

DECLARATION OF 57  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
GUINN FARMS

Effective November 7, 2006

AFTER RECORDING RETURN TO:  
Holigan Land Development, Ltd.  
15950 Dallas Parkway, Suite 750  
Dallas, Texas 75248  
Attn: Wallace Creel

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DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
Guinn Farms

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

Declarant is the owner of the Property (as herein defined). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. This Declaration (as defined herein) is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property.

The Declarant's present intention, stated here for information of present intent only and not as a warranty or representation of future fact, is to develop Guinn Farms with residential units in four phases, this Declaration establishing Phase 1 with the contemplation of the addition of three additional phases by supplemental declarations. Nothing herein, however, shall be deemed to bind Declarant or its successors or assigns to add such additional phases nor to limit the development to four phases. Supplemental declarations annexing subsequent phases to the Property may contain such additional or different covenants and restrictions as Declarant may deem appropriate to develop and govern each such phase.

In addition, Declarant has caused Guinn Farms Homeowners' Association, Inc. to be formed as a Texas nonprofit corporation to own, operate, and maintain Common Areas and Public Improvements (hereinafter defined) within the Property; to administer and enforce the provisions of this Declaration and to perform the other duties and functions set forth in the Declaration, all as more fully set forth below.

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

ARTICLE I- DEFINITIONS

1.1 "Architectural Control Committee" shall mean that certain board as empowered in accordance with Article VI Section 6.1 hereof.

1.2 "Association" means Guinn Farms Homeowners' Association, Inc., a Texas nonprofit corporation established for the purposes set forth herein.

1.3 "Association Documents" shall mean the Certificate of Formation of the Association (sometimes hereafter the "Certificate" or the "Articles") the Bylaws of the Association ("Bylaws"), and resolutions adopted by the Association. Copies of the Certificate and Bylaws are attached hereto as Exhibit "B" and Exhibit "C", respectively.

1.4 "Association Fencing" means that certain fencing installed by Declarant, if Declarant so elects.

1.5 "Board of Directors" means the board of directors of the Association.

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

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

1.8 "City" means the City of Tyler.

1.9 "Class B Control Period" means the period commencing upon the date of this Declaration and expiring upon the earliest of: (i) fifteen years after conveyance of the first Lot to a person or entity other than a partner of Declarant or a Builder, (ii) a date that Declarant in writing elects to terminate the Class B Control Period, or (iii) when all of the Lots (as herein defined) have been improved with a Dwelling thereon and conveyed to persons or entities other than a partner of Declarant or a Builder.

1.10 "Class Vote" means a vote that is counted or tallied for each separate class of voting Members and requires the specific percentage from each class of Members.

1.11 "Common Expenses" shall mean:

a) all costs and expenses incurred by the Association to repair, maintain, operate, and replace the Common Maintenance Areas and any improvements thereon to the extents and standards of quality determined by the Board to be appropriate; and

b) all other costs and expenses necessary to manage, operate, perform the duties, and functions of the Board and the Association as set forth in this Declaration and to establish a reasonable reserve fund as determined by the Board.

1.12 "Common Area" and "Common Areas" shall mean and refer to those areas devoted to the common use and enjoyment of the Owner(s), and include the following: those certain landscaping improvements, plantings, screening walls, fencing, sprinkler systems and recreational facilities, to be placed as shown on the plat of the Guinn Farms addition.

- 1.13 "Common Maintenance Areas" means the Common Areas, if any, and any areas within public rights-of-way, easements (public and private), portions of a Lot, public parks, private streets, landscaping, entry features, fences, walls or similar areas that the Board of Directors deems necessary or appropriate to maintain for the common benefit of the Members.
- 1.14 "County" means the County of Smith, State of Texas.
- 1.15 "Declarant" means Guinn Farms Development, LP and its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign in a document that is Recorded. There may be more than one Declarant if Declarant makes a partial assignment of the Declarant status.
- 1.16 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Guinn Farms and any amendments and supplements hereto made in accordance with its terms.
- 1.17 "Designated Interest Rate" means the interest rate designated by the Board of Directors from time to time, subject to any interest limitations under Texas law. If the Board of Directors fails to designate an interest rate, then the interest rate shall be the lesser of 12% per annum or the highest rate permitted by Texas law.
- 1.18 "Dwelling" means any Residential Unit situated upon any Lot.
- 1.19 "Lot" or "Lots" means any separate residential building parcel(s) shown on a Recorded subdivision plat of the Property or any part thereof including Lots contained in all subsequent phases annexed to the Property. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.
- 1.20 "Member" means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in Article III herein.
- 1.21 "Occupant" shall mean and refer to the lessee of a Residential Unit who holds a written lease in conformance with the Association's regulations.
- 1.22 "Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract for sale or contract for deed, then the purchaser (rather than the fee Owner) will be considered the Owner.
- 1.23 "Parcel" shall mean any parcel of land located in the Property, including each Lot.
- 1.24 "Plat" means (i) the Final Plat, of the Property submitted to and approved by the City, or any other applicable governmental entity, (ii) after recordation thereof, the final Plat of the Property as recorded in the Records of Smith County, Texas.
- 1.25 "Property" means the real property described on Exhibit "A" attached hereto (other than areas dedicated to the City or County).

1.26 "Public Improvements" means certain public improvements constructed and installed in the unpaved public rights-of-way of Streets now or hereafter located in the Property. Such improvements may include any landscaping, fencing, screening walls, entry monuments, water features, detention or retention areas and irrigation systems associated with such public rights-of-way, public parks located within the Property, and public open areas located within the Property.

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

1.28 "Residential Unit" means the improvement located on each Lot that is designed for use as a single family residential dwelling in conformity with this Declaration.

1.29 "Structure" means any structure (other than a Residence) and includes, without limitation, fence, driveway, sidewalk, planting, landscaping, irrigation system, wall, tennis court, swimming pool, outbuilding, playground equipment, or other improvement of any kind or type.

1.30 "Streets" shall mean any land located in an easement or right-of-way dedicated or conveyed to the City for Public use for motor vehicles.

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

Other terms used in the Declaration are defined in various other provisions hereof.

## ARTICLE II- PROPERTY RIGHTS

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

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

b) **Suspension of Voting Rights.** The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid.

c) **Conveyance of Common Area.** The right of the Association, subject to the provisions hereof, to dedicate, sell or transfer all or any part of the Common Areas. However, no such dedication, sale or transfer will be effective unless there is a 67% or greater Class Vote approving such action.

d) **Mortgage Common Area.** The right of the Association, subject to the provisions hereof, to mortgage or lien all or any part of the Common Areas. However, the Common

Areas cannot be mortgaged or liened without a majority vote of the Owners approving such action.

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

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

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

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

### ARTICLE III- MEMBERSHIP AND VOTING

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

3.2 **Multiple Owners.** No Owner, whether one or more persons, shall have more than (1) membership per Lot owned; provided, however, multiple-use rights for multiple owners may be authorized and regulated by the Board.

3.3 **Voting Rights.** The Association shall have the following two (2) classes of voting membership:

a) **Class "A".** Class "A" Members shall be all Owners, with the exception of the Declarant during the Class B Control Period. Class "A" Members shall be entitled to one vote for each Lot owned. However, when more than one person holds an interest in any Lot, all such persons shall be members, but only one vote in total may be cast per Lot as the Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Owner is the person designated to cast the Lot's vote. If the Owners fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it. Wherever herein or in the Bylaws a vote of

a percentage of Members is required it is acknowledged and agreed that if the percentage results in a fraction it will be rounded up to the next highest number. The quorum is fixed at 10% of the Lots.

b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member is entitled to 101% of the votes of the Class "A" Members during the Class "B" Control Period.. The Class "B" membership shall cease and be converted to Class "A" membership upon expiration of the Class "B" Control Period.

#### ARTICLE IV - ASSESSMENTS

4.1 **Obligation to Pay Assessments.** Subject to the terms of this Article IV, the Declarant, for each Lot it owns, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not such covenant will be so expressed in such deed, is deemed to covenant and agree to pay to the Association, each and all of the following assessments (collectively, the "Assessments"):

- a) Regular Assessments as provided in Section 4.4 herein;
- b) Special Group Assessments as provided in Section 4.5 herein;
- c) Special Owner Assessments as provided in Section 4.6 herein;
- d) Builder Assessments as provided in Section 4.7 herein; and
- e) Specific Assessments as provided in Section 4.8 herein.

4.2 **Personal Obligation to Pay Assessments.** Each such assessment, together with interest at the Designated Interest Rate, late charges, costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of the conveyance unless the deficiency was not disclosed in a resale certificate delivered by or in behalf of the Association to the grantee. However, no mortgagee under a Recorded mortgage or beneficiary of a Recorded deed of trust shall be liable for unpaid assessments, which accrued prior to such acquisition of title. In addition, no mortgagee shall be required to collect assessments.

