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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

*Lee*

**WINDSTONE COLONY**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR WINDSTONE COLONY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDSTONE COLONY (this "Declaration"), made as of the date hereinafter set forth by Windstone Development, Ltd., a Texas limited partnership (hereinafter referred to as "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of land in Harris County, Texas, which has been platted and sub-divided as Windstone Colony, Section 1, 22.4838 acres being a replat of Unrestricted Reserve A of Windstone, a subdivision recorded in Volume 337, page 115 of the Map Records of Harris County, which replat is recorded under Film Code No. 438142 of the Map Records of Harris County, Texas (the "Subdivision"). When additional tracts of land are annexed into the jurisdiction of the Association and developed for single family purposes, the Subdivision and such additional subdivisions shall be collectively referred to as the "Subdivisions."

WHEREAS, Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of the property within the Subdivisions and subjected to this Declaration and Declarant desires to provide a flexible and reasonable procedure for the overall development of such property and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such property.

NOW, THEREFORE, Declarant hereby declares that the Lots (as hereinafter defined) within the Subdivisions are hereby subjected to the provisions of this Declaration and such property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**ARTICLE I**

**DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings:

**SECTION 1.** "Area of Common Responsibility" shall mean the Common Area together with those areas, if any, which by contract or agreement become the responsibility of the Association. Road rights-of-ways within or adjacent to the Properties may be part of the Area of Common Responsibility.

**SECTION 2.** "Articles of Incorporation" means the Articles of Incorporation of the Windstone Colony Community Association, Inc. and any amendments thereto, as filed with the

Secretary of State of the State of Texas.

**SECTION 3.** "Assessments" shall mean and refer to the Residential Assessments (as hereinafter defined), the Neighborhood Assessments (as hereinafter defined), the Special Assessments (as hereinafter defined), and any other amounts or sums due by any Owner to the Association pursuant to the provisions of this Declaration or a Supplemental Declaration, levied by the Association for purposes of obtaining funds to pay Association Expenses as provided herein.

**SECTION 4.** "Association" shall mean and refer to Windstone Colony Community Association, Inc., a non-profit, non-stock membership corporation incorporated under the laws of the State of Texas, its successors and assigns.

**SECTION 5.** "Association Expenses" shall mean and include the actual and estimated expenses of operating the Association, both for general and Neighborhood purposes, as may be found to be necessary and appropriate by the Board of Directions of the Association pursuant to this Declaration and the Association's By-Laws and Articles of Incorporation.

**SECTION 6.** "Board of Directors" or "Board" shall mean the governing body of the Association whose members shall be appointed by the Declarant during the Class B Control Period and thereafter elected by the Members.

**SECTION 7.** "Builder" shall mean and refer to any Person undertaking the construction of a Single Family Residence on a Lot for the purpose of selling same.

**SECTION 8.** "Builder Guidelines" shall mean and refer to written guidelines for the construction of improvements adopted by the Windstone Colony ARC, as amended from time to time. The Builder Guidelines may contain provisions applicable to all of the Lots within the jurisdiction of the Association, including the Lots within the Subdivisions, as well as certain provisions which are applicable only to the Lots in a specific Neighborhood or a specific platted subdivision.

**SECTION 9.** "By-Laws" shall mean the By-Laws of the Association, as amended from time to time.

**SECTION 10.** "Class B Control Period" means the period of time ending on the date on which the Declarant has conveyed the last Lot it owns in the Properties, during which period the Class "B" Member is entitled to appoint and remove the members of the Board of Directors.

**SECTION 11.** "Common Area" shall mean and refer to any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners and Occupants.

**SECTION 12.** "Declarant" shall mean and refer to Windstone Development, Ltd., a Texas limited partnership, regardless of whether it owns any Lots subject to this Declaration, and its successors and assigns, provided that in the case of an assign in an instrument of conveyance or by a separate written instrument placed of record in the real property records of Harris County, Texas.

the assign is designated as the "Declarant" by the Declarant hereunder at such time. Upon such designation of a successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease.

**SECTION 13.** "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Windstone Colony as it may hereafter be amended in accordance with the provisions hereof.

**SECTION 14.** "Exclusive Common Area" shall mean and refer to the property and facilities, if any, which by plat or other recorded instrument are restricted for use solely by the Owners and Occupants of a certain Neighborhood, which property and facilities may be maintained by the Association at the expense of such Neighborhood with Neighborhood Assessments.

**SECTION 15.** "Landscaping Guidelines" shall mean and refer to landscape design, installation and maintenance criteria for the Lots which are adopted by the Windstone Colony ARC. The Landscaping Guidelines may be included within and be a part of the Builder Guidelines.

**SECTION 16.** "Lot" shall mean and refer to any portion of the Properties, whether developed or undeveloped, upon which a Single Family Residence has been constructed or it is intended by the Declarant that a Single Family Residence be constructed, excluding reserve tracts, but including lots created by the platting or replatting of a reserve tract. "Lots" shall mean and refer to each Lot and all of them. In the case of a parcel of land within the jurisdiction of the Association planned for single family residential development which has not been platted into Lots, the parcel shall be deemed to contain the number of Lots designated by the Declarant on the development plan for such parcel of land unless or until a different number of Lots is platted.

**SECTION 17.** "Member" shall refer to every Person entitled to membership in the Association, as provided herein.

**SECTION 18.** "Modifications Committee" refers to the committee which may be created by the Board of Directors as specified in Section 2 of Article VI of this Declaration for the purpose of reviewing plans submitted for the alteration or modification of the improvements on a Lot after construction of the initial improvements.

**SECTION 19.** "Mortgage" shall mean and refer to a deed of trust, mortgage or other similar security instrument granting, creating, or conveying a lien or security interest upon a Lot.

**SECTION 20.** "Mortgagee" shall mean a beneficiary or holder of a Mortgage.

**SECTION 21.** "Neighborhood" shall mean and refer to a separately designated and denominated area within the Properties. If separate Neighborhood status is desired, the Declarant shall designate in a Supplemental Declaration or other recorded instrument that such property shall constitute a separate Neighborhood. All property within the jurisdiction of the Association which is not included within a designated Neighborhood shall be considered a part of a single unnamed Neighborhood.

**SECTION 22.** "Neighborhood Assessments" shall mean assessments levied by the Board

of Directors for payment of the Neighborhood Expenses of a particular Neighborhood.

**SECTION 23.** "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of the Owners and Occupants of the Lots within a particular Neighborhood or Neighborhoods.

