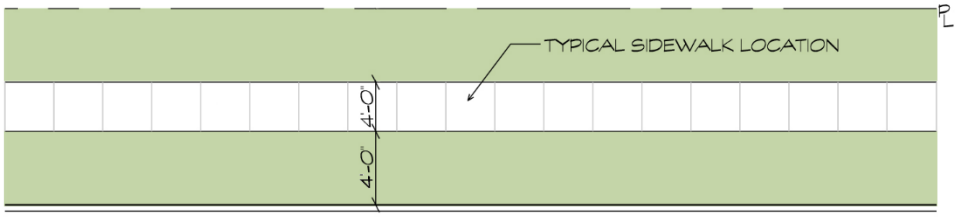


CORNER VISIBILITY
Figure 1

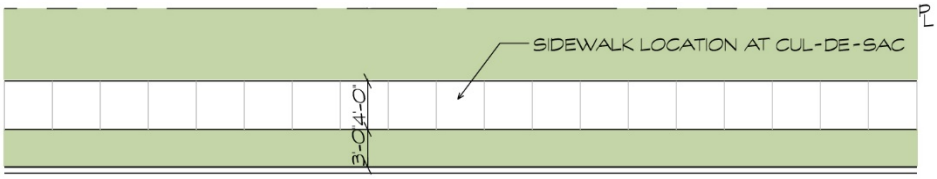
E. Sidewalks, Front Walkways, and Steps/Retaining Walls

1. *Sidewalks* **[Figures 2-4]**

Sidewalks are to be constructed by Builders within street rights of way (R.O.W.) frontage to all front or side property lines adjoining street R.O.W. The sidewalks shall be four feet (4') in width and shall be located four feet (4') from back of curb **[Figure 2]**. Sidewalks shall be located three feet (3') from back of curb on all cul–de-sacs **[Figure 3]**.



TYPICAL SIDEWALK LOCATION
Figure 2



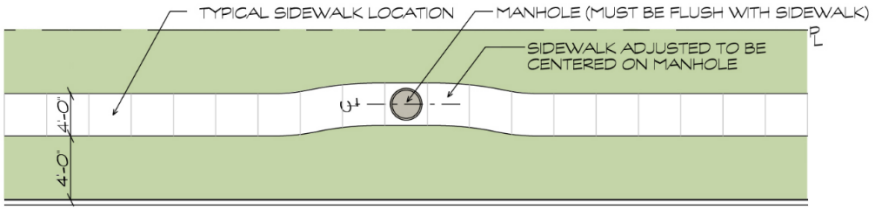
SIDEWALK LOCATION AT CUL-DE-SAC
Figure 3

a. Construction and location must conform to Galveston County and League City construction standards. Construction must be a "picture-frame finish" applied to driveway and walkway areas that intersect the sidewalk in order to achieve a continuous look.

b. Sidewalk shall continue uninterrupted visually through both front walk paving areas and driveways. Sidewalks through driveways shall be five feet (5') wide, maximum 2% cross slope. The additional one foot (1') width of the driveway sidewalk shall be located closest to the lot. Sidewalks shall run continuously through front walkways and driveways, with broom finish and trowel border.

c. Curved sidewalks are permitted only where streets curve, right-of-way width changes or other site factors necessitate. Gentle curves sections only shall be permitted.

d. Where walkways intersect manholes, the sidewalk should be adjusted such that the manhole is centered in the sidewalk. The elevation of manholes or other objects located within a sidewalk shall be adjusted to maintain a flush surface with the sidewalk. This will typically require the removal and resetting of the manhole ring **[Figure 4].**



SIDEWALK LOCATION AT MANHOLE
Figure 4

2. *Front Walkways*

a. The walkway from the street curb or driveway to the front door is required and shall be three feet (3') to five feet (5') in width with a continuous slope from the edge of the porch to the street.

b. Materials may be concrete, non-slip brick pavers or natural stone. Patterned concrete is not acceptable.

c. Any curvilinear elements should be shown on the site plan.

F. Garage and Driveway Locations

1. *Definitions:*

a. *"Three Car Front-Load Garage"* or *"Garage"* shall mean and refer to a garage with three bays side-by-side that face toward the front of the home, with front-facing garage doors which provide for free and unencumbered access by owner's motor vehicles.

b. *Premium Lo*ts "Garage Bay" or "Bay" shall mean and refer to a standard 10' x 20' Garage Bay. Garage Bays may be wider or deeper based on the configuration of the residence. However, the Garage may retain the appearance of having two or three standard Garage Bays. For the purposes of this Addendum, reference is made to the "Main Bay" which is a double Bay with a double garage door and the "Third Car Bay" which is the single bay with a single garage door. Regular lots may have a standard two car garage bay with one side being double the standard depth to accommodate three cars.

2. *Massing of Home/Scale/Proportions*

a. All homes in Westleigh must have a minimum two-car front-facing attached garage. .

b. Three Car Front-Load Garages are permitted and shall be integral to the overall architecture of the home and appropriately designed for the lot size.

3. *Garage Doors*

a. Builder will be required to use one single garage door for the Third Car Bay and one double garage door for the Main Bay. The doors may be either seven (7) or eight (8) feet in height.

b. Color, trim and hardware for each garage door is to be identical.

