

**DRAFTING DOCUMENTS TO CREATE  
PLANNED COMMUNITIES  
WITH OWNERS ASSOCIATIONS**

Presented by

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**CHAPTER 10**



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### PROFESSIONAL ASSOCIATIONS

Texas College of Real Estate Attorneys, Director (2003-present); State Bar of Texas, Real Estate Probate & Trust Law Section, Committee on Property Owners Associations (Chair 1997-2000, 2002-present); American College of Real Estate Lawyers; Planning Committees, Advanced Real Estate Law + Advanced Real Estate Drafting Course, State Bar of Texas (1996-present, Chair 1999 + 2002); Home Builders Association of Greater Dallas, Government Relations Committee (1994-present); Community Associations Institute, Charter Director of Dallas/Ft. Worth Chapter; Dallas Bar Association, Real Property Section; Dallas Area Real Estate Lawyers Discussion Group; American Bar Association, Real Property, Probate and Trust Law Section; Apartment Association of Greater Dallas.

### MAJOR PRESENTATIONS

*Drafting Documents for Condominiums, Planned Communities, and New Urbanism Developments*, 2006, ALI-ABA; *Statutory Minefield for Creating and Marketing Condominiums and Planned Developments*, 2003 Advanced Real Estate Law Course, State Bar of Texas; *Statutory Evolution of Condominiums and Property Owners Associations in Texas*, 2002 Mortgage Lending Institute, U.T. School of Law; *A Primer for Representing Condominium and Property Owners Associations*, 2001 Advanced Real Estate Law Course, 1998 Advanced Real Estate Drafting Course, State Bar of Texas; *Condominium Sales & Resales Under the Texas Uniform Condominium Act*, 1995 Advanced Real Estate Drafting Course, State Bar of Texas; *Texas Uniform Condominium Act*, 1994 Advanced Real Estate Drafting Course, State Bar of Texas.

### VOLUNTEER LEGISLATIVE EXPERIENCE

Spokesperson for the proposed Texas Uniform Planned Community Act (2005-present); Observer, UCIOA Drafting Committee of the National Conference of Commissioners on Uniform State Laws (2005-present); Involved in drafting and passage of the Texas Uniform Condominium Act (1980-1993).

### EDUCATION

The University of Texas - B.A. 1969, M.S. 1976, J.D. 1987



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# DRAFTING DOCUMENTS TO CREATE PLANNED COMMUNITIES WITH OWNERS ASSOCIATIONS

## I. INTRODUCTION

**New laws. New terminology.  
New technology. Never a dull moment.**

### A. INTERESTING TIMES

The timing of this article is a "tweener" in several ways. This article and its form documents are destined to become outdated - possibly soon.

- 2006 is between the paper and the electronic eras of publishing, executing, recording, and distributing governing documents of planned communities.
- 2006 is in the window between HUD/FHA oversight of new planned unit developments (which ended in January 2003), and the inception of state regulation of planned communities, possibility via the proposed Texas Uniform Planned Community Act.
- 2006 is positioned between the dawning of the Consumer Protection Period and the demise of the "HOA Always Wins" Period.
- In 2006, city attorneys and city planners in the growth areas of Texas are still experimenting with ways of ensuring the success of the planned communities within their corporate boundaries.
- On January 1, 2006, the new Texas Business Organizations Code went into effect, requiring Texas attorneys to update our organizational forms to stay abreast of the law and terminology changes.
- In Spring 2006, two interim committees of the Texas House of Representatives and an interim committee of the Texas Senate are expected to hold hearings on the proposed Texas Uniform Planned Community Act which, if enacted, will require additional changes to the documents by which we create planned communities. *(Please visit [www.tupca.org](http://www.tupca.org) for more about the bill.)*

### B. "PLANNED COMMUNITY"?

Although the term "planned community" may be new to Texas attorneys, the concept is not. Planned

community is one of the three types of common interest communities. It is not a condominium. It is not a housing cooperative. Planned community is the name of the third - "everything else" - category of mandatory-membership common-interest communities. A planned community is what we have been calling a planned development, a planned unit development, a townhome project, or a subdivision with a mandatory owners association. The moniker "Planned Community" is coming into vogue in Texas because of the proposed Texas Uniform Planned Community Act (TUPCA), which is named after a model statute. If TUPCA does not become law, the term "Planned Community" may disappear, but not the concept. The gist of a planned community is that the owner of a lot is automatically a member of a property owners association and subject to assessment by the association. In this article, as in TUPCA, "Planned Community" refers to residential-only developments.

### C. FORM DOCUMENTS

As drafting attorneys, we take pride in our abilities to create documents from scratch. Nevertheless, we are all dependent on form document - forms we create and forms we buy and borrow. Looking for a positive light to shine on "forms," I stumbled on the concept of "Knowledge Management," also known as "KM" (am I the last to hear of it?). The development and use of forms is a component of KM. Sounds hip!

#### 1. Using Forms

"Ten Things Every Legal Drafter Should Know," presented at the 2004 Advanced Real Estate Drafting Course, by U. T. Law Professor Wayne Schiess, makes the following recommendations for using forms:

- Never include language you don't understand.
- Make the form your own by thoroughly editing and revising it.
- Preserve a "Starting Place" form that has not been tailored to a specific transaction.
- Be prepared to draft from scratch - there is not a form for everything.

#### 2. Plain Jane Forms

Professor Schiess's suggestion of preserving a "starting place" form that is not tailored to a specific

transaction inspired the forms used with this article. The CC&Rs in particular are intended to serve as a base that can be expanded and customized by an attorney anywhere in Texas for the features that make each development and location unique. The attached document forms are for a "Plain Jane" planned community - an entirely residential single-phase development of traditional detached single family homes with modest common areas and public streets, entirely located within one city and one county, in North Central Texas (no coastal issues, no border issues, no sensitive environmental issues, no bracketed State laws). The project is not within a master planned community or a special district. Your client, the "Declarant," is the land owner, the land developer, and the home builder. See [Appendix E](#) for a list of project attributes with implications for drafting documents.

### 3. Updating Forms

The following is a category checklist for use in updating forms of HOA documents, or adapting forms from another jurisdiction or era. Consider each of the following:

- (1) Changes in federal law, such as the law overriding HOA restrictions that prohibit satellite dishes.
- (2) Changes in state law, such as the advent of home equity lending and its relationship to the lien priority provision in your CC&Rs.
- (3) Changes in local ordinances, such as adding restrictions that authorize the city to step into the shoes of the HOA.
- (4) Changes in lending practices, such as no requirement for HUD/FHA approval of CC&Rs, amendments, or annexations.
- (5) Changes in technology, such as electronic balloting and emailed notices.
- (6) Changes in the marketplace, such as demands for more consumer protections.

**Is any word in this document hard to understand? Tell us, so we can translate it into plain English.**

Also, ask yourself whether your document form could be more readable, more easily amended, more flexible in its terms, easier to use by the addition of headings and a table of contents, and more attractive. Finally, invite your client to point out any word or provision that is not easy to understand. If you reach for a dictionary, replace that word. That was the fate of "hereditament" and "pecuniary" in my document forms.

### D. JARGON

The practice of drafting HOA documents for developers is characterized by its own jargon, acronyms, and abbreviations. The following definitions are intended for use in this article, and in your practice.

1. "**ACC**" is the acronym for Architectural Control Committee - the function or entity of the HOA that deals with matters of appearance and construction. "**ARC**" is the acronym for Architectural Review Committee.
2. "**Architectural Reviewer**" is the "New School" term for ACC. It refers to the Declarant during the Development Period and to the subsequent HOA-appointed ACC. The term is particularly useful when homeowners form a grassroots ACC during the Development Period and try to exercise control over the construction of new houses on vacant lots, claiming they are THE Architectural Control Committee. The use of "Architectural Reviewer" is intended to eliminate contests of which ACC is the controlling ACC.
3. "**CC&Rs**" or "**CCRs**" is the acronym for the Declaration of Covenants, Conditions, and Restrictions, the name typically given to the document that creates a planned community. Other terms frequently used to refer to the same document are "Restrictions," "Covenants," and "Declaration." Also, the public sometimes uses "Bylaws" to refer to CC&Rs.
4. "**Governing Documents**" and "**Project Documents**" are the terms generally used to refer to the set of documents that create the planned community and operate the HOA, such as the plat, CC&Rs, Bylaws, and Articles of Incorporation. Also, if any, the Rules and Architectural Guidelines.
5. "**HOA**" is the acronym for Home Owners Association, the association of owners of lots in the planned community. HOA may be used interchangeably with "POA," the acronym for Property Owners Association.
6. "**Planned Community**" is the term coined by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to refer to real property developments with mandatory owners associations, other than condominiums and cooperatives. It is what lenders call "PUDs" (planned unit developments). In this article, and in the proposed

TUPCA, it refers to residential-only planned communities.

7. "TUPCA" is the acronym for the Texas Uniform Planned Community Act, a proposed bill that is being studied by three interim committees of the Texas Legislature in 2006.

## II. DRAFTING STYLE & PHILOSOPHY

### A. DRAFTING STYLE

A drafting "style" is like your handwriting or your signature - the appearance, texture, and quality of a document that is identified with you. Each of us has a drafting style, whether or not we are aware of it. My instruction to you is to be aware of your individual style and to consciously shape it.

Dallas attorney Frank St. Claire once admonished me to use the power of word processing and desktop publishing to make every piece of paper I produce identifiable as "mine." He educated me about the use of footers, headers, variations of line height and word-letter spacing, and font selection. His suggestions found their mark. (*Frank, I really was listening.*)

I have created such a distinctive style for my HOA documents that attorneys who try to copy my style do not get credit for their own documents. I wish that for you. Not that you will be plagiarized, but that your documents will have the physical attributes of having been written in your hand. It is an awesome ability available to us through the power of word processing.

Drafters of HOA documents may be surprised to learn that their documents are now routinely posted on HOA websites where they are "larger than life" and routinely viewed, downloaded, printed, and read by more people than almost any other type of attorney-prepared document. As Wayne Hyatt has been lecturing us for 25 years, the documents we produce are part of the marketing of the project. The attractiveness and readability of our documents are as important as the floorplan brochure that homebuyers pick up in the sales office. We are an integral part of our client's marketing team, as well as the development team. See [Appendix B](#) for what I hope is a provocative dialogue between "Old School" and "New School" drafting styles.

### B. DRAFTING PHILOSOPHY

A drafting philosophy is both a personal and a professional attribute. Each drafter should be aware of

his philosophy before tackling the drafting of governing documents for a planned community. My drafting philosophy will suit you no better than your philosophy will suit me. To each her own. My only instruction to you is to have one. See [Appendix C](#) for a comparison of "Old School" and "New School" philosophies about drafting HOA documents.

Although our clients have the right to make document and development decisions, they rightfully expect us to identify their options and to counsel them on which path to take. And then there are the clients who delegate to us the HOA-related decisions, trusting us to do the right thing. The following numbered paragraphs identify only 5 of the many drafting issues that reflect a philosophy. Where do you stand on each of these?

#### 1. Who is your audience?

The HOA documents you draft may be used daily for decades - possibly outlasting the houses in the subdivision. Your client does a grand job of designing the development, constructing the infrastructure, and building the houses. It is up to you - as the drafting attorney - to create "community" for the brick and mortar development. Your client may not take as much interest in the details of the documents as he does in the design of the entry feature or the house elevations. However, the HOA documents are no less important to the overall success of the planned community.

So, who IS your audience? Of course, your client is the primary audience for whom you draft. He is paying you to look out for his interests in the development, and is well served if your documents give him lots of rights, very few duties, and a strong shield from liability. However, the developer is not your only audience. There are others. Mortgage lenders, city officials, insurance agents, real estate brokers, and HOA managers will review your documents with an eye to their particular perspectives.

The people who will be most affected by your documents for the longest period of time are the homeowners. They are your ultimate audience - the ones who will be cheering or booing your client for the documents bequeathed to them. You are serving your client by being as attentive to the long-term needs of the owners association that will operate his planned community as you are to the developer's needs to complete the project without interference from the homeowners.

## 2. Class A/B or Vested Rights?

In olden days, the developer controlled the HOA by use of two membership classes. The developer had his own class (Class B) with multiple votes for each lot he owns. All the other owners were grouped into the other class (Class A). Certain events triggered the end of the Class B status, after which the developer became a Class A member. Whatever special rights the developer had were tied to the Class B status. This is the concept used in the model CC&Rs promulgated by HUD in 1973 for use with FHA financing of planned communities.

The concept of class control may have been suitable for single phase developments in which the land developer is also the home builder. However, the class control concept can be cumbersome and risky for long-term phased developments, and for projects in which the developer sells lots to builders. When a developer's rights are based on the ownership of a lot, his ability to control the HOA and preserve his development rights waxes and wanes as lots are sold and annexed.

**No more 1000 votes per lot for the developer? Egads!**

How else can your client protect his investment in the project during build-out and sell-out? The concepts of "Declarant Control Period," "Development Rights," and "Special Declarant Rights" - which originate in the Uniform Acts - can be used in CC&Rs drafted for jurisdictions that do not have Uniform Acts. These are rights vested in the developer for a period of years (or decades) or until some triggering event when the project is fully phased and developed. If the CC&Rs are carefully drafted, your client retains the rights he needs to ensure that the project is fully phased, fully developed, fully built, and fully marketed - even if your client does not own any property in the development and thus is not an owner or member of the HOA.

## 3. Quorums & Consents

Decision making in a planned community is where the government model butts heads with the corporate model. Government elections do not require minimum levels of participation. On election day, the citizens who cast votes decide the issue, even if they are only one percent of the electorate. Corporations, on the other hand, require quorums for shareholder meetings and decisions. Without a quorum, the meeting or balloting does not count. The first generation of HOA documents required high quorums and high levels of homeowner approval.

My drafting philosophy favors the government model for decision making and elections in planned communities. Accordingly, I use relatively low quorum requirements (typically 10 to 20 percent) - the larger the development, the smaller the quorum, and visa versa. Also, I prefer no more than majority approval for amending the documents and most decisions requiring a vote of the owners. In some cases, the majority or percentage is based on voting owners after the quorum requirement is met, rather than on total lots in the project. I save higher levels of consent (two-thirds, three-fourths) for specific provisions that I or my client think should not be easily changed. What is your philosophy on quorums and consents?

## 4. Assessment Caps?

In olden days - the 1960s and 1970s - HOAs were new and lenders were uneasy about giving volunteer HOA boards authority to increase assessments. HUD's model CC&Rs published in 1973 contained a 10 percent cap - an assessment increase greater than 10 percent per year required a vote of the membership. Believing that assessment caps are sacrosanct, two generations of drafters played with different types of caps - raising the cap to 20 percent, tying caps to the CPI, using concepts of "maximum" and "actual" caps, allowing annual increases to accumulate even if not levied, lowering the percentage of owners required to approve an increase, and so forth.

**They can raise the dues HOW high?**

My experience is that assessment caps were never required by the HUD Regional Office that served Texas - only perceived to have been required. Back in the era when HUD, VA, and Fannie Mae approved HOA documents for PUDs, there was no problem getting HOA documents approved - without assessment caps. To those who insist that "something somewhere" requires the use of assessment caps - Hogwash.

My drafting philosophy is that the leadership of an HOA must have sufficient authority to raise the funds necessary to fulfill the legal duties that we - as drafters - impose on the HOA. Assessment caps unfairly hobble the HOA. We have seen years when water rates doubled and insurance rates skyrocketed. Which of its required services should the HOA stop performing when its expenses exceed its capped income and the members will not come out in sufficient numbers to lift the assessment cap?

I prefer to give the HOA directors broad authority for budgeting and assessing. If the homeowners do not like what their directors are doing, they have the right to remove the board and elect replacements.

For clients who want something in the CC&Rs to which they can point when nervous homebuyers ask "How high can 'they' raise my dues?" I include a right of the homeowners to veto an assessment increase or special assessment, with a fairly high level of consents required for the veto. For clients who want to see a dollar amount in the CC&Rs, I include a simple statement of the amount of the initial assessment.

## 5. Invoking Statutes

There are many philosophies about how to handle the interplay of public laws and private restrictions. Here are four approaches. Which approach do you favor?

- **No Cites or Transcription.** This approach assumes that anyone using the HOA document will have access to and be knowledgeable about the applicable laws. Accordingly, there is no reason to reference or restate a statute in the HOA document. On the "pro" side, this approach produces shorter documents containing only those provisions required by statute, not addressed by statute, or that vary from a statute. Also, this approach runs fewer risks that the text of the document will become outdated and unenforceable as the law changes. On the "con" side, users of the HOA document may not know that statutes are applicable to a situation. Being unaware, they may try to take action or amend the HOA document to achieve something that is prohibited or regulated by statute.
- **Integrate Statutes.** This approach assumes that the document user will never know about applicable statutes unless the pertinent statutory provisions are built into the body of the HOA document. On the "pro" side, users of the document will be well informed about statutory issues. On the "con" side, this approach produces longer documents which may require periodic amendment as applicable laws change.
- **Partial Integration.** This approach restates those statutory provisions that are most likely to be used by the HOA's manager and directors in the daily operation of the property. It references, but does not restate, the statutory provisions that are legally complex or infrequently used. This third approach produces documents that are more utilitarian than

the first, and somewhat less inflexible and voluminous than the second.

- **"Applicable Law, Such As".** This approach responds to the activist legislative era in which we find ourselves - expecting laws to change every two years. Incorporating the text of statutes, or requiring compliance with a referenced statute risks making the HOA documents obsolete as the laws change and expand. Instead, "applicable law" is defined in the CC&Rs, and the current statutory reference is inserted within the context of "such as." This alerts the reader to the possibility that a state law addresses the issue, without binding the CC&Rs to the exact text of the current statute, which is likely to change. To illustrate, the CC&Rs might provide:

- *A foreclosure must comply with the requirements of applicable law, such as Chapters 51 and 209 of the Texas Prop. Code.*

## III. ADDITIONAL DRAFTING CONSIDERATIONS

### A. **PROPERTY DESCRIPTION**

How you describe the real property relates back to your drafting philosophy about your audience. Yes, metes and bounds are a traditional way of describing real property. However, the average person who works with CC&Rs does not know how to read metes and bounds. If your goal is to produce CC&Rs that are user-friendly for long-term use by homeowners and property managers, consider describing the subject property by reference to recorded subdivision plats.

The type of property description you use for a project is likely to depend on the circumstances of the development and your personal drafting philosophy. My drafting philosophy favors method #4 below, which combines (a) metes and bounds of the total acreage, (b) reference to a recorded subdivision plat, and (c) itemization of the house lots and common areas. Including all the acreage in the platted subdivision, and defining "common area" as all of the subject land except the house lots, protects your client and the HOA in case some patch of dirt was overlooked in numbering the lots, and in case the public streets become private. When circumstances require the use of metes and bounds before the plat is recorded, I follow up with a "Notice of Platting" when the development is fully phased and platted. It is comforting to know that we have a selection of tools with which to perform the task of describing the

property. Here are five ways of using plat references in a property description:

- ① All of Dillo Estates Addition, an addition to the City of Waco, Texas, according to the plat thereof recorded in Volume 2006, Page 0308, Plat Records, McLennan County, Texas.
- ② Lots 1-40, Block A, and Lots 1-50, Block B, Dillo Estates Addition, an addition to the City of Waco, Texas, according to the plat thereof recorded in Volume 2006, Page 0308, Plat Records, McLennan County, Texas.
- ③ The 33-acre tract describes by metes and bounds in the Legal Description of the final plat of Dillo Estates Addition, an addition to the City of Waco, Texas, according to the plat thereof recorded in Volume 2006, Page 0308, Plat Records, McLennan County, Texas.
- ④ The 33-acre tract describes by metes and bounds in the Legal Description on the Final Plat of Dillo Estates Addition recorded in Volume 2006, Page 0308, Plat Records, McLennan County, Texas, including Lots 1-40, Block A, and Lots 1-50, Block B, Dillo Estates Addition.
- ⑤ All of Dillo Estates Addition, an addition to the City of Waco, Texas, according to the plat thereof recorded in Volume 2006, Page 0308, Plat Records, McLennan County, Texas, which is described with more specificity as follows: [insert metes and bounds description ].