**SECTION 24.** "Occupant" shall mean any person occupying a Single Family Residence within the Properties for any period of time, regardless of whether such person is a tenant or the Owner of such property.

**SECTION 25.** "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to a Lot within the Properties, including a Person who has entered into a contract to sell his Lot, but excluding those having an interest merely as security for the performance of an obligation or those owning an interest in the mineral estate.

**SECTION 26.** "Person" shall mean any natural person, corporation, joint venture, partnership, association, trust or other legal entity.

**SECTION 27.** "Properties" shall mean and refer to (i) the real property contained within the Subdivisions described in the preambles to this Declarant, and (ii) such other real property as may hereafter be brought within the jurisdiction of the Association in accordance with the Provisions of this Declaration.

**SECTION 28.** "Residential Assessments" shall mean assessments levied by the Board of Directors for the purpose of obtaining funds to pay those Association Expenses which are determined by the Board of Directors to benefit all Owners and Occupants of the Lots within the Properties.

**SECTION 29.** "Single Family" shall mean and refer to any number of persons living together as a single household unit, and the household employees of such household unit.

**SECTION 30.** "Single Family Residence" shall mean and refer to a detached residence constructed on a single Lot or on two (2) or more adjacent Lots owned by an Owner which are consolidated into a single building site.

**SECTION 31.** "Special Assessments" shall mean the assessments levied by the Board of Directors pursuant to Section 2(c) of Article III hereof for the purposes specified therein.

**SECTION 32.** "Street" shall refer to any street, boulevard, road, alley, lane, avenue, or thoroughfare within or adjacent to the Properties.

**SECTION 33.** "Supplemental Declaration" shall refer to an instrument which imposes restrictions on a portion of the Properties which may be enforced by the Association including particularly (i) any declaration of supplemental restrictions filed by Declarant imposing more stringent or detailed restrictions or additional restrictions on one or more Neighborhoods within the Properties, or (ii) any supplemental declaration of annexation filed by Declarant bringing additional property within the scheme of the Declaration under the authority provided in the Declaration.

**SECTION 34.** "Windstone Colony Architectural Review Committee" or "Windstone Colony ARC" refers to the committee created by Section 2 of Article VI of this Declaration which has the power to adopt the Builder Guidelines and the right to approve plans and specifications for construction of proposed improvements on the Lots within the jurisdiction of the Association as set forth herein and (unless a Modifications Committee is created in accordance with the provisions hereof), the right to approve plans and specifications for the alteration or modification of improvements on the Lots.

## ARTICLE II

### WINDSTONE COLONY COMMUNITY ASSOCIATION, INC.

**SECTION 1. ORGANIZATION.** The Association has been organized and formed as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure, and management of the maintenance funds, enforcement of the restrictions contained herein and in Supplemental Declarations, providing for the maintenance and preservation of the Area of Common Responsibility and the facilities of the Association and architectural control of the Lots.

**SECTION 2. MEMBERSHIP.** Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership in the Association may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Lot owned by a corporation or partnership shall be exercised by the Individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Board, subject to the provisions of this Declaration and the By-Laws.

**SECTION 3. VOTING.** The Association shall have two classes of membership, Class "A" and Class "B", as follows:

(a) **CLASS A.** Class "A" Members shall be all Owners with the exception of the Class "B" Member. Class "A" Members shall be entitled to (1) one vote for each Lot of which they are the Owner. In any situation where a Member is entitled personally to exercise the vote for a Lot and more than one Person holds the interest in a Lot required for membership in the Association, the vote for such Lot shall be exercised as those Persons among themselves determine and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote for such Lot shall be suspended in the event more than one Person seeks to exercise it.

(b) **CLASS B.** The Class "B" Member shall be the Declarant which shall have five (5) votes for each Lot it owns in the Properties. The Class "B" Member shall be entitled to appoint and remove the members of the Board of Directors during the Class B Control Period. The Class "B" Membership shall cease upon (i) the expiration of the Class B Control Period or (ii) on such earlier

date that the Declarant, in its sole discretion, so determines and records an instrument to such effect in the real property records of Harris County, Texas. In the event the Class "B" Membership ceases pursuant to clause (ii), the Declarant shall thereafter be a Class "A" Member with respect to the Lots it owns.

**SECTION 4. NEIGHBORHOODS.** The Declarant shall have the right to designate and denominate any area within the Properties as a Neighborhood by a Supplemental Declaration or other recorded instrument. All portions of the Properties not included within a designated Neighborhood shall be considered a part of a single unnamed Neighborhood. If a platted subdivision has not been designated by the Declarant as a Neighborhood, the Owners of a majority of the Lots in such platted subdivision may petition the Board of Directors for Neighborhood status. In addition, by petition signed by the Owners of the majority of the Lots in a Neighborhood, a Neighborhood may apply to the Board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhoods, or by petition signed by the Owners of the majority of the Lots in each of two (2) Neighborhoods, such two (2) Neighborhoods may request consolidation into one (1) Neighborhood. The granting of any such petition shall be at the sole discretion of the Board of Directors.

**ARTICLE III**

**COVENANT FOR MAINTENANCE ASSESSMENTS.**

**SECTION 1. PURPOSE OF ASSESSMENTS.** The Assessments provided for in this Declaration shall be used by the Association to maintain and keep in good repair the Area of Common Responsibility and for the general purposes of promoting the common benefit of the Owners and Occupants in the Properties. The judgment of the Board of Directors as to the expenditure of Assessments shall be final and conclusive so long as its judgment is exercised in good faith. Funds obtained by the Association from Assessments may be used to finance all or any of the following:

- i. Operation, mowing, maintenance, repair, and improvement of the Area of Common Responsibility, including fences constructed by or on behalf of the Association pursuant to Article IV, Section 6, entryways, signage, road rights-of-way and easements within, adjacent to and in the vicinity of the Properties;
- ii. Payment of taxes and premiums for insurance coverage in connection with the Common Area and for directors and officers liability insurance;
- iii. Paying the cost of labor, equipment (including expense of leasing any equipment), material, and any associated management or supervisory services and fees;
- iv. Paying the cost and fees of a manager or firm retained to carry out the duties of the Association or to manage the affairs and property of the Association;
- v. Maintaining or replacing any landscaping in the Area of Common Responsibility;
- vi. Designing, purchasing and installing any improvements to the Area of Common Responsibility;

- vii. Removing debris from the Area of Common Responsibility;
- viii. Contracting for the installation and maintenance of street lights in the Properties and paying the costs of electricity for such lights;
- ix. Collecting and disposing of trash, garbage, rubbish and other similar materials if the Board elects to provide such service to the Properties;
- x. Payment of legal fees and expenses incurred to collect assessments and enforce this Declaration;
- xi. Employing policemen or watchmen;
- xii. Contracting for insect and pest control such as mosquito fogging;
- xiii. Carrying out the duties of the Board of Directors of the Association;
- xiv. Creation and funding of such reserve funds as the Board of Directors of the Association deems necessary;
- xv. Paying taxes;
- xvi. Providing contractors to manage and maintain recreational facilities (including, without limitation, swimming pools, bath houses and playgrounds); and
- xvii. Carrying out such purposes of the Association as generally benefit the Members of the Association.