4. *Driveways* **[Figures 6-8]**

a. Design:

All driveway designs are subject to review by the ACA.

b. Location:

A driveway master plan for a development section may be provided by Developer. Location variances may be requested in writing and must include justification for deviating from the desired driveway location (such as construction conflicts of inlets, fire hydrants, flushing valves, manholes, etc.).

c. Curb Conditions:

Where four inch (4”) mountable curbs are utilized, no saw cuts are permitted. Where six inch (6”) barrier curbs are utilized, in accordance with city or county standards, saw-cut street and curb and tie in driveway steel. Builder is solely responsible for realigning grade of the gutter flow line in accordance with regulations and shall repair damaged curbs and gutters which cause ponding water (“bird baths”) resulting from their construction activities.

d. Alignment:

Driveway must be perpendicular to the street with a five foot (5’) radius on driveway apron. The joint will be constructed in conformance with Galveston County and League City requirements.

e. Width:

Driveway is to be seventeen feet (17’) wide at front property line. Refer to **[Figures 6-8]** for Three Car Front Load garage driveway transition alignment. Any variations are subject to ACA review and approval.

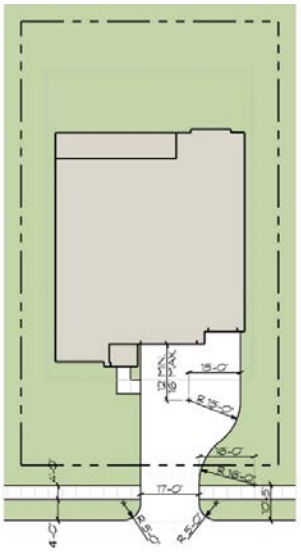
f. Materials and Finish:

Concrete or other masonry materials (e.g. interlocking pavers, and brick borders) relating to the architecture of the home and other site materials. Materials other than standard concrete must be submitted to the ACA for approval. Where the driveway intersects the sidewalk, the driveway finish may not continue through the sidewalk.

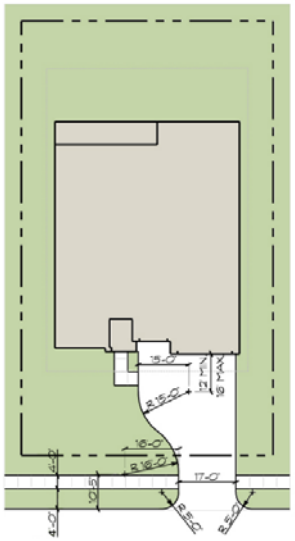
g. Dimensions:

Typical driveways shall be no more than one foot (1') on either side of the Garage at the front of the home. This would result in a driveway width no greater than thirty (30) feet at front building line (typically smaller).

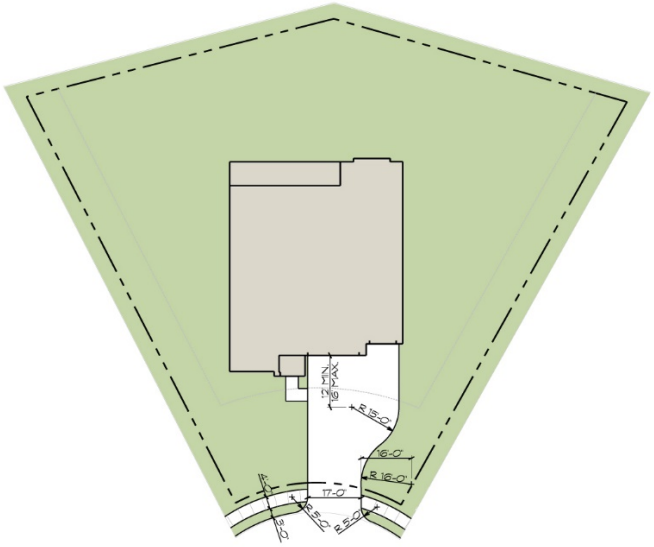
Driveways shall be no more than seventeen feet (17') wide at the sidewalk. Builder shall use radii of sixteen feet (16') and fifteen feet (15') to transition the driveway from its seventeen foot (17') width at the sidewalk to its full width at the garage. The transition shall always take place on the single car garage door bay.



3-CAR GARAGE DRIVEWAY ALIGNMENT A
Figure 6



3-CAR GARAGE DRIVEWAY ALIGNMENT B
Figure 7



3-CAR GARAGE DRIVEWAY ALIGNMENT AT CUL-DE-SAC
Figure 8

G. Fences and Gates

1. <u>Wood Fencing Guidelines</u>

a. Materials:

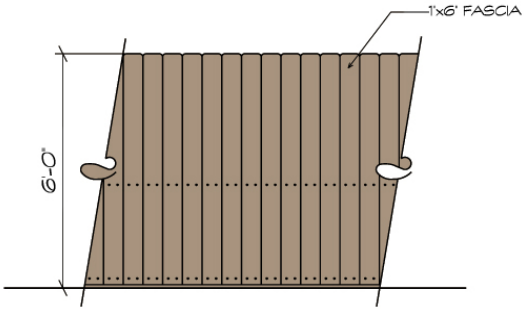
All wood fences are to be constructed with quality, new wood, consisting of treated pine posts and stringers, with posts on eight foot (8') centers and three (3) stringers. All other material shall be No. 2 grade cedar.

- Standard Fence – Standard Fence shall have three (3) stringers. The top stringer shall be sixteen feet (16') to prevent sagging. Pickets to be No. 2 grade one inch (1") by six inch (6") cedar. No other materials are acceptable. **[Figure 9]**

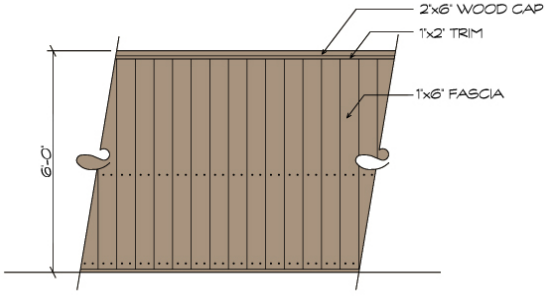
- Corner Lots - Capped wood fences will be required on corner lots. Capped wood fences shall have three (3) stringers, with a two inch (2") by six inch (6") cap, one inch (1") by six inch (6") fascia and one inch (1") by two inch (2") trim affixed to the top stringer. **[Figure 10]**

b. Height:

Fences are typically limited to six feet (6') nominal measurement above natural grade. Builder may be required to construct eight foot (8') high fences where perimeter conditions warrant. Builder will get approval from Developer prior to constructing any fence taller than six feet (6').