## B. CHANGING CONDITIONS

A dilemma arises on how to treat an attribute of the property that is likely to change. For example, a disclosure in the CC&Rs that the property is not within any municipal boundaries will be "wrong" when the property is later annexed by a city. To address that issue, consider use of a provision such as:

*This Declaration discloses characteristics of the Property that may cease to exist or to apply. If the change of circumstance is of public record or is capable of independent verification by any interested person, the Board of Directors, without a vote of the Owners, may - but is not required to - record a Notice of Change that references the provision of this Declaration that ceases to apply to the Property. Such Notice does not constitute an amendment of the Declaration. The Association will*

*notify Owners of the existence of the Notice and will make it available to Owners as an Association record.*

## C. LENDER REQUIREMENTS

Priority of a deed of trust lien over the HOA's assessment lien is the primary concern of a mortgage lender. Be kind to the lenders by drafting "their" provision with a readily identifiable heading or title. Determine whether the documents will be expected to comply with any other underwriting criteria. Even if the project is not being marketed for the institutional mortgage market, or if there are no applicable underwriting requirements, certain traditional mortgagee-protective provisions are commonly used in project documents to give any lender a degree of comfort.

## D. BELTS & SUSPENDERS

Texas law requires a number of notices to be given to home buyers in connection with execution of the purchase contract, such as a specific notice that the property is located in a special district. Consider whether it will benefit your client and future generations of home sellers and buyers to insert the same disclosure (required for contracts) in the publicly recorded HOA documents as a way of bolstering the individual lot sales and resales.

## E. PROPERTY ATTRIBUTES WORTHY OF DRAFTING ATTENTION

Because no two properties are identical, no single set of governing documents will "fit" every development, although our clients do not want to believe it. Many features of the property - such as drainage and rights-of-way - are regulated in some way by statutes and ordinances. Even though public law may not require disclosure of a property feature in the CC&Rs, the drafting attorney may consider whether future generations of owners and operators of the property will benefit by inclusion of a feature-specific provision. Similarly, even though the recorded plat discloses some unusual feature of the property, the drafting attorney may consider a companion provision in the CC&Rs. [Appendix E](#) of this article lists almost 40 property features, many of which may be worthy of disclosure in the CC&Rs.

Some developers are leery of putting anything in the HOA documents that may be off-putting to a home buyer. Other developers want to boldly disclose anything that might protect them from a homebuyer's

future claim that "If I had known the Property had that feature, I never would have bought here!" (*Developers as well as attorneys have drafting philosophies.*)

My preference is to use the CC&Rs for disclosures about any unusual features or uses of the subject property, or of adjoining or nearby land that may be expected to adversely affect the value of homes in the development, the use of land in the development, or the quality of life in the development. The following are merely examples of the many types of location attributes that trigger disclosure notices in the CC&Rs.

### **1. Airport or Landing Strip (Private or Public)**

Anticipating that buyers will complain about noise and hazards after occupying the property, consider disclosing the nature and location of the airstrip or facility, particularly if the airstrip is not readily apparent on a visit to the sales center.

### **2. Gas or Oil Drill Sites**

During different stages in the operation of a drill site, nearby property owners may complain about odors, dirt, traffic, and noise. A disclosure about nearby drill sites is particularly important if the drill site is not readily apparent on a visit to the subdivision by a prospective home buyer.

### **3. Golf Course**

Because lots adjoining a golf course may be visited by errant golf balls and by golfers and caddies in search of those balls, consider provisions to address liability for damage from golf balls, trespass to retrieve golf balls, overspray of grounds from golf course, fencing along golf course, and appearance of yards along golf course.

### **4. Historic or Archeological Features**

If the property contains historic or archeological features, the developer should consult applicable federal and state laws, and consider disclosing historic or archeologic features in the sales contract and in the CC&Rs.

### **5. Mineral Interests**

Outstanding mineral interests will appear in title information on individual lots, and no statute requires a disclosure in the contract or CC&Rs. If applicable, consider adding a notice to the CC&Rs that mineral interests have been severed or reserved.

## **6. Special Districts**

The enabling statutes of some special districts require notice of the district to be given in the sales contract for a home purchase. There is no corresponding requirement for a notice in the CC&Rs. If the property IS in a special district, consider whether and how to weave information about the special district into the CC&Rs. Inquire about (1) the name of the district, (2) the purpose of the district, (3) how the district's boundaries relate to the boundaries of the property, (4) the rate of assessment on property in the district, (5) whether district assessments are paid directly to the district or to a tax assessor, (6) who runs the district, (7) whether your client expects the district to have a formal ongoing relationship with the HOA, and (8) whether a statute requires a particular form of notice to purchasers in this type of district.

## **7. "Watercourses" - Lakes and Rivers**

If the property has a water feature, consider addressing the following issues in the CC&Rs: (1) access easements through the property to the water feature, (2) ownership, control, and maintenance of the water feature and its banks, (3) fencing, signage, and appearance of yards and buildings along the water feature.

## **8. Wells and Septic Tanks**

As rural land becomes urbanized we see opportunities for water wells and septic tanks. What may be commonplace to the country cousin will be exotic to the city cousin who is buying a new home on land that was being grazed only two years earlier. If the property has or allows water wells, consider whether restrictions are needed to limit the use of well water, such as for irrigation and non-potable uses only. If the homes are to be served by septic tanks, consider whether to require certain features for the septic system.

## **IV. STATUTORY & REGULATORY ENVIRONMENT**

### **A. NATIONAL LENDERS**

In January 2006, none of the national institutional mortgage lenders, insurers, and underwriters (Fannie Mae, Freddie Mac, HUD/FHA, and VA) require submission or approval of the governing documents of a planned community as a condition for making an individual home loan. They still require a legal review for condominiums, but not for PUDs (PUD is lender lingo for a planned community). This is a remarkable

circumstance given the profound influence of institutional lenders on the development and documentation of planned communities for 30 years.

In the absence of state laws, national underwriting guidelines acted like de facto federal laws in shaping the development and documentation of planned communities. Each of the four (Fannie Mae, Freddie Mac, HUD/FHA, and VA) had its own criteria for the development, phasing, declarant control, common areas, and governing documents for PUDs. Under some circumstances, approval by one institutional lender guaranteed approval by others.

The requirements of national institutional lenders have continually evolved. The lenders have always distinguished between condominiums and PUDs, with similar but separate requirements for each type of development. The first stage of the lenders' evolution was distinguishing between "full" PUDs and "deminimus" PUDs. (The HUD regional office servicing Texas used a community swimming pool as the hallmark of a "full" PUD.) Deminimus PUDs received a lower level of review. Later, deminimus PUDs were not reviewed at all.

The second stage of the lenders' evolution was the elimination of PUD reviews altogether. With 30 years of PUD experience under their belts, the lenders acquired confidence in that type of development. Their worst fears were not realized. PUDs are functioning for better or worse across the country, often in the absence of any state legislation. Accordingly, the national lenders began disengaging from the approval of PUDs and PUD documents.

On August 2, 2000, VA declared *"Effective immediately, VA is no longer reviewing and approving Planned Unit Developments (PUD's)."* On January 22, 2003, HUD issued its Mortgagee Letter 2003-02, which declared *"Effective immediately, FHA will no longer require approval of a PUD as a precondition for placing FHA mortgage insurance on a dwelling located in the development. Further, FHA will no longer maintain a list of approved PUDs."* Those announcements marked the end of a 30-year era.

## **B. FEDERAL LAWS**

There are some federal laws that relate to the creation, marketing, and operation of housing in general and planned communities in particular. Obviously (to lawyers), federal law overrides anything to the contrary in the HOA documents. That obvious fact is sometimes not understood by homeowners who think their private

recorded restrictions are the highest authority for their development. For those well meaning folks, it may be prudent to reference the statutory source so the HOA does not try to obliterate a right guaranteed by federal law. The following federally-regulated issues are likely to arise in the residential context.

### **1. Satellite Dishes**

The saga of satellite dishes illustrates the interplay of technological changes, HOA documents, and federal law. In the early 1980s, with the advent of television transmission by satellite, homeowners began installing large satellite dishes that were 12 to 30 feet in diameter. When HOA leaders began complaining about the unsightly gargantuan dishes, drafters added satellite dish prohibitions to their CC&Rs. The absolute ban on satellite dishes became so prevalent in CC&Rs nationwide that the satellite television industry sought relief at the federal level.

The Telecommunications Act of 1996 (47 U.S.C.A. §§151, et seq.) protects the right of homeowners to have satellite reception. The Rules for Over the Air Reception Devices (OTARD) were promulgated by the Federal Communications Commission at 47 CFR §1.4000 et seq. to implement the Telecommunications Act of 1996, as amended in January 1999 and October 2000 for multi-family and POA settings. CC&Rs can effectively prohibit the large satellite dishes, but must allow mini-dishes, subject to limited aesthetic controls by the HOA. The FCC's Fact Sheet about OTARD is available online at its website - [fcc.gov/mb/facts/otard.html](http://fcc.gov/mb/facts/otard.html).

### **2. Fair Housing Acts**

The Fair Housing Acts should be familiar to every attorney who works with any aspect of residential real estate. In addition to the federal Fair Housing Act, Texas has an equivalent state statute, and a number of cities have fair housing ordinances based on the federal law. As relates to project documents for planned communities, the Fair Housing Acts address residential restrictions, occupancy restrictions, age restrictions, and architectural adaptations for handicapped persons.

### **3. Child Restrictions or "Protections"**

Although children, per se, are not a protected class, the Fair Housing Acts do protect the class of "familial status." The developer who wants to create an "all adult" area or "children's hours" at the community pool should be counseled about the presumption of discriminatory intent against the protected familial status category. If

you are thinking about getting creative with your documents, check it out first with the local fair housing compliance office.

#### **4. Senior Restrictions**

Federal and state laws do allow age-restricted housing for seniors age 55 and older. For the seniors exemption, see 24 CFR §100.300 et seq. ("HOPA") and Texas Property Code §301.043. See also the article titled "Age Restricted Communities," by Mary S. Alexander, presented at the 2003 Advanced Real Estate Law Course sponsored by State Bar of Texas, available online at <http://www.texasbarcle.com>.

#### **5. Occupancy Restrictions**

Restrictions may limit the number of occupants per home. There are only a few statutory limits on the developer's unfettered authority to impose an occupancy standard. City ordinances may limit the number of occupants per unit based on square footage. A city's limits are typically too high to be useful in the context of planned communities. More pertinent are the Fair Housing Acts, which consider occupancy quotas to be avenues for discrimination against the protected "familial status" category. According to the HUD Memorandum dated March 20, 1991, ". . . the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act." The HUD Memorandum is detailed and informational, and should be consulted by the drafter of occupancy limits. HUD's policy applies only to the protected class of "familial status."

#### **6. Handicap Accessibility of Common Areas**

Attorneys who work with commercial real estate are often familiar with the federal Americans with Disabilities Act, and the federal and state Architectural Barriers Acts. Those laws do not apply to the typical private residential development in which the common areas are used exclusively by the residents and their guests. Instead, the disability provisions of the Fair Housing Acts apply, including (1) Federal Fair Housing Act, 24 CFR §100.205, which is administered by the U.S. Dept. of HUD, (2) Texas Fair Housing Act, §301.025 Property Code, and (3) local fair housing ordinances, if any.

If the planned community has a feature that qualifies as a "public accommodation" or as a "commercial facility," such as a club house that is available for use by non-residents, then a number of other statutes may also

apply, including (1) Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §12181 et seq., the regulations for which are published in 28 CFR §36.001 et seq., and which is administered by the Justice Department, (2) the Federal Architectural Barriers Act of 1968, 42 U.S.C. §4151 et seq., and (3) Texas Architectural Barriers Act, Art. 9102 Texas Revised Civil Statutes, which is administered by the Texas Dept. of Licensing & Regulation. The U.S. Dept. of Justice has ADA information on its website - <http://www.usdoj.gov/crt/ada>.

Evaluate the consequences if your developer client wants the CC&Rs to allow pool memberships to residents of other subdivisions. If the swim center was built to ADA standards, there may be no obstacle, except that it creates an ongoing ADA compliance obligation for the HOA. By clearly defining and narrowly limiting the geography of potential users, the HOA may argue that the swim center is still not available to the general public, thus avoiding the necessity of complying with the ADA.

### **C. STATEWIDE STATE LAWS**

(Aren't all state laws statewide? Not in Texas. See "Bracketed State Laws," below). Texas has approximately 70 statewide laws relating to the development, construction, or marketing of homes - including homes in planned communities. It is beyond the scope of this article to discuss each statute separately. The following material highlights only certain statutes.

#### **1. Corporation & Association Laws**

Neither federal nor Texas law requires incorporation of the HOA for a planned community. Nevertheless, it has been customary for developers to incorporate the HOAs for their planned communities because (1) the mantra of "Declaration, Bylaws, and Articles" is a tradition in a tradition-bound practice, (2) "Articles of Incorporation" appears on the documents checklist used by most mortgage lenders (until 2003, incorporation was required by HUD/FHA), (3) volunteer boards and HOA managers may need the structure of corporation laws to guide them in operating the HOA, and (4) some platting municipalities view a corporate charter as confirmation of the developer's promise to create an HOA for the subdivision.

If the HOA is incorporated, it is usually as a nonprofit corporation subject to the Texas Nonprofit Corporation Law, Chapter 22 of the Texas Business Organizations Code. If not incorporated, the HOA is usually organized as a nonprofit association subject to the

Texas Uniform Unincorporated Nonprofit Association Act (TUUNAA), Chapter 252 of the Texas Business Organizations Code.

## 2. Recording

Since 1999, §202.006 Texas Property Code has required that all governing documents of a property owners association be recorded in the county's real property records. This means that the operational documents that were not previously recorded - such as bylaws, rules, design guidelines, articles of incorporation - must be prepared for recording, with an acknowledgment and some type of property description, such as reference to a recorded subdivision plat.

## 3. Cemetery or Interred Bodies

If an abandoned cemetery is located on the property, or if an unknown cemetery is discovered on the property, Chapter 711 of the Health & Safety Code prohibits the landowner from constructing improvements on the property in a manner that would further disturb the cemetery until the interred human remains are removed under a written order. The statute also requires the owner of land surrounding or supporting a cemetery to provide access to cemetery visitors. If the property contains a cemetery or is near a cemetery, consult Chapter 711 of the Health & Safety Code. This is an example of the statutes we do not work with everyday that will, on occasion, affect a development.

## 4. Community Homes

When drafting "residential" limitations on the use of homes in the property, be mindful that Section 123.003 of Chapter 123 Human Resources Code, Community Homes for Disabled Persons Location Act, prohibits restrictions against community homes.

## 5. Mobile Homes

When drafting requirements for on-site stick-built homes, be mindful that some components of a "stick built" home, such as roof trusses, may be manufactured off-site. Also, "manufactured home" and "mobile home" are defined in the Texas Manufactured Housing Standards Act, Chapter 1201 Occupations Code.

## 6. Wood Single Roofs

Since 1983, Texas law has declared restrictions requiring wood shingle roofs to be void. See Sec. §5.025 Texas Property Code.

## D. BRACKETED STATE LAWS

The drafting attorney will also want to know whether the planned community is in a part of the state that is subject to one of the several bracketed statutes in the Texas Property Code, some of which have implications for the governing documents. "Bracket bills" is the nickname given to state laws that are neither local laws within the meaning of the Texas Constitution, nor statewide in application, as required by the Texas Constitution. Brackets are either geographical (such as, all counties along an international border) or population-based (such as, a city with a population of 100,000 or more). Populations are taken from the most recent diennial federal census. Land does not move, but population sizes do, resulting in a phenomenon known in legislative circles as "bracket creep."

## E. LOCAL ORDINANCES

For purposes of this article, "local" means everything other than statewide or federal statutes and codes. Attorneys who practice in a single jurisdiction may have complete knowledge of their territory. Attorneys with statewide practices will be challenged to stay on top of local variations on a theme.

### 1. HOA Ordinances (City)

The city in which the property is located may have HOA-related requirements for the project plat, the CC&Rs, and/or the home sales contracts. One of the most interesting aspects of the housing boom in North Texas is that growth cities are requiring developers to create planned communities with mandatory owners associations as a condition of the platting process. Notes like "TO BE OWNED AND MAINTAINED BY HOA" are appearing on plats with increasing frequency. Unfortunately, there seems to be competition among city attorneys to see who can impose the most requirements on the CC&Rs, and who can compel recordation of the CC&Rs at the earliest opportunity in the platting process. Recently encountered city requirements have included:

- City attorney approval of the CC&Rs before the plat is approved by city.
- Recording the CC&Rs before the plat is approved by city.
- CC&Rs must require HOA to dedicate reserves for maintenance of private streets.
- CC&Rs must contain certain magic words the city likes.

- Certain size common areas must have signs with city-mandated wording, and the requirement for the signs must be in the CC&Rs.
- Builder must put notices in model homes and sales center with city-mandated wording, and the requirement for the notices must be in the CC&Rs.
- Developer must give city an HOA reserves analysis and proposed HOA budget.

Fortunately, the codes of many cities are available online. The author's research found the following ways of locating city codes.

a. City Website. Many cities have their own websites. Some or all of a city's codes may be published on its website. Links to the websites of Texas cities are available on the State's website - state.tx.us. Click on "Government" and then "Cities." City websites are also easily found with general search engines, like Google.

b. Municode. The Municipal Code Corporation is a national clearinghouse of municipal codes, via its website - Municode.com. In January 2006, 155 Texas cities were featured on <http://www.Municode.com>. An advantage of using this website is the user-friendly search engine. In some cases, a city's complete code may not be online.

c. AmLegal. American Legal Publishing Corporation maintains a public website - <http://www.amlegal.com> - with links to the codes of some Texas cities (23 in January 2006). Select "free Online Library" and click on Texas.

When searching a city's entire code on Municode.com, using the phrases "owners association" is a good way to start. If no matches are found, expand the search by typing the terms "owners" and "association" without quotes - or just the term "association." The technique for searching the code on a city's website without the Municode search engine will vary by website.

A city's requirements, if any, for creating a planned community with a mandatory owners association is often found in the city code under the big categories of Land Development, Development, and Subdivision, and under subcategories such as Public Sites and Open Spaces, Private Streets, and Roadway Facilities. The specific ordinance within the city's entire body of code is sometimes easy to find - sometimes not. Whatever you find on the city's website should be confirmed with the city's staff or attorney.

## 2. Site-Specific PD Ordinance (City)

The planned community may be in a site-specific PD (planned development) or PDD (planned development district) for which the city has an ordinance. If not available on the city's website, the ordinance is usually available through the city secretary or your client's platting engineer. Consider referencing the ordinance in the CC&Rs and, if appropriate, identifying unusual provisions of the ordinance of which the homeowner controlled HOA should be mindful.

## 3. Special Districts (State)

There are a number of state laws that are inherently local in nature, creating locale-specific water districts, utility districts, hospital districts, and road districts. These statutes pinpoint the property, often by metes and bounds descriptions. Location-specific district statutes were codified in 2005 into the Special District Local Laws Code. In addition to the state's generic special districts, Texas has many special districts that are created pursuant to constitutional or statutory authority. No matter the origin of the special district, it is a political subdivision of our state.

## V. TEN TIPS FROM THE TRENCHES

*Oh no, not THAT.*

1. The worst thing that happens - and it does happen - is when a home buyer closes on his new home before the CC&Rs have been recorded against the lot. This nightmare is most likely to occur with subsequent phases. There are creative ways to anticipate and mitigate this event. Better to not let it happen.

2. Before you record the CC&Rs or an annexation instrument, confirm that the entity that executed the instrument owns the land and is still the only owner of the land being subjected to the CC&Rs. If your client has not yet taken title to the land, add a land owner's consent to the CC&Rs. If your client has already closed lots to builders, add builders' consents to the CC&Rs. The consents can be recorded separately from the CC&Rs.