In addition to the above-mentioned purposes for which funds may be used by the Association, it specifically shall be the obligation of the Association to maintain, repair and replace those fences constructed by or on behalf of the Association along the rear and side lot lines of all Lots that abut a Common Area, perimeter boundary of the Properties, pipeline easement or Street. Pursuant to the provisions of Article IV, Section 6, the Association is granted a right of access across each Lot for purposes of performing such functions. The Association, however, shall not be required to construct, repair or maintain fences constructed across the front of a Lot, or a fence constructed between two (2) adjoining Lots.

**SECTION 2. TYPES OF ASSESSMENTS.** Each Owner by acceptance of a deed to any Lot in the Properties, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (i) Residential Assessments; (ii) Neighborhood Assessments, if applicable; and (iii) Special Assessments to be established and collected as hereinafter provided.

(a) Residential Assessments . Residential Assessments shall be levied for Association Expenses which are determined by the Board to benefit all Members. The initial annual Residential Assessment shall be \$330.00 per Lot, which shall not be increased more than 10% above the annual Residential Assessment for the previous year without a majority vote of the Members (including both Class "A" Members and Class "B" Members). Such expenses benefitting all Members shall be all

Association Expenses except the expenses which are determined by the Board to benefit or provide a higher level of service to a particular Neighborhood or Neighborhoods. The good faith determination by the Board of which Association Expenses constitute Neighborhood Expenses shall be final. The initial annual Residential Assessment shall commence on the date that the first Lot in the Properties is conveyed by the Declarant or on such later date as the Board determines and shall be due and payable thirty (30) days thereafter. If such assessment commences on a date other than January 1, such assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, annual Residential Assessments shall be levied for each calendar year in advance and shall be due and payable on January 1 unless a different date is specified by the Board.

(b) Neighborhood Assessments. Neighborhood Assessments shall be levied against the Lots in a particular Neighborhood where the Board has determined that certain Association Expenses benefit only that Neighborhood. Upon written request by the Owners of a majority of the Lots within a Neighborhood, the Board shall initiate a service benefitting only that particular Neighborhood which shall be paid for by a Neighborhood Assessment or the Board shall discontinue a service previously provided to a Neighborhood; provided, however, the commencement or discontinuance of any such service during the Class B Control Period must be approved by the Declarant. Association Expenses benefitting only a particular Neighborhood may include, without limitation, Association Expenses incurred for maintenance and repair of the following items and provision of the following services within a particular Neighborhood: private streets, back door or garage trash pick-up service as opposed to curb side service, individual mailboxes, and operation and maintenance of Exclusive Common Areas, landscaping, fountains, lighting and signage within the particular Neighborhood. The total Neighborhood Assessment applicable to a particular Neighborhood shall be divided by the number of Lots within such Neighborhood and each Owner of a Lot contained within the concerned Neighborhood shall be assessed an amount equal to the quotient so obtained.

(c) Special Assessments. In addition to the other Assessments authorized herein, the Board may levy one or more Special Assessments in any year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located upon the Common Area, including fixtures and personal property related thereto: provided, however, except as otherwise hereinafter provided, any such Special Assessment must have the written consent of the Class "B" Member, as long as such membership exists, and a per Lot Special Assessment in an amount greater than ten percent (10%) of the most recent annual Residential Assessment per Lot must be approved by majority vote of the Class "A" Members present in person or by proxy at a meeting of the Members.

The Board may also levy one or more Special Assessments in any fiscal year for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, or repair or replacement of a capital improvement located upon Exclusive Common Area, including fixtures and personal property related thereto; provided, however, that any such Special Assessment shall have the affirmative vote or written consent of the Owners of a majority of the Lots in the Neighborhood or Neighborhoods entitled to exclusive use of such Exclusive Common Area.

If a Special Assessment is approved as herein required and levied, it shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed. Special Assessments shall be allocated among all Owners in the same manner as Residential Assessments unless the purpose of the Special Assessment is to provide funds to be used for Exclusive Common Area facilities, in which event the Special Assessment shall be allocated solely among the Owners of the Lots in the Neighborhood or Neighborhoods entitled to use the applicable Exclusive Common Area in the same manner as a Neighborhood Assessment.

**SECTION 3. RATES OF ASSESSMENT.** Assessment shall be fixed at uniform rates on all Lots; provided, however, the rate applicable to Lots owned by the Declarant or a Builder shall be equal to one-half (½) of the full assessment amount. The rate of assessment for a Lot shall change upon its conveyance by the Declarant or Builder, with an appropriate proration of the assessments for the year of the ownership change.

**SECTION 4. CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** All Assessments, together with interest commencing on the due date at a rate of interest to be set from time to time by the Board of Directors not in excess of the maximum lawful rate, costs (specifically including, but not limited to, any flat charges or percentage fees charged by any collection agencies used by the Association in collecting Assessments), and reasonable attorney's fees and court costs actually incurred, shall be a charge on the land and shall be secured by a continuing lien upon the land against which each Assessment is made. Each such Assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such land at the time the Assessment fell due. Each such Owner shall be personally liable for his or her portion of each Assessment coming due while he or she is the Owner of the land, and each Assessment thereafter coming due unless and until such Owner notifies the Association of the sale or conveyance of the land against which the Assessment is made as hereinafter provided in this Section 4.