STANDARD WOOD FENCE
<u>Figure 9</u>



CAPPED WOOD FENCE
<u>Figure 10</u>

c. Location:

- Interior Lots:

  Fence must be set back at least fifteen feet (15') from the front of the home, but no further back than the mid-point of the home. **The finished side of a fence should always face the public view.** A "good neighbor" fence policy is required for all privately viewed conditions. Alternating sections are to occur at regular fence post intervals only, so that an entire panel is dedicated to one lot and the following panel is dedicated to the adjacent lot and so forth. In this manner, both lots receive approximately the same exposure to finished sides of a picket fence structure.

- Corner Lots:

  Fence must be located halfway between the property line and the building line. For example, if a corner lot building line is fifteen feet (15'), the fence must be located seven and one-half feet (7.5') within the property, not on the property line.

  The fence perpendicular to the side street (parallel to the front street) may be set back as necessary to provide for access to public utility meters, but must be far enough forward to screen the air conditioning units. The finished, or "picket" side of the fence must face the side street and the fence shall be capped. However, in no case may the fence be closer than five (5) feet behind the front of the home, and further back than the mid-point of the home.

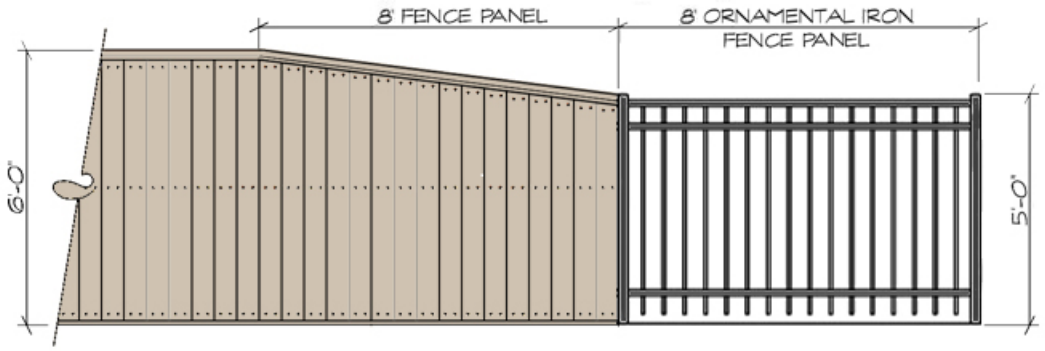
d. Special Conditions:

The finished side of a fence should always face the exterior or public side. Any exposures to public roads, greenbelts, ditches, or detention basins will be considered public view. In situations where good neighbor (interior to lots) fence is required and can be seen from public it is understood that the fence shall remain good neighbor.

Where residential lots are located adjacent to either a commercial, institutional, or other more public use, the finished side of a fence should always face the non-residential use.

f. Fence Height Transition:

Where six (6) foot wood good neighbor or side fence meets five (5) foot ornamental iron back of lot fence (Greenbelt and Lake Lot Conditions) there shall be a sixteen foot (16') transition from wood to ornamental iron **[Figure 12].**



WOOD FENCE TRANSITION
Figure 12

2. *Ornamental Steel Fence Guidelines* **[Figure 13]**

a. Location:

Ornamental steel fencing shall be required on all front fencing and on the rear property line of lots adjacent to water bodies, amenity lakes and greenbelts, and all gates must face the street

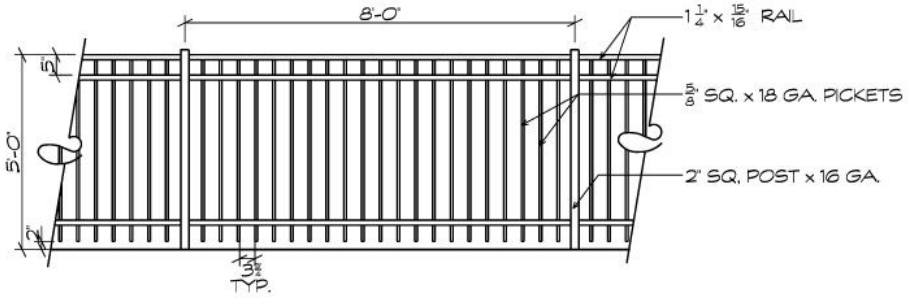
b. System Description:

Fence shall be **Ameristar® Montage ATF™ Welded Ornamental Steel Majestic™ 3R EXT 5'T 8'W, Black** (or another suitable type approved by the ACA). It shall be installed in accordance with manufacturer's specifications for fence series. Pedestrian gates are allowed, but not required on all lake and greenbelt lots. The gates shall not exceed forty inches (40") in width, inclusive of gate hardware.

Fence is three (3) rails and the height of fence shall be five feet (5') measured from natural grade.

c. Quality Assurance:

System shall be installed by contractor thoroughly familiar with the type of construction involved, materials and techniques specified.



ORNAMENTAL STEEL FENCE
Figure 13

d. Breezeway fences connecting detached garages to the main residence may be ornamental steel or wood. Fence may be four feet (4') or six feet (6').

3. Gates

a. Gates shall be constructed with the same materials and quality as the adjoining fence. If the adjoining fence is ornamental steel, all hardware shall be painted the same color as the fence.

b. Pedestrian gates may not exceed forty two inches (42") in width.

H. Landscaping –

Yard Trees

- Yard trees will be required for each home. Placement of trees on Standard Interior Lots and Corner Lots are illustrated on Figure A. Corner Lots have different criteria for different lot widths. See below.