3. Be alert for property name changes. Your client may change the name of the project to Blackacre for marketing purposes, after the land has been platted as Whiteacre. It has been known to happen after you send the CC&Rs to your client for execution. He is preparing to sign when he realizes that the CC&Rs use the "wrong" name for the project. Along the same vein, your client

may erect a name monument at the subdivision entrance that does not match the project name he gave you to use with the CC&Rs. What name DO you use in the CC&Rs?

4. You may discover belatedly that the "Declarant" name and signature provided by your client does not match the name in which land title is held. Sometimes it is easier to change the title, other times the signature block and Declarant references.

5. Be wary when your client assures you that his next project is identical to the one you just finished, and thus is worthy of a rate reduction. It will be just different enough to be a drafting nightmare.

6. When your client is the registered agent for the HOA you incorporated, check periodically that the charter is active. Developers have been known to let HOA charters lapse for failure to attend to some state requirement.

7. Expect your client to change fundamental land use decisions after the project has been created, such as deciding to annex additional land to what had started as a single phase project, or changing Phase 3 from detached single family to townhouses (for which the CC&Rs lack appropriate provisions).

8. Do not be surprised to discover that your developer client closed lot sales to builders before the CC&Rs were recorded. He did not realize that you needed that information. It helps if you are handling the lot sales as well as the HOA documents.

9. Chuckle when your client asks you to tweak the HOA documents that came with the land buy, thinking it will save him some money. (It doesn't).

10. Small developers are the last of the cowboys. To be successful, land developers do not need an advanced degree, a license, or a certificate. They just "do it." They have a vision and an instinct that may elude us desk jockeys. They lack clerical help, which puts more of a burden on us to keep track of paper. They need us to keep them out of trouble, to focus on the details while they are combining resources and getting results. You gotta love them.

**APPENDIXES**

**APPENDIX A**

Chronology of Document Drafting Resources

**APPENDIX B**

Drafting Styles

**APPENDIX C**

Document Philosophies

**APPENDIX D**

Types of Typical Residential Project Documents for a Planned Community

**APPENDIX E**

Project Attributes

**APPENDIX F**

Materials to Be Provided by Developer of Planned Community

**APPENDIX G**

Declaration of CC&Rs for Prairie Chapel Estates

**APPENDIX H**

Bylaws of Prairie Chapel Estates HOA

**APPENDIX I**

Articles of Association of Prairie Chapel Estates HOA

**APPENDIX J**

Common Area Deed

**APPENDIX K**

Management Certificate

## APPENDIX A

CHRONOLOGY OF DOCUMENT DRAFTING RESOURCES  
FOR THE CREATION OF PLANNED COMMUNITIES

Even "original" from-scratch forms emerge from concepts and experience we acquire from working with other forms. Here - in chronological order - are some of the resources that have influenced the form documents provided with this article.

- 1965        **ROHAN.** The Law of Real Property is a multi-volume loose-leaf publication (the "Green Books"). In 1965, Patrick J. Rohan became the editor and is closely associated with the volumes dealing with "Condominiums, Cooperative and Homeowner Association Developments." The volumes on common interest communities are now published by Lexis-Nexis, as an 8-volume loose-leaf publication. *(Not reviewed by author since 1984.)*
- 1973        **HUD & VA.** "Suggested Legal Documents for Planned Unit Developments," issued in October 1973 by the U. S. Department of Housing and Urban Development as Appendix 9 of HUD Handbook 4135.1, revised March 31, 1981, containing a form of CC&Rs, Bylaws, and Articles of Incorporation, for use with financing by HUD/FHA and the Veterans Administration. *(These 30+ year old forms infused a by-gone era.)*
- 1973        **ALI-ABA.** Since 1973, the American Law Institute-American Bar Association has sponsored an annual course on Drafting Documents for Condominiums and Planned Unit Developments, which publishes forms by attorneys in different parts of the United States.
- 1980s       **UNIFORM ACTS.** The Uniform Planned Community Act was promulgated in 1980, followed by the Uniform Common Interest Ownership Act in 1982. As states adopted Uniform Acts, documents were created to work with the Uniform Acts, and the Uniform Act terminology began migrating to states that do not have Uniform Acts.
- 1985        **HYATT.** First edition of "Condominiums and Home Owner Associations - A Guide to the Development Process," by Wayne S. Hyatt, was published in 1985. This seminal book was periodically supplemented through 2000.
- 2000        **HYATT.** "Condominium and Homeowner Association Practice: Community Association Law," by Wayne S. Hyatt, is published by ALI-ABA. This is an essential resource for any drafter of HOA documents. Supplemented annually.

TEXAS RESOURCES

**KENDRICK.** "Texas Transaction Guide: Legal Forms," originally authored by Kendrick & Kendrick, published by Matthew Bender and available through LexisNexis. *(Not reviewed by author)*

**WEST.** Volume 15 of West's Texas Forms has forms of restrictions for subdivisions. Volume 15 can be purchased separately, or as part of the 3-volume Real Property set. *(Not reviewed by author)*

**APPENDIX B  
DRAFTING STYLES**

<b>OLD SCHOOL</b>	<b>NEW SCHOOL</b>
Protect the developer in every paragraph	Segregate developer protections and write docs for long term use by owners (who are irritated by all the "Declarant" references)
Serious SERIOUS tone	Inject a bit of humor or folk wisdom.
Lots of defined terms	As few defined terms as possible
Capitalize All Defined Terms in Document	Capitalize only the defined terms that are capable of being misunderstood in context, like "Property."
Internal references to section numbers	Internal references to names of articles or sections
No table of contents	Table of contents for longer documents
"shall"	"will" "must"
Project-specific data appears only once in document, thereafter replaced by defined terms	Project-specific data ( <i>such as project name</i> ) appears throughout document, where appropriate, thus customizing entire document for the project
Serif font (Times Roman, Courier). This column is in Times New Roman 11 pt.	San Serif font (Arial, Helvetica) - easier to read when reduced in size, and on 10th generation photocopies. This column is in Tahoma 10 pt.
No graphics	Selective use of graphics, project logo, and marketing font
Sign documents in blue ink	Sign documents in black ink which makes better images for photocopies and scans
Write for attorneys and judges - in traditional legal tone	Write for homeowners and property managers. Short words. Short sentences. Plain spoken.
Standard margins	Modify margins as needed to suit the document and the mode of delivery.
Standard/default settings for line height + word/letter spacing	Modify line heights + word/letter spacing as needed to fit the document to the paper and to personalize your publishing style.

## APPENDIX C

## DOCUMENT PHILOSOPHIES

OLD SCHOOL	NEW SCHOOL
High levels for homeowner quorums and consents	Low/attainable levels for homeowner quorums and consents
Uniform enforcement - treat everyone the same	Discretionary enforcement - each case on its own merits
Owners have duties, board has power	Owners have rights, board has duties
Owners exist to fund the HOA	HOA exists to serve its members
Paper	Website
Certified mail	Email
Caps on assessment increase by board	No caps on assessments
Require amendments of the documents to be recorded with the signatures of all consenting owners	A statement by the signing HOA officer that the required consents of owners were obtained
Itemize list of powers, duties, and maintenance responsibilities	Broad powers, use examples only if necessary to illustrate the power
Describe subject property by metes and bounds	Describe property by reference to recorded plats
Limit the reasons for which developer can amend CC&Rs without consent of owners	Broad amendment powers for developer
CC&Rs terminate after certain number of years then, automatically renew for ten-year increments	CC&Rs are perpetual
Votes are based on numbers of owners	Votes are based on numbers of lots
Exhibits are numbered or lettered consecutively	Exhibits are named or numbered to work with the document, even if not sequentially
Calendar year for HOA's fiscal year	If assessment is payable annually, start fiscal year when homeowners most likely to have the funds, which is not January 1

**APPENDIX D****TYPES OF PROJECT DOCUMENTS****FOR A TYPICAL RESIDENTIAL PLANNED COMMUNITY****BASIC PROJECT DOCUMENTS & SERVICES**

- Declaration of Covenants, Conditions & Restrictions
- Bylaws
- Articles of Incorporation or Articles of Association
- Reservation of Corporation Name
- Formation of POA
- Common Area Deed
- Management Certificate

**OTHER TYPES OF DOCUMENTS**

- Parkland Deed to City
- Initial Rules & Regulations & Policies
- Pre-Sale Purchase Reservation
- Disclosures to Purchasers
- Lot Sales Contract to Builders
- Lot Deed

**IF DEVELOPED IN PHASES (FOR EACH PHASE)**

- Annexation Amendment or Supplemental Declaration

**EXAMPLES OF SPECIAL DRAFTING NEEDS**

- If development is within a master PUD
- If development is targeted for special population
- Unusual environmental or historical feature
- Unusual common amenity
- Rental pools or unusual resident services
- Mix of housing products with different needs
- If POA maintains lots or building exteriors

APPENDIX E

**PROJECT ATTRIBUTES  
WITH IMPLICATIONS FOR DRAFTING DOCUMENTS  
FOR A PLANNED COMMUNITY**

ATTRIBUTE OF PROJECT	PlainJane use basic form docs	Suggests addnl drafting, addnl provisions, or different form
Declarant is your client	Yes	NO
Declarant is the only owner of all land in the project	Yes	NO
Declarant is the only homebuilder in the project	Yes	NO
Project is in the corporate boundaries of a city	Yes	NO
City ordinance mandates provisions for CCRs	NO	Yes
Project is entirely in one county	Yes	NO
Project has public streets - no private streets	Yes	NO
Project will be expanded by phasing	NO	Yes
Project is relatively small (250 lots)	Yes	NO
Project is 100% residential	Yes	NO
Project will have only one type of housing	Yes	NO
The type of housing in project is:		
Traditional detached single family	Yes	NO
Zero lot line/patio homes/courtyard homes	NO	Yes
Duplex (attached one side)	NO	Yes
Townhouse (attached two sides)	NO	Yes
Other	NO	Yes
Project is on leased land	NO	Yes
Project land is completely platted into house lots and common area - no unplatted tracts subject to CCRs	Yes	NO
Subdivision name on plat is same as Declarant's name for project - in marketing materials and as title of CCRs	Yes	NO

ATTRIBUTE OF PROJECT	PlainJane use basic form docs	Suggests addnl drafting, addnl provisions, or different form
Plat has notes that create duties for HOA or lot owners	NO	Yes
Project is subject to a site specific PD ordinance that creates duties for HOA or lot owners	NO	Yes
Project is subject to prior-recorded restrictions affecting land use or improvements	NO	Yes
Project will be a master planned community with sub-associations	NO	Yes
Project will be a sub-association within a master planned community	NO	Yes
Project is in a special district	NO	Yes
Project is targeted for a specific category of homeowners, such as senior housing, affordable housing	NO	Yes
Project is designed for traditional residential uses, not as second homes, resort homes, vacation homes, timeshares	Yes	NO
Project has drainage or floodplain issues	NO	Yes
Project has a water feature (lake, pond, river)	NO	Yes
Project has a swimming pool	NO	Yes
Project has an entry feature, screening wall, and landscaped right-of-way	Yes	NO
Project has uneven terrain requiring retaining walls between house lots	NO	Yes
Project will be gated	NO	Yes
Project has commercial sites	NO	Yes
Project is next to a golf course	NO	Yes
Project is next to airport, railroad line, cemetery, prison, or another land use that may adversely affect property values or quality of life	NO	Yes
HOA will maintain <u>only</u> common area lots that will be owned by HOA - nothing on house lots.	Yes	NO

ATTRIBUTE OF PROJECT	PlainJane use basic form docs	Suggests addnl drafting, addnl provisions, or different form
HOA will maintain real property or improvements that are not owned by HOA and are not on house lots in project (street islands, highway right of way, utility-owned land)	NO	Yes
HOA will maintain portions of house lots, or certain improvements on house lots (drainageways or screening wall that run from lot to lot)	NO	Yes
Declarant wants to discourage investor purchases	NO	Yes
Project will share an amenity with another project	NO	Yes
Project has environmental or habitat issues	NO	Yes

## APPENDIX F

**MATERIALS TO BE PROVIDED BY  
DEVELOPER OF PLANNED COMMUNITY****Typically available from developer's title company:**

1. Copy of Schedules A, B + C from recent title insurance policy or commitment
2. Legible & complete copy of each recorded easement or instrument affecting title to project (*the instruments shown on Schedules B+C of the title policy*)
3. Copy of recorded deed to project land into current owner
4. Copy of any recorded deeds of trust against the project land
5. If the project land is in a master planned development, a legible & complete copy of recorded subdivision plat and master restrictions (including revisions)

**Typically available from developer's platting engineer:**

1. Overall concept plan and preliminary plats of project
2. Legible & complete copy of recorded subdivision plat and any replats or corrections
3. Field notes of land if the city requires CC&Rs to be recorded before plat

**Typically available from developer's office:**

1. Copy of PD ordinance or other city records authorizing the project
2. Copy of development agreement (if any) with city or another developer
3. Site map of project, showing common amenities, perimeter streets, location of lots
4. Copy of instrument creating the declarant entity, such as partnership agreement
5. Construction specifications for houses, fences, and other lot improvements
6. Name and contact information for each member of the development team

**Items we may need as work progresses:**

1. Proposed annual HOA budget for built-out project. *Typically prepared by the developer or by the HOA management company.*
2. Specimen sales contract and specimen warranties, if any, given to purchasers
3. Copies of marketing literature

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APPENDIX G

**DECLARATION OF  
COVENANTS, CONDITIONS, AND  
RESTRICTIONS  
FOR  
PRAIRIE CHAPEL ESTATES  
(A Planned Community)  
Crawford, McLennan County, Texas**

Declarant

P. C. Declarant Company, L.P.

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**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
PRAIRIE CHAPEL ESTATES**

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# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PRAIRIE CHAPEL ESTATES

This Declaration of Covenants, Conditions, and Restrictions for Prairie Chapel Estates is made by P. C. Declarant Company, L.P., a Texas limited partnership ("**Declarant**"), on the date signed below. Declarant owns the real property described in Exhibit A of this Declaration, together with the improvements thereon.

Declarant desires to establish a general plan of development for the planned community to be known as Prairie Chapel Estates. Declarant further desires to provide for the preservation, administration, and maintenance of portions of Prairie Chapel Estates, and to protect the value, desirability, and attractiveness of Prairie Chapel Estates. As an integral part of the development plan, Declarant deems it advisable to create a property owners association to perform these functions and activities more fully described in this Declaration and the other Governing Documents described below.

Declarant DECLARES that the property described in Exhibit A will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Declaration, including Declarant's representations and reservations in Article 16 below, which run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the property, their heirs, successors, and assigns, and inure to the benefit of each Owner of any part of the property.

## **ARTICLE 1 DEFINITIONS**

The following words and phrases, whether or not capitalized, have specified meanings when used in the Governing Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. "**Applicable Law**" means the statutes and public laws and ordinances in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document, and are not intended to apply to the Project if they cease to be applicable by operation of law, or if they are replaced or superceded by one or more other statutes or ordinances.

1.2. "**Architectural Reviewer**" means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Reviewer is Declarant, Declarant's designee, or Declarant's delegatee. Thereafter, the board-appointed Architectural Control Committee is the Architectural Reviewer.

1.3. "**Assessment**" means any charge levied against a lot or owner by the Association, pursuant to the Governing Documents or State law, including but not limited to Regular Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 8 of this Declaration.

1.4. "**Association**" means the association of owners of all lots in the Property, and serving as the "property owners' association" defined in Section 202.001(2) of the Texas Property Code. The initial name of the Association is Prairie Chapel Estates Homeowners Association.

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

1.6. "**City**" means the City of Crawford, Texas, in which the Property is located.

1.7. "**Common Area**" means portions of real property and improvements thereon that are owned and/or maintained by the Association, as described in Article 4 below. Portions of the common area may be allocated to certain lots as limited common area.

1.8. "**Declarant**" means P. C. Declarant Company, L.P., a Texas limited partnership, which is developing the Property, or the successors and assigns of P. C. Declarant Company, L.P., which are designated a Successor Declarant by P. C. Declarant Company, L.P., or by any such successor and assign, in a recorded document, executed by both Declarant and Successor Declarant in the case of a voluntary assignment.

1.9. "**Declarant Control Period**" is defined in Article 16 of this Declaration.

1.10. "**Declaration**" means this document, as it may be amended from time to time.

1.11. "**Development Period**" is defined in Article 16 of this Declaration.

1.12. "**Governing Documents**" means, singly or collectively as the case may be, this Declaration, the Plat, the Bylaws of the Association, the Association's Articles of Association, and the Rules of the Association, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Governing Document is a part of that Governing Document.

1.13. "**Lot**" means a portion of the Property intended for independent ownership, on which there is or will be constructed a dwelling, as shown on the Plat. As a defined term, "lot" does not refer to common areas, even if platted and numbered as a lot. Where the context indicates or requires, "lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the lot.

1.14. "**Majority**" means more than half. A reference to "a majority of owners" in any Governing Document or applicable law means "owners of at least a majority of the lots," unless a different meaning is specified.

1.15. "**Member**" means a member of the Association, each member being an owner of a lot, unless the context indicates that member means a member of the board or a member of a committee of the Association. In the context of votes and decision-making, each lot has only one membership, although it may be shared by co-owners of a lot.

1.16. "**Owner**" means a holder of recorded fee simple title to a lot. Declarant is the initial owner of all lots. Contract sellers and mortgagees who acquire title to a lot through a deed in lieu of foreclosure or through judicial or nonjudicial foreclosure are owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not owners. Every owner is a member of the Association. A reference in any Governing Document or applicable law to a percentage or share of owners or members means owners of at least that percentage or share of the lots, unless a different meaning is specified. For example, "a majority of owners" means owners of at least a majority of the lots.

1.17. "**Plat**" means all plats, singly and collectively, recorded in the Real Property Records of McLennan County, Texas, and pertaining to the real property described in Exhibit A of this Declaration, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the plat, as it may be amended from time to time. The initial plat, titled "Final Plat of Prairie Chapel Estates Addition," was recorded on November 13, 2005, Cabinet G, Slide 123, Plat Records, McLennan County, Texas.

1.18. "**Property**" means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Prairie Chapel Estates. The Property is located on land described in Exhibit A to this Declaration, and includes every lot and any common area thereon.

1.19. "**Resident**" means an occupant of a dwelling, regardless of whether the person owns the lot.

1.20. "**Rules**" means rules and regulations of the Association adopted in accordance with the Governing Documents or applicable law. The initial Rules may be adopted by Declarant for the benefit of the Association.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO DOCUMENTS**

2.1. PROPERTY. The real property described in Exhibit A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations, rights, and reservations in Article 16, which run with the Property and

bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each owner of the Property.

2.2. ADDITIONAL PROPERTY. Additional real property may be annexed to the Prairie Chapel Estates and subjected to the Declaration and the jurisdiction of the Association on approval of owners representing at least two-thirds of the lots in the Property, or, during the Development Period, by Declarant as permitted in Article 16. Annexation of additional property is accomplished by recording a declaration of annexation, including an amendment of Exhibit A, in the Real Property Records of McLennan County, Texas.

2.3. ADJACENT LAND USE. Declarant makes no representation of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Prairie Chapel Estates, regardless of what the plat shows as potential uses of adjoining land. Declarant and the Association can not and do not guaranty scenic views, volumes of traffic on streets around and through Prairie Chapel Estates, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air.

2.4. RESTRICTIONS, EASEMENTS & PLAT DEDICATIONS. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all restrictions, easements, licenses, leases, and encumbrances of record, including any shown or referenced on the plat, each of which is incorporated herein by reference. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded restrictions, easements, licenses, leases, and encumbrances, and further agrees to maintain any easement that crosses his lot and for which the Association does not have express responsibility.