4.3 **Purpose of Assessments.** All Assessments shall be controlled and expended by the Association on behalf of the Owners only for the specified purposes provided in this Declaration. No profit, gain or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as an agent for the Owners, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of Association Property, and other that by a rebate of excess membership dues, fees, or Assessments) to the benefit of any individual. All services contemplated to be paid from Assessments shall be obtained by the Association on behalf of the



Owners. Upon termination of the Association (and not before), all Assessments held at that time by the Association shall be allocated and returned to the Owners who paid them.

4.4 "Regular Assessments" shall be determined, allocated, and expended for 12 month periods and each such 12 month period shall constitute a fiscal year of the Association. Regular Assessments shall be used to pay Common Expenses.

a) Date of Commencement of Regular Assessments. Except as provided in Section 4.7, the Regular Assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to a Builder or an entity that assumes Declarant status as provided herein), unless the Board of Directors elects to commence the Regular Assessment earlier. The first Regular Assessment shall be adjusted according to the number of months in the fiscal year. The Board of Directors shall fix the amount of the Regular Assessment against each Lot at least 30 days in advance of each assessment period. Written notice of the Regular Assessment shall be sent to an Owner of every Lot subject thereto.

b) Maximum and Actual Regular Assessment. Until January 1<sup>st</sup> of the year immediately following the conveyance of the first Lot to an Owner other than Declarant or a Builder, the maximum Regular Assessment shall be \$225.00 per Lot. The Board of Directors may fix the actual Regular Assessment at an amount not in excess of the specified maximum Regular Assessment. From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first Lot to an Owner other than Declarant or a Builder, the maximum Regular Assessment may be increased as follows:

(i) Maximum Increase Without Vote. Without a vote of the Members in accordance with Subsection (b)(iii) the Board of Directors may increase the maximum Regular Assessment each year by up to 20% above the maximum Regular Assessment for the previous year. The Board of Directors may increase the maximum Regular Assessment with or without increase the actual Regular Assessment.

(ii) Maximum Increase With Vote. The maximum Regular Assessment may be increased more than 20% above the prior year's maximum Regular Assessment amount by a 67% or greater Class Vote of Members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present approving such action.

4.5 Special Group Assessments. With the approval of the Majority Vote of the Class A Members the Board may levy at any time by written notice to the Owners "Special Group Assessments" to pay any capital improvements and other unanticipated expenses that would have normally been paid by Regular Assessments but which were not included in that year's budget for Regular Assessments. Special Group Assessments shall be assessed equally on each Lot containing a Residence at the time of such Special Group Assessment.

4.6 **Special Owner Assessments.** The board may levy at any time by written notice to an Owner "Special Owner Assessments" against such Owner to pay the costs and expenses resulting from (a) damage to or loss of the Public Improvements or other property in which the Association has an ownership interest if such damage or loss is determined by the Board to have been caused, directly or indirectly, by the acts or omissions of such Owner, or its agents, employees, occupants, or visitor, (b) any charge or cost incurred by an Owner and that Association has agreed to collect, including charges attributable to an Owner's cable bill, telephone bill or service or utility bill or (c) any cost, expense or liability incurred by the Association in enforcing the Declaration against such Owner.

4.7 **Builder Assessment.** No fees will be assessed to the Builder for the first six (6) months after the purchase of the Lot(s). After that period, the Builder(s) will be assessed half of the annual assessment as determined by the Board.

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

4.9 **Due Date Of Assessment.** The due dates of Regular Assessments shall be established by the Board of Directors. Regular Assessments shall be payable annually within 30 days after an invoice is delivered by the Association to an Owner; provided, however, the Board may require payment of Regular Assessments more frequently than annually. The due date of any Special Group Assessment, Special Owner Assessment, or Specific Assessment shall be fixed in a written notice levying such Assessment; provided, however, such due date shall not be earlier than 15 days after the date of such notice. The Builder Assessment shall be due as provided in Section 4.7 of this Declaration.

4.10 **Declarant's Payment of Shortfall Amount.** During the period that Declarant owns any Vacant Lots, if the Association's revenues are insufficient to pay the expenses of the Association, then Declarant may pay to the Association the difference between the revenues and the expenses. Declarant may pay such amount within 30 days of receipt of a request for payment thereof from the Association, provided that if the budget deficit is the result of the failure or refusal of an Owner or Owners to pay their Regular Assessment or special assessments, the Association will diligently pursue (and the Declarant may also pursue at its option) all available remedies against such defaulting Owner or Owners and will promptly reimburse the Declarant the amounts, if any, so collected. Declarant's election to pay more than the amounts required hereunder shall not obligate Declarant to pay any such sums in the future.

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

4.12 **Failure to Pay Assessments; Remedies of the Association.** With respect to any assessment or other sum due herein not paid within ten days after the due date, the Association shall have the right to: (i) charge a late fee, in an amount determined by the Board of Directors; (ii) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; and/or (iii) charge costs and fees related to the collection of the sum due. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of his or her Lot. The failure to pay assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

4.13 **Lien.**

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

b) **Enforcement of Lien -- Judicial or Nonjudicial.** The lien may be enforced by judicial or nonjudicial foreclosure. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale to be exercised in accordance with Texas Property Code Ann. 51.002 (Vernon 1995), as it may be amended. The Board of Directors may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board of Directors' meeting.

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

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

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

## ARTICLE V – THE ASSOCIATION

5.1 **The Association – Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Certificate of the Association, Bylaws, and this Declaration. The Association shall continue to exist until the Association is wound up and terminated, even if the corporate status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Certificate and the Bylaws.

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

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

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

5.5 **Limitation on Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless there is a 75% or greater vote of the Members (all

classes counted together) approving such action. This Section 5.5 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions to enforce written contracts between the Association in proceedings instituted against it; or (e) actions to enforce written contracts between the Association and a third party. Except as authorized by said vote, the Board of Directors shall not be liable for failing or refusing to commence litigation.

5.6 Insurance.

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

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

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

b) **Additional Insurance.** The Board of Directors may obtain additional insurance as the Board of Directors determines advisable, including, without limitation, the

insurance set forth below. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary, the Board of Directors shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

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

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

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

(iv) **Workers Compensation Insurance.** Workers compensation insurance and employer's liability insurance.

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

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

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

5.7 **Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational or other

agreements with other persons or entities; provided, any such agreement shall require approval of the Board of Directors. The Board of Directors may employ for the Association a management agent or agents, at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policymaking authority. The Association may enter into contracts with Declarant or affiliates of Declarant provided that such contracts are on market terms.

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

5.9 **Winding Up and Termination of Association; Conveyance of Assets.** If the Association is wound up and terminated other than incident to a merger or consolidation, the assets both real and personal of the Association shall be conveyed as provided in the Certificate.

5.10 **Enforcement.** The Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in Accordance with the applicable procedures set forth in the Bylaws. The Bylaws do not provide for an absolute right under all circumstances to notice and/or hearing either prior to or after the imposition of sanctions. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

- a) **Fines.** The Board of Directors may impose reasonable monetary fines, which shall constitute a lien on the Lot, upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest or invitee of the Owner of such Lot.
- b) **Suspension of Voting Rights.** The Board of Directors may suspend an Owner's right to vote.
- c) **Suspension of Rights to Use Common Area.** The Board of Directors may suspend any person's or entity's right to use any recreational facilities within the Common Areas; provided, however, nothing herein shall authorize the Board of Directors to limit ingress or egress to or from a Lot.
- d) **Right of Self-Help.** The Board of Directors may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration.
- e) **Right to Require Removal.** The Board of Directors may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the Lot, remove the violation, and restore the property to substantially the same condition as previously existing, without such action being deemed a trespass.

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

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

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

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

## ARTICLE VI- ARCHITECTURAL CONTROLS

6.1 **Architectural Control Committee.** The Architectural Control Committee ("ACC") shall have exclusive jurisdiction to review construction and alteration of Structures on any portion of the Property. No construction, development, or modification of any kind shall commence or be carried out on any Lot until approved in writing by the ACC. Approval shall be subject to such regulations, architectural standards, and application procedures as may be promulgated by the ACC. However, ACC approval is not required for (i) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant to be exempt from the ACC approval requirements; (ii) any improvements to the interior of a Dwelling, except as provided herein; (iii) the painting or re-bricking of the exterior of any Dwelling in accordance with the color and design scheme approved by the ACC; or (iv) improvements for which the Declaration expressly states that the ACC's prior approval is not required. Any improvements pursuant to clauses (iii) and (iv) immediately preceding must be in compliance with any applicable Building Standards. The ACC shall make its regulations, standards, and procedures available to Owners, Builder/Owners, and developers who seek to engage in development of or construction upon any portion of the Property and shall conduct its



operations in accordance therewith. The ACC will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The Declarant, in its sole discretion, shall appoint the members of the ACC which shall consist of three (3) members, none of whom shall be required to be residents of Guinn Farms or own property in Guinn Farms. The ACC shall and may act independently of the Association and its Board until such time as the Declarant assigns its rights of appointment to the Board of Directors, at which time the ACC shall function in the same fashion as committees of the Association and shall be appointed by the Board of Directors. This Section may not be amended without the written approval of the Declarant.