Yard Trees	
Required Quantity	Described above
Species:	Burr Oak, Live Oak, Nuttall Oak, Shumard Oak, Red Oak, Water Oak, Mexican Sycamore, Bald Cypress, Holly, Loblolly Pine, Japanese Blueberry, Magnolia or other trees approved by ACA.
Size:	65 Gallon - minimum 3" caliper
Height:	Minimum 10'-12'
Spread:	Minimum 5'-6'

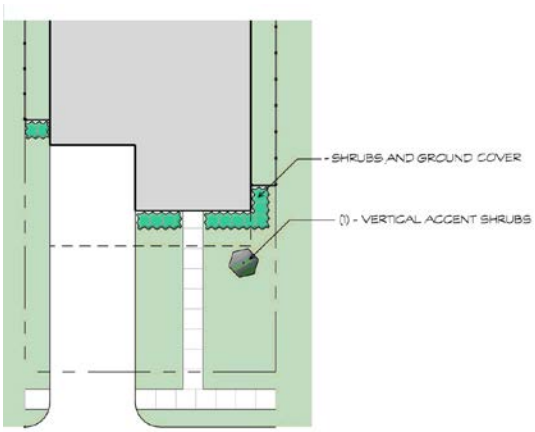
- Interior, Corner and Cul-de-Sac Lots:
    - One (1) yard tree is required for 50’ wide lots and two (2) yard trees are required for 60’ wide lots.

Other Vegetation [Figure B]

- In addition to the tree requirements above, individual lots must meet the following minimum requirements.

    a. – At least the following shall be installed per lot in the front yard:

    - Minimum fifteen (15) Evergreen Shrubs - Type and Size outlined below. Evergreen shrubs are to be located in the back one-third of the yard, closest to the home.
    - Minimum Twelve (12) Flowering Shrubs – Type and Size outlined below. Flowering shrubs to be located as accents to Evergreen shrubs.
    - Minimum Two (2) Ornamental Tree/Vertical Accent Type and Size outlined below. Preferred location of Ornamental/Vertical Accent trees is within the landscape bed. Ornamental tree does not count as a yard tree.
    - Shrubs adjacent to rear yard fencing may be eliminated only as needed to provide gate access to the rear yard.
    - Minimum Twenty (20) Small Ground Cover – Type and Size outlined below.



Front Yard Landscape Bed
Figure B

- The scrubs and ground cover are in addition to the foundation scrubs required; and are as follows:

APPROVED PLANT LIST FOR ACCENT TREES & PLANTING ISLANDS

TYPE A Accent Trees 30 gal.	TYPE C Shrubs 5 gal.	TYPE D Groundcovers 1 & 2 gal.
Bald Cypress	Butterfly Bush	Asian Jasmine
Burr Oak	Esperanza	Bulbine
Live Oak	Gulf Coast Muhly	Hamelin Grass
Mexican Sycamore	Indian Hawthorne	Iris spp.
Nuttall Oak	Knock Out Rose	Lantana spp.
Shumard Oak	Mexican Bush Sage	Mexican Feather Grass
Water Oak	Miscanthus Grass	Wedelia
Bald Cypress	Nearly Wild Rose	Weeping Rosemary
Holly spp.	Plumbago	
Pine spp.	Purple Fountain Grass	
Japanese Blueberry	Texas Sage	
Magnolia spp.	Upright Rosemary	

Grass Coverage

- All areas exposed to public view (public rights of way, greenbelt views) shall be solid-sodded with Saint Augustine grass.

I. Lot Drainage

1. Type "A" and Type "B" Drainage

a. Lots with Type "A" drainage achieve positive site drainage of ± 1.0% from the rear of lots to the street as dictated by the approved Drainage Plan.

b. Lots with Type "B" drainage achieve positive site drainage by draining a portion of the lot to the rear of lot as dictated by the approved Drainage Plan.

c. Unless otherwise approved in writing by the ACA, all drainage must follow the agency-approved Drainage Plan for the subdivision.

2. Additional Drainage

a. When a home structure is in place on a given lot, positive drainage is to be directed away from the home structure.

b. Drainage runoff onto adjoining properties is prohibited, except as provided in the approved Drainage Plan.

3. Protective Swales & Localized Drainage

a. The construction of protective swales is required on all lots.

b. In the event the lots do not drain after the installation of swales, area drains may be required.

J. Site Maintenance during Construction

General Maintenance – Each lot shall be maintained in a neat, clean orderly condition by the builder during construction and until the home is closed. Building debris must be removed from each lot by Builder as often as necessary to maintain attractiveness of the construction site. Debris may not be dumped in any area of the development unless a specific location for such a purpose is approved in writing by the ACA. Each Builder will maintain their own concrete washout during the period that homes are under construction. The Builder must use best management practices to minimize silt from flowing into the streets. The Builder will construct and maintain a "fenced" area within the boundaries of each lot to be used as a trash receptacle. The "fenced" area can be constructed with orange construction fencing.

K. Lake Lots and Greenbelt Lots

Homes adjacent to greenbelts and lakes should be designed to maximize views to these amenities. Detached garages are prohibited on lake lots. Rear elevations of both custom and production lake-front homes shall have materials equal to front elevations.

III. Architectural Design and Materials

A. Massing of Home/Scale/Proportions

The massing of a home should be reasonably scaled to the street and the surrounding homes. Homes should have massing variations and avoid the "straight box" design. Pieces of the home should be scaled appropriately to each other. In production home programs, attached garages shall protrude no more than ten (10) feet from the front plane of the main residence. In custom home programs, attached front loading garages should be recessed from the front plane of the home with architectural detail.