2.5. STREETS WITHIN PROPERTY. Because streets within Prairie Chapel Estates are capable of being converted from publicly dedicated to privately owned, and vice versa, this Section addresses both conditions. Private streets, if any, are part of the common area which is governed by the Association. Public streets are part of the common area only to the extent a governmental body, such as the city or county, authorizes or delegates to the Association. Regarding public streets, the Association, acting through the board, is specifically authorized (1) to accept from a governmental body any delegation of street-related duties, and (2) to act as attorney in fact for the owners in executing instruments required by public ordinance or public law to impose, modify, or remove restrictions or traffic devices (such as speed bumps) on public streets in the Property.

### **ARTICLE 3**

#### **PROPERTY EASEMENTS AND RIGHTS**

3.1. GENERAL. In addition to other easements and rights established by the Governing Documents, the Property is subject to the easements and rights contained in this Article.

3.2. EASEMENT FOR SCREENING WALL. The Association is hereby granted a perpetual easement (the "**Screening Wall Easement**") over each lot (1) on or along a thoroughfare on the perimeter of or through Prairie Chapel Estates, and (2) that abuts or contains a portion of the Property's entry feature or screening wall, fence, or berm for the purposes stated in this Section, regardless of whether or how the plat shows the easement, entry feature, or screening wall, fence, or berm. The purpose of the Screening Wall Easement is to provide for the existence, repair, improvement, and replacement of the Property's entry feature and screening wall, fence, or berm, to be maintained by the Association as a common area. In exercising this Screening Wall Easement, the Association may construct, maintain, improve, and replace improvements reasonably related to the entrance and screening of a residential subdivision, including: screening walls, fences and/or berms; planter beds, landscaping, and plant material; electrical and water meters and equipment, including light fixtures and sprinkler systems; and signage relating to Prairie Chapel Estates. The owners of the lots burdened with the Screening Wall Easement will have the continual use and enjoyment of their lots for any purpose that does not interfere with and prevent the Association's use of the Screening Wall Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of a burdened lot as may be reasonably necessary for the Association to perform its contemplated work on the Screening Wall Easement. This easement is perpetual. The Screening Wall Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may assign this easement, or any portion thereof, to the city if the city agrees to accept the assignment. This Screening Wall Easement applies only to the original entry features and screening walls installed by Declarant and replacements thereof, and does not apply or pertain to fences installed on individual lots, even though the lot abuts a major thoroughfare.

3.3. OWNER'S EASEMENT OF ENJOYMENT. Every owner is granted a right and easement of enjoyment over the common areas and to use of improvements therein, subject to other rights and easements contained in the Governing Documents. An owner who does not occupy a lot delegates this right of enjoyment to the residents of his lot. Notwithstanding the foregoing, if a portion of the common area, such as a recreational area, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

3.4. OWNER'S INGRESS/EGRESS EASEMENT. Every owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his lot.

3.5. RIGHTS OF CITY. The city, including its agents and employees, has the right of immediate access to the common areas at all times if necessary for the welfare or protection of the public, to enforce city ordinances, or to improve the appearance of or to preserve public property, public easements, or public rights of way.

3.6. ASSOCIATION'S ACCESS EASEMENT. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation all common areas and the owner's lot and all improvements thereon - including the house and yards - for the below-described purposes.

3.6.1. Purposes. Subject to the limitations stated below, the Association may exercise this easement of access and entry for the following express purposes:

- a. To inspect the property for compliance with maintenance and architectural standards.
- b. To perform maintenance that is permitted or required of the Association by the Governing Documents or by applicable law.
- c. To perform maintenance that is permitted or required of the owner by the Governing Documents or by applicable law, if the owner fails or refuses to perform such maintenance.
- d. To enforce architectural standards.
- e. To enforce use restrictions.
- f. The exercise of self-help remedies permitted by the Governing Documents or by applicable law.
- g. To enforce any other provision of the Governing Documents.
- h. To respond to emergencies.
- i. To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- j. To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by applicable law.

3.6.2. No Trespass. In exercising this easement on an owner's lot, the Association is not liable to the owner for trespass.

3.6.3. Limitations. If the exercise of this easement requires entry onto an owner's lot, including into an owner's fenced yard, the entry will be during reasonable hours and after notice to the owner. This Subsection does not apply to situations that - at time of entry - are deemed to be emergencies that may result in imminent damage to or loss of life or property.

3.7. UTILITY EASEMENT. The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of Prairie Chapel Estates. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else

necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

3.8. **MINERAL RIGHTS.** Some or all of the Property may be subject to a previous owner's acquisition, reservation, or conveyance of oil, gas, or mineral rights pursuant to one or more deeds or other instruments recorded in the Real Property Records of McLennan County, Texas, including but not limited to rights to all oil, gas, or other minerals lying on, in, or under the Property and surface rights of ingress and egress. Because the instruments conveying or reserving mineral interests were recorded prior to this Declaration, those interests in the Property are superior and are not affected by any provision to the contrary in this Declaration. By accepting title to or interest in a lot, every owner acknowledges the existence of the mineral rights and/or reservations referenced in this Section and the attendant rights in favor of the owner or owners of the mineral interests.

3.9. **SECURITY.** The Association may, but is not obligated to, maintain or support certain activities within Prairie Chapel Estates designed, either directly or indirectly, to improve safety in or on the Property. Each owner and resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each owner and resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within Prairie Chapel Estates. Each owner and resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

#### **ARTICLE 4** **COMMON AREA**

4.1. **OWNERSHIP.** The designation of real property as a common area is determined by the plat and this Declaration, and not by the ownership of the property. This Declaration contemplates that the Association will eventually hold title to every common area capable of independent ownership by the Association. Declarant may install, construct, or authorize certain improvements on common areas in connection with the initial development of Prairie Chapel Estates, and the cost thereof is not a common expense of the Association. Thereafter, all costs attributable to common areas, including maintenance, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the common areas, unless this Declaration elsewhere provides for a different allocation for a specific common area.

4.2. **ACCEPTANCE.** By accepting an interest in or title to a lot, each owner is deemed (1) to accept the common area of the Property, and any improvement thereon, in its then-existing "as is" condition; (2) to acknowledge the authority of the Association, acting through its board of directors, for all decisions pertaining to the common area; (3) to acknowledge that transfer of a common area's title to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (4) to acknowledge the continuity of maintenance of the common area, regardless of changes in the Association's board of directors or management.

4.3. **COMPONENTS.** The common area of Prairie Chapel Estates consists of the following components on or adjacent to the Property, even if located on a lot or a public right-of-way:

- a. All of the Property, save and except the house Lots.
- b. The land described in Exhibit A as common area and all improvements thereon.
- c. Any area shown on the plat as common area or an area to be maintained by the Association.

- d. The formal entrances to Prairie Chapel Estates, including (if any) the signage, landscaping, electrical and water installations, planter boxes and fencing on both sides of the junction of Vanishing Oaks Drive and Prairie Chapel Road.
- e. The continuous screening wall and streetscape along the Prairie Chapel Road side of the Property.
- f. The grounds between Prairie Chapel Road and the screening wall to the extent the Association has a right or duty to maintain or regulate that portion of the Prairie Chapel Road right-of-way.
- g. Landscaping on islands on Vanishing Oaks Drive, to the extent it is not maintained by the city.
- h. Any modification, replacement, or addition to any of the above-described areas and improvements.
- i. Personal property owned by the Association, such as books and records, office equipment, and supplies.

4.4. LIMITED COMMON AREA. If it is in the best interest of the Association, a portion of the common area may be licensed, leased, or allocated to one or more lots for their sole and exclusive use, as a limited common area, whether or not the area is so designated on the plat. Inherent in the limiting of a common area, maintenance of the limited common area becomes the responsibility of the lot owner, rather than the Association. For example, a common area that is difficult to access and maintain except via the adjoining house lot might be a candidate for limited common area.

## **ARTICLE 5**

### **ARCHITECTURAL COVENANTS AND CONTROL**

5.1. PURPOSE. Because the lots are part of a single, unified community, this Declaration creates rights to regulate the design, use, and appearance of the lots and common areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which Prairie Chapel Estates is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on a lot, including but not limited to dwellings, fences, landscaping, retaining walls, yard art, sidewalks and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

5.2. ARCHITECTURAL CONTROL DURING THE DEVELOPMENT PERIOD. During the Development Period, neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes on vacant lots. During the Development Period, the Architectural Reviewer for new homes on vacant lots is the Declarant or its delegates.

5.2.1. Declarant's Rights Reserved. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within Prairie Chapel Estates enhance Declarant's reputation as a community developer and do not impair Declarant's ability to sell homes in the Property. Accordingly, each owner agrees that - during the Development Period - no improvements will be started or progressed on owner's lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

5.2.2. Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) a modifications or architectural committee appointed by Declarant or by the board, (2) a modifications or architectural committee elected by the owners, or (3) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to

veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

5.3. ARCHITECTURAL CONTROL BY ASSOCIATION. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Control Committee (the "**ACC**"), or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC will assume jurisdiction over architectural control. The ACC will consist of at least 3 but not more than 7 persons appointed by the board, pursuant to the Bylaws. Members of the ACC serve at the pleasure of the board and may be removed and replaced at the board's discretion. At the board's option, the board may act as the ACC, in which case all references in the Governing Documents to the ACC are construed to mean the board. Members of the ACC need not be owners or residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the board.

5.4. LIMITS ON LIABILITY. The Architectural Reviewer has sole discretion with respect to taste, design, and all standards specified by this Article. The Architectural Reviewer and each of its members has no liability for decisions made in good faith by the Architectural Reviewer, and which are not arbitrary or capricious. The Architectural Reviewer is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the Architectural Reviewer, (2) supervising construction for the owner's compliance with approved plans and specifications, or (3) the compliance of the owner's plans and specifications with governmental codes and ordinances, state and federal laws.

5.5. PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT. Without the Architectural Reviewer's prior written approval, a person may not construct a dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, if it will be visible from a street, another lot, or the common area. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of Prairie Chapel Estates.

5.6. ARCHITECTURAL APPROVAL. To request architectural approval, an owner must make written application to the Architectural Reviewer and submit 2 identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. In support of the application, the owner may but is not required to submit letters of support or non-opposition from owners of lots that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Architectural Reviewer's files. Verbal approval by an Architectural Reviewer, the Declarant, an Association director or officer, a member of the ACC, or the Association's manager does not constitute architectural approval by the appropriate Architectural Reviewer, which must be in writing.

5.6.1. Deemed Approval. Under the following limited conditions, the applicant may presume that his request has been approved by the Architectural Reviewer:

- a. If the applicant or a person affiliated with the applicant has not received the Architectural Reviewer's written response - approving, denying, or requesting additional information - within 60 days after delivering his complete application to the Architectural Reviewer.
- b. If the proposed improvement or modification strictly conforms to requirements and construction specifications contained in this Declaration and in any design guidelines for the Property in effect at the time of application.

If those conditions are satisfied, the owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his application, and provided he initiates and completes the improvement in a timely manner. In exercising deemed approval, the burden is on the owner to document the Architectural Reviewer's actual receipt of the owner's complete application. Under no circumstance may approval of the Architectural Reviewer be deemed, implied, or presumed for an improvement or modification that would require a variance from the requirements and construction specifications contained in this Declaration and in any design guidelines for the Property in effect at the time of application.

5.6.2. Building Permit. If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer approval.

5.6.3. Declarant Approved. Notwithstanding anything to the contrary in this Declaration, any improvement to Prairie Chapel Estates made or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer.

5.7. ARCHITECTURAL GUIDELINES. Declarant during the Development Period, and the Association thereafter, may publish architectural restrictions, guidelines, and standards, which may be revised from time to time to reflect changes in technology, style, and taste.

## **ARTICLE 6**

### **CONSTRUCTION AND USE RESTRICTIONS**

6.1. VARIANCE. The use of the Property is subject to the restrictions contained in this Article, and subject to rules adopted pursuant to this Article. The board or the Architectural Reviewer, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance.

6.2. CONSTRUCTION RESTRICTIONS. Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every lot must have the characteristics described in Exhibit B, which may be treated as the minimum requirements for improving and using a lot. The Architectural Reviewer and the board may promulgate additional rules and restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article. An owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his lot and dwelling.

6.3. LIMITS TO RIGHTS. No right granted to an owner by this Article or by any provision of the Governing Documents is absolute. The Governing Documents grant rights with the expectation that the rights will be exercised in ways, places, and times that are customary for the neighborhood. This Article and the Governing Documents as a whole do not try to anticipate and address every creative interpretation of the restrictions. For example, an owner's right to have a sign advertising the home for sale is not the right to mount the sign on the chimney and illuminate it with pulsating neon lights. The right of access to a home is not the right to land helicopters on the lot. The rights granted by this Article and the Governing Documents are at all times subject to the board's determination that a particular interpretation and exercise of a right is significantly inappropriate, unattractive, or otherwise unsuitable for the neighborhood, and thus constitutes a violation of the Governing Documents. In other words, the exercise of a right or restriction must comply with the spirit of the restriction as well as with the letter of the restriction.

6.4. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through its board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of Prairie Chapel Estates. In addition to the restrictions contained in this Article, each lot is owned and occupied subject to the right of the board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of common areas.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of exteriors of dwellings and lots.
- f. Landscaping and maintenance of yards.
- g. The occupancy and leasing of dwellings.
- h. Animals.

- i. Vehicles.
- j. Disposition of trash and control of vermin, termites, and pests.
- k. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Governing Documents, or the quality of life for residents.

6.5. ACCESSORY SHEDS. Accessory structures, such as dog houses, gazebos, metal storage sheds, playhouses, and greenhouses, are permitted as long as they are typical for Prairie Chapel Estates in terms of type, number, size, location, color, material, and height. Accessory structures may not be located in front yards or in unfenced portions of side yards facing streets. If an accessory structure that is visible from a street or another lot is installed on a lot without the prior written approval of the Architectural Reviewer, the Architectural Reviewer reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to screen it or to remove it.

6.6. ANIMAL RESTRICTIONS. No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose or for food. The only animals permitted on the Property are customary domesticated household pets, which may be kept for personal companionship subject to rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 4 dogs and/or cats may be maintained on each lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other lots. Pets must be maintained inside the dwelling, and may be kept in a fenced yard only if they do not disturb residents of other lots. Resident is responsible for the removal of his pet's wastes from the Property. Unless the Rules provide otherwise, a resident must prevent his pet from relieving itself on the common area or the lot of another owner.

6.7. ANNOYANCE. No lot or common area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of Prairie Chapel Estates as a residential neighborhood; (3) may endanger the health or safety of residents of other lots; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The board has the sole authority to determine what constitutes an annoyance.

6.8. APPEARANCE. Both the lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring lots. The Architectural Reviewer is the arbitrator of acceptable appearance standards.

6.9. BUSINESS USE. A resident may use a dwelling for business uses, such as telecommuting, personal business, and professional pursuits, provided that: (1) the uses are incidental to the primary use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) the uses do not entail visits to the lot by employees or the public in quantities that materially increase the number of vehicles parked on the street; and (4) the uses do not interfere with the residential use and enjoyment of neighboring lots by other residents.

6.10. DECLARANT PRIVILEGES. Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other owners and residents, as provided in Article 16 of this Declaration. Declarant's exercise of a Development Period right that appears to violate a rule or a use restriction of this Article does not constitute waiver or abandonment of the restriction by the Association as applied to owners other than Declarant.

6.11. DRAINAGE. No person may interfere with the established drainage pattern over any part of Prairie Chapel Estates unless an adequate alternative provision for proper drainage has been approved by the board.

6.12. DRIVEWAYS. The driveway portion of a lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of boats, trailers, and inoperable vehicles; or (2) for repair or restoration of vehicles.

6.13. FENCES. This Section is subject to the Architectural Reviewer's right to adopt additional or different specifications for construction or reconstruction of fences. The height of fences must be between 4 feet and 8 feet. Fences must be made of masonry, wood, or other Architectural Reviewer-approved material. Any portion of a fence that faces a street, alley, or common area must have a "finished side" appearance. Retaining walls must be constructed

entirely with Architectural Reviewer-approved materials, however railroad ties may not be used for a retaining wall visible from a street. Fences may not be constructed between a dwelling's front building line and the street. The use of barbed wire and chain link fencing is prohibited. The use or application of a stain that cures in a solid color or paint is prohibited. Wood fences may be left in their natural state. No wood fence may be stained to alter the fence color from a natural wood color. Without prior approval of the Architectural Reviewer, clear sealants may be applied.

6.14. FLAGS. Each owner and resident of Prairie Chapel has a right to fly the flag on his lot. The United States flag ("Old Glory") and/or the Texas state flag ("Lone Star Flag") may be displayed in a respectful manner on each lot, subject to reasonable standards adopted by the Association for the height, size, illumination, location, and number of flagpoles. All flag displays must comply with public flag laws. No other types of flags, pennants, banners, kites, or similar types of displays are permitted on a lot if the display is visible from a street or common area.

6.15. GARAGES. Without the board's prior written approval, the original garage area of a lot may not be enclosed or used for any purpose that prohibits the parking of two standard-size operable vehicles therein. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

6.16. GUNS. Hunting and shooting are not permitted anywhere on or from Prairie Chapel Estates. The Association is not required to enforce this provision by confronting an armed person.

6.17. LANDSCAPING. No person may perform landscaping, planting, or gardening on the common area without the board's prior written authorization.

6.18. LEASING OF HOMES. An owner may lease the dwelling on his lot. Whether or not it is so stated in a lease, every lease is subject to the Governing Documents. An owner is responsible for providing his tenant with copies of the Governing Documents and notifying him of changes thereto. Failure by the tenant or his invitees to comply with the Governing Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an owner of his tenant's violation, the owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The owner of a leased lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Governing Documents against his tenant. The Association is not liable to the owner for any damages, including lost rents, suffered by the owner in relation to the Association's enforcement of the Governing Documents against the owner's tenant.

6.19. LIGHTS. Exterior light sources on a lot should be unobtrusive, shielded to prevent glare, directed away from neighboring homes and yards, with little if any spillover light on neighboring property. All visible exterior light fixtures on a lot should be consistent in style and finish with the architecture of the home.

6.20. NOISE & ODOR. A resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy residents of neighboring lots. The Rules may prohibit the use of noise-producing security devices.

6.21. OCCUPANCY. Other than the completed principal dwelling, no thing or structure on a lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, campers, and storage sheds.

6.22. RESIDENTIAL USE. The use of a house lot is limited exclusively to residential purposes or any other use permitted by this Declaration, including limited business uses described above.

6.23. SCREENING. The Architectural Reviewer may require that the following items must be screened from the view of the public and neighboring lots and dwellings, if any of these items exists on the lot: (1) satellite reception equipment; (2) clotheslines, drying racks, and hanging clothes, linens, rugs, or textiles of any kind; (3) yard maintenance equipment; (4) wood piles and compost piles; (5) accessory structures that do not have prior approval of Architectural Reviewer; (6) garbage cans and refuse containers; (7) anything determined by the board to be unsightly or inappropriate for a residential subdivision. Screening may be achieved with fencing or with plant material, such as trees and bushes, or any combination of these. If plant material is used, a reasonable period of time is permitted for the plants to reach

maturity as an effective screen. As used in this Section, "screened from view" refers to the view of a person in a passenger vehicle driving on a street or alley, or the view of a person of average height standing in the middle of a yard of an adjoining lot.

6.24. SIGNS. An owner who is actively marketing his lot for sale or lease may place in the front yard one professionally-made traditional yard sign of not more than 5 square feet advertising the lot for sale or for rent. No other sign or unsightly object may be erected, placed, or permitted to remain on the Property or to be visible from windows in the dwelling without the board's prior written approval. The board's approval may specify the location, nature, appearance, dimensions, number, and time period of a sign or object. The Association may effect the removal of any sign or object that violates this Section or which the board deems inconsistent with neighborhood standards without liability for trespass or any other liability connected with the removal.