In order to extinguish any Person's personal liability with regard to Assessments coming due following the sale or conveyance of the Lot owned by such Person, such Person shall be obligated to notify the Association of such Person's sale or conveyance of the Lot against which Assessments may be levied. In that regard, each Person who at any time owned any Lot in the Properties against which Assessments may be levied shall no longer be liable or responsible for payment of Assessments coming due after the date upon which such Person furnishes to the Association a copy of the executed instrument of conveyance by which fee title to the Lot previously owned by such Person was conveyed or transferred to another Person, and the mailing address of the Person to whom such Lot was conveyed or transferred. Upon receipt of such information, the Association shall cause the name and address of the new Owner to be substituted for that of the prior Owner on the records of the Association, and the prior Owner shall no longer be liable or responsible for Assessments subsequently coming due. Each Person owning a Lot against which Assessments may be made shall have the obligation to notify the Association of any change in its address, and notice of any such change shall become effective five (5) days after written notice thereof has been provided to the Association. With regard to mailing notices of Assessments payable by any Person to the Association, the Association shall be deemed to have satisfied any obligation that it might have to provide written notices or bills if the same are mailed or delivered to the Owner at the address of such Owner as reflected on the records of the Association, and no such Owner or other

Person liable for the payment of any Assessment shall escape such liability or be entitled to any deferral or abatement of interest or any late charges or collection costs with regard to delinquent Assessments on the basis of such persons failure to receive notice thereof if the Association sent such notice by regular U.S. Mail to the most recent address of the Person according to the records of the Association.

Residential Assessments and Neighborhood Assessments shall be payable annually on a date specified by the Board of Directors; provided, however, the Board may, at its option, require payment of such Assessments in monthly or quarterly installments. Special Assessments shall be paid in such manner and on such date or dates as may be fixed by the Board.

**SECTION 5. COMPUTATION.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during each calendar year or such other fiscal year as the Board may adopt, taking into consideration any subsidy payments to be received from the Declarant pursuant to an agreement with the Association and any additional property to be annexed into the jurisdiction of the Association in the forthcoming year. Such budget may include a capital contribution or reserve in accordance with a capital budget separately prepared and separate line items for expenses benefitting each Neighborhood which will be paid with a Neighborhood Assessment. In the event that the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year. The Association Expenses shall be allocated as follows:

- i. The amount of all estimated expenses to be incurred for the sole benefit of a particular Neighborhood shall be determined for each Neighborhood and that portion of the total estimated Association Expenses attributable to a particular Neighborhood shall be allocated among the Owners of the Lots in the Neighborhood as provided in Section 2(b) of this Article III, and shall be levied as Neighborhood Assessments; and
- ii. The remaining Association Expenses shall be levied as Residential Assessments, and shall be allocated among the owners of all of the Lots in the Properties as provided in Section 2(a) of this Article III.

The Board shall in good faith attempt to cause the budget and the Assessments to be levied against each owner for the following year to be delivered to each Member at least thirty (30) days prior to the end of the current year.

**SECTION 6. LIEN FOR ASSESSMENTS.** All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with interest, collection and other costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on the property owned by each Owner in favor of the Association. All Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the real property records of Harris County, Texas shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for Assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**SECTION 7. SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien securing the Assessments provided for herein shall be subordinate to (i) liens of ad valorem taxes and (ii) the lien of any Mortgage which has been recorded in the real property records of Harris County, Texas. Sale or transfer of any Lot subject to this Declaration shall not affect the lien hereby created. However, the sale or transfer of any Lot pursuant to foreclosure of a Mortgage or any conveyance in lieu thereof, shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

**SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS, REMEDIES OF THE ASSOCIATION.** Any Assessments which are not paid in full by the date specified by the Board shall be delinquent. Any delinquent Assessment shall commence to bear interest on the due date at such interest rate as the Board may from time to time determine not in excess of the maximum lawful rate of interest. If the Assessment is not paid when due, the lien herein retained and created against the affected Lot shall secure the Assessment due, interest thereon from the date due and payable, all costs of collection, court costs, reasonable attorney's fees actually incurred, and any other amount provided or permitted by law. In the event that the Assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit for collection against the Owner personally obligated to pay the Assessment or foreclose the lien created and reserved hereby against the Lot of such Owner.

The Association's lien is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien shall be or is required. By acquiring a Lot, an Owner grants to the Association a power of sale in connection with the Association's lien. By written resolution, the Board of Directors of the Association may appoint, from time to time, an officer, agent, trustee, or attorney of the Association to exercise the power of sale on behalf of the Association. The Association shall exercise its power of sale pursuant to the Texas Property Code, and any applicable provision(s), amendment(s), or recodifications thereof in effect at the time of the exercise of such power of sale. The Association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created hereby. Costs of foreclosure may be added to the amount owed by the Owner to the Association. An Owner may not petition a Court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the Owner's debt. The Association may bid for and purchase the Lot at the foreclosure sale utilizing funds of the Association. The Association may own, lease, encumber, exchange, sell, or convey a Lot. The purchaser at any such foreclosure sale shall be entitled to sue for recovery of possession of the Lot by an action of forcible detainer without the necessity of giving any notice to the former owner or owners of the Lot sold at foreclosure. The Owner shall have no right of redemption after or resulting from a foreclosure sale of the Association's lien. Nothing herein shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien. At any time before a nonjudicial foreclosure sale, an Owner of a Lot may avoid foreclosure by paying all amounts due the Association. Foreclosure of a tax lien attaching against a Lot under Chapter 32, Tax Code, shall not discharge the Association's lien under this paragraph for amounts becoming due to the Association after the date of foreclosure of the tax lien.

No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, by non-use of Common Area or abandonment of the Lot owned by such

Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of Declarant and each other Owner.

All payments shall be applied first to costs and attorney's fees, then to interest, and then to delinquent Assessments.

**SECTION 9. ASSESSMENT OBLIGATION OF DECLARANT.** Subject to the further provisions hereof, Declarant, on behalf of itself and its successors and assigns to whom its rights as Declarant are expressly assigned, covenants and agrees to pay the Assessments as provided herein for the Lots that it owns. However, as long as the Class "B" membership exists in the Association, the Declarant may annually elect by written notice to the Association, either to pay Assessments on its Lots as herein provided or to pay the Association the difference between the amount of Assessments collected on all other Lots subject to assessment and the amount of the actual expenditures incurred to operate the Association during the year. The payment by Declarant of such a subsidy in any year in lieu of Assessments shall under no circumstances obligate the Declarant to pay a subsidy in a future year or years.