B. Exterior Elevations and Materials

1. Exterior Elevations

Exterior elevations shall include a variety of major and minor architectural features. Major architectural features include but are not limited to: roof pitch or style (i.e. hip, gable), porches, dormers, entry portico, change of material and window bay. Minor architectural features include but are not limited to: window style (i.e. flat or arched), front door style, garage door style, shutters and decorative detail (i.e. gable inset). To be considered distinct from a similar elevation, an elevation shall include two (2) major architectural differences and two (2) minor architectural differences.

Flat, blank elevations on any side shall not be allowed. Windows must occur on all street facing elevations of homes

2. Repetition of Elevation

Elevations in production home portfolios should: avoid monotony, maintain continuity of scale and character, avoid the negative "look-alike" effect of frequent repetition and allow sufficient latitude for the builder in satisfying market demand. Builders must conform to the following:

a. Plan repeat with the same front elevation design: every foruth consecutive lot. Thus, at least three other homes must occur between the next repeated same front elevation. Different brick and trim color of repeated elevation is also required.

b. Plan repeat with different front elevation: every third consecutive lot. Thus, at least two other homes must occur between the next repeated floor plan with a different front elevation design. Differ brick and trim color.

c. The ACA reserves the right to reject an elevation that closely resembles that of a nearby home or in any way detracts from the overall street scene. Additionally, identical brick color and type, and siding color, are prohibited on homes that are adjacent to one another. A custom home may not be repeated within any given section.

3. Exterior Materials

No more than three exterior wall materials are allowed. All exterior walls on the first floor shall be brick, stone or stucco. On two-story homes, the front and side elevations must be predominantly brick, stone or stucco. Brick, siding and trim colors are addressed in Paragraph J. Homes adjacent to exterior roadways, greenbelts and lakes shall have rear elevation materials equal to front elevations.

a. Brick: Brick shall be hard-fired and have an overall appearance of relative evenness in color and texture. Painted brick may be permitted where deemed appropriate by the ACA for a particular architectural style.

b. Siding: Where siding is used, it shall be fiber-cement, horizontal lap siding, eight inch (8") exposure (*Hardiplank® Select Cedar Mill* or equivalent) or board and batten. Diagonal siding, and 4x8 panel siding are prohibited. Wood, vinyl, metal, and particleboard are prohibited siding materials.

c. Trim: All trim shall be smooth/semi-smooth, high quality finish grade stock wood or fiber-cement (*Harditrim® Select Cedar Mill, Harditrim® Smooth*, or equivalent).

d. Stucco: Stucco is permitted if appropriate to the style of architecture and if approved by the ACA.

e. Stone: Stone veneer may be natural cut stone or manufactured stone veneer such as *Cultured Stone®.*

f. Synthetic Materials: materials such as metal siding, vinyl siding, and other materials which have the appearance of wood, or stone must be reviewed to ensure a quality appearance for approval by the ACA.

g. Material Changes: Changes to exterior wall material should have a logical relationship to the massing of the home. Material changes on a common wall plane that occur along a vertical line should be minimized or avoided wherever possible.

h. Awnings: Awnings over entrances or windows are prohibited.

C. Entrances and Windows

All openings in a structure such as windows and doors should relate to each other on all elevations both vertically and horizontally. This should occur in some clearly defined order, and scattered or random placements should be avoided. Both entrances and windows should be in proportion as they relate to the building mass as a whole. All sides of a home should receive equal design consideration. Reflective glass is prohibited.

1. <u>Entrances</u>

Entrances should be the focal point of the elevation which they serve. Although two-story entryways are allowed, the creation of a focal point at the entry through the use of human scaled entry elements is suggested. Recessed or protruded one-story elements add to the architectural detail of the home. Regardless of the scale selected, entrances should always relate to the overall architectural character and quality of the home. Siding is not allowed in the front entry.

2. <u>Windows</u>

Windows, like entrances, should be compatible with the overall building mass and architectural character and quality of the elevation.

If shutters are incorporated as part of the design, they should be appropriately scaled to relate to the window opening and appear authentic. They must also always occur in pairs. The shutter color must harmonize with the other colors on the home. Where shutters are used on a home located on a corner lot, they should occur on the side street elevation as well as the front.

Windows on the front elevation (first and second floors) must be consistent with the design of the elevation of the homes. Windows on other elevations may be divided lite or single pane, bronze or white bronze.

D. Roof Treatment and Overhangs

1. Materials

25-year warranty, three-dimensional composition asphalt shingles. All shingles within a given neighborhood shall be the same color.

2. Form

a. The form and massing of the roof should have a logical relationship to the style and massing of the home. Roof pitches should be applicable codes, but must be a minimum of 8 in 12 when viewed from the front of the home and 6 in 12 when viewed from the side of the home. **Exceptions to these roof pitches may be made with prior approval of the ACA**

b. The roof height should not exceed ¾ of the total elevation area for single story homes and ½ the total elevation area two story homes.

c. Fascia depths should be in scale with the mass of the elevation, but the face of the fascia board must be at least six inches (6") (nominal) in size.

3. Overhangs

a. Overhangs should be compatible with the architecture of the home and function as shading devices. Care should be taken not to exaggerate their lengths or provide too small an overhang. Overhangs should be more pronounced on eave conditions while rake conditions should receive a much more moderate overhang.

4. Roof Penetrations

a. Roof vents, utility penetrations, or other roof protrusions must be painted to match the singles. Skylights should not be visible from the front street.

5. *Gutters & Downspouts*

a. Gutters and downspouts should be strategically placed to minimize their visibility to the front street. Preferably, downspouts should occur only at the rear and sides of a home. Placement on the front elevation shall be avoided as much as possible, but may be used to avoid water runoff at front entrances.

b. Gutters and downspouts must match or be very similar to the color of the surface to which they are attached. Downspouts must be installed vertically and in a simple configuration. All gutters and downspouts on standard lots must be installed so water runoff does not adversely affect adjacent properties.