6.25. TELEVISION. Each resident of Prairie Chapel Estates will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another lot are prohibited within the Property, except (1) reception-only antennas or satellite dishes designed to receive television broadcast signals, (2) antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "**Antenna**") are permitted if located (a) inside the structure (such as in an attic or garage) so as not to be visible from outside the structure, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the owner may install the Antenna in the least conspicuous location on the lot where an acceptable quality signal can be obtained. The Association may adopt reasonable rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law.

6.26. TEMPORARY STRUCTURES. Except for "accessory sheds" as described above, improvements or structures of a temporary or mobile nature, such as tents, portable sheds, and mobile homes, may not be placed on a lot if visible from a street or another lot. However, an owner or owner's contractor may maintain a temporary structure (such as a portable toilet or construction trailer) on the lot during construction of the dwelling.

6.27. VEHICLES. All vehicles on the Property, whether owned or operated by the residents or their families and guests, are subject to this Section and Rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The board may effect the removal of any vehicle in violation of this Section or the Rules without liability to the owner or operator of the vehicle.

6.27.1. Parking in Street. The following subsection may not be construed to prohibit the parking of all vehicles on public streets. Vehicles that are not prohibited below may park on public streets if the city allows curbside parking, subject to the continuing right of the Association to adopt reasonable rules if circumstances warrant.

6.27.2. Prohibited Vehicles. Without prior written board approval, the following types of vehicles and vehicular equipment - mobile or otherwise - may not be kept, parked, or stored anywhere on the Property - including overnight parking on streets and driveways - if the vehicle is visible from a street or from another lot: mobile homes, motor homes, buses, trailers, boats, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles which are not customary personal passenger vehicles, and any vehicle which the board deems to be a nuisance, unsightly, or inappropriate. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times.

6.28. WINDOW TREATMENTS. All window treatments within the dwelling that are visible from the street or another dwelling must be maintained in good condition and must not detract from the appearance of the Property. The Architectural Reviewer may require an owner to change or remove a window treatment that the Architectural Reviewer determines to be inappropriate or unattractive. The Architectural Reviewer may prohibit the use of certain colors or materials for window treatments.

6.29. YARD ART. The Association is interested in the appearance of all portions of a house lot that are visible from the street or from a neighboring lot, including yards, porches, sidewalks, window sills, and chimneys (hereafter, collectively, the "**yard**"). Some changes or additions to a yard may defy easy categorization as an improvement, a sign, or landscaping. This Section confirms that all aspects of a visible yard are within the purview of the Architectural Reviewer.

## **ARTICLE 7**

### **ASSOCIATION OPERATIONS**

7.1. THE ASSOCIATION. The existence and legitimacy of the Association is derived from this Declaration and the Bylaws of the Association.

7.1.1. Type. The Association must be a nonprofit organization, and may be unincorporated or incorporated, as the Association decides from time to time. If the Association incorporates, the subsequent failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association.

7.1.2. Applicability. The Association is subject to the Texas Business Organizations Code ("**TBOC**"). Because provisions of this Declaration address issues covered by the TBOC, this Declaration is a "Governing Document" as defined by TBOC, and any such provision herein is a "Bylaw" as defined by TBOC. When incorporated, the Association is subject to TBOC Chapter 22 - the Nonprofit Corporation Law. When unincorporated, the Association is subject to TBOC Chapter 252 - the Uniform Unincorporated Nonprofit Association Act.

7.1.3. Name. A name is not the defining feature of the Association. Although the initial name of the Association is Prairie Chapel Estates Homeowners Association, the Association may operate under any name that is approved by the board and (1) registered by the board with the County Clerk of McLennan County, Texas, as an assumed name, or (2) filed by the Association with the Secretary of State as the name of the filing entity. The Association may also change its name by amending the Governing Documents. Another legal entity with the same name as the Association, or with a name based on the name of the Property is not the Association, which derives its authority from this Declaration.

7.1.4. Duties. The duties and powers of the Association are those set forth in the Governing Documents, together with the general and implied powers of a property owners association and, as applicable, an unincorporated nonprofit association or a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Governing Documents.

7.1.5. Duration. The Association comes into existence on the later to occur of the two following events: (1) the date on which this Declaration is recorded in the Real Property Records of McLennan County, Texas, or (2) the date on which a deed is recorded in the Real Property Records of McLennan County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

7.2. BOARD. The Association is governed by a board of directors. Unless the Association's Bylaws or Articles of Association provide otherwise, the board will consist of at least 3 persons elected by the members at the annual meeting of the Association, or at a special meeting called for that purpose. Unless the Governing Documents expressly reserve a right, action, or decision to the owners, Declarant, or another party, the board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Governing Documents to the "Association" may be construed to mean "the Association acting through its board of directors."

7.3. MEMBERSHIP. Each owner is a member of the Association, ownership of a lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the lot. The board may require satisfactory evidence of transfer of ownership before a purported owner is entitled to vote at meetings of the Association. If a lot is owned by more than one person or entity, each co-owner is a member of the Association and may

exercise the membership rights appurtenant to the lot. A member who sells his lot under a contract for deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the board. However, the contract seller remains liable for all assessments attributable to his lot until fee title to the lot is transferred.

7.4. DECISION-MAKING. Any decision or act of the Association may be made by or at the direction of the board, unless the Governing Documents reserve the decision or act to the members, the Declarant, or any other person or group. Unless the Governing Documents or applicable law provide otherwise, any action requiring approval of the members may be approved (1) at a meeting by owners of at least a majority of the lots that are represented at the meeting, provided notice of the meeting was given to an owner of each lot, or (2) in writing by owners of at least a majority of all lots, provided the opportunity to approve or disapprove was given to an owner of each lot.

7.5. MANAGER. The board may delegate the performance of certain functions to one or more managers or managing agents of the Association. Notwithstanding a delegation of its functions, the board is ultimately responsible to the members for governance of the Association.

7.6. COMMUNICATIONS. This Declaration is drafted in an era of rapidly changing communication technologies. Declarant does not intend to limit the methods by which the Association, owners, and residents communicate with each other. Such communications may be by any method or methods that are available and customary. For example, if the Association is required by the Governing Documents or applicable law to make information available to owners of all lots, that requirement may be satisfied by posting the information on the Association's website or by using electronic means of disseminating the information, unless applicable law requires a specific method of communication. It is foreseeable that meetings of the Association and voting on issues may eventually be conducted via technology that is not widely available on the date of this Declaration. As communication technologies change, the Association may adopt as its universal standard any technology that is used by owners of at least 85 percent of the lots. Also, the Association may employ multiple methods of communicating with owners and residents.

7.7. VOTING. One indivisible vote is appurtenant to each lot. The total number of votes equals the total number of lots in the Property. If additional property is made subject to this Declaration, the total number of votes will be increased automatically by the number of additional lots or tracts. Each vote is uniform and equal to the vote appurtenant to every other lot, except during the Declarant Control Period as permitted in Article 16. Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association's Bylaws.

7.8. BOOKS & RECORDS. The Association will maintain copies of the Governing Documents and the Association's books, records, and financial statements. The Association will make its books and records available to members, on request, for inspection and copying.

7.9. INDEMNIFICATION. The Association indemnifies every officer, director, committee chair, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors and officers liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

7.10. OBLIGATIONS OF OWNERS. Without limiting the obligations of owners under the Governing Documents, each owner has the following obligations:

7.10.1. Pay Assessments. Each owner will pay assessments properly levied by the Association against the owner or his lot, and will pay regular assessments without demand by the Association.

7.10.2. Transfers. Each owner will pay the applicable HOA Sale Fees described in Article 8 of this Declaration and pursuant to the Notice of HOA Sale Fees in effect at the time of transfer.

7.10.3 Comply. Each owner will comply with the Governing Documents as amended from time to time.

7.10.4 Reimburse. Each owner will pay for damage to the Property caused by the negligence or willful misconduct of the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, contractors, agents, or invitees.

7.10.5. Liability. Each owner is liable to the Association for violations of the Governing Documents by the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

7.11. NEW HOME SALES. The sale by Declarant to a homeowner of (1) a lot that is improved with a newly constructed house or (2) a lot with a contract for construction of the first house, is considered a "New Home Sale" for purposes of this Declaration. New Home Sales are not resales. The obligations for HOA Sale Fees for New Home Sales are described in Article 8 of this Declaration.

7.12. HOME REALES. For purposes of this Declaration, a "**resale**" is every sale or conveyance of a lot (or of an interest in a lot) that is improved with a house, other than the initial sale by Declarant of the lot with the newly constructed house to the initial homeowner. This Section applies to every resale of a house lot.

7.12.1. Resale Certificate. An owner intending to sell his home will notify the Association and will request a resale certificate from the Association.

7.12.2. No Right of First Refusal. The Association does not have a right of first refusal and may not compel a selling owner to convey the owner's lot to the Association.

7.12.3. HOA Sale Fees. At time of transfer, the HOA Sale Fees described in Article 8 of this Declaration and pursuant to the Notice of HOA Sale Fees in effect at the time of transfer are due and payable by buyer and/or seller

7.12.4. Information. Within 30 days after acquiring an interest in a lot, an owner will provide the Association with the following information: a copy of the settlement statement or deed by which owner has title to the lot; the owner's email address (if any), U. S. postal address, and phone number; any mortgagee's name, address, and loan number; the name and phone number of any resident other than the owner; the name, address, and phone number of owner's managing agent, if any.

7.12.5. Exclusions. This requirements of this Section, do not apply to the following transfers: (1) the initial conveyance from Declarant; (2) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (3) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (4) transfer to, from, or by the Association; (5) voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent; (6) a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; (7) a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (8) a disposition by a government or governmental agency.

## **ARTICLE 8**

### **COVENANT FOR ASSESSMENTS**

8.1. PURPOSE OF ASSESSMENTS. The Association will use assessments for the general purposes of preserving and enhancing Prairie Chapel Estates, and for the common benefit of owners and residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which Prairie Chapel Estates was developed. If made in good faith, the board's decision with respect to the use of assessments is final.

8.2. PERSONAL OBLIGATION. An owner is obligated to pay assessments levied by the board against the owner or his lot. An owner makes payment to the Association at its principal office or at any other place the board directs. Payments must be made in full regardless of whether an owner has a dispute with the Association, another owner, or any other person or entity regarding any matter to which this Declaration pertains. No owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the common area or by abandonment of his lot. An owner's

obligation is not subject to offset by the owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the owner and a continuing covenant running with the lot.

8.3. CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of owners of at least two-thirds of the lots. In addition to other rights granted to owners by this Declaration, owners have the following powers and controls over the Association's budget:

8.3.1. Veto Increased Dues. At least 30 days prior to the effective date of an increase in regular assessments, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless owners of at least a majority of the lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

8.3.2. Veto Special Assessment. At least 30 days prior to the effective date of a special assessment, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the special assessment. The special assessment will automatically become effective unless owners of at least majority of the lots disapprove the special assessment by petition or at a meeting of the Association.

8.4. TYPES OF ASSESSMENTS. There are 4 types of assessments: Regular, Special, Individual, and Deficiency.

8.4.1. Regular Assessments. Regular assessments are based on the annual budget. Each lot is liable for its equal share of the annual budget. If the board does not approve an annual budget or fails to determine new regular assessments for any year, or delays in doing so, owners will continue to pay the regular assessment as last determined. If during the course of a year the board determines that regular assessments are insufficient to cover the estimated common expenses for the remainder of the year, the board may increase regular assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, of the common area.
- b. Utilities billed to the Association.
- c. Services billed to the Association and serving all lots.
- d. Taxes on property owned by the Association and the Association's income taxes.
- e. Management, legal, accounting, auditing, and professional fees for services to the Association.
- f. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- g. Premiums and deductibles on insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including fidelity bonds and directors and officers liability insurance.
- h. Contributions to the reserve funds.
- i. Any other expense which the Association is required by law or the Governing Documents to pay, or which in the opinion of the board is necessary or proper for the operation and maintenance of Prairie Chapel Estates or for enforcement of the Governing Documents.

8.4.2. Special Assessments. In addition to regular assessments, and subject to the owners' control for assessment increases, the board may levy one or more special assessments against all lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special

assessments do not require the approval of the owners, except that special assessments for the following purposes must be approved by owners of least a majority of the lots:

- a. Acquisition of real property, other than the purchase of a lot at the sale foreclosing the Association's lien against the lot.
- b. Construction of additional improvements within Prairie Chapel Estates, but not replacement of original improvements.
- c. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

8.4.3. Individual Assessments. In addition to regular and special assessments, the board may levy an individual assessment against a lot and its owner. Individual assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an owner or his lot into compliance with the Governing Documents; fines for violations of the Governing Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-lot basis; and "pass through" expenses for services to lots provided through the Association and which are equitably paid by each lot according to benefit received.

8.4.4. Deficiency Assessments. The board may levy a deficiency assessment against all lots for the purpose of defraying, in whole or in part, the cost of repair or restoration if insurance proceeds or condemnation awards prove insufficient.

8.5. BASIS & RATE OF ASSESSMENTS. The share of liability for common expenses allocated to each lot is uniform for all lots, regardless of a lot's location or the value and size of the lot or dwelling; subject, however, to an exemption for Declarant provided in Article 16.

8.6. ANNUAL BUDGET. The board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The board will make the budget or its summary available to an owner of each lot, although failure to receive a budget or summary does not affect an owner's liability for assessments. The board will provide copies of the detailed budget to owners who make written request and pay a reasonable copy charge.

8.7. DUE DATE. The board may levy regular assessments on any periodic basis - annually, semi-annually, quarterly, or monthly. Regular assessments are due on the first day of the period for which levied. Special and individual assessments are due on the date stated in the notice of assessment or, if no date is stated, within 10 days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

8.8. RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair of common area improvements. The Association must budget for reserves and may fund reserves out of regular assessments.

8.9. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the owners hereunder.

8.10. LIMITATIONS OF INTEREST. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Governing Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater

than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the owner if those assessments are paid in full.

8.11. EFFECT OF NONPAYMENT OF ASSESSMENTS. An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association, acting through the board, is responsible for taking action to collect delinquent assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the Bylaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the board nor the Association, however, is liable to an owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

8.11.1. Interest. Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the board from time to time, not to exceed the lesser of 18 percent or the maximum permitted by law. If the board fails to establish a rate, the rate is 10 percent per annum.

8.11.2. Late Fees. Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the board from time to time.

8.11.3. Costs of Collection. The owner of a lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorneys fees and processing fees charged by the manager.

8.11.4. Acceleration. If an owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

8.11.5. Suspension of Vote. If an owner's account has been delinquent for at least 30 days, the Association may suspend the right to vote appurtenant to the lot. Suspension does not constitute a waiver or discharge of the owner's obligation to pay assessments.

8.11.6. Money Judgment. The Association may file suit seeking a money judgment against an owner delinquent in the payment of assessments, without foreclosing or waiving the Association's lien for assessments.

8.11.7. Notice to Mortgagee. The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of assessments.

8.11.8. Foreclosure of Assessment Lien. As provided by this Declaration, the Association may foreclose its lien against the lot by judicial or nonjudicial means.

8.12. HOA SALE FEES. This Section addresses the expenses, fees, charges, and contributions (hereafter, collectively, the "**HOA Sale Fees**") that are charged by the Association or its manager, and that arise at the time of a home's sale or purchase. As used in this Section, "HOA Sale Fees" does not include a buyer's prepaid and/or pro-rata assessments. HOA Sale Fees are not refundable by the Association or the Association's manager, and may not be regarded as a prepayment of or credit against assessments. HOA Sale Fees generally fall into two types of categories - budget enhancing fees, such as contributions to the reserve or operating funds of the Association, and administrative fees, such as fees for resale certificates, estoppel certificates, copies of governing documents, compliance inspections, ownership record changes, and priority processing.

8.12.1. Notice of HOA Sale Fees. The Association will publicly record a Notice of HOA Sale Fees, which may be recorded as part of the Management Certificate.

8.12.2. Manager's Fees. HOA Sale Fees may be charged by the Association's manager, managing director, or managing agent (collectively, "manager"), pursuant to a contract between the Association and the manager, and provided there is no duplication of fees by type or amount with fees charged by the Association.

This Article does not obligate the manager to levy HOA Sale Fees. The number, types, and amounts of HOA Sale Fees charged by a manager (1) must have the prior written approval of the board, (2) are not subject to the Association's assessment lien, (3) should not exceed what is customary in amount, kind, and number for the local marketplace, and (4) are not payable by the Association unless the management contract so stipulates.

8.12.3. Amendment of Notice. Although the initial Notice of HOA Sale Fees is recorded as an exhibit of this Declaration, the Notice is not subject to the amendment requirements of Article 16 of this Declaration. The board, without a vote of the owners, may amend the Notice of HOA Sale Fees for the following two purposes: (1) to change a stated amount or formula for an HOA Sale Fee, or (2) to conform the Notice of HOA Sale Fees with applicable law regarding HOA Sale Fees. Any other amendment of the Notice requires the approval of owners of two-thirds of the lots represented at a meeting of the Association at which a quorum is present, provided notice of the proposed amendment is given with the notice of meeting. During the Development Period, any amendment of the Notice of HOA Sale Fees must have the written and acknowledged consent of Declarant.

8.12.3.1. Effective. To be effective, an amendment or restatement of the Notice of HOA Sale Fees by the owners or by the board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, the recording data of the Declaration, and the recording data of the previously recorded Notice of HOA Sale Fees, (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of owners or directors, and (3) recorded in the Real Property Records of McLennan County, Texas.

8.12.3.2. Applicability. If the amended or restated Notice of HOA Sale Fees results in an overall reduction of HOA Sale Fees for a conveyance that is pending at the time of the amendment, the lower rate is effective immediately for any closing that occurs after the date the amendment is publicly recorded. If the amended or restated Notice of HOA Sale Fees results in an overall increase of HOA Sale Fees for the lot being conveyed, the increased amount is not effective until the 90th day after the date on which the amended or restated Notice of HOA Sale Fees is publicly recorded.

8.12.3.3. Distribution. Within 60 days after the amended or restated Notice of HOA Sale Fees is publicly recorded, a copy or report of, or electronic link to, the recorded amended Notice of HOA Sale Fees must be delivered or made available to an owner of each lot.

## **ARTICLE 9**

### **ASSESSMENT LIEN**

9.1. ASSESSMENT LIEN. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the lot and is secured by a continuing lien on the lot. Each owner, and each prospective owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his lot.

9.2. SUPERIORITY OF ASSESSMENT LIEN. The assessment lien on a lot is subordinate and inferior to (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration, (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due, (5) a home equity or reverse mortgage lien which is a renewal, extension, or refinance of a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due, (6) an FHA-insured or VA-guaranteed mortgage. Except for the foregoing, the assessment lien is superior to all other liens and encumbrances on a lot.

9.3. EFFECT OF MORTGAGEE'S FORECLOSURE. Foreclosure of a superior lien extinguishes the Association's claim against the lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former owner. The purchaser at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale, and for the owner's pro rata share of the pre-foreclosure deficiency as an Association expense.

9.4. NOTICE AND RELEASE OF NOTICE. The Association's lien for assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Real Property Records of McLennan County, Texas. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing owner.

9.5. POWER OF SALE. By accepting an interest in or title to a lot, each owner grants to the Association a private power of nonjudicial sale in connection with the Association's assessment lien. The board 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 meeting.

9.6. FORECLOSURE OF LIEN. The assessment lien may be enforced by judicial or nonjudicial foreclosure. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the Bylaws and applicable law, such as Chapter 209 of the Texas Property Code. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose the assessment lien if the debt consists solely of fines and/or a claim for reimbursement of attorney's fees incurred by the Association.

## **ARTICLE 10**

### **ENFORCING THE DOCUMENTS**

10.1. NOTICE AND HEARING. Before the Association may exercise certain of its remedies for a violation of the Governing Documents or damage to the Property, the Association must give an owner written notice and an opportunity for a hearing, according to the requirements and procedures in the Bylaws and in applicable law, such as Chapter 209 of the Texas Property Code. Notices are also required before an owner is liable to the Association for certain charges, including reimbursement of attorneys fees incurred by the Association.