Notwithstanding anything to the contrary herein, the Declarant may pay Assessments or a subsidy in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind payment"). The amount by which Assessments or a subsidy shall be decreased as a result of any in kind payment shall be the fair market value of the in-kind payment. If the Declarant and the Board agree as to the value of any in-kind payment, the value shall be as agreed. If the Board and the Declarant cannot agree as to the value of any in-kind payment, the Declarant shall supply the Board with a detailed explanation of the service performed and material furnished, and the Board shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Board and the Declarant are still unable to agree on the value of the in-kind payment, the value shall be deemed to be the average of the bids received from the three (3) independent contractors.

**SECTION 10. LOANS BY DECLARANT.** Declarant may, at its sole discretion, loan to the Association, on such terms and conditions as may be acceptable to the Board of Directors, the difference between the amount of assessments collected on Properties subject to assessments and the amount of actual expenditures required to operate the Association. The Declarant's loan to the Association hereunder may be in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. The Board of Directors is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the expenses.

## ARTICLE IV

RIGHTS IN THE COMMON AREA

**SECTION 1. OWNER'S RIGHTS.** Subject to the further provisions of this Section, every Member shall have a right of enjoyment to the recreational facilities or amenities located on the Common Area, and such right shall be appurtenant to and shall pass with the title to the Lot owned by such Member. Such right of enjoyment shall be subject to the following:

- (a) The Association shall have the right to charge reasonable admission and other fees for the use of any facility situated upon the Common Area.
- (b) The Association shall have the right to borrow money and to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred.
- (c) The Association shall have the right to take such steps as are reasonably necessary to protect the Common Area against foreclosure of any such mortgage.
- (d) The Association shall have the right to suspend the enjoyment rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid in excess of thirty (30) days.
- (e) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Common Area, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.
- (f) The Association shall have the right to dedicate, sell or convey all or any part of the Common Area and the right to grant or dedicate easements over the Common Area to public or private utility companies.
- (g) The Association shall have the right to enter into agreements pursuant to which individuals who are not Members of the Association are granted the right to use the Common Area and the facilities located thereupon.

**SECTION 2. DELEGATION OF USE.** Each Member shall have the right to extend his right of enjoyment to the Common Area to the members of his family and to such guests or other persons as may be permitted by the Association. An Owner shall be deemed to have made a delegation of all rights to use the Common Area to the Occupants of any leased residence.

**SECTION 3. EASEMENTS - GENERAL.** Easements for the installation and maintenance of utilities are reserved as shown and provided for on the plats of the Properties and/or as dedicated by separate instruments. Neither Declarant nor any utility company or authorized political subdivision using the easements referred to herein shall be liable for any damages done by them or their assigns, agents, employees or servants, to fences, walls, shrubbery, trees, flowers, improvements or other property of the Owner situated on the land covered by such easements as a

result of construction, maintenance or repair work conducted by such parties or their assigns, agents, employees or servants.

**SECTION 4. EASEMENTS FOR UTILITIES AND PUBLIC SERVICES.**

a) There is hereby granted to the Association, to Harris County, and to any other public authority or agency, utility district, or public or private utility company, a perpetual easement upon, over, under, and across (i) the Common Area, and (ii) those portions of all Lots as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems and detention ponds, electrical, gas, telephone, water and sewer lines, street lights, street signs and traffic signs; provided, however, that such easements shall not unreasonably affect the ability to develop, market or the value of any Lot. To the extent possible, utility lines and facilities serving the Properties and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permitted for the providing utility company or other supplier or servicer, with respect to the portions of the Properties encumbered, (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to excavate or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) There is also hereby granted to Harris County and to such other governmental authority or agency as shall from time to time have jurisdiction over the Properties (or any portion thereof) with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over and across all of the Properties for purposes of performing such duties and activities related to law enforcement and fire protection in the Properties as shall be required or appropriate from time to time by such governmental authorities under applicable law.

**SECTION 5. EASEMENTS FOR ASSOCIATION.** There is hereby granted a general right and easement to the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association, and any employees of such manager, to enter upon any Lot or any portion thereof in the performance of their respective duties or the enforcement of the provisions of the Declaration. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or Occupant of the residence directly affected thereby.

**SECTION 6. FENCE MAINTENANCE EASEMENT.** There is granted to the Association, its successors and assigns, an easement across each Lot for the construction of a fence or wall or maintenance of an existing fence or wall, together with the right of ingress and egress for such purposes without liability to the Owner for damages arising from the use of the easement. In addition, any fence or wall being maintained by the Association shall remain unobstructed of any structures or plantings that would prohibit access thereto for construction and maintenance purposes.

**SECTION 7. TELECOMMUNICATION SERVICES.** Some or all of the following telecommunication services may be provided by one or more different utility companies to the Single Family Residences within the Properties: (i) local and long-distance telephone service; (ii) voice mail service; (iii) cable television service; (iv) central home systems for fire and burglary detection;

(v) electronic utility meter reading systems; (vi) electronic mail systems; and (viii) other similar telecommunication services. The Builder Guidelines adopted by the Windstone Colony ARC may require that each Single Family Residence constructed in the Properties include wiring and other necessary facilities to enable the Single Family Residence access to telecommunication services. The Windstone Colony ARC shall have the right from time to time to promulgate specifications for the wiring and other necessary facilities to be installed. The installation of such wiring in a Single Family Residence does not obligate the Owner to accept or pay for any of the telecommunication services that may be provided within the Properties.

### **SECTION 8. SECURITY SERVICES.**

a) **Security Services.** The association may provide security services for the Properties or support certain activities to make the Properties safer and shall be authorized to enter into contracts for such purposes. The Board shall be permitted to modify or cancel existing services provided, if any, or to provide additional services. Nothing contained herein is a representation as to what services will or will not be provided.

(b) **DISCLAIMER CONCERNING SECURITY.** NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, HOWEVER, AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND WINDSTONE COLONY ARC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT, THE WINDSTONE COLONY ARC OR OTHER PROVIDER MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, WINDSTONE COLONY ARC, THE DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, THE WINDSTONE COLONY ARC, THE DECLARANT, OR ANY SUCCESSOR DECLARANT AND THEIR AGENTS HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY

WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

**SECTION 9. RIGHTS OF DECLARANT DURING CONSTRUCTION AND SALE PERIOD.** Notwithstanding any provisions contained in this Declaration, until the Declarant has developed and sold all of its land within the Properties, it shall be expressly permissible for Declarant and any Owner approved by Declarant to maintain upon such portion of the Properties as Declarant may deem necessary (including particularly the Common Area), such facilities, and carry on such activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such Owner's development, construction, and sales activities related to their properties, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Properties, the right to carry on sales and promotional activities in the Properties; the right to place signs in the Common Area and in road rights-of-way within the Properties; and the right to construct and operate business offices, construction trailers, model residences, information and sales offices. Declarant and any such Owner may use residences owned or leased by Declarant or such Owner as model residences and sales offices.