6.2 The ACC may promulgate detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such construction, modifications, additions, or alterations, shall be submitted to the ACC for approval as to the quality of workmanship and design and harmony of external design with existing structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his or her Residential Unit or to paint the interior of his or her Residential Unit any color desired. In the event the ACC fails to approve or to disapprove such plans or to request additional information reasonably required in sixty (60) days after submission, the plans shall be deemed approved. The ACC may charge a reasonable fee to cover the administrative expense of its review and comment, such fee payable to the Association.

6.3 **Building Standards.** The Declarant or ACC may, but is not required to, establish specific guidelines and building standards to assist Persons in determining the type of Structures and Residential Units, which may be constructed on the Property. The ACC or Declarant may amend or modify such guidelines or standards from time to time in its sole discretion. Such guidelines or standards, if promulgated, shall supplement this Declaration and are general guides to permitted construction within the Property, but shall not diminish the authority of the ACC and Declarant to approve plans as otherwise herein provided. The ACC may, from time to time and in its sole and absolute discretion, adopt, amend, and repeal, by unanimous vote or written consent of members of the ACC, the Building Standards. The Building Standards may not conflict with the terms of this Declaration.

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

## 6.5 Plan Review.

a) **Timing of Review and Response.** Upon receipt by the ACC of all of the information required by this Article VI, the ACC will have 15 days in which to review said plans. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACC in form satisfactory to the ACC. If the ACC requests additional information and the applicant fails to provide such information prior to the date stated in the ACC's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACC consider the request. If the ACC fails to issue its written approval within 30 days after the ACC's receipt of all materials requested by the ACC to complete the submission, then such failure by the ACC to issue its written approval shall be deemed approval. The ACC may charge a reasonable fee for reviewing requests for approval.

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

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

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

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

6.9 **Variances.** The ACC may authorize variances from strict compliance with the requirements herein, in any Building Standards or any required procedures: (i) in narrow circumstances where the design meets the intent of the provision from which variances is sought and where granting the variance would enhance design innovation and excellence; or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. For purposes of this Section 6.9, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing as the sole or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance shall be contrary to the terms of this Declaration and no variance shall be effective unless in writing. No variance shall stop the ACC from denying a variance in other circumstances.

6.10 **Enforcement; Non-Conforming and Unapproved Improvements.** If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACC in its sole and absolute discretion, such improvements will be in violation. The Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement on any Lot that is not approved by the ACC.

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

## ARTICLE VII- USE RESTRICTIONS AND COVENANTS

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

7.2 **No Temporary Structures as a Residence.** No structure of a temporary character, including, without limiting the generality thereof, any trailer, basement, tent, shack, garage, barn,

or other out-building will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent that is erected in the back yard behind a fully-screened fence is permitted provided that such activity does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board of Directors in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

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

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

7.5 **Mining.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted in the Development, nor will oil wells, tanks, tunnels, mineral excavations or shafts be permitted in the Development, except subsurface operations that have no effect upon the surface of the Property. No derrick or other structure designed for use in boring for oil or natural gas will be erected, maintained or permitted in the Development. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

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

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

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

or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

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

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

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

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

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

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

7.15 **Building Requirements.** Building requirements and criteria shall include those standards reflected in the final plat and required by the zoning and building ordinances of the City applicable to the subdivision.. They shall also include such criteria as may be promulgated by the ACC and filed of record. Such requirements, criteria, and restrictions include setbacks, maximum height, lot coverage, minim dwelling size. If the City requirements are more restrictive they shall govern. If the Association requirements are more restrictive they shall govern.

- a) **Minimum Size of Dwelling** shall be 1,300 square feet of airconditioned space.
- b) **Maximum Height of Dwelling** shall be 42 feet and 2.5 stories.
- c) **Front Setbacks** shall be 15 feet.
- c) **Side Setbacks** shall be 4 feet; provided that street side setbacks on corner lots shall be 12 feet.
- d) **Rear Setbacks** shall be 15 feet.
- e) **Landscaping** shall require one (1) tree in each front yard of 2" caliper at a minimum. Crepe myrtle cannot be used to fulfill this requirement. The front and side yards

must be sodded up to the fence. The front and side yards must be sprinklered up to the fence. See also 7.42.

f) **Mailboxes** shall be black double mailboxes, Deluxe Post 4872BLK and Mailbox 4850BLK, located as approved by the ACC. See also 7.36.

g) **Roof.** Roofing material will be Weathered Wood or Rustic Black Tamko 20 year shingles or equivalent approved material of similar color. Roof pitch - see 7.19 below.

h) **Exterior.** The exterior of a Dwelling shall be 80% brick or stone as more fully provided in 7.18 below.

i) **Garages.** Garages are not to be enclosed (except for model homes) or used for living space. See also 7.33 below.

j) **Outbuildings.** No metal outbuildings shall be placed on a Lot unless approved by the ACC or the Board.

k) **Fences** are required on all Lots and shall be stained and sealed, with the smooth side facing out and the poles facing in. Fences facing the front shall have a cap on it. See 7.23 below.

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

**7.17 Architectural Control.** No building shall be erected, placed, or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the structure thereon have been approved in accordance with the Declaration.

**7.18 Masonry Requirements.** All residential buildings shall be of exterior fire resistant construction having at least eighty percent (80%) of the total exterior walls above grade level and below the first floor plate line, excluding doors and windows, constructed of brick or stone, and

shall be approved by the City in accordance with the City's building code and fire prevention code. Exterior Insulated Finishing System (EIFS) shall not be permitted as the primary building material. Notwithstanding the foregoing, the second floor masonry requirements shall be as provided in one or more bulletins hereinafter promulgated and recorded by the Board of Directors or the Architectural Control Committee.

7.19 **Roof Pitch.** Roof pitch shall be a minimum of 6 - 12 for all Dwellings.

7.20 **Repetition.** Dwellings shall vary in elevation according to the following rules (i) a minimum of six (6) Dwellings must separate adjacent Dwellings of the same elevation; and (ii) Dwellings of the same elevation may not be constructed directly across the street from one another.

7.21 **Parking of Motor Vehicles.** Vehicles that have a gross vehicle weight of more than 11,000 pounds are prohibited from being parked or stored overnight. This includes large recreational vehicles, tractor-trailers, buses, vans, and similar type vehicles. Trucks with tonnage in excess of one ton and panel trucks with a painted advertisement shall not be permitted to park overnight within Guinn Farms except those used by a Builder during the construction of improvements. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement; provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board of Directors as intended for such vehicular use.

7.22 **Trailers, Boats, Commercial and Recreational Vehicles.** No vehicle, including boats, camper trailers, trailers, or other similar vehicle shall be parked in public view from any street. Parked vehicles on private property shall not encroach on any right-of-way, sidewalks, or parkways (unpaved portion of rights-of-way). Inoperable and junked vehicles shall not be stored in an area that is visible from public ROW or adjacent properties. Inoperable vehicles include: (i) expired license plate, (ii) no safety inspection certificate, (iii) and are wrecked, dismantled, or discarded. Commercial vehicles include panel trucks and other vehicles bearing advertisements of business on their panels and stretch limousines. The Board of Directors will have the absolute authority to determine from time to time whether a vehicle, equipment or other item is in operable condition and complies with the requirements in clauses (i) through (iii) above. Upon an adverse determination by the Board of Directors, the Owner will cause the item to be removed and/or otherwise brought into compliance with this paragraph. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. Notwithstanding any provision herein, no trucks or vehicles of any size that transport inflammatory or explosive cargo may be kept in Guinn Farms at any time.