10.2. REMEDIES. The remedies provided in this Article for breach of the Governing Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Governing Documents and by law, the Association has the following right to enforce the Governing Documents, subject to applicable notice and hearing requirements (if any):

10.2.1. Nuisance. The result of every act or omission that violates any provision of the Governing Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

10.2.2. Fine. The Association may levy reasonable charges, as an individual assessment, against an owner and his lot if the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate a provision of the Governing Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the owner's obligations under the Governing Documents.

10.2.3. Suspension. The Association may suspend the right of owners and residents to use common areas for any period during which the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate the Governing Documents. A suspension does not constitute a waiver or discharge of the owner's obligations under the Governing Documents.

10.2.4. Self-Help. The Association has the right to enter any part of the Property, including lots, to abate or remove, using force as may reasonably be necessary, any improvement, thing, animal, person, vehicle, or condition that violates the Governing Documents. In exercising this right, the board is not trespassing and is not liable for damages related to the abatement. The board may levy its costs of abatement against the lot and owner as an individual assessment. The board will make reasonable efforts to give the violating owner prior notice of its intent to exercise self-help. The notice may be given in any manner likely to be received by the owner. Prior

notice is not required (1) in the case of emergencies, (2) to remove violative signs, (3) to remove violative debris, or (4) to remove any other violative item or to abate any other violative condition that is easily removed or abated and that is considered a nuisance, dangerous, or an eyesore to the neighborhood.

10.2.5. Suit. Failure to comply with the Governing Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

10.3. BOARD DISCRETION. The board may use its sole discretion in determining whether to pursue a violation of the Governing Documents, provided the board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, 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 (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

10.4. NO WAIVER. The Association and every owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Governing Documents. Failure by the Association or by any owner to enforce a provision of the Governing Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Governing Documents at any future time. No officer, director, or member of the Association is liable to any owner for the failure to enforce any of the Governing Documents at any time.

10.5. RECOVERY OF COSTS. The costs of curing or abating a violation are at the expense of the owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Governing Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Governing Documents or the restraint of violations of the Governing Documents, the prevailing party is entitled to recover from the nonprevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

## **ARTICLE 11**

### **MAINTENANCE AND REPAIR OBLIGATIONS**

11.1. ASSOCIATION MAINTAINS. The Association's maintenance obligations will be discharged when and how the board deems appropriate. The Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on lots or common areas.

- a. The common areas.
- b. Any real and personal property owned by the Association but which is not a common area, such as a house lot owned by the Association.
- c. Any property adjacent to Prairie Chapel if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property.
- d. Any area, item, easement, or service - the maintenance of which is assigned to the Association by this Declaration or by the plat.

11.2. OWNER RESPONSIBILITY. Every owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the architectural control requirements of Article 5 and the use restrictions of Article 6:

11.2.1. House Maintenance. Each owner, at the owner's expense, must maintain all improvements on the lot, including but not limited to the dwelling, fences, sidewalks, and driveways. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each owner is expected to maintain his lot's improvements at a level, to a standard, and with an appearance that is commensurate with the

neighborhood. Specifically, each owner must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

11.2.2. Yard Maintenance. Each owner, at the owner's expense, must maintain the yards on his lot at a level, to a standard, and with an appearance that is commensurate with the neighborhood. "Yards" means all parts of the lot other than the dwelling, including fenced and unfenced portions of the lot. Specifically, each owner must:

- a. Maintain an attractive ground cover or lawn on all yards visible from a street.
- b. Edge the street curbs at regular intervals.
- c. Mow the lawns and grounds at regular intervals.
- d. Prevent lawn weeds or grass from exceeding 6 inches in height.
- e. Not plant vegetable gardens that are visible from a street.
- f. Maintain an attractive appearance for shrubs and trees visible from a street.
- g. Replace plant material, as needed, to maintain the minimum landscaping requirements of Exhibit B.

11.2.3. Avoid Damage. An owner may not do any work or to fail to do any work which, in the reasonable opinion of the board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

11.2.4. Responsible for Damage. An owner is responsible for his own willful or negligent acts and those of his or the resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the common areas or the property of another owner.

11.3. OWNER'S DEFAULT IN MAINTENANCE. If the board determines that an owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the owner is responsible, the board may give the owner written notice of the Association's intent to provide the necessary maintenance at owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the owner fails or refuses to timely perform the maintenance, the Association may do so at owner's expense, which is an individual assessment against the owner and his lot. In case of an emergency, however, the board's responsibility to give the owner written notice may be waived and the board may take any action it deems necessary to protect persons or property, the cost of the action being the owner's expense.

## **ARTICLE 12** **INSURANCE**

12.1. GENERAL PROVISIONS. All insurance affecting the Property is governed by the provisions of this Article, with which the board will make every reasonable effort to comply. The cost of insurance coverages and bonds maintained by the Association is an expense of the Association. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each owner irrevocably appoints the Association, acting through its board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:

12.1.1. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

12.1.2. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an owner or resident or their invitees, the owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

12.2. PROPERTY. To the extent it is reasonably available, the Association will obtain property insurance for insurable common area improvements. Also, the Association will insure the improvements on any house lot owned by the Association.

12.3. GENERAL LIABILITY. The Association will maintain a commercial general liability insurance policy over the common areas - expressly excluding the liability of each owner and resident within his lot - for bodily injury and property damage resulting from the operation, maintenance, or use of the common areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an owner's claim because of negligent acts of the Association or other owners.

12.4. DIRECTORS & OFFICERS LIABILITY. To the extent it is reasonably available, the Association will maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

12.5. OTHER COVERAGES. The Association may maintain any insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a mortgagee or an owner.

12.6. OWNER'S RESPONSIBILITY FOR INSURANCE. Each owner will obtain and maintain property insurance on all insurable improvements on his lot, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each owner will obtain and maintain general liability insurance on his lot. Each owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an owner fails to maintain required insurance, or to provide the Association with proof of same, the board may obtain insurance on behalf of the owner who will be obligated for the cost as an individual assessment. The board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by owners if the insurance is deemed necessary or desirable by the board to reduce potential risks to the Association or other owners. Each owner and resident is solely responsible for insuring his personal property in his dwelling and on the lot, including furnishings, vehicles, and stored items.

### **ARTICLE 13** **MORTGAGEE PROTECTION**

13.1. INTRODUCTION. This Article establishes certain standards for the benefit of Mortgagees, as defined below.

13.1.1. "**Underwriting Lender**" means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or U. S. Department of Veterans Affairs (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an owner's financing options nor as a representation that the Property is approved by any institution.

13.1.2. "**Mortgagee**" means a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a lot, or any renewal, modification, or refinancing thereof. In dealing with the Association, a Mortgagee may be represented by a mortgage services, agent, or representative.

13.1.3. "**Eligible Mortgagee**" means a Mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying number and street address of the mortgaged lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A single notice per lot will be valid so long as the Eligible Mortgagee holds a mortgage on the lot. The board will maintain this information.

13.2. MORTGAGEE RIGHTS.

13.2.1. Lien Superiority. As stated in the Assessment Lien Article of this Declaration, the lien in a Mortgagee's recorded deed of trust is superior to the Association's lien for assessments.

13.2.2. Termination. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least 51 percent of Eligible Mortgagees, in addition to the required consents of owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least two-thirds of Eligible Mortgagees.

13.2.3. Inspection of Books. Mortgagees may inspect the Association's books and records, including the Governing Documents, by appointment, during normal business hours.

13.2.4. Financial Statements. If a Mortgagee so requests, the Association will give the Mortgagee an audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

13.2.5. Right of First Refusal. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

13.2.6. Amending Governing Documents. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the board, without approval of owners or Mortgagees, may amend this Article and other provisions of the Governing Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Governing Documents. In case of conflict, this Article controls.

13.2.7. Attend Meetings. A representative of an Eligible Mortgagee may attend and address any meeting which an owner may attend.

13.2.8. Insurance. If an Underwriting Lender is a Mortgagee or an owner, at the request of the Underwriting Lender the Association will comply with the Underwriting Lender's insurance requirements to the extent the requirements are reasonable and available, and do not conflict with other insurance requirements of this Declaration.

### 13.3. LIMITS ON ASSOCIATION'S DUTIES.

13.3.1. Which Mortgagees? The Association's affirmative obligations to Mortgagees under the Governing Documents extend only to those Mortgagees of whom the Association has actual knowledge. This Article may not be construed to require the Association to perform title research to ascertain the existence and identify of a Mortgagee on a lot. Any duty of the Association to a Mortgagee is conclusively satisfied if performed for Mortgagees known to the Association, without regard to other holders of liens on lots. The Association may rely on the information provided by owners and mortgagees.

13.3.2. Communications with Mortgagee. If the Governing Documents or public law require the consent of Mortgagees for an act, decision, or amendment by the Association, the approval of a Mortgagee is implied when the Mortgagee fails to respond within 30 days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

## **ARTICLE 14** **AMENDMENTS**

14.1. CONSENTS REQUIRED. As permitted by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by the board alone. Otherwise, amendments to this Declaration must be approved by owners of at least a majority of the lots. Approval of owners does not require that the amendment be signed by the consenting owners, or that consents be executed and acknowledged by the approving owners.

14.2. METHOD OF AMENDMENT. For an amendment that requires the approval of owners, this Declaration may be amended by any method selected by the board from time to time, pursuant to the Bylaws, provided the method gives an owner of each lot the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

14.3. **EFFECTIVE.** To be effective, an amendment approved by the owners or by the board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of owners or directors and, if required, Eligible Mortgagees; and (3) recorded in the Real Property Records of McLennan County, Texas, except as modified by the following section.

14.4. **DECLARANT PROVISIONS.** Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Article 16. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

14.5. **MERGER.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by owners of at least a majority of the lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving association pursuant to the merger. The surviving or consolidated association may administer the provisions of the Governing Documents within Prairie Chapel Estates, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

14.6. **TERMINATION.** Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by owners of at least two-thirds of the lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the board without a vote of owners. In all other circumstances, an amendment to terminate must be approved by owners of at least 80 percent of the lots.

14.7. **CONDEMNATION.** In any proceeding, negotiation, settlement, or agreement concerning condemnation of the common area, the Association will be the exclusive representative of the owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the common area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

## **ARTICLE 15**

### **DISPUTE RESOLUTION**

15.1. **INTRODUCTION & DEFINITIONS.** The Association, the owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

15.1.1. "**Claim**" means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.
- b. Claims relating to the rights and/or duties of Declarant as Declarant under the Governing Documents.
- c. Claims relating to the design, construction, or maintenance of the Property.

15.1.2. "**Claimant**" means any Party having a Claim against any other Party.

15.1.3. "**Exempt Claims**" means the following claims or actions, which are exempt from this Article:

- a. The Association's claim for assessments, and any action by the Association to collect assessments.
- b. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- c. Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.
- d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

15.1.4. "**Respondent**" means the Party against whom the Claimant has a Claim.

15.2. **MANDATORY PROCEDURES.** Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

15.3. **NOTICE.** Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

15.4. **NEGOTIATION.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

15.5. **MEDIATION.** If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

15.6. **TERMINATION OF MEDIATION.** If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

15.7. **ALLOCATION OF COSTS.** Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

15.8. **ENFORCEMENT OF RESOLUTION.** Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement

is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

15.9. GENERAL PROVISIONS. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

15.10. LITIGATION APPROVAL & SETTLEMENT. To encourage the use of alternate dispute resolution and discourage the use of costly and uncertain litigation, the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section. This Section may not be amended without the approval of owners of at least 75 percent of the lots.

15.10.1. Owner Approval. The Association may not initiate any judicial or administrative proceeding without the prior approval of owners of at least a majority of the lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of owners in order to preserve the status quo.

15.10.2. Funding Litigation. Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a special assessment, the Association must levy a special assessment to fund the estimated costs of litigation prior to initiating a judicial or administrative proceeding. The Association may not use its annual operating income, reserve funds, or savings to fund litigation, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation reserve fund.

15.10.3. Settlement. The board, on behalf of the Association and without the consent of owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims.

15.11. CONSTRUCTION-RELATED DISPUTES. In addition to the above procedures, a claim relating to an alleged construction defect may be governed by Texas statutes relating to residential construction, such as:

15.11.1. RCLA. Under Chapter 27 of the Texas Property Code, the Residential Construction Liability Act, if an owner has a complaint concerning an alleged construction defect, and if the alleged defect has not been corrected through normal warranty service, the owner must provide the notice required by Chapter 27 of the Texas Property Code to the builder or contractor by certified mail, return receipt requested, not later than the 60th day before the date owner files suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the alleged construction defect. If requested by the builder or contractor, the owner must provide the builder or contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

15.11.2. TRCCA. Under Chapters 401 et. seq. of the Texas Property Code, the Texas Residential Construction Commission Act (TRCCA), alleged construction defects in units constructed as townhouses, duplexes, and detached single family houses are subject to the policies and procedures of the TRCCA. The Commission maintains a website with information for home owners.

## **ARTICLE 16**

### **DECLARANT RIGHTS & RESERVATIONS**

16.1. GENERAL PROVISIONS.

16.1.1. Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Article.

16.1.2. General Reservation & Construction. Notwithstanding other provisions of the Governing Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other owner, or the Association, prevent or interfere with the rights contained in this Article which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Article and any other Governing Document, this Article controls. This Article may not be amended without the prior written consent of Declarant. The terms and provisions of this Article must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

16.1.3. Purpose of Development and Declarant Control Periods. This Article gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of Prairie Chapel Estates, which is ultimately for the benefit and protection of owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with 90 days' notice.

16.1.4. Intent to Build. Declarant, in its own name or through its affiliates, intends to construct dwellings on the lots in connection with the sale of the lots. However, Declarant may, without notice, sell some or all of the lots to one or more other builders to improve the lots with dwellings to be sold and occupied. In that event, Declarant may be expected to amend this Declaration to add provisions addressing the role of a builder in the Property.

16.2. DEFINITIONS. As used in this Article and elsewhere in the Governing Documents, the following words and phrases have the following specified meanings:

16.2.1. "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of (1) [insert #] years from date this Declaration is recorded, or (2) 60 days after title to 75 percent of the lots that may be created in Prairie Chapel Estates has been conveyed to owners other than Declarant or affiliates of Declarant.

16.2.2. "**Development Period**" means the [insert #-]year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to this Article, such as rights relating to development, construction, expansion, and marketing of Prairie Chapel Estates. The Development Period is for a term of years and does not require that Declarant own land described in Exhibit A. The Development Period is different from and longer than the Declarant Control Period. Declarant may terminate the Development Period at any time by recording a notice of termination.

16.2.3. "**Unilaterally**" means that the Declarant may take the authorized action without the consent, approval, vote, or joinder of any other person, such as owners, mortgagees, and the Association. Certain provisions in this Article and elsewhere in the Governing Documents authorize the Declarant to act unilaterally. Unilateral action by Declarant is favored for purposes of efficiency and to protect the interests of Declarant.

16.3. DECLARANT CONTROL PERIOD RESERVATIONS - GOVERNANCE. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

16.3.1. Incorporation of Association. Declarant will incorporate the Association as a Texas nonprofit corporation before the end of the Declarant Control Period.

16.3.2. Officers & Directors. During the Declarant Control Period, the Board may consist of 3 persons. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as

a "Leader." Declarant's unilateral right to remove and replace officers and directors applies to officers and directors who were elected or designated by lot owners other than Declarant, as well as to Declarant's appointees.

16.3.3. Association Meetings. During the Declarant Control Period, meetings of the Association may be held at a location, date, and time that is convenient to Declarant, whether or not it is mutually convenient for the owners.

16.3.4. Transition Meeting. Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call a transition meeting of the members of the Association for the purpose of electing, by vote of the owners, directors to the board. Written notice of the transition meeting must be given to an owner of each lot at least 10 days before the meeting. For the transition meeting, owners of 10 percent of the lots constitute a quorum. The directors elected at the transition meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

16.4. DECLARANT CONTROL PERIOD RESERVATIONS - FINANCIAL. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

16.4.1. Association Budget. During the Declarant Control Period, the Declarant-appointed board will establish a projected budget for Prairie Chapel Estates as a fully developed, full constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of new homes in the Property.

16.4.2. Budget Funding. During the Declarant Control Period only, Declarant is responsible for the difference between the Association's actual operating expenses and the regular assessments received from owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease being responsible for the difference between the Association's operating expenses and the assessments received from owners other than Declarant.

16.4.3. Declarant Assessments & Reserves. During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association. During the Declarant Control Period, Declarant is not required to make contributions to the Association's reserve funds for the lots owned by Declarant. Declarant's obligation to fund the difference in the Association's operating expenses may not be construed to require Declarant to fund reserve accounts.

16.4.4. Commencement of Assessments. During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of regular assessments until a certain number of lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies regular assessments against the lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.

16.4.5. Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

16.4.6. Budget Control. During the Declarant Control Period, the right of owners to veto assessment increases or special assessments is not effective and may not be exercised.

16.5. DEVELOPMENT PERIOD RESERVATIONS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

16.5.1. Withdrawal. During the Development Period, Declarant may withdraw real property from the Property and the effect of this Declaration (1) if the owner of the withdrawn property consents to the withdrawal, and (2) if the withdrawal does not significantly and detrimentally change the appearance, character, operation, or use of the Property.

16.5.2. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the owner of the land or lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of lots and streets; (b) change the minimum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

16.5.3. Architectural Control. During the Development Period, Declarant has the absolute right to serve as the Architectural Reviewer pursuant to Article 5. Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under Article 5 and this Article to (1) an architectural control committee appointed by the board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant also has the unilateral right to exercise architectural control over vacant lots in Prairie Chapel Estates. Neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes and related improvements on vacant lots.

16.5.4. Amendment. During the Development Period, Declarant may amend this Declaration and the other Governing Documents, without consent of other owners or any mortgagee, for any purpose.

16.5.5. Completion. During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the common area and lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of Prairie Chapel Estates, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

16.5.6. Easement to Inspect & Right to Correct. During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

16.5.7. Promotion. During the Development Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other owners and residents, for purposes of promoting, identifying, and marketing Prairie Chapel Estates and/or Declarant's houses, lots, developments, or other products located outside the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers parties - at the Property to promote the sale of lots.

16.5.8. Offices. During the Development Period, Declarant reserves for itself the right to use dwellings owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to lots and dwellings used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

16.5.9. Access. During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing Prairie Chapel Estates, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the homebuying public through any existing or future gate that restricts vehicular access to the Property in connection with the active marketing of lots and homes by Declarant, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

16.5.10. Utility Easements. During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, cable, internet service, and security. To exercise this right as to land that is not a common area of the Property or not owned by Declarant, Declarant must have the prior written consent of the land owner.

16.5.11. Assessments. For the duration of the Development Period after the Declarant Control Period ends, each lot owned by Declarant is subject to mandatory assessment by the Association in the same manner as the lot of any other owner.

16.5.12. Land Transfers. During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Governing Documents, including without limitation an obligation for transfer or resale certificate fees, and the transfer-related provisions of Article 7 of this Declaration.

16.6. DIFFERENT STANDARDS. Declarant has the right (1) to establish specifications for the construction of all initial improvements in Prairie Chapel Estates, (2) to establish different specifications for each neighborhood within the Property, and (3) to grant variances or waivers from community-wide standards to certain neighborhoods of the Property.

16.7. COMMON AREAS. Any initial common area improvement will be installed, constructed, or authorized by Declarant, the cost of which is not a common expense of the Association. For every common area capable of being conveyed to the Association, Declarant will convey title to the common area to the Association by one or more deeds - with or without warranty. At the time of conveyance to the Association, the common areas will be free of encumbrance except for the property taxes accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of common areas requiring inspection, evaluation, acceptance, or approval of common area improvements by the owners.

