

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the “Declaration”), is made by DIC INVESTMENTS, LLC, a Texas limited liability company (“Declarant”).

PREAMBLE AND DECLARATION

WHEREAS, Declarant is owner of the Property (defined below), and has created a residential community with designated lots and other areas for the benefit of the present and future owners of lots within the subdivision, and desires to create and carry out a uniform plan for the improvement, development, and sale of those lots;

WHEREAS, Declarant desires to ensure the preservation of the values of the lots within the subdivision and for the maintenance of the common area, and to this end desires to subject the subdivision to the covenants, restrictions, easements, charges, and liens hereinafter set forth, all of which are for the benefit of the subdivision and the owners thereof; and

WHEREAS, Declarant deems it desirable for the efficient preservation of the values of the lots within the subdivision to subject and bind the subdivision to the jurisdiction and assessment of the Association (defined below), which will have the power and duty to maintain and administer the common area of the subdivision, the power to administer and enforce the covenants and restrictions, and to collect and disburse the assessments fines, fees, and other charges herein created.

NOW, THEREFORE, Declarant hereby declares that the Property and such additions thereto as may hereafter be made pursuant to the terms hereof is and shall be held, transferred, sold, mortgaged, conveyed and occupied subject to the covenants, restrictions, conditions, easements, development standards, charges and liens hereinafter set forth.

ARTICLE I - PURPOSE

The Property is encumbered by the Declaration to (i) ensure the best and highest use and most appropriate development of the Property, (ii) protect lot owners against improper use of surrounding lots, (iii) preserve so far as practicable the natural beauty of the Property, (iv) guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials, (v) encourage and secure the erection of attractive improvements on each lot with appropriate locations, (vi) secure and maintain proper setbacks from streets and adequate free and open space, and (vii) in general to provide for development of the highest quality to enhance the value of investment made by owners of lots within the subdivision.

ARTICLE II - DEFINITIONS

The following words, when used in this Declaration, unless the context shall prohibit, shall have the following meaning:

1. “Association” shall mean Providence Landing Owners Association, a Texas non-profit corporation, its successors and assigns. The Association is a “property owners’ association” as defined in Chapter 202 of the Texas Property Code.
2. “Board” shall mean the Board of Directors of the Association.
3. “Bylaws” shall mean the Bylaws of the Association as amended from time to time.
4. “Certificate” shall mean the Certificate of Formation of the Association, as it may be amended from time to time.
5. “Committee” shall mean the Architectural Control Committee as provided for in Article VIII hereof.
6. “Common Areas” shall mean: (a) any real or personal property leased, owned, or used by the Association for the common use and benefit of the Members of the Association, including without limitation the Park and any recreation amenities, maintenance equipment and facilities, and landscape irrigation equipment and systems within the Park or the Orchard; (b) any areas reserved for or granted to the Association by easement or otherwise for access to areas owned or used by the Association; (c) any areas for which the Association has obtained or assumed the right and obligation of maintenance; (d) all detention ponds and related facilities and landscape areas (if any, and without any obligation of Declarant or the Association to install such facilities or areas); (f) private streets and alleys (if any, and without any obligation of Declarant or the Association to install such private streets or alleys); (g) security systems and facilities (if any, and without any obligation of Declarant or the Association to install such systems or facilities); and (h) landscape facilities, including, but not limited to, landscape irrigating systems serving the Common Area, lighting facilities, signage, and street furniture (if any) installed in the Common Area, all of which are for the common use, enjoyment and benefit of the Members of the Association.
7. “Declarant” shall mean DIC Investments, LLC, its successors and assigns and any person or entity to whom the then Declarant assigns its rights as Declarant hereunder by instrument in writing recorded in the Official Public Records of Real Property of Colorado County, Texas.
8. “Design Guidelines” shall mean those particular standards restrictions, guidelines, recommendations, and specifications applicable to architecture, design, construction, placement, location, alteration, and maintenance of any Improvements of any nature whatsoever and also include landscaping to or within the Property, and all amendments, bulletins, modifications, supplements, and interpretations thereof. The Design Guidelines may be prepared by the Committee and may be reasonably amended, modified, supplemented and interpreted from time to time by the Committee.
9. “Detention Area” shall mean the area designated on the Subdivision Plat as the 14.35 acre easement for detention over a portion of Lots 9, 10, 11, and 12 and the Park, which is an easement for the benefit of the Association for the purpose of drainage control and management within the Property.