6. Exposed Roof Metal /Antennas

a. All exposed stack vents, skylight curbs, attic ventilators, and other metal roof accessories shall match or closely resemble the roofing color.

b. All stack vents and attic ventilators shall be located on the rear roof slopes perpendicular to the ground plane. They shall not be visible from public areas and should be placed in a location which is least visible from adjoining property.

c. Roof-mounted ventilators shall be no higher than 10 inches above the roof surface.

E. Chimneys

If chimneys protrude from an elevation and are located on the front elevation, the side-street side elevation of a corner lot or the rear elevation on a lake, or greenbelt lot, the chimney must be brick, stone or stucco, in conformance with the architecture. Prefabricated metal flues should be clad in approved materials to create the image of a traditional masonry chimney. The use of wood or fiber-cement siding is not allowed.

If a chimney is interior to the roof (not on an external elevation) or at the rear or non-corner side of a home, it must be constructed of materials that match the architectural style and color of the home. Acceptable materials include masonry, brick, stucco, wood or fiber-cement siding.

Spark arrestors and caps are required on all chimneys. The spark arrestor and cap should be unadorned, non-ornamental and designed to match or be compatible with the color and material of the exterior elevations of the home. Caps must be of metal or masonry construction.

Heights of chimneys shall meet all fire code requirements and be proportional to the roofline of the respective home. Metal chimneys, if used, shall not exceed a maximum exposed height of 6 inches of chimney pipe nor a maximum height of 18 inches of total exposed metal including both chimney pipe and cap.

Direct vent fireplaces are permitted.

F. Garage Doors

Garage doors should be relatively unadorned while remaining compatible with the architecture of the home and elevations. Panel doors are encouraged to help downscale the effect of a garage door.

G. Address Identification

1. *Visibility*
   The address number must be visible from the street. The scale of the address number may vary according to the scale of the home, but may be no larger than 6 inches (6”) in height and must be placed in a horizontal line. The street name is not permitted on the exterior of the home.

2. *Style*
   The specific style shall be as approved by the ACA and the numbers must be Arabic and must be easily read from the street.

3. *Location*
   The number for address identification should be inset into the brick either next to the front door or on the front of the home. Internally-lit address numbers are not permitted.

H. Lighting

The type, color, and quality of exterior lighting for the site and home must be consistent with other lighting on the property and in the neighborhood. Incandescent lighting is preferred. However, the ACArecognizes that new lamps and bulbs are available and will review alternative types. No high-wattage, commercial/industrial-type fixtures, mercury vapor, or sodium-vapor light sources are allowed in any location.

1. *Floodlighting*
   Floodlighting fixtures must be attached to the home or other architectural structure and must not illuminate adjacent public or private properties. Lights must be directed downward and shielded to avoid "hot" glare spot visible by neighbors. Fixture and shield color should be compatible with the building. Conduits and wiring must be concealed.

2. *Exterior Lighting Fixtures*
   All exterior light fixtures visible from the street or other public areas must be of an understated design that complements the architectural style of the residence.

3. *Walkway Lighting*
   Walkway lighting should be an inconspicuous bollard or dome light design. The lamp may be incandescent (100w maximum), quartz (75w maximum), metal halide (75w maximum), fluorescent (25w maximum), or white L.E.D.

I. Screening

Fences, walls and landscaping are acceptable screening materials. All wood fences must be constructed in accordance with these Builder Guidelines.

1. *A/C Equipment & Home Generators*
   On corner lots, side-lot A/C compressors and/or home generators must be enclosed behind the side lot fence. On interior lots, A/C compressors and/or home generators may be enclosed in the side lot fence or screened from public view by landscape materials.

J. Exterior Colors

Color variety among homes is required. The ACA shall determine whether near or adjacent homes' brick or trim colors are too similar to allow. No more than three colors (plus brick or stone color) shall be permitted. Trim color and field color must vary.

1. *Paint*
   Exterior paints and stains shall complement colors of other materials. Siding and trim should generally stay within the earthtone color family. White and cream trim is permitted. Extremely bold or primary colors are prohibited. Bright yellow, blue, or green pastels are not allowed. Soft, muted earthtone pastel colors are acceptable.

2. *Brick*
   Acceptable brick colors are in the earthtone color family. Very dark colored brick is discouraged. No one brick color should dominate a particular street scene. Variety in brick color is strongly encouraged. A brick color may be repeated every fifth home including same and opposite side of street.

3. *Stone Veneer*
   Stone Veneer shall be natural limestone or manufactured stone of similar color other regional stone color deemed appropriate with the project character as approved by the ARC.

K. Security Devices

No security devices such as sirens and speaker boxes shall be visible from a public view and should be located inside the home. Security devices should be the minimum effective size and be located unobtrusively. These Builder Guidelines also prohibit security and/or burglar bars on the exterior of homes unless specifically approved by the ACA prior to installation.

L. Structured Wiring

"Structured Residential Wiring" is a centralized method of organizing and distributing coaxial cabling, data and security wiring from a central distribution point for flexibility, accessibility and future expansion for each home.

1. Cabling

a. Telephone and Data Cable: Category 5 Enhanced ("Cat 5E") solid wire, UTP, Type CMR. As appropriate, Builder should use shielded or plenum rated Cat 5E. Cabling shall be terminated to EIA/TIA standards for phone and data interchangeability.

b. Video Cable: RG-6 dual coaxial cable ("RG6").

2. Installation Criteria

a. Installation shall be in accordance with manufacturer's recommendation. Installers should demonstrate satisfactory knowledge of, and construction should be in general compliance with ANSI/EIA/TIA Residential Structured Wiring Standards.

b. Certification of each home network is not required.