7.23 **Fences.** Fences are required on all Lots. All fences shall be kept in good repair and dilapidated fences shall be repaired or replaced. The Board shall have the final authority to make the determination that a fence is in a condition to require repair or replacement. Fences are to be stained with natural wood colors and sealed. No bright unnatural colors are allowed. No fences may be painted or stained with a solid stain. Any stain used must be translucent enough for the grain and texture of the wood to show through and be of natural wood color and shall be a color approved by the ACC.

a) **Type of Fencing.** No fence, wall or hedge shall be erected, placed or altered on any Lot without the prior written approval of the ACC and the design of and materials used in the construction of fences shall be subject to the prior written approval of the ACC. No fence, wall or hedge shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line indicated on the Plat, unless otherwise permitted by the ACC and in accordance with the requirements of the City of Tyler, Texas. Chain link fences are permissible for dog runs provided they are contained within the property and hidden from neighboring views and streets. Otherwise, no wire or woven fence shall be permitted on any part of a lot. All service and sanitation facilities, clothes lines, trampolines, swing sets, wood piles, tool sheds and air conditioning equipments must be enclosed within fences, walls and/or landscaping so as not to be visible from the adjoining lots and residential streets. If they cannot be screened the request must be submitted to the ACC showing the location of the Lot with the type and colors of the building materials. Upon submission of a written request, the ACC may, from time to time, at its sole discretion, permit Owners to construct fences or walls which are in variance with the provisions of this paragraph where, in the opinion of the ACC, the fence or wall is an integral part of the home. Fencing shall be constructed in accordance with the following restrictions based on the location of such fencing.

b) **Location of Fence.** Front Yard Fencing – fencing will be allowed to extend from the perimeter of a dwelling to the side or rear property lines. Said fence is to be of spruce material or better, has boards which are installed vertically only (not horizontally or diagonally), and is no higher than six (6) feet. Recommended stain shall be medium brown.

c) **Maintenance of Fencing.** All fences shall be kept in good repair and shall not create urban blight. Dilapidated fences shall be repaired or replaced in accordance with provisions of the City of Tyler ordinance. Except for the Association Fencing, each Owner shall maintain the portion of fencing on such Owner's Lot in a presentable condition and shall make all repairs and replacements. The Association shall be responsible for maintaining the Association Fencing. All repairs and replacements to the perimeter fencing and/or Association Fencing, in any, must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in the foregoing sentence, perimeter fencing and/or Association Fencing shall not be changed or modified without the prior written consent of the ACC.

i. **Common Fencing.** Side and rear yard fences that are installed by Declarant or a Builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "Common Fence") shall be maintained jointly by the Owners whose Lots adjoin such Common Fence and the costs associated therewith shall be shared equally by said Owners. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACC approval is obtained) and seek collection of one-half of the cost of repair or replacement at Arbitration (as



defined herein); and/or (ii) seek payment of one-half of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term "Arbitration" shall mean binding arbitration pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners.

- ii. **Sight Lines.** Compliance with these fencing and landscaping requirements shall in no way cause visibility obstructions and/or bind corners at intersections. Whenever an accessway intersects a public street or when two (2) public streets intersect, a triangular visibility area shall be designed to provide unobstructed cross-visibility at a level between three (3) and six (6) feet. Trees may be permitted in this area provided they are trimmed in such a manner that no limbs or foliage extend into the cross-visibility area. Triangular areas are: (i) areas of property on both sides of the intersection of an accessway and public right-of-way shall have a triangular visibility area with (2) sides of each triangle being a minimum of ten feet (10') in length from the point of intersection and the third side being a line connecting the ends of the other two (2) sides; (ii) areas of property located at a corner formed by the intersection of two (2) or more public rights-of-way shall have a triangular visibility area with two (2) sides of each triangle being a minimum of twenty-five feet (25') in length from the point of intersection and the third side being a line connecting the ends of the other two (2) sides. Landscaping, except required grass and low ground cover, shall not be located closer than three feet (3') from the edge of any accessway pavement. Declarant or the Association may direct the Owner to trim any hedge, shrub planting or tree that does not comply with the foregoing provisions, and upon Owner's failure to do so, Declarant or the Association may, at its option, perform such trimming, whereupon the Owner shall be obligated, when presented with an itemized statement, to reimburse Declarant or the Association (as applicable) for the cost of such work.

**7.24 Outbuildings, Sheds and Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior consent of the ACC. As stated in 7.15(j) above, no metal outbuildings will be permitted to be placed on a Lot unless specifically approved by the ACC or the Board.

**7.25 Animals.** No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that so long as they do not exceed four (4) in number in the aggregate, cats, dogs or other generally recognized household pets may be permitted on any Lot; however, those pets that are permitted to roam free or that, in the sole discretion of the Board of Directors, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board of Directors. If the animal owner fails to remove the animal from the Lot after the Board of Directors' request, the Board of Directors may remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the Bylaws. Animals are not to be raised, bred or kept for commercial purposes or food. It is the purpose of these

provisions to restrict the use of the Property so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other non-domesticated animals that may interfere with the quietude, health or safety of the community. All animals will be kept in strict accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal.

#### 7.26 Signs

a) **Sign Restrictions.** Permission is granted as a special privilege for residential dwelling occupants for the erection of one (1) non-illuminated personal real estate property sale sign in the front yard of a dwelling on private property provided that only one such sign not exceeding three (3) square feet may be erected. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 60 days in advance of the election to which they pertain and are removed within 15 days after the election and to the extent allowed by law only one sign per candidate is permitted. A permitted or authorized sign may not contain any language or symbols on the sign that are not directly related to the authorized purpose of the sign. An Owner may erect spirit signs for the purpose of support for youth activities. The ACC may in the Building Standards permit additional signs and/or place additional restrictions or limitations on the signs permitted in this Declaration, provided that such additional restrictions or limitations do not conflict with the terms herein. No banners are permitted without the prior written approval of the ACC. The Association will have the right to remove any sign, billboard, banner, or other advertising structure that does not comply with the foregoing. Removal shall not subject the Association to any liability in connection with such removal.

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

7.27 **Trash; Containers and Collection.** Garbage cannot be placed at curbside more than twenty four (24) hours prior to the date of pickup. Each residential customer should keep the containers securely closed in such a manner as to prevent the scattering of the contents and to render the contents inaccessible to insects, rodents, and other animals. Each container cannot be larger than four (4) feet in diameter and must weigh less than fifty (50) pounds. No hazardous wastes or liquids can be placed in containers for collection. Storage or accumulation on any property of the following materials is not allowed: (i) debris, rubbish or trash: (ii) broken or discarded household furniture, appliances, boxes and cartons, lawn equipment, play equipment and toys: (iii) used or discarded building materials: (iv) old tires, batteries, used oil or automobile parts, engine parts scrap metal, broken-down farm or construction equipment: (v) kitchen refuse, animal or vegetable food stuffs and their packaging, liquid wastes or grease or any other household waste which is damp or capable of emitting noxious odors: (vi) leaves, grass clippings, limbs and brush from lot clearing or yard maintenance: (vii) any other materials which are offensive and unsightly or tend to decay and become putrid or attract rodents and insects. No Lot or other area in the Guinn Farms shall be used as a dumping ground for rubbish.

All incinerators or other equipment for the storage or other disposal of garbage or trash shall be kept in a clean and sanitary condition. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any Builder designated by Declarant.

**7.28 Antennae and Satellite Dishes.** Except with the written permission of the ACC or as provided herein, exterior antennae, aerials, satellite dishes or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of the Lot outside the Dwelling, except that (i) antennas or satellite dishes (not to exceed eighteen (18) inches in diameter) designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACC (a "Permitted Device") must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained. In all cases except as may be approved by the ACC, no Permitted Device of any style shall be (a) erected as a free-standing structure, (b) permitted to extend outside the roof of the main residential structure or (c) maintained on any portion of the Lot forward of the front building line. A Permitted Device that complies with the provisions of this paragraph and the Building Standards shall not require the ACC's approval prior to installation. However, the ACC shall be the exclusive authorities for purposes of determining if the item or device complies with the provisions of this paragraph and the Building Standards.

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

**7.30 No Solar Collectors.** Except with the written permission of the ACC no solar collector panels or similar devices may be placed on or around any Dwelling.

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

**7.32 Sidewalks.** The Builder shall build sidewalks along the front and sides (if applicable) of the Residential Unit abutting the street, which sidewalks shall conform to the City specifications

and regulations, and such requirements as may be promulgated by the Board or ACC. The Owner shall be responsible for mowing grass up to the curb of any public street adjacent to Owner's Lot and maintaining any landscaping around any sidewalk located on such Owner's Lot to the extent required by the City or the Association.

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

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

7.35 **Window Treatment.** No aluminum foil, newspaper, reflective film, bedsheets, linens or similar treatment will be placed on windows or glass doors of a Dwelling.

7.36 **Mailboxes.** The standard mailbox originally installed by the Builder must be black double mailboxes, Deluxe Post 4872BLK and Mailbox 4850BLK, located as approved by the ACC.

7.37 **Athletic and Recreational Facilities.** No outdoor athletic and recreational facilities such as basketball goals, playscapes, swing sets and sport courts may be placed on a Lot unless (i) such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed ten feet in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully-screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACC may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling and out of public view. No such items shall be otherwise located (including, without limitation, in the any street).

7.38 **Swimming Pool Fence Requirements; No Above-Ground Pools.** Swimming pools shall have a fence of a minimum of four feet (4') in height. The fence may be constructed of wood, ornamental metal, tubular steel, metal screens, or other approved material. Above ground-level swimming pools shall not be installed on any Lot.