10. “Improvements” shall mean any buildings, structures, recreational facilities, gazebos, ponds, underground or above ground installations, slope alterations, lights, driveways, utility facilities and lines, irrigation facilities, parking areas, fences, barriers, retaining walls, stairs, decks, poles, windbreaks, plantings, planted trees and shrubs, statues or sculptures and all other structures, landscaping, or improvements of every type and kind.
11. “Landscaping” shall mean growing plants.
12. “Lot” shall mean each subdivided Lot within the Property.
13. “Member” shall mean each Owner of record of a Lot who shall be a member of the Association as provided in Article IV hereof.
14. “Orchard” shall mean that portion of Lots 9, 10, 11, and 12 located between the Orchard Fence and the Colorado River.
15. “Orchard Fence” shall mean the fence running generally in a north to south direction across Lots 9, 10, 11, and 12 and the Park, and designated on the Subdivision Plat as a dotted line to the east of the 150’ building line across the front of Lots 9, 10, 11, and 12 and the Park (being generally parallel to River Trace Drive), and to the west of the western boundary of the Detention Area.
16. “Owner” shall mean each and every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot.
17. “Park” shall mean the area designated on the Subdivision Plat as the 6.860 acre Park between Lots 10 and 11, which is to be owned and maintained by the Association and is intended for the sole use and enjoyment of the Owners (and, if applicable, of the owners of lots with respect to any property subsequently annexed to the scheme of this Declaration in accordance with Article III), subject to the Rules and Regulations. The Park is one of the Common Areas. Notwithstanding any provision in this Declaration or the Subdivision Plat to the contrary, the Park is not dedicated to the public or intended for public use.
18. “Plans and Specifications” shall mean any and all documents designed to guide or control the construction or erection of any Improvements, including, but not limited to those indicating size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications for all building products and construction techniques, samples of exterior colors, plans for utility services and all other documentation or information relevant to such Improvements.
19. “Property” shall mean Providence Landing, a subdivision in Colorado County, Texas according to the Subdivision Plat, and any and all improvements thereon, and any additions or annexations thereto as may hereafter be brought within the jurisdiction of the Association as provided in Article III hereof. The legal description for the Property is attached as Exhibit A and incorporated by reference.

20. “Residence” shall mean those portions of each Lot that are improved with a single family residence and its garage.

21. “Resident” shall mean an occupant of a Residence.

22. “Rules and Regulations” shall mean the reasonable rules and regulations consistent with the terms of this Declaration and the Bylaws approved from time to time by the Board, in its discretion and as it deems advisable, governing the use and enjoyment of the Common Areas and the Lots, or any part thereof. The initial Rules and Regulations are attached as Exhibit B and incorporated by reference.

23. “Subdivision Plat” shall mean the map or plat of the Property and any amendments or replats that are applied for by the Declarant, approved by applicable local authorities and filed in the appropriate real property records. The Subdivision Plat for the Property as of the date of this Declaration is filed in Book 526, Page 480 the Plat Records of Colorado County, Texas.

ARTICLE III - PROPERTY

1. Property Subject to Declaration. The Property and all Lots within the Property shall be owned, held, occupied, leased, encumbered, mortgaged, transferred, sold, and/or conveyed by Declarant, or any subsequent Owner of all or any part thereof, subject to this Declaration.

2. Annexations to the Property Subject to Declaration. Any property may be annexed to the scheme of this Declaration by the owner of such property by filing of record a Supplemental Declaration (herein so called), which shall extend the scheme of this Declaration to such additional property; provided, however, that such Declaration as applied to the property which is so annexed may be altered or modified by said Supplemental Declaration only as set forth in Section 3 of this Article, and provided further, if property is annexed or added to the scheme of this Declaration by any person, firm or corporation other than Declarant, the Association must give written consent thereto.

3. Contents of Supplemental Declaration. Each Supplemental Declaration shall include a legal description of the property so annexed. Such Supplemental Declaration shall set forth the development standards and protective covenants to which the annexed properties shall be subject, and such development standards and protective covenants may contain additions, deletions, and modifications as may be necessary to reflect the different character, if any, of the annexed properties.

ARTICLE IV - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. Membership. Each Owner of a Lot shall automatically become and must remain a Member in good standing of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot. Any transfer of title to a Lot shall operate automatically to transfer membership in the Association appurtenant to such Lot to the new Owner thereof. There shall be only one membership per Lot. If a Lot is owned by more than one Owner, all co-Owners shall share the privileges of such membership, subject to the restrictions on voting as set forth

hereinafter and as may be set forth in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners.

2. Acceptance of Grantee. Each grantee of Declarant of a Lot, or other real property interest in the Property, and each subsequent grantee, by the acceptance of a deed of conveyance, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. All impositions and obligations hereby imposed shall constitute covenants running with the land, and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

3. Classes of Voting Members. So long as the Declarant owns any portion of the Property, the Association shall have two classes of voting membership, the Lot Owners and the Declarant. Each Lot Owner shall be entitled for each Lot owned by the Lot Owner to one vote per Lot. If for any Lot there is more than one Owner, the vote for such Lot shall be exercised as such Owners, among themselves, determine, and advise the secretary of the Association in writing prior to the meeting at which they are to be cast. In the absence of such advice the vote for such a Lot shall be suspended if more than one Lot Owner seeks to exercise it. The Declarant is entitled to 50 votes for each Lot owned by the Declarant. At such time as the Declarant no longer owns any portion of the Property, the Declarant shall have the same voting rights as a Lot Owner and there shall be a single class of Members, each entitled to one vote per Lot. No Member shall be entitled to exercise any right as a Member at any time he/she/it is not a Member in good standing. A Member shall not be in good standing if such person or entity is (a) in violation of any portion of this Declaration, the Design Guidelines, or any rule or regulations promulgated by the Board; or (b) delinquent in the full, complete and timely payment of any Assessment (defined below) or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of the Declaration, the Bylaws, or any rule or regulation promulgated by the Board.

4. Number, Term and Election of Directors. Directors shall be elected for one year terms and shall serve until their respective successors are elected and qualified. The Directors shall be elected by Members representing a majority of the votes cast at a meeting of Members present or represented by legitimate proxy at which a quorum is present. The Board shall consist of three individuals. No Director need be a Member of the Association. The election of the Directors and the manner in which vacancies are filled shall take place in accordance with the Bylaws, as they may be amended from time to time.