3. Distribution Panel

a. All cabling is to be home-run to a 14" x 28" Distribution Panel which is to be located in climate controlled space within the home. The size of the distribution panel will provide room for installation of routers and such devices by homeowner.

b. A dedicated 110v AC electrical outlet shall be located within the Distribution Panel.

4. Service feed to Network Interface Device(s)

a. The Network Interface Device (NID) is a device that serves as the demarcation point between the phone and cable providers' point of service and the Distribution Panel. NIDs are typically provided by the cable and phone providers.

b. Service feeds from the NID to the Distribution panel are to be made with two (2) Cat5E and two (2) RG6 cables. Service feeds will be made available to cable and telephone providers.

5. Distribution Points

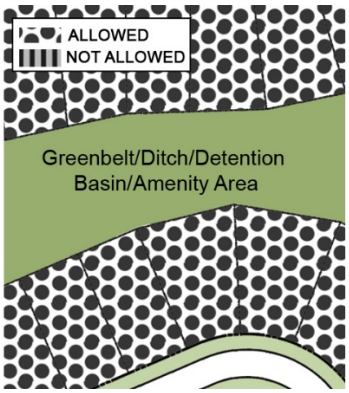
a. Minimum Distribution Points include family room, living room, computer alcove, master bedroom, media room, and library.

b. All Distribution Points are to be terminated with a minimum of one (1) data and one (1) video outlet. Additional data and video are recommended in family rooms or entertainment centers.

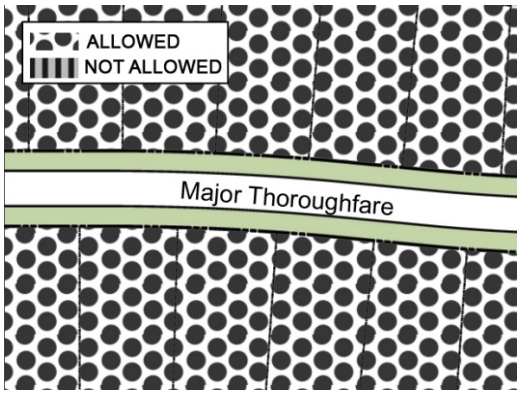
M. Second Story Balconies

1. *Allowed* **[Figures 22-23]**

Second story balconies will be allowed on the back of the homes when the back of lot faces greenbelts, ditches, detention basins, amenity areas, or major thoroughfares.



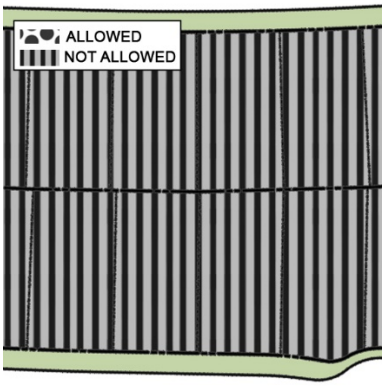
SECOND STORY BALCONY
ALLOWED
Figure 22



SECOND STORY BALCONY
ALLOWED
Figure 23

2. *Not Allowed* **[Figure 24]**

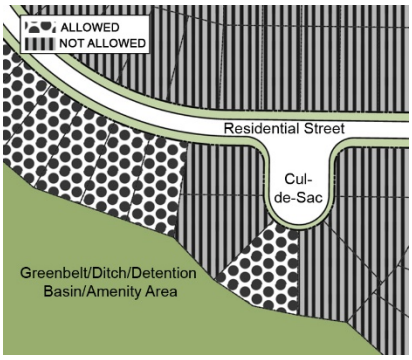
Second story balconies will not be allowed when the back of lot faces another lot.



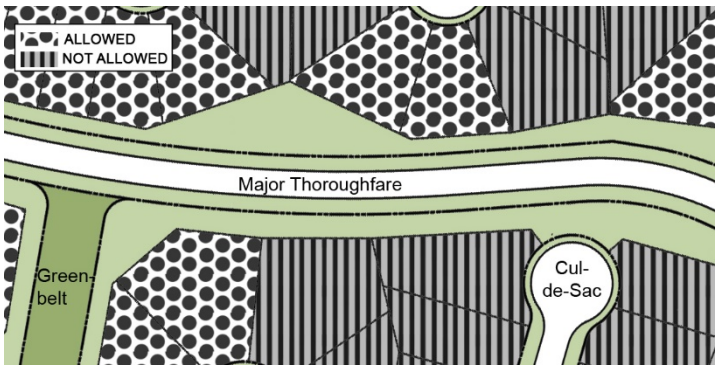
SECOND STORY BALCONY
NOT ALLOWED
Figure 24

3. *Special/Mixed Conditions* **[Figures 25-26]**

Second story balconies will **not** be allowed when the back of lot faces another lot **and** a greenbelt, ditch, detention basin, amenity area or major thoroughfare.



SECOND STORY BALCONY
SPECIAL/MIXED CONDITIONS
Figure 25



SECOND STORY BALCONY
SPECIAL/MIXED CONDITIONS
Figure 26

L. Backyard Living

1. Concrete Patios

A concrete patio that has an exposed foundation that is greater than one foot (1') in height should be covered with masonry which matches, or is complimentary to the masonry of the residence.

2. Decks

a. All decks are assumed to be rear or side yard and are subject to review by the ACA.

b. Decks should be constructed no closer than five feet (5') from the adjoining lot on the side and eight feet (8') from the rear.

c. Wood decks that have an exposed area below that is greater than two feet (2') should be screened from view with lattice or other decorative screening. Each lattice panel should have a minimum thickness of 3/8 inch and be framed.

d. In order for a wood deck to appear compatible with the residence, a sub-structure that is skirted with the same materials that are used on the house is encouraged.

e. If a deck is a second story deck, where a second story deck is permitted **[Figures 22-26]**, and the wall below the deck has windows or is 100% finished, then screening is not required. The deck support structures should be designed to architecturally match the residence and is subject to review by the ACA.