16.8. SUCCESSOR DECLARANT. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Real Property Records of McLennan County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

## **ARTICLE 17**

### **GENERAL PROVISIONS**

17.1. COMPLIANCE. The owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Governing Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

17.2. HIGHER AUTHORITY. The Governing Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Governing Documents are enforceable to the extent they do not violate or

conflict with local, state, or federal law or ordinance. In the event of a conflict between the Governing Documents, the hierarchy of authority is as follows: this Declaration (highest), Association's Articles of Association, Bylaws, and the Rules (lowest). Within the Declaration, Article 16 has the highest authority.

17.3. NOTICE. All demands or other notices required to be sent to an owner or resident by the terms of this Declaration may be sent by electronic, ordinary, or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association on the date the notice is issued. If an owner fails to give the Association an address for sending notices, all notices may be sent to the owner's lot, and the owner is deemed to have been given notice whether or not he actually receives it.

17.4 CHANGING TECHNOLOGY. The Governing Documents are drafted at the end of an era that uses ink on paper to communicate, to give notice, and to memorialize decisions. The next era of communications may be paperless, relying on electronic communications for many activities that are customarily papered on the date of this Declaration. As technology changes, the terms of the Governing Documents that pertain to communications, notices, and documentation of decisions may be interpreted and applied in ways that are consistent with and customary for the then-current technology for standard business practices, without necessity of amending the Governing Document.

17.5 LIBERAL CONSTRUCTION. The terms and provision of each Governing Document are to be liberally construed to give effect to the purposes and intent of the Governing Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved first to give effect to Declarant's intent to protect Declarant's interests in the Property, and second in favor of the operation of the Association and its enforcement of the Governing Documents, regardless which party seeks enforcement.

17.6 SEVERABILITY. Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

17.7. CAPTIONS. In all Governing Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer.

17.8. EXHIBITS. The following exhibits are attached to this Declaration and incorporated herein by reference: Exhibit A - Description of Subject Land, Exhibit B - Construction Specifications, Exhibit C - Lienholder Consent to Declaration.

17.9. INTERPRETATION. Whenever used in the Governing Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

17.10. DURATION. Unless terminated or amended by owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

17.11. PREPARER. This Declaration was prepared in the law offices of Able Attorney, 1114 S. University Parks Drive, Waco, Texas 76798.

SIGNED on this \_\_\_\_\_ day of March 2006.

**P. C. DECLARANT COMPANY, L.P.**, a Texas limited partnership

By: P. C. DECLARANT, INC., a Texas corporation, its general partner

By: \_\_\_\_\_  
Tom Developer, President

[ACKNOWLEDGMENT]

**EXHIBIT A**  
**DESCRIPTION OF SUBJECT LAND**

PRAIRIE CHAPEL ESTATES

The 122.78-acre tract described by metes and bounds in the Owner's Certification of the Final Plat of Prairie Chapel Estates Addition, recorded on November 13, 2005 as Cabinet G, Slide 123, Plat Records, McLennan County, Texas, including the following common areas and 248 house lots:

HOUSE LOTS

- BLOCK "A": LOTS 1 - 36
- BLOCK "B": LOTS 1 - 28
- BLOCK "C": LOTS 1 - 9
- BLOCK "D": LOTS 1 - 42
- BLOCK "E": LOTS 1 - 21
- BLOCK "F": LOTS 1 - 13
- BLOCK "G": LOTS 1 - 28
- BLOCK "H": LOTS 1 - 25
- BLOCK "I": LOTS 1 - 19
- BLOCK "J": LOTS 1 - 27

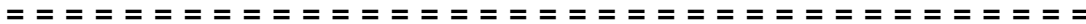
COMMON AREAS

- Open Space A, Block "C"
- Open Space B, Block "A"
- Open Space C, Block "D"
- Open Space D, Block "G"

**SAVE & EXCEPT AND EXCLUDING:**

LOT 37, BLOCK A  
(labeled City of Crawford Water Tower Site)

LOT 20, BLOCK I  
(labeled Crawford Independent School Site)



**EXHIBIT B**  
**CONSTRUCTION SPECIFICATIONS**

(Sample of Some Types of Provisions)

B.1. HOUSES. The principal improvement on a lot must be one detached single family dwelling. The dwelling size, setbacks, and exterior materials must comply with the applicable ordinances and with any higher standards established by the Architectural Reviewer.

B.2. NEW CONSTRUCTION. The dwelling must be constructed on the lot. A dwelling or addition constructed elsewhere may not be moved onto a lot. Factory-built homes are not permitted, even though assembled or finished on the lot.

B.3. EXTERIOR WALL MATERIALS. The type, quality, and color of exterior wall materials must be approved by the Architectural Reviewer. Generally, at least 75 percent of the dwelling's total exterior area, minus windows and doors, must be masonry or masonry veneer. Any siding used on the remainder of the dwelling's exterior walls must be a cement fiber board product, such as HardiPlank.

B.4. ROOFS. Roofs must be covered with material having a manufacturer’s warranty of at least 20 years, such as GAF Sentinal or its equivalent. The Architectural Reviewer may permit or require other weights, materials, and colors.

B.5. GARAGE & DRIVEWAY. Each dwelling must have an attached garage for at least two standard-size cars. The driveway must be surfaced with concrete.

B.6. LANDSCAPING. Landscaping must be installed on the front and side yards of the lot within 90 days after an occupancy permit is issued for the dwelling. The minimum landscaping requirements are (1) a fully sodded front yard, (2) a fully sodded side yard on the street side of each corner lot, and (3) one three-inch caliper tree in the front yard.

B.7. MAILBOXES. If curbside boxes are permitted by postal authorities, the Architectural Reviewer may require a uniform size and style of mailbox and pedestal.

B.8. AIR CONDITIONERS. Air conditioning equipment may not be installed in the front yard of a dwelling. Window units are prohibited. The Architectural Reviewer may require that air-conditioning equipment and apparatus be visually screened from the street and neighboring lots.

B.9. DEBRIS. No lot or other part of the Property may be used a dumping ground. Waste materials incident to construction or repair of improvements on a lot may be stored temporarily on the lot during construction while work progresses and must be removed when construction or repair is complete.

=====

**EXHIBIT C**  
**LIENHOLDER CONSENT TO DECLARATION**  
PRAIRIE CHAPEL ESTATES

Brazos Valley Bank is a Texas banking institution whose address is 501 Washington Avenue, Waco, Texas 76701. Brazos Valley Bank holds a promissory note signed by P. C. Declarant Company, L.P. The promissory note is secured by a deed of trust lien against real property that includes the property described in Exhibit A of this Declaration of Covenants, Conditions, and Restrictions for Prairie Chapel Estates. The lien benefitting Brazos Valley Bank is contained in the Construction Deed of Trust, recorded on October 12, 2005, as Document No. 20050746, Real Property Records, McLennan County, Texas, as it may be amended or extended from time to time.

By signing this instrument, Brazos Valley Bank consents to the recording of the Declaration of Covenants, Conditions, and Restrictions for Prairie Chapel Estates, which will not be extinguished by foreclosure of any lien assigned to or for the benefit of Brazos Valley Bank, or its affiliates, successors, or assigns.

SIGNED on the \_\_\_\_\_ day of March 2006.

**BRAZOS VALLEY BANK**, a Texas banking institution

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[ACKNOWLEDGMENT]

AFTER RECORDING, PLEASE RETURN TO:  
Able Attorney  
Drafters R Us  
1114 S. University Parks Drive  
Waco, Texas 76798

(Intentionally Left Blank)

## APPENDIX H

# BYLAWS OF PRAIRIE CHAPEL ESTATES HOMEOWNERS ASSOCIATION

(A Texas Property Owners Association)<sup>1</sup>

**PROPERTY<sup>2</sup>**

These Bylaws pertain to Prairie Chapel Estates, a planned community in the City of Crawford, Texas, according to the plat thereof recorded on November 13, 2005, in Cabinet G, Slide 123, Plat Records, McLennan County, Texas. These Bylaws are to be recorded in the Real Property Records of McLennan County, Texas.

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<sup>1</sup> The HOA is purposefully described as a "Property Owners Association" or a "Planned Community", rather than a nonprofit corporation because the corporate status of the HOA may lapse from time to time.

<sup>2</sup> Organizational bylaws are not customarily recorded in a county's public records, except for bylaws of mandatory owners associations. A reference to the real property is placed on the cover page for the benefit of the county clerk.

**BYLAWS  
OF  
PRAIRIE CHAPEL ESTATES HOMEOWNERS ASSOCIATION**  
(A Texas Property Owners Association)

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# BYLAWS OF PRAIRIE CHAPEL ESTATES HOMEOWNERS ASSOCIATION

(A Texas Property Owners Association)

## ARTICLE 1 INTRODUCTION

1.1. PROPERTY.<sup>4</sup> These Bylaws provide for the governance of Prairie Chapel Estates, a planned community located in the City of Crawford, Texas, according to the plat thereof recorded on November 13, 2005, Cabinet G, Slide 123, Plat Records, McLennan County, Texas. (the "**Property**").

1.2. DECLARATION. The Property is subject to a number of publicly recorded documents, including the Declaration of Covenants, Conditions, and Restrictions for Prairie Chapel Estates, recorded or to be recorded in the Real Property Records of McLennan County, Texas (the "**Declaration**").

1.3. DEFINITIONS.<sup>5</sup> Words and phrases defined in the Declaration have the same meanings when used in these Bylaws.

1.4. DECLARANT CONTROL.<sup>6</sup> Notwithstanding anything to the contrary in these Bylaws, a number of provisions in these Bylaws are modified by Declarant's rights and reservations under the Declaration during the Declarant Control Period and the Development Period, such as the number, qualification, appointment, removal, and replacement of directors, as well as the weight of votes allocated to lots owned by Declarant. See Article 16 of the Declaration, which has priority over these Bylaws.

1.5. PARTIES TO BYLAWS. All present or future lot owners and all other persons who use or occupy the Property in any manner are subject to these Bylaws, the Declaration, and the other Governing Documents as defined in the Declaration. The mere acquisition of a lot or occupancy of a dwelling will signify that these Bylaws are accepted, ratified, and will be strictly followed.

1.6. TYPE OF ORGANIZATION.<sup>7</sup> As an organization of lot owners, the Association is created by the Declaration and these Bylaws. The Association is a nonprofit organization, and may be incorporated or unincorporated.

1.7. APPLICABLE LAW. The Association is a legal entity governed by the Texas Business Organizations Code (the "**Code**"). If the Association is not incorporated, it is an unincorporated nonprofit association subject to Chapter 252 of Title 6 of the Code, the Texas Uniform Unincorporated Nonprofit Association Act. If the Association is incorporated, it is a domestic nonprofit corporation subject to Chapter 22 of Title 2 of the Code, the Texas Nonprofit Corporation Law.

<sup>4</sup> This section provides the property description that is required to record an instrument in the county's real property records. If the subdivision is not platted, refer to a metes and bounds description attached as an exhibit to Bylaws, or provide recording data for an instrument that describes the land by metes and bounds. If the name of the platted subdivision differs from the "project name," draft accordingly.

<sup>5</sup> It is not necessary or advisable to restate definitions from the Declaration. In addition to the risks of error and omission, restating definitions creates a trap for the unwary HOA that amends a definition in one document, but not in the other.

<sup>6</sup> Because these Bylaws are written for the long-term use by the owner-controlled HOA, the Bylaws have limited references to the Declarant, whose overriding control rights are contained in the Declaration. This section would be eliminated for an owner-controlled HOA.

<sup>7</sup> No Texas statute requires incorporation of owners associations, other than condominiums (for which TUCA requires incorporation). Because the HOA's corporate charter may lapse from time to time, a requirement of incorporation is purposefully avoided.

If not incorporated, the Association, at its discretion, may use the Texas Nonprofit Corporation Law for guidance in governing the Association. Sections of the Code that are cited in these Bylaws are incorporated herein by reference, whether or not the Association is incorporated.

1.8. GENERAL POWERS AND DUTIES. The Association, acting through the board, has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Property as may be required or permitted by the Governing Documents and applicable law. The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its members, subject only to limitations upon the exercise of such powers as may be contained in applicable law or the Governing Documents.

## **ARTICLE 2 BOARD OF DIRECTORS**

2.1. NUMBER AND TERM OF OFFICE. After the Declarant Control Period,<sup>8</sup> the board will consist of three<sup>9</sup> persons. The number of directors may be changed by amendment of these Bylaws, but may not be less than three.<sup>10</sup> Upon election, each director will serve a term of 2<sup>11</sup> years. A director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

2.2. STAGGERED TERMS. To maintain staggered terms, two directors will be elected in even-numbered years, and three directors will be elected in odd-numbered years. To establish staggered terms, at the first election after the transition meeting, the candidates receiving the most votes will serve 2-year terms, and the candidates receiving the next-highest votes will serve initial terms of one year. In an odd-numbered year, the three highest vote getters will serve a 2-year term, and the next two highest vote getters will serve 1-year terms. In an even-numbered year, the two highest vote getters will serve 2-year terms, and the next three highest vote getters will serve 1-year terms. Thereafter, their successors will serve 2-year terms. If the board is ever elected en masse, the same method will be used to re-establish staggered terms.

2.3. QUALIFICATION. The following qualifications apply to the election or appointment of persons to the board.<sup>12</sup> (*See Article 16 of the Declaration for the number and qualifications of directors during the Declarant Control Period.*)

2.3.1. Owners. At least a majority of the directors must be members of the Association, spouses of members, or residents of the Property.

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<sup>8</sup> Although the entire Bylaws is subject to Declarant's rights, the phrase "After the Declarant Control Period" is purposefully inserted here for emphasis because of the tendency of homeowners to reach for this section to discredit the Declarant-appointed board.

<sup>9</sup> The number typically depends on the projected size of the development when fully phased. Although 5 is the most typical number of directors for HOAs, the number should be tailored to the size and circumstances of each development. If the Bylaws fails to state a number of directors, the number of initial directors in the Articles of Association will control, as provided by TBOC §22.204.

<sup>10</sup> TBOC §22.204(a) requires a minimum of 3 directors for nonprofit corporations.

<sup>11</sup> It is customary to stagger the terms of directors, with 2- or 3-year terms. Absent a term provision, TBOC §22.208(b) provides for 1-year terms. Some drafters prefer staggered 3-year terms. I prefer the pattern of electing the odd-number of directors in odd-numbered years, and the even-number of directors in even-numbered years, which works even if the board changes in size from 3 to 7 to 9 to 5.

<sup>12</sup> TBOC §22.203 states that directors need not be HOA members or Texas residents unless the Articles or Bylaws so require. As a practical matter, who is likely to want to serve other than owners, residents, and their family members? Resist constraints on qualifications that may disqualify otherwise qualified and interested candidates. Consider few if any qualifications for small-size HOAs, or HOAs with few total owners, or HOAs with absentee owners.

2.3.2. Entity Member. If a lot is owned by a legal entity, such as a partnership or corporation, any officer, partner, agent, or employee of that entity member is eligible to serve as a director and is deemed to be a member for the purposes of this Section. If the relationship between the entity member and the director representing it terminates, that directorship will be deemed vacant.<sup>13</sup>

2.3.3. Delinquency. No person may be elected or appointed as a director if any assessment against the person or his lot is more than 30 days' delinquent at the time of election or appointment, provided he has been given notice of the delinquency and a reasonable opportunity to cure it.

2.4. ELECTION.<sup>14</sup> Directors will be elected by the members of the Association. The election of directors will be conducted at the annual meeting<sup>15</sup> of the Association, at any special meeting called for that purpose, or by any method permitted by applicable law, such as Section 22.160(d) of the Code, which may include, without limitation, mail, facsimile transmission, electronic mail, or a combination of any of these.

2.5. VACANCIES.<sup>16</sup> Subject to the exceptions below, vacancies on the board caused by any reason are filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the board. Each director so elected serves until the next meeting of the Association, at which time a successor will be elected to fill the remainder (if any) of the term that was vacated. The exceptions to board-elected replacements are (1) the removal of a director by a vote of the Association's members, who will elect a replacement, and (2) a vacancy occurring because of an increase in the number of directors,<sup>17</sup> which also will be filled by election of the members.

2.6. REMOVAL OF DIRECTORS.<sup>18</sup>

2.6.1. Removal by Members. At any annual meeting of the Association or at any special meeting of the Association called for the purpose of removing a director, any one or more of the directors may be removed with or without cause by members representing at least two-thirds of the votes present in person or by proxy at the meeting, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the members must be given an opportunity to be heard at the meeting.

2.6.2. Removal by Directors. A director may not be removed by the officers or by the remaining directors, except for the following limited reasons for which a director may be removed by at least a majority of the other directors at a meeting of the board called for that purpose:

- a. The director is a party adverse to the Association, the board, or a committee of the Association in pending litigation to which the Association, board, or committee is a party, provided the Association did not file suit to effect removal of the director.
- b. The director's account with the Association has been delinquent for at least 90 days or has been delinquent at least 3 times during the preceding 12 months, provided he was given notice of the default and a reasonable opportunity to cure.

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<sup>13</sup> This provision assumes the individual director was elected on his individual qualifications, which suggests that the entity-owner is not entitled to appoint a replacement to fill the vacancy created by the departure of its representative on the board. If a case could be made that the seat belongs to the entity, the provision might be written differently.

<sup>14</sup> TBOC §22.206 provides that directors will be appointed by the board if an election provision is not stated in the Bylaws or Articles. So, "election by members voting" must be in the Bylaws to ensure this right of membership.

<sup>15</sup> Although it is customary to elect directors at the annual meeting, TBOC §22.160 permits balloting by mail, fax, and/or email if the Bylaws so provide. Consider whether voting should be done at face-to-face meetings for certain circumstances.

<sup>16</sup> TBOC §22.212 addresses board vacancies, and provides that a board-elected replacement serves out the remainder of the vacated term. This Section of the Bylaws provides that the replacement serves until the next HOA meeting, at which a replacement will be elected.

<sup>17</sup> TBOC §22.212(b)

<sup>18</sup> TBOC §22.211.

- c. The director has refused or failed to attend 3 or more meetings of the board during the preceding 12 months, provided he was given proper notice of the meetings.

2.6.3. No Removal by Officers.<sup>19</sup> A director may not be removed by officers of the Association, acting in their capacity of officers of the Association, under any circumstance.

## 2.7. MEETINGS OF THE BOARD.

2.7.1. Organizational Meeting of the Board. Within 10 days after the annual meeting, the directors will convene an organizational meeting for the purpose of electing officers. The time and place of the meeting will be fixed by the board and announced to the directors.

2.7.2. Place of Board Meetings.<sup>20</sup> The board will conduct its meetings at a location that is reasonably convenient for the greatest number of directors, and at a place or facility that is sufficiently large to accommodate the number of owners who typically attend board meetings as observers. The decision of where to meet may be made on a meeting by meeting basis by the officer or director who calls the meeting, by board resolution, or by any other practice that is customary for property owners associations. The board is not required (1) to conduct its meetings at the Property, (2) to maintain a fixed place for its meetings, (3) to select a location that is convenient to owners, or (4) to select a facility that accommodates a larger number of spectator members than is customary.

2.7.3. Types of Board Meetings. Regular meetings of the board may be held at a time and place that the board determines, from time to time, but at least one such meeting must be held each calendar quarter, with or without notice. Special meetings of the board may be called, with notice, by the president or, if he is absent or refuses to act, by the secretary, or by any 2 directors. In case of emergency, the board may convene an emergency meeting for the purpose of dealing with the emergency after making a diligent attempt to notify each director by any practical method.

2.7.4. Notice to Directors of Board Meetings.<sup>21</sup> Notice is not required for regular meetings of the board, provided all directors have actual or constructive knowledge of the meeting date, time, and place. Notice of a special meeting must be given at least one day in advance of the meeting. If notice is given, it may be given by any method or combination of methods that is likely to impart the information to the directors.