5. Notice and Voting Procedures. Quorum, notice and voting requirements of and pertaining to the Association may be set forth in the Certificate and the Bylaws, as either or both may be amended from time to time. Unless clearly inconsistent with the terms and provisions of the Certificate and Bylaws, the Board may adopt and promulgate such other and further procedures as it may deem appropriate to fairly carry out the spirit and intention of this Declaration, the Certificate and the Bylaws, without undue cost, expense or inconvenience.

ARTICLE V - COVENANTS AND ASSESSMENTS

1. Creation of the Lien and Obligation of Assessments. Declarant, for each Lot owned by it within the Property, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefore shall be deemed to covenant and agree (and such covenant shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), to pay to the Association: (a) regular annual assessments; (b) special assessments to be fixed, established and collected from time to time as hereinafter provided; and/or (c) special individual assessments (collectively referred to as the "Assessments" and individually as an "Assessment"), such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular, special and special individual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon each Lot against which each such Assessment is made and shall also be the continuing personal obligation of the then-existing Owner of such Lot at the time when the assessment became due. Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, and grants to the Association the power of sale in connection with such lien. There shall be no Assessments on the Common Areas. The aforesaid lien shall be superior to all other liens and charges against said Lot, except for tax liens and a first mortgage lien or first deed of trust lien of record in favor of any financial institution securing sums borrowed for the acquisition of or construction of improvements on the Lot in question. The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. To evidence the aforesaid assessment lien, the Association shall prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the property covered by such lien and a description of the property. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Colorado County, Texas. The Association has the right to appoint a trustee to exercise the power of sale by non-judicial foreclosure in the same manner as Texas law permits a sale of property under a power of sale conferred by a deed of trust or other contract lien. Such lien for payment of Assessments shall attach on the date that such payment becomes delinquent and may be enforced by the foreclosure of the defaulting Owner's property by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the Assessments and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

2. Purpose of Assessments. The Assessments levied by the Association shall be used for any purpose authorized by law, including without limitation the purpose of operating the Association, promoting the enjoyment, recreation, health, safety, and welfare of the Owners as owners of Lots and Residences within the Property, and for the proper maintenance, operation, and improvements to the Common Areas, including, but not limited to: (a) maintenance (and replacement as necessary) and cleaning of the Common Areas; (b) the payment of premiums for hazard insurance in connection

with the Common Areas, and any improvements or facilities thereon to be replaced by the Association; (c) paying the cost of labor, equipment (including the expense of leasing any equipment) and material required for, and management and supervision of the Common Areas; (d) paying the costs and fees of a manager or firm retained to manage the affairs and carry out the duties of the Association; (e) carrying out the duties of the Board; and (f) carrying out the purposes of the Association as stated herein.

3. Amount and Payment of Annual Assessment. Each year, the Board shall create a budget and determine the current operation and maintenance costs and anticipated needs of the Association during the year for which the assessment is being made, including without limitation such items as reserves and capital replacement costs and the cost to repair and maintain the streets shown on the Subdivision Plat during the period of time such repair and maintenance is an obligation of the Association, and establish the amount of the annual assessment (an "Annual Assessment") for each Lot. The Annual Assessment for each Owner will be equal to the total amount of the annual budget multiplied by a fraction, the numerator of which is the number of Lots owned by that Owner and the denominator of which is the total number of Lots within the Property. Annual Assessments will be due and payable by January 31 of each year.

4. Increase in Annual Assessments. Each year from and after calendar year 2006, Annual Assessments shall not be increased to more than the greater of (i) 110% of the immediately preceding year's Annual Assessment or (ii) the percentage increase in the CPI (hereinafter defined) since the date of the immediately preceding increase in the Annual Assessments, unless a greater increase is approved by Members representing at least 66 $\frac{2}{3}$ % of the votes cast at a meeting of Members present or represented by legitimate proxy at which a quorum is present. "CPI" shall mean the Consumer Price Index for All Urban Consumers, All Items, 1982-1984=100, as published by the Bureau of Labor Statistics, United States Department of Labor. If such index is discontinued, CPI shall then mean the most nearly comparable index published by the Bureau of Labor Statistics or other official agency of the United States government as determined by the Association.

5. Special Assessment. The Association may by vote of at least 66 $\frac{2}{3}$ % of the votes entitled to be cast by the Members present and voting in person or represented by legitimate proxy, regardless of class, at a meeting duly called for such purpose at which quorum is present, levy a special assessment ("Special Assessment") for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described improvement, including the necessary fixtures and personal property related thereto, or for carrying out the purposes of the Association as stated in its Certificate or as stated herein. Any such Special Assessment shall be allocated among the Lots in the same manner as Annual Assessments are allocated. The due date and delinquent date of any Special Assessment shall be fixed in the resolution authorizing such assessment. Written notice of such meeting shall be given to all Members at least 30 days in advance and shall set forth the purpose of the meeting.

6. Special Individual Assessment. Upon the affirmative majority vote of the Board, the Association may levy Special Assessments against individual Owners for reimbursement to the Association for repairs to the Common Areas occasioned by the willful or negligent acts of such Owner(s) ("Special Individual Assessment"). Any Special Individual Assessment shall be payable within 30 days following demand by the Board.