3. Pools and Spas

a. Pools constructed above ground are prohibited.

b. Prefabricated spas or hot tubs, installed above ground are acceptable, but when visible from public view or other lots, they shall be skirted, decked, screened or landscaped to hide all plumbing, heaters, pumps, filters, etc.

c. Privacy screens for pools or spas on Landscape Reserves Lots should be set back a minimum of twenty feet (20') from the rear property line and cannot exceed thirty feet (30') in width parallel to the rear property line unless otherwise approved by the ACA.

d. Privacy screens should not exceed six feet (6') above existing grade.

e. Screening material may be masonry (compatible with the residence), wood fence with finished side out, or other screening material approved by the ACA.

f. Swimming pool appurtenances, such as rock waterfalls and slides, are encouraged to be in keeping with the scale of the home as determined by the ACA.

g. Skimmer nets, brushes, heaters, plumbing, etc. shall not be visible from public view. Consideration should be given to the impact of noise to adjacent homes.

h. Pool walls shall not encroach on utility drainage or detention easements.

i. Wood or concrete pools decks may be placed on utility easements with permission from utility companies, but are subject to removal by utility companies.

j. Decks shall not alter drainage on neighboring lots or directly abut fencing and at a minimum shall be two feet (2') from the side property line.

IV. MODEL HOMES/MODEL HOME PARK

A. Model Home Layout

1. Modifications

Realizing that model homes will function as sales offices, modifications to the finished product that would actually be sold is expected. However, Builders are expected to emulate as closely as possible the end product that a consumer can expect to receive.

Before sale by the Builder, all modifications (e.g., front yard fencing, atrium doors in lieu of overhead garage doors, floodlights, etc.) must be removed and the unit restored to its standard appearance.

2. Yard Lights

Each model should have, unless otherwise specified by the ACA, yard lights installed that will illuminate the model homes during the period from dusk to 10:00 p.m. The Builder may employ other types of illumination upon approval of the ACA.

3. Fencing

Fencing on sales models will always be of an iron/metal material of a standard configuration where it is adjacent to front yards. Fences will always permit view of the home and into the lot from the street. Model home fences should never exceed four feet (4') in height in the front yard. Wood fencing is allowed in the rear yards of model homes. All fence designs must be submitted to the ACA for review and approval.

4. Flag Poles

A maximum of two (2) flagpoles per model home site, per builder will be allowed to display a U.S. flag, a Texas flag, or builder flag and must be properly lit.

The flagpole should be one-piece construction of brushed anodized aluminum not to exceed thirty-five feet (35') in height. The pole should be capable of withstanding local wind velocities.

The length of the flag should be approximately one-fourth (1/4) the height of the pole on which it is mounted. Building-mounted flagpoles are not permitted. Flags and/or poles must be replaced when they become faded or worn.

B. Maintenance: Model Home Exteriors and Landscaping

1. Model Homes Exterior

Exterior of model homes should be kept in a new and fresh condition. Doors, siding, and trim are to be kept clean and painted when necessary. If, in the opinion of the ACA, areas of a model home require refurbishing, the ACA will give the respective builder two (2) weeks notice in writing in which to correct the deficiencies.

2. *Landscaping*

The front and rear yards of all model homes are to be landscaped including fully sodded yards and foundation plant material. Model homes shall be allowed to install small water ponds, waterfalls, etc. which shall be removed at the time the model home is converted to a residential home.

C. Model Home/Builder Signage

One (1) yard sign per lot is allowed for the purpose of advertising a particular Builder name or to advertise the property for sale or rent. No additional sign, advertisement, billboard, or advertising structure of any kind shall be displayed to public view on any lot.

Builders will be allowed one (1) yard sign per builder, per model park. The sign may be a maximum of thirty-two square feet (32-sq. ft.) in area. Base landscaping is required. The sign will be allowed for a period of time commensurate with the model homes sales program only. Model identification signs may not exceed three (3) square feet. In addition, one (1) sign no larger than three (3) square feet may be used to indicate whether a model home is open/closed and the hours of operation only. This sign must be close to the front door.

The ACA has the right to remove any sign, advertisement, billboard, or advertising structure which is in violation of these guidelines. All model home signage packages must be submitted to the ACA for review and approval.

Exhibit "F"

Form of Assignment

ASSIGNMENT OF UTILITY AGREEMENT

This Assignment of Utility Agreement (this "Assignment") is made and entered into as of ____, ("Effective Date") by and between **Wilbow-Westleigh LLC,** a Texas limited liability company ("Developer"), and **Galveston County Municipal Utility District No. 80**, a political subdivision of the State of Texas organized and operating under Chapters 49 and 54 of the Texas Water Code (the "District"). Developer and the District are referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

Developer, on behalf of the District, entered into that certain Utility Agreement dated as of _____, 2020 (the "Utility Agreement") with the City of League City, Texas.

The Utility Agreement provides that Developer may assign its rights, duties, and obligations under the Utility Agreement to the District.

Developer desires to make such assignment to the District and the District desires to accept same.

NOW, THEREFORE, for and in consideration of the mutual covenants and terms herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

1. Developer hereby assigns to the District, and the District hereby assumes and accepts, all of Developer's rights, duties, and obligations under the Utility Agreement.

2. The construction and validity of this Assignment shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Exclusive venue shall be in Galveston County, Texas, and all parties consent to venue in Galveston County.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Assignment in multiple copies each of equal dignity as of the date and year first written above.

WILBOW-WESTLEIGH LLC,
a Texas limited liability company

By:_____
Lawrence A. Corson, President

ATTEST:

GALVESTON COUNTY MUNICIPAL
UTILITY DISTRICT NO. 80

By:_____
Secretary, Board of Directors

By: _____
President, Board of Directors

(SEAL)