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

7.40 **Exterior Lighting.** Exterior lighting must be approved by the ACC.

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

7.42 **Minimum Landscape Requirements; Landscape Maintenance.** A minimum of one (1) tree is required in each front yard with a minimum two-inch (2") caliper. Existing trees of equal or greater size within the required front yard may be counted toward this requirement. Crepe myrtle cannot be used to satisfy this requirement. Yards must be sod from the sides to the fence, street, and adjoining lot. All landscaping located on any Lot, including grass lawns, must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board of Directors, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass and plantings of every kind on his or her Lot cultivated, pruned and free of trash and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flowerbeds and planter areas. Removal of live native trees is not permitted without the approval of the ACC. **Sprinkler System:** Front, back and side yards must have an automatic sprinkler system with coverage up to the fence.

## ARTICLE VIII – COMMON AREAS

8.1 **Association to Hold and Maintain.** The Association will own all Common Areas in fee simple title, or easement title, as applicable. The Association shall maintain the Common Areas and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas to the extent the Board of Directors determines that such maintenance is desirable.

8.2 **Use of Common Areas at Own Risk.** Each Owner, by acceptance of a deed to a Lot, acknowledges that the use and enjoyment of any Common Area recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any Builder are not insurers of personal safety and that each person using the Common Areas assumes all risks of personal injury and loss of or damage to property, resulting from the use and enjoyment of any recreational facility or other portion of the Common Areas. Each Owner agrees that neither the Association, the Board of Directors and any committees, any Builder, nor Declarant shall be liable to such Owner or any person claiming any loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from or otherwise relating to the use of any recreational facility or other portions of the Common Areas, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant, or any Builder. **THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.**

8.3 **Condemnation of Common Areas.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be

payable to the Association and will be used by the Association as the Board of Directors determines, in its business judgment, including, without limitation, (i) to purchase additional Common Areas to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Areas any improvements that were on the condemned Common Areas, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

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

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

## ARTICLE IX- EASEMENTS

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

9.2 **Easement to Correct Drainage on Property.** During the period that Declarant owns any real property within the Development, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over, and under the ground within the Property (excluding the area where the Dwelling is located) as reasonably necessary to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage

facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

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

9.4 **Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of Declarant, its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing, and completion of Dwellings and landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot 24 months after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

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

#### ARTICLE X- MISCELLANEOUS

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

10.2 **Amendments to Declaration.** This Declaration may be amended by a written consent by Members holding 67% of the votes (all classes counted together), except that Declarant, at its sole discretion and without a vote or the consent of any other party, may modify, amend or repeal this Declaration: (i) at any time prior to the conveyance of the first Lot; (ii) as necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (iii) as necessary to comply with the requirements of the VA, HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency or secondary mortgage market entity; or (iv) as necessary to clarify or to correct technical, typographical or scrivener's errors; provided, however, any amendment pursuant to

clause (ii), (iii) and/or (iv) immediately above must not have a material adverse effect upon any right of any Owner. Any amendment to this Declaration shall be effective upon Recording.

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

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

10.5 **Notice to Association of Sale or Transfer.** Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board of Directors written notice of the name and address of the purchaser or transferee within 30 days after the date of such transfer of title and such other information as the Board of Directors may reasonably require. The Association may charge a transfer fee upon the conveyance of title to a Lot for purposes of covering the reasonable administrative costs to change the records.

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

10.7 **Construction and Interpretation.** This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law. In the event of a dispute as to interpretation of any provision in this Declaration, the Bylaws, or other governing documents, the interpretation of the Board of Directors shall govern.

10.8 **Notices.** Except as otherwise provided in the Bylaws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notice may also be given by electronic mail but will not be deemed delivered unless actually received. Notices that are mailed shall be deemed to have been duly given three days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used



by the Association for mailing of notices, statements, and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice.

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

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

10.11 **Rights and Obligations Run With Land.** The provisions of this Declaration are covenants running with the land and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees, and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the ACC acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to ACC accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed.

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

10.13 **Street Lights.** Street lights within the Property are anticipated to be maintained by the electric utility provider. The operational costs for the street lights are anticipated to be paid by the City. If, at any time in the future, the City adopts an ordinance, regulation, or other mechanism whereby the costs for maintaining and/or operating the street lights within the community are allocated to the Declarant, the Declarant shall have the right to assign all such obligations to the Association, and the Association hereby consents to accept the assignment of all obligations related to maintaining and/or operating said street lights, and the Association shall assume these additional costs as Common Expenses. If, at any time in the future, the City adopts an ordinance, regulation, or other mechanism whereby the costs for maintaining and/or operating

the street lights within the community are allocated to the Association, the Association shall assume these additional costs as Common Expenses.

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

10.15 **Gender.** All personal pronouns used in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

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

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


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

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on this 7th day of October, 2006.

**DECLARANT:**

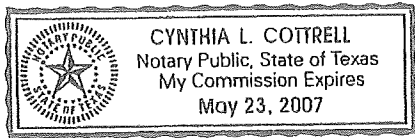
**GUINN FARMS DEVELOPMENT, LP ,  
a Texas limited partnership**

**By: Guinn Development, LLC,  
a Texas limited liability company,  
its general partner**

By:   
Name: **Wallace Creel**  
Title: **President**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

The foregoing instrument was acknowledged before me on this the 7<sup>th</sup> day of November, 2006, by Wallace Creel, President of Guinn Development, LLC, a Texas limited liability company, General Partner of Guinn Farms Development, L.P., a Texas limited partnership, on behalf of said general partner and limited partnership.



*Cynthia L. Cottrell*  
Notary Public for the State of Texas

AFTER RECORDING RETURN TO:  
Holigan Land Development, Ltd.  
15950 Dallas Parkway, Suite 750  
Dallas, Texas 75248  
Attn: Wallace Creel

EXHIBIT "A"

The Property  
Legal Description – Guinn Farms

All that certain lot, tract or parcel of land situated in Smith County, Texas and being Lots NCB 1490-E 1-14, 1490-F 1-8, 1490-D 1-10, 1490-A 1-12 & 20-30, 1490-A 1-28, 1490B 1-15, 1490-C 1-30, 1490 1-53, Guinn Farms Addition, Unit 1, as recorded in Cabinet D, Slide 323-A, Plat Records, Smith County, Texas.

EXHIBIT "B"

CERTIFICATE OF FORMATION  
OF  
GUINN FARMS HOMEOWNERS' ASSOCIATION, INC.  
A TEXAS NON-PROFIT CORPORATION

[FOLLOWS THIS PAGE]

OCT 23 2006

CERTIFICATE OF FORMATION  
OF  
GUINN FARMS HOMEOWNERS' ASSOCIATION, INC. Corporations Section

This Certificate of Formation, dated October 20, 2006, has been duly executed and is filed pursuant to the Texas Business Organizations Code (the "TBOC") to form a non-profit corporation under the TBOC.

1. Entity Type and Name. The entity being formed is a non-profit corporation. The name of the non-profit corporation (the "Association") is Guinn Farms Homeowners' Association, Inc.

2. Registered Agent; Registered Office. The name of the initial registered agent of the Association in the State of Texas is Wallace Creel. The address of the initial registered office of the Association is 15950 N. Dallas Parkway, Suite 750, Dallas, Texas 75248.

3. Purpose. The purpose for which the Association is organized is to be and constitute, and to exercise all powers and privileges and perform all duties and obligations of, the Association to which reference is made in the "Declaration of Covenants, Conditions, and Restrictions for Guinn Farms" (the "Declaration") instrument pertaining to the single-family subdivision within the City of Tyler, Smith County, Texas, as recorded or to be recorded (and amended or supplemented from time to time) in the Real Property Records of Smith County, Texas. The Association shall not engage in any purpose, action or activity that is prohibited by the Texas Nonprofit Corporation Law and by other applicable law. The Association does not contemplate pecuniary gain or profit, direct or indirect, to its members.

4. Duration. The period of the Association's duration is perpetual.

5. Members. The Association shall have one or more classes of members. The designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class are set forth within the Declaration and the Bylaws of the Association.

6. Indemnification. To the full extent permitted by applicable law, no director or officer of this Association shall be liable to this Association or its members for monetary damages for an act or omission in such director's or officer's capacity as a director or officer of this Association, except that this Article 6 does not eliminate or limit the liability of a director or officer of this Association for:

a breach of such director's or officer's duty of loyalty to this Association or its members;

an act or omission not in good faith that constitutes a breach of duty of such director or officer to the Association or that involves intentional misconduct or a knowing violation of the law;

a transaction from which such director or officer received an improper benefit, whether or not the benefit resulted from an action taken within the scope of such director's or officer's office;

an act or omission for which the liability of such director or officer is expressly provided for by statute; or

an act related to an unlawful stock repurchase or payment of a dividend.