7. Duties of the Board. The Board shall, upon request by an Owner, and payment of a reasonable charge established by the Board, cause to be furnished to any such Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of the payment for any assessment therein stated to have been paid.

8. Owner's Personal Obligation for Payment of Assessments. The Assessments shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the rate of 15% per annum, or the maximum legal rate per annum if lower, on the amount of the Assessment from the due date thereof, together with all costs and expenses of collection, including attorney's fees and court costs.

ARTICLE VI - POWERS OF THE ASSOCIATION

1. Board. The affairs of the Association shall be managed by the Board.

2. Duty of the Association. The Association shall have the duty to operate, maintain, or otherwise manage or provide for the operation, maintenance, cleaning and management of the Common Areas and for construction of any additional Improvements to the Common Areas. The streets shown on the Subdivision Plat have been dedicated to the public by Declarant. However, the Association shall have the duty to maintain and repair those streets until the Commissioners Court of Colorado County, by formal written action or Minute Order accepts the obligation to maintain and repair such streets, or unless the property is annexed by the City of Columbus. The cost to maintain and repair the streets will be included in the annual budget determined by the Board for calculation of the Annual Assessments, and may under appropriate circumstances be included in any Special Assessment or Special Individual Assessment.

3. Powers and Authority of the Association. The Association shall have all of the powers of a non-profit corporation organized under Chapter 22 of the Business Organizations Code of the State of Texas, subject only to such limitations upon the exercise of such powers as expressly set forth in the Certificate, the Bylaws, or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, the Certificate and the Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. The Association shall have all rights, privileges, and authority reasonably implied from the existence of any right, privilege, or authority granted to it in this Declaration, the Certificate or the Bylaws or otherwise reasonably necessary to effectuate any such right, privilege, or authority.

4. Liability Limitations. Neither Declarant, its partners, shareholders, directors, officers, employees, agents and representatives, any Member, nor the Board (nor any of them), nor the officers of the Association nor the members of the Committee shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such Member was acting on behalf of the Association or otherwise. Neither Declarant, its

managers, members, partners, shareholders, directors, officers, employees, agents and representatives, nor the Board (nor any of them), nor the officers of the Association nor the members of the Committee shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Declarant, its managers, members, partners, shareholders, directors, officers, employees, agents and representatives, the Association, or the Board (or any of them, or the other person, firm or association liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, Improvements or portions thereof or Common Areas or portion thereof, including, without limitation, any negligent act or omission of the Declarant, its managers, members, partners, shareholders, directors, officers, employees, agents and representatives, the Association, Board (any of them), the officers of the Association, the members of the Committee, or any of its agents, employees or contractors.

ARTICLE VII - INSURANCE

1. Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering the Association, the Committee, and any or all portions of the Common Areas, and any Improvements thereon or appurtenant thereto, and any other property owned or leased by the Association, for the benefit of the Association, the Committee, the Members, the Board, agents, officers, and employees of the Association, in such amounts and with such endorsements and coverage as shall be considered in its sole discretion to be good, sound insurance coverage for activities or properties similar in location, character, construction or use.
2. Insurance Proceeds. The Association and the Members shall use the net proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a Special Assessment or Special Individual Assessment to cover the deficiency.

ARTICLE VIII - ARCHITECTURAL CONTROL COMMITTEE

1. Committee. The Committee shall consist of three members who shall be appointed and/or removed as follows:
 - (a) Until all of the Lots have been sold to third-party purchasers, the Committee shall consist of Terry Sablatura, Sarah McMurray, and Brooks Ranton. If any such person resigns or is unable to act as a member of the Committee, the Declarant may replace such person.
 - (b) After all of the Lots within the Property (including any annexations thereto) have been sold and conveyed by Declarant to third-party purchasers, the Board shall have the exclusive right and power, at any time and from time to time, to appoint and remove the members of the Committee, and to fill vacancies thereon.
2. Function of Committee. No Improvement (a) shall be initially erected, constructed, or placed, or (b) after initial construction, shall the exterior of any Improvement be subsequently

altered, on any portion of the Property until Plans and Specifications shall have been submitted to and approved in writing by the Committee. The Committee's approval rights regarding modifications to the Improvements include, but are not limited to, any change to exterior paint colors and installation or removal of any fencing or landscaping. The decision of the Committee with regard to approval of such Plans and Specifications shall be final, conclusive and binding upon the applicant. The Committee may prepare the Design Guidelines which may be amended from time to time by the Committee in its reasonable discretion to establish general guidelines for implementation of this Declaration. Notwithstanding anything to the contrary in the preceding, the redevelopment of existing Improvements, whether resulting from a casualty or a renovation, shall not require prior approval of the Committee except (x) to the extent (and such review shall be limited to such extent) such redevelopment would materially alter the exterior appearance of the Improvements (as were initially approved by the Committee) or (y) if the footprint of the Improvements materially changes size or location.