**SECTION 10. NO PARTITION.** There shall be no partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring and disposing of title to real property which may or may not be subject to this Declaration.

## ARTICLE V

### INSURANCE AND CASUALTY LOSSES

**SECTION 1. INSURANCE.** The Association's Board of Directors, or its duly authorized agent, shall have the authority, but not the obligation, to obtain blanket all-risk casualty insurance for all insurable improvements on the Common Area, or if blanket all-risk coverage is not reasonably available, an insurance policy providing fire and extended coverage. In addition to casualty insurance on the Common Area, the Association may, upon request of a Neighborhood, obtain casualty insurance on the Exclusive Common Area within the Neighborhood. Such insurance policies shall be in such amount or amounts as the Board of Directors deems appropriate.

The Board may also obtain a public liability policy covering the Common Area and Exclusive Common Area, insuring the Association and its Members for all damages or injury caused by the negligence of the Association, its agents, the Members or Occupants, in such amount as the Board deems appropriate.

Premiums for all insurance on the Common Area shall be Association Expenses and shall be included in the Residential Assessments and the premiums for insurance on Exclusive Common Area shall be included in the Neighborhood Assessment of the Neighborhood(s) benefitted thereby. In addition to the other insurance discussed in this Section, the Board may also obtain, as an Association Expense payable from Residential Assessments, (i) worker's compensation insurance.

and the Board shall obtain such insurance if and to the extent required by law, (ii) directors' and officers' liability coverage, and (iii) a fidelity bond or fidelity insurance on directors, officers, employees, and other Persons handling or responsible for the Association's funds.

**SECTION 2. DAMAGE AND DESTRUCTION.** Immediately after damage or destruction by fire or other casualty of all or any part of the property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and the repair or reconstruction of the damaged or destroyed property, to the extent insurance proceeds are available for such purpose. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition which existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. In the event that insurance proceeds are unavailable to repair or reconstruct the Common Area or the Exclusive Common Area of any Neighborhood, the damaged or destroyed property shall be restored to its natural state and maintained by the Association in a neat and attractive condition. If insurance proceeds are insufficient to cover a repair or reconstruction, the Board may levy a special assessment to cover the shortfall, subject to the requirements of Section 5 of Article III above.

## ARTICLE VI

### **ARCHITECTURAL STANDARDS AND RESTRICTIONS**

**SECTION 1. PURPOSE.** In order to establish and preserve a harmonious and aesthetically pleasing design for the Windstone Colony project and to protect and promote the value of the Properties, the Lots shall be subject to the restrictions set forth in this Article VI. Every grantee of any interest in a Lot by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article.

**SECTION 2. WINDSTONE COLONY ARCHITECTURAL REVIEW COMMITTEES; MODIFICATIONS COMMITTEE.** There is hereby established the Windstone Colony Architectural Review Committee (sometimes hereinafter called the "Windstone Colony ARC") which shall have exclusive jurisdiction over all original construction on the Lots and over modifications, additions, or alterations made on or to the residences and other improvements on the Lots.

The Windstone Colony ARC shall (i) adopt such standards or guidelines as it determines for the construction or alteration of improvements on the Lots in the Properties (the "Builder Guidelines"), which may vary for different portions of these Properties or different platted subdivisions or Neighborhoods within the Properties, and (ii) establish application and review procedures for plans and specifications. The Windstone Colony ARC shall make the Builder Guidelines available to Builders who seek to engage in development of or construction upon a Lot and who shall conduct their operations strictly in accordance therewith. The Windstone Colony ARC may establish and charge reasonable fees for its review of plans hereunder.

The Windstone Colony ARC shall consist of three (3) members. Until the date on which it has sold all of its Lots within the Properties, the Declarant shall have the right to appoint all members of the Windstone Colony ARC as well as the right to remove any member at any time. There shall

be no surrender of this right prior to that time, except by a written instrument executed by Declarant and recorded in the real property records of Harris County, Texas. Following the expiration of such right, the Board of Directors shall have the right to appoint and remove the members of the Windstone Colony ARC. The Windstone Colony ARC is authorized, but not obligated, to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Windstone Colony ARC in performing its functions set forth herein. The costs of the services of such consultants shall be an Association Expense except to the extent such costs are covered by a plan review fee established by the Windstone Colony ARC, if it elects to establish such fee,

The Board of Directors shall have the right, but not the obligation, at any time to create a separate committee known as the "Modifications Committee" to perform the obligations of the Windstone Colony ARC hereinafter specified with respect to the review of plans for the alteration or modification of the improvements on a Lot after construction of the initial improvements. The Board shall also have the right to abolish such committee at any time. In the event such committee is created it shall consist of three (3) members appointed by the Board and the Board shall have the power to remove a member at any time. In the event a Modifications Committee is created, such committee shall have all of the duties and powers granted to the Windstone Colony ARC in this Declaration with respect to the alteration or modification of improvements on a Lot in the Properties unless or until the Board determines there should no longer be two (2) separate committees and abolishes the Modifications Committee, in which event all such duties and powers shall thereafter be restored to the Windstone Colony ARC.

**SECTION 3. APPROVAL OF PLANS.** No construction of improvements, or modifications, additions, or alterations to existing improvements, shall be commenced or maintained by or on behalf of any Owner with respect to any Lot in the Properties, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface a different color than the one previously approved), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Windstone Colony ARC, a survey showing the location of existing trees of eight (8) inches in diameter at a height of twelve (12) inches above ground and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Windstone Colony ARC as to the compliance of such plans and specifications with this Declaration, the applicable Supplemental Declaration(s), and the Builder Guidelines, including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Windstone Colony ARC, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved." The Windstone Colony ARC may establish a reasonable fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his improvements, to paint the interior of the improvements on his Lot any color desired, or to repaint or restain the exterior of the improvements on his Lot with the same color which has been

previously approved for such improvements. The Windstone Colony ARC shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

Upon approval of plans and specifications, no further approval under this Article VI shall be required with respect thereto, unless construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. The Windstone Colony ARC may disapprove plans and specifications for any reason which is consistent with the objects and purposes of this Declaration as determined by the Windstone Colony ARC from time to time, including purely aesthetic considerations, as long as such grounds are not arbitrary or capricious.