Any repeal or amendment of this Article by the members of this Association shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director or officer of this Association existing at the time of such repeal or amendment. In addition to the circumstances in which a director or officer of this Association is not personally liable as set forth in the foregoing provisions of this Article 6, a director or officer shall not be liable to the full extent permitted by the provisions of the TBOC that further limit the liability of a director or officer as the same may be amended from time to time.

To the full extent permitted by applicable law, the Association shall indemnify any director or officer against judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses (including court costs and attorney's fees) actually incurred by any such person who was, is or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director or officer and shall advance to such person such reasonable expenses as are incurred by him in connection therewith. The rights of directors and officers set forth in this Article 6 shall not be exclusive of any other right which directors or officers may have or hereafter acquire relating to the subject matter hereof. As used in this Article 6, the terms "director" and "officer" shall mean any person who is or was a director or officer of the Association and any person who, while a director or officer of the Association, is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise. As used in this Article 6, the term "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative, any appeal in any such action, suit or proceeding and any inquiry or investigation that could lead to such an action, suit or proceeding.

7. Action Without a Meeting. Any action authorized or required by the Texas Nonprofit Corporation Law to be taken at any annual or special meeting of members, board of directors, or any committee thereof, or any action that may be taken at any annual or special meeting of members, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by a sufficient number of members, directors, or committee members as would be necessary to take

that action at a meeting at which all of the members, directors, or members of the committee were present and voted.

8. Initial Directors. The number of directors constituting the initial Board of Directors is three (3), and the names and address of the persons who are to serve as directors are:

W. R. Creel  
15950 N. Dallas Parkway, Suite 750  
Dallas, Texas 75248

J. Brady Giddens  
15950 N. Dallas Parkway, Suite 750  
Dallas, Texas 75248

Cindy Cottrell  
15950 N. Dallas Parkway, Suite 750  
Dallas, Texas 75248

The number of directors may be changed as provided in the Bylaws of the Association, provided, however, that the number of directors may never be less than three (3).

9. Distribution of Assets Upon Winding Up. Upon the winding up of the Association, the Association's assets shall be distributed in the manner provided by Section 22.304 of the TBOC.

10. Organizer. The name and address of the sole organizer of the Association is

Charles W. Spencer  
8111 LBJ Freeway, Suite 920  
Dallas, TX 75251

IN WITNESS WHEREOF, this Certificate of Formation has been executed on the \_\_\_\_ day of October, 2006 by the undersigned, and the undersigned sole organizer does hereby disclaim any and all interests in the Association.

SOLE ORGANIZER


  
\_\_\_\_\_  
Charles W. Spencer



EXHIBIT "C"

BYLAWS  
OF  
GUINN FARMS HOMEOWNERS' ASSOCIATION, INC.  
A TEXAS NON-PROFIT CORPORATION

[FOLLOWS THIS PAGE]

BYLAWS  
OF  
GUINN FARMS  
HOMEOWNERS' ASSOCIATION, INC.  
A TEXAS NON-PROFIT CORPORATION

Organized: October 23, 2006

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BYLAWS  
OF  
GUINN FARMS HOMEOWNERS' ASSOCIATION, INC.  
A TEXAS NON-PROFIT CORPORATION

ARTICLE I  
NAME AND LOCATION

The name of the association is **GUINN FARMS HOMEOWNERS' ASSOCIATION, INC.** (the "Association"). The Association is a non-profit corporation organized under the Texas Business Organizations Code (the "TBOC"). The principal office of the Association shall be located at 15950 N. Dallas Parkway, Suite 750, Dallas, Texas 75248, but meetings of members and directors may be held at such places within the State of Texas as may be designated by the Board of Directors.

ARTICLE II  
PURPOSE AND PARTIES

**Section 2.01. Purpose.** The purpose for which the Association is formed is to govern Guinn Farms subdivision ("Subdivision"), situated in the City of Tyler, County of Smith, State of Texas, which property is described in that certain Declaration of Covenants, Conditions, and Restrictions for Guinn Farms (as the same may be hereafter amended or supplemented, the "Declaration"), and recorded in the Real Property Records of Smith County, Texas.

**Section 2.02. Parties.** All present or future owners ("Owners") of the lots in the Subdivision ("Lots"), tenants or future tenants of any Lot, or any other person who might use in any manner the facilities of the properties owned, managed or controlled by the Association ("Properties") are subject to the provisions and the regulations set forth in these Bylaws. The mere acquisition, lease or rental of any Lot or the mere act of occupancy of a Lot will signify that these Bylaws are accepted, approved, ratified, and will be complied with.

ARTICLE III  
DEFINITIONS

The definitions contained in the Declaration are incorporated herein by reference.

ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS

**Section 4.01. Membership.** Each and every Owner shall automatically be a member of the Association ("Member") without the necessity of any further action on his part, subject to the terms of the Declaration, the Certificate of Formation, these Bylaws, and the rules and regulations with respect to the Properties from time to time promulgated by the Association. Membership shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of the Lot owned by such Owner. Ownership of any portion of the Lots shall be the sole qualification for being a Member; provided, however, a Member's voting rights may be regulated or suspended as provided in the Declaration, these Bylaws, and/or the rules and

regulations promulgated thereunder. Persons or entities shall be Members by reason of ownership of land dedicated and accepted by the local public authority and devoted to public use and such land shall be owned subject to all of the terms and provisions of the Declaration except that: (i) ownership of land devoted to purposes described in this sentence shall not create any votes in the Members owning such land, and (ii) such non-voting Members shall not be required to pay any assessments other than special individual assessments as described and authorized in the Declaration. No person or entity shall be a Member by reason of ownership of any easement, right-of-way, or mineral interest. In addition, any person or entity that holds an interest in and to all or any part of the Lots merely as security for the performance of an obligation shall not be a Member.

**Section 4.02. Transfer.** Membership may not be severed from the Lots nor may it be in any way transferred, pledged, mortgaged or alienated except upon the sale or assignment of the Owner's interest in all or any part of the Lots and then only to the purchaser or assignee as the new Owner thereof. Membership shall not be severed by the encumbrance by an Owner of all or any part of the Lots. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void and of no further force or effect, and will be so reflected upon the books and records of the Association. Any transfer of the fee title to a Lot shall automatically operate to transfer membership to the new Owner thereof. In the event an Owner should fail or refuse to transfer the membership registered in such Owner's name to the transferee, the Association shall have the right to record the transfer upon its books and records.

**Section 4.03. Voting Rights.** The provisions dealing with the voting rights are set forth in the Declaration.

**Section 4.04. Multiple Owner Votes.** Where there are multiple Owners of a Lot it is not intended by any provision of the Declaration or these Bylaws that each of said Owners shall be entitled to cast the votes allocated to such Lot nor may fractional votes be cast. When more than one person or entity owns the interest or interests in and to any Lot, as required for membership in the Association, each and every person or entity shall be a Class A Member, and the votes for any such Lot shall be exercised as they, among themselves, collectively determine and they shall designate one person to cast the votes or execute a written consent, as applicable. The Owners of such Lot will notify the Association, in writing, of the person so designated. Such notice will not be valid unless signed by all Owners of such Lot. The Association shall not be required to recognize the vote or written assent of any such multiple Owners except the vote or written assent of the Owner designated in writing executed by all of such multiple Owners and delivered to the Association.

If such Owners are unable to agree among themselves as to how the one vote per Lot shall be cast, they shall forfeit the right to vote on the matter in question. If more than one person or entity purports to exercise the voting rights with respect to any such Lot on any matter in question, none of such votes shall be counted in tabulating the vote on such matter and such votes shall be deemed void.

**Section 4.05. Suspension of Voting Rights.** The voting rights of any Member may be suspended by the Board for any period during which any assessment levied by the Association remains past due, unless the Member is in good faith contesting the validity or amount of the

Assessment. The voting rights of any Member may also be suspended by the Board for a period not to exceed sixty (60) days for an infraction of the rules and regulations set forth in the Declaration.

**Section 4.06. Quorum, Notice and Voting Requirements.**

(a) Subject to the provisions of Paragraph (d) of this Section, any action taken at a meeting of the Members for which voting requirements are not specifically addressed by the Declaration shall require the assent of the majority of all of the votes of those who are voting in person or by proxy, regardless of class, at a duly called meeting at which a quorum is present.

(b) The presence at the initial meeting of Members entitled to cast, or of proxies entitled to cast, ten percent (10%) of the votes of all Owners, regardless of class, shall constitute a quorum for any action except as otherwise provided in the Certificate of Formation, the Declaration or these Bylaws. If the required quorum is not present or represented at the meeting, subsequent meetings may be called, subject to the notice requirements set forth below, and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting, and provided that once the required quorum for the subsequent meeting is present or represented at the meeting, no further subsequent meetings with reduced requirements for a quorum shall be held

(c) Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) but not more than fifty (50) days before such meeting to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose or purposes of the meeting.