3. Preliminary and Final Plan Submissions. The Plans and Specifications shall be submitted to the Committee for approval or disapproval in accordance with rules to be established by the Committee from time to time. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the Plans and Specifications meet the approval of the Committee, one complete set of Plans and Specifications will be retained by the Committee and the other complete set will be marked "Approved" and returned to the Lot Owner or his designated representative, or, in the alternative, the Committee may issue a letter describing the Plans and Specifications with reasonable specificity and acknowledging its approval of same. If found not to be in compliance with this Declaration and the Design Guidelines, one set of such plans, specifications and surveys shall be returned marked "Disapproved," accompanied by a reasonable statement and explanation of items found not to comply with this Declaration and the Design Guidelines. Any modification or change to the approved set of Plans and Specifications must again be submitted to the Committee for its inspection and approval. If the Committee fails to approve or disapprove such Plans and Specifications within two weeks after the actual date on which the submission is received, then the Committee's disapproval shall be presumed.

4. Enforcement. Following approval of any Plans and Specifications by the Committee, representatives or agents of the Committee shall have the right during reasonable hours to enter and inspect any Residence or other Improvement which is being constructed to determine whether or not the Plans and Specifications thereof have been approved and are being complied with. In the event the Committee shall determine that such Plans and Specifications have not been approved or are not being complied with or that construction has commenced without prior approval from the Committee, the Committee shall be entitled to recommend to the Board, and the Board may take any of the following actions:

- (a) Require the Owner to remove the Improvement and restore the Lot to its condition prior to any such work, all at the Owner's sole expense. If the Owner fails or refuses to comply with any such requirement, the Association shall have the right and power to seek appropriate injunctive relief from a court of competent jurisdiction; or
- (b) If the Owner refuses or fails to properly perform the work required under (a), the Board may cause such work to be done and may charge the Owner for the cost

thereof as determined by the Board which charge until paid shall be assessed as a Special Individual Assessment upon the Owner's Lot and any Improvements thereon; or

- (c) Permit the Committee to ratify the action taken by the Owner, and the Committee may (but shall not be required to) condition such ratification upon the same conditions which the Committee may impose upon the giving of its prior consent under this Article.

5. Release of Claims. Neither Declarant, the Association, the Committee, the Board, nor the shareholders, officers, directors, managers, members, employees, attorneys, representatives and agents of any of them, shall be liable in damages to anyone submitting Plans and Specification to any of them for approval, or to any Owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such Plans or Specifications and no publication of any Design Guidelines, architectural bulletins or Lot information sheets shall be construed as representing or implying that such Plans and Specifications, guidelines, bulletins or sheets will, if followed, result in properly designed Improvements and/or Improvements built in a good and workmanlike manner. Every person or entity who submits Plans and Specifications, and every Owner of each and every Lot, agrees that he will not bring any action or suit against Declarant, the Association, the Committee, the Board, nor the shareholders, partners, officers, directors, manager, members, employees, attorneys, representatives and agents of any of them, to recover any such damages and hereby releases and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence, act or omission and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6. Variance. The Committee may authorize in writing variances from compliance with any of the Design Guidelines or this Declaration as to any Plans and Specifications when circumstances such as topography, Lot size, obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with specific considerations imposed by the Committee. Any variance requires the unanimous approval by the members of the Committee.

7. Commencement and Completion of Construction. In the event the Committee approves the Plans and Specifications for such work, and construction thereon does not commence within 180 days, then such approval shall be deemed revoked by the Committee. Subject to force majeure, all work covered by such approval shall be completed within one year of the commencement thereof. For the purposes of this Declaration, work on an Improvement shall be deemed to have "commenced" when the site has been graded or, in the case of buildings, when footings or foundations have been poured or otherwise installed.

ARTICLE IX - PROTECTIVE COVENANTS

1. Single Family Residential Use Only. Except as herein provided, each Lot and Residence shall be used only as a single family residence; provided that no Owner or Resident shall be precluded with respect to his Residence from maintaining a personal professional library, keeping

his personal business records or accounts therein or handling his personal business or professional calls or correspondence therefrom, and the Association may make further Rules and Regulations governing use for such purposes. For purposes of this restriction, and Section 2 below, a single family shall mean any Member or persons related by blood, adoption or marriage living with not more than one person who is not so related as a single household unit or no more than one person who is not so related as a single household unit or no more than two persons who are not so related living together as a single household unit, and the household employees of either such household unit. Except as herein provided, no Lot or any portion thereof shall be used for any non-residential purpose, including, without limitation, any retail use, commercial use, personal or professional services, restaurant use or office purpose. Except as herein provided, no Lot shall be leased or licensed and no Owner or Resident shall allow any occupancy of such Lot or portion thereof by anyone other than family members as described in this Section.

2. Single Family Dwellings Only. Except as herein provided, no Improvements shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling and its customary and usual accessory structures (as permitted by the Committee or as outlined in the Design Guidelines). Except as herein provided, no temporary structure of any kind shall be erected or placed upon any Lot.

3. Garages; Driveways; Parking. Each Residence shall be provided a garage for a minimum of two conventional automobiles, unless otherwise specifically approved by the Committee or as outlined in the Design Guidelines. Each Resident shall park and store his automobile within the garage or on the Resident's driveway. The garage door shall be closed at all times when not in use. No Resident shall park any automobile or vehicle on any Lot outside of any approved garage or on the Resident's driveway. No disabled or inoperable vehicles may be parked or stored in public view. Under no circumstances or conditions shall any automobile or other vehicle be parked on a non-paved portion of any Lot. Under no circumstances shall any 18-wheeler truck or 18-wheeler cab or any similar truck or large vehicle or equipment be parked or stored anywhere in the Property without the prior written consent of the Association, which may be withheld in the Association's sole discretion. Visitors may temporarily park their vehicles on the street for a period not to exceed 24 hours so long as the safe and orderly flow of traffic is not impaired; however, in no event may any boat, trailer, or recreational vehicle be parked on the street at any time. Any vehicle found to be in violation is subject to either or both (a) a "fine" imposed by the Association or (b) removal by a licensed towing company approved by the Association at Owner's expense.