**SECTION 4. LANDSCAPING APPROVAL.** To preserve the aesthetic appearance of the Windstone Colony project, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed on a Lot in the Properties unless and until the plans therefor have been submitted to and approved in writing by the Windstone Colony ARC. In the installation of landscaping and maintenance of his Lot, each Owner shall comply with the Landscaping Guidelines adopted by the Windstone Colony ARC from time to time.

**SECTION 5. APPROVAL NOT A GUARANTEE OR VARIANCE.** The review and approval of plans pursuant to this Article is made on the basis of aesthetic considerations only and no approval of plans and specifications and no publication of the Builder Guidelines shall be construed as representing or implying that such plans, specifications, or guidelines will, if followed, result in properly designed improvements. Such approvals and design guidelines shall in no event be construed as representing or guaranteeing that any improvements built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, the Windstone Colony ARC, nor any of their respective officers, partners, directors, employees, or members, shall be responsible or liable in damages or otherwise to any Person who submits plans for approval by reason of mistake of judgment, negligence or nonfeasance arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications. The purpose of such review primarily is to conform the aesthetic appearances of development within the Properties. In addition, the approval of plans pursuant to this Article shall not be deemed to be a variance from the specific restrictions of this Declaration or the Builder Guidelines. All variances must be issued in accordance with the provisions of Section 8 of this Article.

**SECTION 6. RIGHT TO INSPECT.** Any member of the Board of Directors or the Windstone Colony ARC and their representatives shall have the right, but not the obligation during reasonable hours to enter upon and inspect any Lot with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In the event the Windstone Colony ARC shall determine that such plans and specifications have not been approved or are not being complied with, the Windstone Colony ARC shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In addition to any other remedies available

to the Association, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

**SECTION 7. NO WAIVER OF FUTURE APPROVALS.** The approval by the Windstone Colony ARC of any plans and specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar plans and specifications, drawings, or matters whatsoever subsequently or additionally submitted for approval or consent.

**SECTION 8. VARIANCES.** The Windstone Colony ARC may grant variances from compliance with the restrictions of this Declaration and from any of the Builder Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, or (b) stop the Windstone Colony ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing, shall not be considered a hardship warranting a variance.

## ARTICLE VII

### **SPECIFIC USE RESTRICTIONS**

**SECTION 1. SINGLE FAMILY RESIDENCES.** Each and every Lot in the Properties is hereby restricted to one (1) Single Family Residence and related outbuildings and improvements, including guest houses, servants quarters and greenhouses, and use for single-family residential purposes exclusively and no Single Family Residence shall be occupied by more than a Single Family.

No business or business activity shall be carried on, in or upon any Single Family Residence, with the exceptions as stated below. Garage sales or yard sales (or any similar vending of merchandise) conducted on any Lot more than once within a 12-month period shall be considered a business activity and is therefore prohibited. The Board may permit a community garage sale to be held on the Common Area in which all Members are entitled to participate on a designated day from time to time. Notwithstanding the foregoing, a Single Family Residence on a Lot may be used for a Home Occupation provided that:

- i. no person other than a resident of the Single Family Residence shall be engaged or employed in the Home Occupation at the site and such business does not generate business related traffic to and/or from the residence;
- ii. there shall be no visible storage or display of occupational materials or products;
- iii. there shall be no exterior evidence of the conduct of a Home Occupation and no Home Occupation shall be conducted on the Lot outside of the Single

Family Residence; and

- iv. no additional parking shall be provided for the Home Occupation and no material additional traffic shall be generated to or from the Property as a result of the Home Occupation.

As used herein, the term "Home Occupation" shall mean a commercial enterprise conducted in a Single Family Residence which is incidental to the principal residential use.

**SECTION 2. LIVING AREA REQUIREMENTS.** The total living area of the Single Family Residence on a Lot shall not be less than the applicable minimum number of square feet specified in a Supplemental Declaration applicable to such Lot, if any, or in the Builder Guidelines adopted by the Windstone Colony ARC which are applicable to such Lot.

**SECTION 3. TYPE OF CONSTRUCTION.** A minimum of 51% to 100%, as specified in the Builders Guidelines, of the exterior wall area of all Single Family Residences, exclusive of doors and windows, shall be masonry or brick veneer construction, unless a variance from this restriction is specifically approved in writing by the Windstone Colony ARC.

No detached garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Windstone Colony ARC. Every garage and accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character which incorporates wood construction on the exterior shall be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

**SECTION 4. GARAGES, DRIVEWAYS AND SIDEWALKS.** Each Single Family Residence must have an attached or detached garage with an automatic garage or manual garage door opener. Garage doors shall be kept closed except when opened for the entry or exit of vehicles. Each Owner shall construct and maintain at his expense a concrete driveway with a minimum width of twelve (12) feet from the garage of his residence to the abutting Street, including the portion of the driveway in the street easement, and the Owner shall repair at his expense any damage to the Street occasioned by connecting the driveway thereto. Each Owner shall also maintain, repair and replace, when necessary, the sidewalk along the front of his Lot as well as the sidewalk on the side of corner Lots.

**SECTION 5. ANTENNAE AND SATELLITE DISHES.** No television, radio or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by the regulations promulgated under the Telecommunications Act of 1996, as amended from time to time. The Windstone Colony ARC is empowered to adopt rules governing the types of antennae that are permissible in the Properties and to establish reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that receipt of an acceptable signal would not be impaired, an antenna

permissible pursuant to the rules of the Windstone Colony ARC may only be installed in a side or rear yard location, not visible from the Street, and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations.

**SECTION 6. ANIMALS AND PETS.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of a maximum of three (3) pets consisting of dogs, cats or other usual and common household pets (excluding in such maximum number, fish and birds); provided, however, those pets which are permitted to roam free, or which in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants within the Properties may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Single Family Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pet, the owner of a pet that has caused damage to property shall be responsible for compensating the owner of the damaged property, but the Association shall have no obligation to enforce such obligation. Animal control authorities shall be permitted to enter the Properties to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.