(d) As an alternative to the procedure set forth above, any action referred to in this Section may be taken without a meeting if a consent in writing, approving of the action to be taken, shall be signed by the percentage of Members required by the Declaration to take such action.

(e) In the event of a conflict between these Bylaws, the Declaration and the Certificate of Formation in the notice, voting and quorum requirements for actions to be taken by the Association, the requirements under the Declaration shall control.

**Section 4.07. Annual Meeting.** The first annual meeting of the Members shall be held within one (1) year after the date of formation of the Association. Thereafter, annual meetings shall be set by the Board so as to occur not later than ninety (90) days after the close of the Association's prior fiscal year. The time and place of all annual meetings shall be determined by the Board. The Board shall give written notice of the place of holding of the meeting to all Members.

**Section 4.08. Special Meetings.** Special meetings of the Members may be called at any time by the Declarant, by the President, by the Board, or upon the written request for a special meeting from Members who are entitled to vote at least twenty percent (20%) of the outstanding votes of the Members (all classes counted together).

**Section 4.09. Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Proxies shall be revocable and shall automatically cease upon conveyance by the Member of his Lot, or upon receipt by the Secretary of the Association of notice of the death or judicially declared incompetence of such Member. Unless otherwise provided in the proxy, no proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided therein, except that the maximum term of any proxy shall be three (3) years from the date of execution.

**Section 4.10. Action Without Meeting By Written Consent.** Any action which may be taken by the Members at a regular or special meeting, other than the election of directors, may be taken without a meeting if done in compliance with relevant provisions of the TBOC and Section 4.06(d) above.

## ARTICLE V BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

**Section 5.01. Number.** The affairs of this Association shall be managed by a Board of not less than three (3) or more than five (5) directors (herein, the "Board"). The number of directors may be changed by amendment of these Bylaws. The members of the initial Board or their successors, shall serve until the first annual meeting of the Members.

**Section 5.02. Term of Office.** Until the Class "B" Control Period terminates as provided in the Declaration, the Class "B" Member shall appoint the members of the Board of Directors. At the first duly called meeting after the termination of the Class "B" Control Period at which a quorum is present, the Members, voting regardless of class, shall elect three (3) directors for a term of two (2) years each and two (2) directors for a term of three (3) years increasing the number of directors at that time from three (3) to five (5). At each annual meeting thereafter at which a quorum is present, the Members shall elect to replace those directors whose terms have expired. With the exception of the directors elected at the first meeting to serve for a term of three (3) years, all directors shall serve for a term of two (2) years.

**Section 5.03. Removal.** So long as the Class "B" Membership exists, the entire Board may be removed from office only by the Class "B" Member. When the Class "B" Membership no longer exists, the entire Board may be removed from office, with or without cause, by a vote of Members holding a majority of the votes.

**Section 5.04. Vacancies.** Vacancies on the Board shall be filled subject to the following provisions:



(a) Vacancies by Death or Resignation. In the event of the death or resignation of a director, a successor director shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of such director.

(b) Vacancies by Removal. Vacancies created by the removal of a director shall be filled during the Class "B" Control Period by the Class "B" Member, and after the termination of the Class "B" Control Period by a vote of Members holding a majority of the votes. Such director shall serve for the unexpired term of the removed director.

(c) Vacancies by Increase in Directorships. Any vacancy to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of Members called for that purpose.

**Section 5.05. Indemnification of Officers and Directors.** Except in cases of fraud, willful malfeasance, gross negligence or bad faith of the director or officer in the performance of duties, and subject to the provisions of applicable Texas law, each director and officer shall be indemnified by the Association and the Members against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her by judgment or settlement in connection with any proceeding to which he or she may be a party, or may become involved by reason of being or having been a director or officer of the Association. The Association may indemnify its officers and directors to the extent permitted by the Texas Business Organizations Code. **THIS INDEMNITY INCLUDES LIABILITY FOR NEGLIGENCE OF THE INDEMNITEE.**

The Association may purchase and maintain insurance on behalf of any director or officer or may enter into other arrangements, such as creating a trust fund, establishing a form of self-insurance, or establishing a letter of credit, guaranty or surety arrangement, in connection with indemnification of directors and officers, provided, however, that in no event shall the grant of a security interest or other lien on the assets of the Association ever be given to secure an indemnity obligation under this Section 5.05.

**Section 5.06. Compensation and Loans.** No director shall receive compensation for any service such director may render to the Association. However, directors shall be reimbursed for actual expenses incurred in the performance of his or her duties of office. No loans may be made by the Association to any officer or director of the Association.

**Section 5.07. Action Without Meeting and Telephone Meetings.** The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of the number of directors necessary to take that action at a meeting at which all of the directors are present and voting. Any action so approved shall have the same effect as though taken at a meeting of the directors. The Board may hold duly called meetings between directors by conference, telephone or other similar communications equipment by means of which all participants in the meeting can hear each other.

ARTICLE VI  
NOMINATION AND ELECTION OF DIRECTORS

**Section 6.01. Nominations.** Nominations for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two or more Members. The Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it in its discretion shall determine, but not less than the number of vacancies that are to be filled. Such nominations must be made from Owners or, where such Owner is not an individual person, an officer, director, shareholder, partner or representative of an Owner.

**Section 6.02. Election of Board.** The initial Board shall be set forth in the Certificate of Formation of the Association. The first election of the Board shall be conducted at the first meeting of the Association after the termination of the Class "B" Control Period. All positions on the Board shall be filled at that election. Thereafter, directors shall be elected by Members at the annual meeting. At such elections the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VII  
MEETINGS OF DIRECTORS

**Section 7.01. Regular Meetings.** Regular meetings of the Board shall be held quarterly at such place within the State of Texas, and at such hour as may be fixed from time to time by resolution of the Board. If the meeting date falls upon a Saturday, Sunday or legal holiday, then that meeting shall be held at the same time on the next day which is not a Saturday, Sunday or legal holiday. Notice of the agenda and place of meeting shall be delivered either personally, by mail, by telephone, telegraph, electronic mail or facsimile communication equipment to the Board members not less than four (4) days prior to the meeting. However, notice of a meeting need not be given to Board members who have signed a waiver of notice or a written consent to the holding of the meeting. Attendance in person at a meeting, except where such director attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened, shall constitute waiver of notice and such director's consent to the holding of said meeting. Participation by a director in a meeting by telephone or similar communication equipment shall constitute waiver of notice and attendance in person at such meeting.

**Section 7.02. Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the President or by any two (2) directors other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be sent to all directors by mail not less than three (3) days prior to the scheduled time of the meeting, provided that notice of the meeting

need not be given to Board members who have signed a waiver of notice or a written consent to the holding of the meeting. An officer of the Association shall make reasonable efforts to notify all directors of the meeting by telephone. Attendance in person at a meeting, except where such director attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened, shall constitute waiver of notice and such director's consent to the holding of said meeting. Participation by a director in a meeting by telephone or similar communication equipment shall constitute waiver of notice and attendance in person at such meeting.

**Section 7.03. Quorum.** A majority of the total number of directors constituting the Board shall constitute a quorum for the transaction of business. Every act performed or decision made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**Section 7.04. Open Meetings.** All meetings of the Board after the Class "B" Control Period terminates shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

**Section 7.05. Executive Session.** The Board may, with approval of a majority of a quorum of the Board, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, disciplinary matters, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

## ARTICLE VIII GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS

**Section 8.01. Powers and Duties.** The affairs of the Association shall be conducted by the Board. In addition to the powers and duties enumerated in the Declaration or elsewhere herein, and without limiting the generality thereof, the Board, for the mutual benefit of the Members, shall have the powers and/or duties set forth in the Declaration and the following powers and/or duties:

(a) If, as and when the Board, in its sole discretion, deems necessary it may take such action to enforce the terms and provisions of the Declaration, the Certificate of Formation and these Bylaws by appropriate means and carry out the obligations of the Association thereunder, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel and accounting services, the commencement of legal causes of action, the promulgation and enforcement of the Association rules which may include the establishment of a system of fines and/or penalties enforceable as special individual assessments as provided in the Declaration and to enjoin and/or seek legal damages from any Owner for violation of such provisions or rules;

- (b) To contract for and maintain such policy or policies of insurance as may be required by the Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;
- (c) To enter into contracts for legal and accounting services, maintain one or more bank accounts, and generally, to have the powers necessary or incidental to the operation and management of the Association;
- (d) If, as and when the Board, in its sole discretion, deems it necessary it may, but shall not be obligated to, sue and defend in any court of law on behalf of the Association or one (1) or more of its Members;
- (e) To establish and maintain a working capital and/or contingency fund in an amount to be determined by the Board;
- (f) To make reasonable rules and regulations for the use of the Common Areas and to amend same from time to time, which rules and regulations will be duly filed in the county records;
- (g) To make an unaudited annual report available (within one hundred twenty (120) days after the end of each fiscal year) to each Owner;
- (h) Subject to the terms of the Declaration, to adjust the amount, collect and use any insurance proceeds to cover any insured liability of the Association;
- (i) To delegate its powers and duties to committees, officers or employees as provided in these Bylaws, employ a manager or other persons and contract with independent contractors or managing agents who have professional experience to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or entity appointed as a manager or managing agent shall be terminable with or without cause on not more than ninety (90) days written notice by the Association and shall have a term of not more than one (1) year with successive one (1) year renewal periods upon the mutual agreement of the parties;
- (j) To suspend the voting rights of any Owners who have failed to pay their assessments or who have otherwise violated the Declaration, these Bylaws or the rules and regulations of the Association;
- (k) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by twenty-five percent (25%) or more of the outstanding votes of the Members, regardless of class;
- (l) To elect the officers of the Association, as provided in these Bylaws;
- (m) To fill vacancies on the Board, in accordance with Section 5.04(a) hereof;
- and

(n) Generally, to have the powers necessary or incidental to the operation and management of the Association.