4. Marketing Activities. Anything herein contained to the contrary notwithstanding, for a period of four years after the date hereof, Declarant reserves the right to use one or more of the Lots for purpose of marketing and selling Lots and/or Residences in the Property and lots and/or homes in other subdivisions or projects in Colorado County, Texas, now or hereafter being developed by Declarant or any of its affiliates now or hereafter existing. In connection with such use, Declarant (or its affiliate) may construct a sales office or other office facilities and one or more model homes on any one or more of the Lots, together with related facilities, including, without limitation, parking lots, storage areas and signs and other marketing facilities. On or before four years after the date hereof, Declarant shall cease any use of any such Lot which does not conform to this Declaration and shall cause any non-conforming facilities located on any such Lot to comply with this Declaration.

5. Vehicles. Except as otherwise provided herein, any truck (over 3/4 ton and excluding conventional pickups), bus, boat, boat trailer, mobile home, golf cart, motorcycle, recreational vehicle, campmobile, camper and any vehicle other than a conventional automobile shall, if brought within the Property by or on behalf of any Owner, Member or Resident, be stored, placed or parked within the garage on the appropriate Lot. A boat, trailer, or recreational vehicle may be parked on a Resident's driveway for no more than 48 hours to allow for loading and preparation for trips; however, no person may live in a recreational or other vehicle or boat at any time.

6. Construction Site Maintenance. If any construction on a Lot is approved by the Association pursuant to this Declaration, then the Owner of such Lot is responsible to keep the home site free of rubbish on a daily basis and street (to the crown) scraped clear of any mud accumulation. An Owner will not be allowed to store any excavation of soil on streets or adjacent sites. Soil runoff due to rain or irrigation will be removed promptly from streets and sidewalks by the Lot Owner. Building materials may be stored on a Lot only during construction activities, and, to the extent feasible, must be screened from public view.

7. Offensive Activities. No noxious or offensive activity or pollution affecting sight, sound or smell, as may be determined by the Association, shall be conducted or permitted on any portion of the Property. All garbage shall be kept in plastic bags or other containers required by the Association and, if applicable, the City of Columbus or other entity providing trash removal for the Property. Each Owner, Member and Resident shall observe and comply with any and all regulations or requirements promulgated by the Association and, if applicable, the City of Columbus or other entity providing trash removal for the Property in connection with the storage and removal of trash and garbage. No clothes, sheets, blankets, laundry items of any kind, or other articles shall be hung out on any Lot so as to be visible from any place outside the Residence. Each Lot shall be kept free of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. Each Owner, Member and Resident shall observe and comply with any and all regulations or requirements promulgated from time to time by the Association with respect to the hours of operation of tools, equipment, machines, and lawn maintenance equipment.

8. Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms, fireworks, explosive, or incendiary device, chemical, liquid, or powder shall be discharged upon the Property, and no open fires shall be lighted or permitted except in areas specifically designated for such purposes by the Association.

9. Garage Sales. No direct sales activities (excluding, however, activities of the Declarant, estate sales, and bona fide homebuilders and community activities specifically approved by the Board), garage sales, yard sales, patio sales, flea markets, bazaars, sample sales, promotional dinner parties or similar activities shall be conducted on any portion of the Property. The Association is specifically authorized to hold each year a community-wide market sale on such terms as the Board may from time to time authorize.

10. Pets. Any noise or odor emitted by, and any discharge or waste from, any animal (including, without limitation, dogs and cats) which can be seen, heard or smelled outside of the perimeter of the

subject Owner's Lot shall be deemed noxious and offensive and is therefore prohibited. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential Lot, except that dogs, cats, or other household pets may be kept, provided that they are not noxious, offensive, vicious, or dangerous as determined by the Association, and except as otherwise permitted by the Association. Any outside pen, cage, kennel, shelter, concrete pet pad, run, track, or other building, structure or device directly or indirectly related to animals which can be seen, heard or smelled by anyone other than the subject Owner must be approved by the Committee in its sole and absolute discretion. Each and every dog, cat, or other household pet, must be vaccinated with current shots and if not kept and confined within an enclosed non-visible portion of the Lot, must be leashed and accompanied by a person or Owner, when traveling beyond the perimeter of the Lot, and such person or Owner shall promptly clean and remove the waste of any pet.

11. Maintenance. Each Owner shall have the duty and responsibility, at his sole cost and expense to keep and maintain his Lot, and all Improvements therein and thereon, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include (without limitation): proper lawn care; prompt removal of all litter, trash, refuse and waste; keeping driveways in good repair and condition; maintenance of exteriors and promptly repairing any exterior damage; complying with all governmental, health and police requirements; and protecting against erosion. In addition to the foregoing, that portion of any Lot within the Orchard must be maintained to the same standards as the Park is maintained by the Association, as such standards may from time to time be established or amended by the Association. The Association, and its agents, during normal business hours, shall have the right (after ten days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any person or entity) and to take any action specified in the notice to remedy or abate said violation or breach. The cost of such remedy or abatement will be paid to the Association within thirty days after demand and a Special Individual Assessment upon the Lot affected.