**SECTION 7. WINDOW AIR CONDITIONERS.** No window or wall-type air conditioners shall be permitted to be used, erected, placed or maintained on or in any Single Family Residence, except that the Windstone Colony ARC may, at its discretion, permit window or wall-type air conditioners to be installed if such unit, when installed, shall not be visible from a Street or any other Lot.

**SECTION 8. RENTING OR LEASING.** Single Family Residences may be rented or leased only by written leases and subject to the following restrictions:

All tenants shall be subject to the terms and conditions of this Declaration and to the rules and regulations promulgated by the Association as though such tenant were an Owner. Each Owner of a Single Family Residence agrees to cause his tenants to comply with this Declaration and the rules and regulations promulgated pursuant hereto, and is responsible and liable for all violations and losses caused by such tenants, notwithstanding the fact that such tenants are fully liable for any such violation. All provisions of this Declaration and of any rules and regulations promulgated pursuant hereto which govern the conduct of Owners of a Single Family Residence and which provide for sanctions against Owners shall also apply to all Occupants of a Single Family Residence even though such Occupants are not specifically mentioned. Each Owner who leases his residence shall provide the Association with the name of his tenant and a mailing address where such Owner can be contacted.

**SECTION 9. VEHICLES AND PARKING.** The term "vehicles", as used herein, shall refer, without limitation to, automobiles, trucks, truck-cabs, motorcycles, minibikes, scooters, go-carts, campers, buses, and vans. No vehicle may be parked or left upon any Lot in the Properties, except in a garage or other area designated by the Board, and in driveways for such temporary periods as may be specified by the Board from time to time. The parking of vehicles on streets or within road rights-of-way is specifically prohibited; provided, however, the Board shall have no obligation to enforce this restriction if enforcement is unlawful or the Board deems enforcement to

be economically infeasible or otherwise impractical. Any vehicle parked or left not in accordance with this section shall be considered a nuisance. No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles and vehicles authorized by the Board.

**SECTION 10. DISPOSAL OF TRASH.** No trash, rubbish, garbage, manure, debris or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping ground for such materials. All such matter shall be placed in sanitary refuse containers as determined by the Association's contracted trash disposal service and placed in an area adequately screened from public view by planting or fencing. All rubbish, trash, and garbage shall be regularly removed by a contracted service through the Association. Residents shall be billed for Association Contracted trash disposal service as part of the Association fee. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal.

**SECTION 11. DRAINAGE.** Catchbasins and drainage areas are for the purpose of natural flow only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of a Lot may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains.

**SECTION 12. CLOTHESLINES, GARBAGE CANS, WOODPILES, ETC.** All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property.

**SECTION 13. WEAPONS AND FIREWORKS.** The use of fireworks, firearms and other weapons within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns and small firearms of all types. Nothing contained in this Declaration shall be construed to require the Association to take action to enforce this Section.

**SECTION 14. TEMPORARY BUILDINGS.** Temporary buildings or structures shall not be permitted on any Lot, provided, however, Declarant may permit temporary toilet facilities, sales and construction offices and storage areas to be used by Builders in connection with the construction and sale of residences and by contractors performing land development activities within the Properties for Declarant. Builders may use garages as sales offices for the time during which such Builders are marketing homes. At the time of a sale of a Single Family Residence by Builder any garage appurtenant to such residence used for sales purposes must be reconverted to a functional garage in compliance with the plans approved by the Windstone Colony ARC.

**SECTION 15. GRASS AND SHRUBBERY.** The Owner of each Lot shall install or cause to be installed solid grass in the area between the front of his residence and the curb line of the abutting Street and the side yard of such Lot out to the curb on all corner Lots and landscape his Lot in accordance with the Builder Guidelines. Grass and weeds shall be kept mowed to prevent unsightly appearance, and all curbs, drives and walkways shall be kept edged. Dead or damaged trees shall be promptly removed or replaced, and if not removed by the Owner upon request, then

the Association may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damage caused by such removal. The Association may plant, install and maintain shrubbery and other screening devices on utility easements around boxes, transformers and other above-ground utility equipment, and mow and maintain the grass around such areas. The Association shall have the right to enter upon the Lots to plant, install, maintain and replace such shrubbery or other screening devices, and mow and maintain grass around such areas following reasonable advance notice to the Owner of such Lot at the expense of the Owner.

**SECTION 16. TRAFFIC SIGHT AREAS.** All Lots located at Street intersections shall be landscaped so as to permit safe sight across the Street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

**SECTION 17. MAILBOXES.** Each Single Family Residence shall have an individual mailbox or assigned space in a cluster box which complies with U.S. Postal Service requirements and the specifications for mailboxes approved or prescribed by the Board or the Windstone Colony ARC. The placement of an individual mailbox on a Lot shall be at a location approved by the Windstone Colony ARC. Each Lot shall have a house number identifying its street address made of materials and a color or colors specified by the Windstone Colony ARC in keeping with the overall character and aesthetics of the community. Different materials and/or colors for street numbers may be specified by the Windstone Colony ARC for different Neighborhoods or platted subdivisions.

**SECTION 18. DISPOSAL UNITS.** Each kitchen in each Single Family Residence shall be equipped with a garbage disposal unit in a serviceable condition.

**SECTION 19. PRIVATE UTILITY LINES.** All electrical, telephone, telecommunication, natural gas and other utility lines and facilities which are located on a Lot and are not owned by a governmental entity or a public utility company shall be installed underground unless otherwise approved in writing by the Windstone Colony ARC.

**SECTION 20. ROOFTOP ELEMENTS.** All stack vents and attic ventilators shall be located on the rear slopes of roofs and mounted perpendicular to the ground plate, unless otherwise approved by the Windstone Colony ARC. All exposed roof stack vents, flashings, attic ventilators, etc. on each Single Family Residence must be painted to blend with the color of the roof of the Single Family Residence unless otherwise approved by the Windstone Colony ARC. No solar collector shall be allowed on any roof slope visible from a Street, the Common Area or any other Lot.

**SECTION 21. DECORATIONS.** On front lawns of Lots and on any portion of a Lot visible from any Street, there shall be no decorative appurtenances placed, such as sculptures, birdbaths and birdhouses, fountains or other decorative embellishments of any kind unless such specific items have been approved in writing by the Windstone Colony ARC as part of the landscaping plan for such Lot.

**SECTION 22. PLAYGROUND EQUIPMENT.** All playground equipment on a Lot must be placed at the rear of the Lot at a specific location approved by the Windstone Colony ARC and behind a fence or otherwise screened from public view from any Street abutting the Lot.