**Section 8.02. Contracts Terminable.** So long as the Class "B" Membership exists, the Board shall not enter into any contracts or agreements unless such contracts or agreements are terminable by the Board upon ninety (90) days prior written notice or less.

## ARTICLE IX OFFICERS AND THEIR DUTIES

**Section 9.01. Enumeration of Officers.** The officers of the Association shall be as follows:

- (a) A President, who shall at all times be a member of the Board;
- (b) A Vice President, who shall at all times be a member of the Board;
- (c) A Secretary, who may or may not be a member of the Board;
- (d) A Treasurer, who may or may not be a member of the Board; and
- (e) Such other officers, who may or may not be members of the Board, as the Board may from time to time by resolution create.

**Section 9.02. Multiple Offices.** The offices of President and Secretary may be held by the same person.

**Section 9.03. Election of Officers.** At its organizational meeting following the formation of the Association, the directors shall elect officers. Thereafter, the election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

**Section 9.04. Term.** The officers shall be elected annually by the Board and each shall hold office for one (1) year unless an officer shall sooner resign, be removed, or otherwise become disqualified to serve.

**Section 9.05. Special Appointments.** The Board may elect such other officers or appoint such other agents as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 9.06. Resignation and Removal.** Any officer may be removed from office by the Board with or without cause. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.07. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the replaced officer.

Section 9.08. Duties. The duties of the officers are as follows:

(a) President. The President shall (i) preside at all meetings of the Board; (ii) see that orders and resolutions of the Board are carried out; (iii) sign all contracts, leases, mortgages, deeds and other written instruments; provided, however, that any duly authorized officer may sign checks and promissory notes; and (iv) shall perform such other duties as may be required by the Board.

(b) Vice President. The Vice President shall (i) act in the place and stead of the President in the event of the President's absence, inability or refusal to act; and (ii) shall exercise and discharge such other duties as may be required by the Board.

(c) Secretary. The Secretary shall (i) record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; (ii) keep the corporate seal of the Association and affix it on all papers requiring said seal; (iii) serve notice of meetings of the Board and of the Members; (iv) keep appropriate current records showing the Members of the Association together with their addresses; and (v) perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall (i) receive and deposit in appropriate bank accounts all monies of the Association; (ii) disburse such funds as directed by resolution of the Board; (iii) maintain the financial records of the Association; and (iv) perform such other duties of a similar nature as may be required by the Board.

#### ARTICLE X COMMITTEES

The Board and/or the Declarant shall appoint an Architectural Control Committee ("ACC") as provided in the Declaration. The provisions of Article VI of the Declaration specifically set forth the rights, duties, obligations, responsibilities and liabilities of the ACC and its members and those provisions are incorporated herein by reference for all purposes. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

#### ARTICLE XI CORPORATE SEAL

The Association may, but is not required, to have a seal in circular form having within its circumference the name of the Association.

## ARTICLE XII BOOKS AND RECORDS

**Section 12.01. Inspection by Members.** The membership register, books of account and minutes of meetings of the Members, of the Board and of committees shall be made available for inspection and copying by any Member or by the Member's appointed representative, at any reasonable time and for a purpose reasonably related to the Member's interest, at the office of the Association or at such other place as the Board may designate.

**Section 12.02. Rules for Inspection.** The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
- (b) Hours and days of the week when such an inspection may be made;
- (c) Payment of the cost of reproducing copies of requested documents; and
- (d) Frequency of inspection by the same Member or group of Members to avoid misuse of inspection rights for the sake of harassment.

**Section 12.03. Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical property owned by the Association. The rights of inspection by a director includes the right to make extra copies of documents.

## ARTICLE XIII ASSESSMENTS

The provisions of the Declaration specifically set forth the rights, obligations and liabilities of the Association and its Members relative to the levy, collection and use of assessments and those provisions are incorporated herein by reference for all purposes.

## ARTICLE XIV INDEMNIFICATION

Subject to the provisions of Title 1, Chapter 8 of the Texas Business Organizations Code, the Association may indemnify directors, officers, agents and employees as follows:

1. **Extent.**

- (a) Statutorily Required Indemnification. The Association shall indemnify its directors and officers against reasonable expenses incurred in connection with a proceeding in which the director or officer is named as a defendant or respondent because he is or was a director or officer of the Association if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding. The Association may, at the direction and in the sole

discretion of the Board, pay for or reimburse the director or officer for the payment of his reasonable expenses in advance of the final disposition of the proceeding, provided that the Association receives in writing (i) an affirmation by the director or officer of his good faith belief that he has met the standards of conduct necessary for indemnification under Section 8.101 of the Texas Business Organizations Code, and (ii) an undertaking by or on behalf of the director or officer to repay the amount paid or reimbursed if it is ultimately determined such standards of conduct have not been met or that indemnification is prohibited by the Texas Business Organizations Code.

(b) Permitted Indemnification. The Association, at the direction of and in the sole discretion of the Board, shall have the right, to such further extent as permitted by law, but not the obligation, to indemnify any person who (i) is or was a director, officer, employee, or agent of the Association, or (ii) while a director, officer, employee, or agent of the Association, is or was serving at its request as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

2. Insurance. The Association may purchase and maintain insurance or another arrangement on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at its request as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the Association would have the power to indemnify him against that liability pursuant to the provisions of the Texas Business Organizations Code. Furthermore, the Association may, for the benefit of persons indemnified by the Association, (i) create a trust fund; (ii) establish any form of self-insurance, (iii) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Association; or (iv) establish a letter of credit, guaranty, or surety arrangement.

#### ARTICLE XV AMENDMENTS

These Bylaws or the Certificate of Formation may be amended by the Board of Directors during the Class "B" Control Period, and thereafter at a regular or special meeting of the Members by a majority vote of a quorum of Members present in person or by proxy, or written consent, as provided in Section 4.06 of these Bylaws. Further provided, Declarant, at its sole discretion and without a vote or the consent of any other party, may modify, amend or repeal these Bylaws or the Certificate of Formation: (i) at any time prior to the conveyance of the first Lot; (ii) as necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation or judicial determination; (iii) as necessary to comply with the requirements of the VA, HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency or secondary mortgage market entity; or (iv) as necessary



to clarify or to correct technical, typographical or scrivener's errors; provided, however, any amendment pursuant to clause (ii), (iii) and/or (iv) immediately above must not have a material adverse effect upon any right of any Owner. Any amendment to these Bylaws or the Certificate of Formation shall be effective upon Recording.

ARTICLE XVI  
MISCELLANEOUS


Section 16.01. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of formation of the Association.

Section 16.02. Interpretation. In the case of any conflict between the Certificate of Formation and these Bylaws, the Certificate of Formation shall control; in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the case of any conflict between the Declaration and the laws of the State of Texas governing non-profit corporations, the laws of the State of Texas shall control; provided, however, to the extent reasonably practical, the Certificate of Formation, Bylaws and Declaration shall be construed and interpreted together as consistent and non-conflicting documents, such being the intent thereof. The Board of Directors shall be the governing authority on interpretation of the Declaration, Bylaws, Certificate of Formation, or other governing documents, the its interpretation will only be overturned on a finding that such interpretation was arbitrary, capricious or discriminatory.

CERTIFICATION

I, the undersigned, am the duly elected and acting President of GUINN FARMS HOMEOWNERS' ASSOCIATION, INC., a non-profit corporation, and I do hereby certify:

That the within and foregoing Bylaws were adopted as the Bylaws of said corporation, that the same do now constitute the Bylaws of said corporation, and that they have not been modified, amended nor rescinded.

  
\_\_\_\_\_  
Wallace Creel