12. Exterior Surfaces. Each Owner shall keep and maintain the quality and appearance of all exterior surfaces (including railings, painted surfaces and roof shingles), particularly those areas covered by an approved paint or stain, in good repair, condition and appearance.

13. Signs. Except as otherwise permitted by applicable law, no sign of any kind shall be displayed to the public view, except for signs which are part of Declarant's overall marketing plan for the Property. However, an Owner may place a temporary listing broker sign for the sale of its Lot if such sign is approved in advance in writing by the Committee, such approval not to be unreasonably withheld.

14. Use Limitations. The following uses are not permitted on any Lot: (a) any use which involves the raising, breeding, or keeping of any animals or poultry, except as otherwise permitted by the Association; (b) dangerous or unsafe use or storage of explosives, no oil, gasoline or flammable liquid shall be stored; (c) objectionable or nuisance uses by reason of odor, dust, fumes, smoke, noise, vibration, refuse matter or water-carried waste; (d) uses considered objectionable, such as junk or salvage yards, unscreened outside storage or material or suppliers, or uses that for

any other reason have an adverse effect on adjoining property or create unsightly conditions; (e) uses in violation of the laws of the United States or of the State of Texas or any political subdivision thereof, including applicable ordinances of the City of Columbus, Texas; and (f) any rental of all or a portion of the Lots or any retail use, commercial use, personal or professional services, restaurant use or office uses.

15. Grading and Drainage. All site grading shall result in drainage toward the streets or drainage swales. Drainage of paved surfaces shall be directed toward storm drainage inlets. No paved surface may drain directly onto landscaped areas or any other unpaved areas. All surface drainage, including roof drainage of buildings, shall be designed to conform to the overall drainage of the property. No Owner may ever change the grading and drainage on a Lot without the prior consent of the Committee. No Resident may obstruct any drainage easement, and must remove any obstruction created or caused by the Resident on demand by the Association.

16. Setback Lines. No structure or part thereof any kind shall be placed within the building setback line as shown on the Subdivision Plat; and no paving shall be placed within the paving setback line. The following improvements are expressly excluded from the foregoing setback requirements unless otherwise noted: (a) structures below and covered by the ground where such structures will not interfere with provisions for underground utilities; (b) steps, walks, driveways and curbing; (c) planter and retaining walls, fences or hedges; and (d) landscaping.

17. Variance. The Board may authorize in writing variances from the protective covenants contained in this Article when circumstances require, as determined by the Board in its sole discretion, but only in accordance with specific considerations imposed by the Board. Any variance requires the unanimous approval by the members of the Board.

18. Rules and Regulations. The Rules and Regulations approved by the Board may contain additional restrictions on the use and occupancy of any Lot consistent with the protective covenants contained in this Article.

ARTICLE X - EASEMENTS

1. Right of Entry for the Association. The Association shall have the right, but not the obligation, to enter into any Lot for emergency, security and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration and its Rules and Regulations, which right may be exercised by the Board, officers, agents, employees, attorneys, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Association.

2. Easements for Public Utilities. Easements for installation and maintenance of utilities and drainage facilities are shown on the Subdivision Plat. Except as may be otherwise permitted by the Committee, no Owner shall erect, construct or permit any obstructions or permanent Improvements

of any type or kind to exist within any easement area for public utilities which would restrict or adversely affect drainage or the use of the easement for its intended purpose. Each Owner assumes, full, complete and exclusive liability and responsibility for all costs and expenses related to damage, repair, relocation and restoration of such Improvements or fence. All utility meters, equipment, air conditioning compressors and similar items must be visually screened in a manner satisfactory to the Committee. Declarant reserves the right to relocate, make changes in, and additions to said easements, right-of-way dedications, limitations, reservations and grants for the purpose of most efficiency and economically developing the Improvements within the Property. Declarant reserves the additional right to locate, relocate, construct, erect and maintain, in and on any streets or roadways, sewer lines, water lines, electrical lines and conduits maintained by the Declarant, as well as other pipelines, conduits, wires, and public utility functions beneath or above the surface of the ground, with the right of access to the same at any time for the purposes of repair and maintenance. Neither the Association, the Declarant, nor any utility company using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants to shrubbery, streets, flowers, or any other property of the Owners situated on the land covered by those easements.

3. Easements for Maintenance by the Association. The Association is hereby granted the following easements for the purposes indicated: (i) a 10 foot easement centered along the western boundaries of Lots 1 and 18 for the maintenance, repair, and replacement of the fence along those boundaries; (ii) a blanket easement over the Detention Area for the purpose of construction, maintenance, repair, or replacement of any drainage control or management improvements, equipment, or systems within the Detention Area; and (iii) a blanket easement over the Orchard, for the purpose of maintenance, repair, and replacement of any recreation amenities, maintenance equipment and facilities, and landscape irrigation equipment and systems within the Orchard that are owned or maintained by the Association. However, the granting of such easements to the Association does not relieve any Owner of the obligation to otherwise maintain and repair the Owner's Lot as provided herein.

ARTICLE XI - USE OF THE COMMON AREAS

1. Members Easements of Enjoyment. Every Member shall have a nonexclusive right and easement of use, recreation and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title of each respective Lot. Such easement shall not give such person the right to make alterations, additions or Improvements to the Common Areas.

2. Title to the Common Areas. The Declarant shall dedicate and convey the Common Areas to the Association.

3. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association owning such Common Areas, in its discretion to make, amend, expand, modify, publish and enforce reasonable Rules and Regulations governing the use and enjoyment of the Common Areas, or any part thereof, all of which reasonable Rules and Regulations shall be binding upon, complied with, and

observed by each Member. These Rules and Regulations may include provisions to charge reasonable admission or other fees for the use of any facility now or hereafter situated or constructed upon the Common Areas and to govern and control the use of such Common Areas by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may wish to use such Common Areas or any part thereof at the same time. Each Owner, by acceptance of a deed for any Lot, acknowledges and agrees that the use, enjoyment, and marketability of the Owner's Lot may be affected by this provision and that the Rules and Regulations may change from time to time. The Board has the authority to enforce the Rules and Regulations by all appropriate means, including without limitation the imposition of fines, if notice and an opportunity to be heard are first given, and an Owner found to have violated the Rules and Regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

- (b) The right of the Association to suspend voting and membership rights of an Owner, including the right to use any portion of the Common Areas, for any period during which any Assessment against that Owner's Lot remains unpaid, and for a default under this Declaration or for an infraction of its Rules and Regulations for the duration of the default or infraction, provided, that the Association shall not deny the use of the Common Areas as is necessary for access to each Lot, including, without limitation, any streets and sidewalks.
- (c) Subject to the affirmative vote of 66 $\frac{2}{3}$ % of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum is present and which is duly called and held for the following purpose: the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purpose and upon such conditions as the Board may determine.
- (d) The right of the Association to grant easements in and to the Common Areas to any public agency, authority, or utility for such purposes as may benefit the Property, the Owners, or the Lots.
- (e) The right of the Association to borrow money for the purpose of improving the Common Areas or any portion thereof, for acquiring additional Common Areas, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a deed of trust, mortgage, or other security interest conveying all or any portion of the Common Areas as security for repayment of such loan, subject to the affirmative vote of 66 $\frac{2}{3}$ % of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum is present and which is duly called and held for such purpose.

ARTICLE XII - GENERAL PROVISIONS

1. Duration. This Declaration shall run for an original fifty year term beginning on the date of recordation of this Declaration in the County Clerk's Office of Colorado County, Texas, after which time this Declaration shall be automatically extended for successive periods of ten years unless an instrument is signed by the Members entitled to cast 90% of the votes of the Association and recorded in the County Clerk's Office of Colorado County, Texas, which contains and sets forth an agreement to terminate this Declaration.

2. Amendments. This Declaration is expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as provided herein. This Declaration may be amended as follows:

- (a) Provided that there is no adverse affect to the title or value of any Owner's property or that any such Owner shall consent thereto, this Declaration may be amended unilaterally at any time and from time to time by Declarant as long as Declarant owns any portion of the Property, (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (ii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on the property subject to this Declaration; or (iii) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the property subject to this Declaration.
- (b) This Declaration may be amended upon the express written consent of a majority of the Board and the Members entitled to cast at least 51% of the votes of the Association.

All amendments shall be recorded in the County Clerk's Office of Colorado County, Texas.

3. Enforcement; Resolution of Certain Disputes. This Declaration may be enforced by the Declarant, the Association or any Owner. Enforcement of this Declaration may be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by this Declaration; but failure to the Declarant, the Association or any Owner to enforce any covenant, restriction or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees from the nonprevailing party. Matters of dispute or disagreement between owners with respect to interpretation or application of the Protective Covenants in Article IX of this Declaration shall be determined by the Board. Matters pertaining to Architectural and Design Review in Article VIII shall be determined by the Committee. These respective determinations (absent arbitrary and capricious conduct or manifest error) shall be final and binding upon all Owners.

4. Validity. Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on any Lot. Invalidation of any provision of this Declaration, or any portion thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect.

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

6. Safety and Security. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE CONSIDERED TO HAVE A DUTY TO INSURE OR GUARANTEE THE SAFETY OF THE OWNERS OF LOTS OR THE PROPERTY WITHIN THE SUBDIVISION OR TO BE A PROVIDER OF SECURITY SERVICES. WHETHER OR NOT SUCH SERVICES ARE PROVIDED BY DECLARANT OR THE ASSOCIATION, NEITHER OF THEM SHALL BE HELD LIABLE FOR ANY LOSS, DAMAGE, OR INJURY BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES OR SERVICES TAKEN OR PROVIDED. EACH OWNER AND ANY PERMITTED TENANT, GUEST, OR INVITEE ACKNOWLEDGES AND UNDERSTANDS THAT NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR RESPECTIVE MEMBERS, MANAGERS, OFFICERS, SHAREHOLDERS, OR DIRECTORS ARE SECURITY SERVICE PROVIDERS AND ACKNOWLEDGES THAT NONE OF THEM HAVE MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATING TO ANY SAFETY OR SECURITY MEASURES UNDERTAKEN WITHIN THE SUBDIVISION.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the date of the acknowledgement to be effective as of the _____ day of _____, 2006.

DIC INVESTMENTS, LLC

By: _____
Terry Sablatura, President

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2006, by Terry Sablatura, President of DIC INVESTMENTS, LLC, a Texas limited liability company, on behalf of said entity.

Notary Public in and for the State of Texas