2.7.5. Informing Members of Board Meetings.<sup>22</sup> The board will try to inform Association members of the time and place of each board meeting. The information may be imparted by any method or combination of methods that is likely to be available or communicated to most if not all members in a timely manner, such as by posting on the Association's website, by broadcast email, by signs posted at the Property, or by hand-delivered fliers. On the written request of an owner, the Association will provide the owner with the time and place of the next regular or special meeting of the board. The failure of the Association to disseminate and the failure of an owner to receive timely or accurate information about the date, time, and place of a meeting does not invalidate the meeting.

2.7.6. Conduct of Meetings. The president presides over meetings of the board and the secretary keeps, or causes to be kept, a record of resolutions adopted by the board and a record of transactions and proceedings occurring at meetings. When not in conflict with law or the Governing Documents, the then current edition of Robert's Rules of Order governs the conduct of the meetings of the board.

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<sup>19</sup> This Section is directed as the common misunderstanding by HOA boards that if they can remove a director's office, they can also remove the director all together.

<sup>20</sup> TBOC §6.001(c).

<sup>21</sup> TBOC §6.051 + §22.217.

<sup>22</sup> Not required by TBOC. Different from TUCA's requirements for condominium owners. Similar to the "Owner Right" in TUPCA.

2.7.7. Quorum.<sup>23</sup> At meetings of the board, a majority of directors constitutes a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present are the acts of the board. If less than a quorum is present at a meeting of the board, the majority of those present may adjourn the meeting from time to time. At any reconvened meeting at which a quorum is present, any business that may have been transacted at the meeting as originally called may be transacted without further notice.

2.7.8. Minutes.<sup>24</sup> The written report of a board meeting is not the minutes of the meeting until approved by the directors at a future meeting. The minutes must report actions taken by the board, but need not report the substance of discussion. The board is not required to distribute minutes of its meetings to the members.

2.7.9. Voting.<sup>25</sup> A director who is also an officer of the Association, even the presiding officer, is expected to participate and to vote in the manner of every other director. The president of the Association is not prohibited from voting and is not limited to tie-breaking votes. Directors may not participate by proxy at meetings of the board.

2.7.10. Open Meetings.<sup>26</sup> Regular and special meetings of the board are open to members of the Association, subject to the following provisions to the extent permitted or required by applicable law:

- a. No audio or video recording of the meeting may be made, except by the board or with the board's prior express consent.
- b. Members who are not directors may not participate in board deliberations under any circumstances, and may not participate in board discussions unless the board expressly so authorizes at the meeting.
- c. Executive sessions are not open to members.
- d. The board may prohibit attendance by non-members, including representatives, proxies, agents, and attorneys of members.
- e. The board may prohibit attendance by any member who disrupts meetings or interferes with the conduct of board business.
- f. The board may but is not required to publish to members the time, date, and place of board meetings, but will provide the information if requested in writing by a member on a meeting by meeting basis.

2.7.11. Executive Session. The board may adjourn any regular or special meeting of the board and reconvene in executive session, subject to the following conditions:

- a. The nature of business to be considered in executive session will first be announced in open session.

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<sup>23</sup> TBOC §22.213.

<sup>24</sup> TBOC does not require that minutes be made of meetings, but does require that minutes be available for inspection. This section tries to counter the mistaken notion of many HOA boards and managers that the "minutes" of a meeting should be a verbatim transcript of what transpired. Prudent legal advisors counsel boards to produce "minimal" perfunctory minutes that state only the decisions made and actions taken, and none of the discussion. Prudent legal advisors also instruct boards to refrain from publishing or distributing "minutes" that have not been approved by the board.

<sup>25</sup> This section is not addressed by TBOC. This section tries to counter the mistaken notice of some HOA boards that the director who is "president" is precluded from voting at board meetings except to break a tie. A nonvoting director may be suitable for large business corporations with professional directors, but is not suitable for a small board of volunteer directors.

0. TBOC does not require open board meetings. TUCA requires open meetings for condominiums and the proposed TUPCA would require open board meetings. This provision is a consumer protection.

- b. No action may be taken nor decision made in executive session, which is for discussion and informational purposes only.
- c. The limited purposes for which the board may convene in executive session are (1) to confer with the Association's legal counsel, (2) to discuss litigation or resolution of claims with which the Association is threatened or involved, (3) to discuss labor or personnel matters, (4) to discuss a complaint from or an alleged violation by an owner when the board determines that public knowledge would be injurious to the owner, and (5) on advice of counsel, to discuss matters of a particularly sensitive nature.
- d. At the end of the executive session, the board must return to the open meeting and announce the general nature of the business that was considered in executive session. Any vote, act, or decision that would have been made in executive session (but for this requirement) must be made in the open meeting.
- e. The board is not required to make or maintain minutes of executive sessions.

2.7.12. Telephone Meetings.<sup>27</sup> Members of the board or any committee of the Association may participate in and hold meetings of the board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

2.8. ACTION WITHOUT MEETING.<sup>28</sup> Any action required or permitted to be taken by the board at a meeting may be taken without a meeting, subject to the following requirements:

2.8.1. Unanimous Consents. If all directors individually or collectively consent in writing to such action, the written consents have the same force and effect as the unanimous approval of directors at a meeting.

2.8.2. Majority Consents. If at least a majority of the directors, individually or collectively, consent in writing to such action, the written consents have the same force and effect as approval by a majority of the directors at a meeting. Prompt notice of the action so approved must be delivered to each non-consenting director.

2.8.3. Procedures. Written consents must state the date of each director's signature. The required number of written consents must be received by the Association within 60 days after the date of the earliest dated consent. Written consents must be filed with the minutes of board meetings. Additional procedures may be required by the Code.

2.9. POWERS AND DUTIES.<sup>29</sup> Generally, the board has all the powers and duties necessary for the administration of the Association and for the operation and maintenance of the Property. The board may do all acts and things except those which, by applicable law or the Governing Documents, are reserved to the members and may not be delegated to the board. Without prejudice to the general and specific powers and duties set forth in applicable law or the Governing Documents, or powers and duties as may hereafter be imposed on the board by resolution of the Association, the powers and duties of the board include, but are not limited to, the following:

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<sup>27</sup> TBOC §6.002 authorizes meetings by telephone and videoconferencing. Stated in Bylaws merely as a convenience to users.

<sup>28</sup> TBOC §22.220 authorizes board action (and committee action) without meetings if the certificate of formation (the Articles of Association or Incorporation) so authorizes. Not clear whether the publicly recorded Bylaws of an HOA can serve as authority for action without meetings in the absence of authority under the certificate of formation. Check the certificate of formation for this authority. TBOC §6.201 is not applicable to board actions - it applies to meetings of members, not to board meetings.

<sup>29</sup> Do not confuse powers of the HOA with powers of the board. A drafter who prefers itemization of powers and duties is encouraged to use such itemization in only one governing document - the CC&Rs, Bylaws, or Articles - without trying to replicate them in two or more documents. What happens if the HOA amends the list of board powers and duties in one document, but not in another? Or, if the lists do not match in some way?

2.9.1. Appointment of Committees.<sup>30</sup> The board, by resolution, may from time to time designate standing or ad hoc committees to advise or assist the board with its responsibilities. The resolution may establish the purposes and powers of the committee created, provide for the appointment of a chair and committee members, and may provide for reports, termination, and other administrative matters deemed appropriate by the board. Members of committees will be appointed from among the owners and residents. The board may not appoint a committee to act in its place in managing the affairs of the Association.<sup>31</sup>

2.9.2. Manager. The board may employ a manager or managing agent for the Association, at a compensation established by the board, to perform duties and services authorized by the board.

2.9.3. Emergency Powers.<sup>32</sup> An emergency exists for purposes of this Section if a local, state, or national government or governmental entity declares a disaster or state of emergency in the area in which the Property is located, or declares a state of war. In anticipation of, during, or in the aftermath of an emergency, the officers and directors may take or authorize any action they deem necessary or advisable to protect lives and property. A decision or action made in good faith under emergency conditions may not be used to impose liability on an officer, director, employee, or agent of the Association.

2.10. FIDELITY BONDS. Any person handling or responsible for Association funds, including officers, agents, and employees of the Association, must furnish adequate fidelity bonds. The premiums on the bonds may be a common expense of the Association.

### **ARTICLE 3 OFFICERS**<sup>33</sup>

3.1. DESIGNATION. The principal officers of the Association are the president, the vice-president, the secretary, and the treasurer. The board may appoint one or more vice-presidents and other officers and assistant officers as it deems necessary. The president and secretary must be directors. Other officers may, but need not, be members or directors. Any two offices may be held by the same person, except the offices of president and secretary.<sup>34</sup> If an officer is absent or unable to act, the board may appoint a director or a committee to perform the duties of that officer and to act in place of that officer, on an interim basis.

3.2. ELECTION OF OFFICERS.<sup>35</sup> The officers are elected no less than annually by the directors at the organizational meeting of the board and hold office at the pleasure of the board. Except for resignation or removal, officers hold office until their respective successors have been designated by the board.

3.3. REMOVAL AND RESIGNATION OF OFFICERS.<sup>36</sup> A majority of directors may remove any officer, with or without cause, at any regular meeting of the board or at any special meeting of the board called for that purpose. A successor may be elected at any regular or special meeting of the board called for that purpose. An officer may resign at any time by giving written notice to the board. Unless the notice of resignation states otherwise, it is effective when received by the board and does not require acceptance by the board. The resignation or removal of an officer who is also a director does not constitute resignation or removal from the board.

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<sup>30</sup> TBOC §22.219 authorizes boards to appoint committees without any express authorization in the Bylaws or Articles. Sated in Bylaws merely as a convenience to users.

<sup>31</sup> TBOC §22.218 authorizes the board to appoint an "executive committee," at least a majority of whom must be members, to which it may delegate management of the HOA.

<sup>32</sup> In the aftermath of 9/11 and Katrina, it seems prudent to anticipate an emergency situation. This Section is based loosely on the Emergency Powers section of the Arizona corporation statutes - §10-3303.

<sup>33</sup> TBOC §§3.103 + 3.105 address officers of all entities. TBOC §22.231 addresses officers of nonprofit corporations.

<sup>34</sup> TBOC §22.231(a)

<sup>35</sup> TBOC §22.232

<sup>36</sup> TBOC §3.104

### 3.4. DESCRIPTION OF PRINCIPAL OFFICES.<sup>37</sup>

3.4.1. President. As the chief executive officer of the Association, the president: (1) presides at all meetings of the Association and of the board; (2) has all the general powers and duties which are usually vested in the office of president of an organization; (3) has general supervision, direction, and control of the business of the Association, subject to the control of the board; and (4) sees that all orders and resolutions of the board are carried into effect.

3.4.2. Vice-President. The vice-president acts in place of the president in event of the president's absence, inability, or refusal to act. The vice-president also exercises and discharges any duty required of the vice-president by the board.

3.4.3. Secretary. The secretary: (1) keeps the minutes of all meetings of the board and of the Association; (2) has charge of such books, papers, and records as the board may direct; (3) maintains a record of the names and addresses of the members for the mailing of notices; and (4) in general, performs all duties incident to the office of secretary.

3.4.4. Treasurer. The treasurer: (1) is responsible for Association funds; (2) keeps full and accurate financial records and books of account showing all receipts and disbursements; (3) prepares all required financial data and tax returns; (4) deposits all monies or other valuable effects in the name of the Association in depositories as may from time to time be designated by the board; (5) prepares the annual and supplemental budgets of the Association; (6) reviews the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds; and (7) performs all the duties incident to the office of treasurer.

3.5. AUTHORIZED AGENTS. Except when the Governing Documents require execution of certain instruments by certain individuals, the board may authorize any person to execute instruments on behalf of the Association. In the absence of board designation, the president and the secretary are the only persons authorized to execute instruments on behalf of the Association.

## **ARTICLE 4** **STANDARDS**

4.1. SEPARATE LIABILITY.<sup>38</sup> The Association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort. Members, directors, and officers of the Association are not personally and individually liable for the Association's breach of a contract or for the Association's tort or omission merely because they are members, directors, or officers of the Association. A member has the right to assert a claim against the Association, and the Association has the right to assert a claim against a member.

4.2. GENERAL STANDARDS.<sup>39</sup> The general standards of duty for an officer or director of the Association are the State's standards for officers and directors of a nonprofit corporation, as stated in the Code as it may be amended. On the date of this document, Sections 22.221 and 22.235 of the Code provide the following standards:

- a. A director will discharge the director's duties in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the Association.
- b. An officer or director is not liable to the Association, its members, or another person for an action taken or not taken as a director if the director acted in compliance with the above-stated standard for discharging duties. A person seeking to establish liability of an officer or director must prove that the officer or director did not act (1) in good faith, (2) with ordinary care, and (3) in a manner the officer or director reasonably believed to be in the best interests of the Association.

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<sup>37</sup> TBOC §22.231

<sup>38</sup> This Section is based on TBOC §252.006 - the Texas Unincorporated Nonprofit Association Act.

<sup>39</sup> TBOC §22.221 for directors, and §22.235 for officers of nonprofit corporations.

4.3. RELIANCE.<sup>40</sup> An officer or director may rely on information prepared or presented by (1) an officer or employee of the Association, (2) an attorney licensed by the State of Texas, (3) a certified public accountant, (4) an investment banker, or (5) a person whom the officer or director reasonably believes to possess professional expertise in the matter, and (6) in the case of a director, a committee of the Association of which the director is not a member. Such reliance must be exercised in good faith and with ordinary care. An officer or director may not rely on such information if he has actual knowledge that makes the reliance unwarranted.

4.4. COMPENSATION. Except as permitted below, a director, officer, member, or resident is not entitled to receive financial or monetary profit from the operation of the Association, and no funds or assets of the Association may be paid as salary or compensation to, or be distributed to, or inure to the benefit of a director, officer, member, or resident. Nevertheless,

- a. Reasonable compensation may be paid to a director, officer, member, or resident for services rendered to the Association in other capacities.
- b. A director, officer, member, or resident may, from time to time, be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided the expense has been approved by the board.
- c. The board may budget and use Association funds to purchase awards, certificates, a celebratory meal, or other customary tokens or demonstrations of appreciation for volunteer activities.
- d. This Section does not apply to distributions to lot owners permitted or required by the Declaration, applicable law, or a court order.

4.5. LOANS.<sup>41</sup> The Association may not loan money to or guaranty a loan for an officer or director of the Association.

4.6. CONFLICT OF INTERESTS.<sup>42</sup> If a contract or transaction is fair to the Association, it is not disallowed merely because an officer, director, or member of the Association has a financial interest in the transaction, provided (1) the "interested" officer, director, or member fully and accurately discloses the nature of his interest to the board in a manner that is timely for the board's consideration of the contract or transaction, and (2) the "interested" officer or director does not participate in the vote to approve the contract or transaction, although the "interested" director may be counted toward a quorum at the meeting. Nothing in this Section may be construed to prevent the board from adopting policies and procedures that are more stringent than the requirements of this Section, or of applicable law, such as Sections 1.003, 1.004, and 22.230 of the Code.

## **ARTICLE 5**

### **MEETINGS OF THE ASSOCIATION**

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<sup>40</sup> TBOC §§3.102 + 3.105.

<sup>41</sup> TBOC §22.055 + §22.225 permit loans to officers and prohibit loans to directors. In most HOAs, the officers are also directors, and both are volunteers. This sections conforms to the public's expectations for volunteer officers and directors.

<sup>42</sup> "Conflict of Interests" is the term most often used by HOA directors when referring to the concept of interested parties. This section tries to counter the myth that "some law" prohibits all transactions from which an HOA member may profit, even indirectly. One of the applicable TBOC provisions is §22.230, titled "Contracts or Transactions Involving Interested Directors, Officers, and Members." See also §§1.003, 1.004

5.1. ANNUAL MEETING.<sup>43</sup> An annual meeting of the Association will be held during the second calendar quarter of each year.<sup>44</sup> At annual meetings the members will elect directors in accordance with these Bylaws, and may also transact such other business of the Association as may properly come before them.

5.2. SPECIAL MEETINGS.<sup>45</sup> It is the duty of the president to call a special meeting of the Association if directed to do so by a majority of the board or by one or more petitions signed by owners of at least 20<sup>46</sup> percent of the lots in the Property. If the petition process is used, petitions may be in any form that is customary for the time. The board may not require a specific form of petition, nor require that the petition be offered to every member of the Association. Signatures on petitions need not be notarized or witnessed. An electronic or faxed petition is acceptable if the "signer's" identity is reasonably discernible.<sup>47</sup>

5.3. PLACE OF MEETINGS.<sup>48</sup> Meetings of the Association may be held at the Property or at a suitable place convenient to the members, as determined by the board.

5.4. NOTICE OF MEETINGS.<sup>49</sup> Subject to the provisions below, at the direction of the board, written notice of meetings of the Association will be given to an owner of each lot<sup>50</sup> at least 10 days but not more than 60 days prior to the meeting. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the particular purpose of a special meeting. Notices may also set forth any other items of information deemed appropriate by the board.

5.4.1. Notice Exception.<sup>51</sup> Individual notice of the regular annual meeting of the Association is not required if (1) the time and place of the meeting is largely unchanged from year to year and (2) information about the time and place is routinely available to all members, such as by year-long posting on the Association's official website or repetitive announcements in the Association's newsletter. This exception does not apply to special meetings of the Association, or to changes in the time and place of the regular annual meeting.

5.4.2. Special Meeting Notice. Within 30 days after the board resolution or receipt of petition, the board must give all members notice of the special meeting. If the board fails or refuses to call the special meeting in a timely manner, an ad hoc committee of owners may do so provided the notice of meeting names the ad hoc committee and its individual members, and further provided that the notice is delivered to an owner of every lot in accordance with these Bylaws. The notice of any special meeting must state the time, place, and purpose of

<sup>43</sup> TBOC §22.153 states that an annual meeting is NOT required if the bylaws provide for more than one regular meeting of members each year. ANNUAL meetings at which all of the HOA's business is conducted is customary.

<sup>44</sup> Give the board latitude in scheduling the annual meeting to optimize attendance. Do not dictate the day of week or the start time for the meeting (such as "the second Tuesday in January at 7:00 p.m."). In establishing a period of time for the HOA's annual meeting, consider the location and nature of the property in light of the calendar. For example, a planned community that is likely to attract families with school age children will be ill-served by an annual meeting in the month in which many schools schedule spring breaks. Also, consider the annual meeting in light of the HOA's fiscal year. Some drafters favor calendar quarters instead of months.

<sup>45</sup> TBOC §22.155

<sup>46</sup> As with quorums, the minimum threshold for a petition calling a special meeting is at the drafter's discretion. The larger the development, the lower the percentage.

<sup>47</sup> Boards have been known to try to thwart grassroots initiatives by devising technicalities for the petition process. This is a "power to the people" provision. The drafter who is a proponent of iron-rule boards will want to use different text.

<sup>48</sup> TBOC §6.001(a)+(b).

<sup>49</sup> TBOC §6.051 + §22.156

<sup>50</sup> Although TBOC §22.156 requires that a notice of meeting be delivered to "each member entitled to vote," it is costly and impractical to send notices to every co-owner of each lot, such as co-owning spouses. In practice, associations are typically in contact with one owner per lot, even if a lot has multiple owners.

<sup>51</sup> TBOC §22.157. Consult subsection (b) for projects with more than 1,000 lots.

the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

5.5. RECORD DATE.<sup>52</sup> Before each meeting of the Association, the board will establish a list of all members for purposes of receiving a meeting notice, and a list or way of identifying members who are ineligible to vote at the meeting because of a delinquent account. These membership lists are described in the Association Records Article below. The "cut off" date on which these lists are based is referred to in the Code as the "Record Date." The Record Date for an Association meeting for which notice is given is 10 calendar days before the date the notice is distributed or published to the members. The Record Date for an Association meeting for which no notice is given is 45 calendar days before the meeting.

5.6. ELIGIBILITY.<sup>53</sup> Every member is entitled to receive notice of Association meetings, to attend Association meetings, and to be counted towards a quorum, even if the member is ineligible to vote or to stand for election to the board.

5.6.1. Meeting Notice. An owner of each lot in the Property as of the Record Date is eligible to receive notices of meetings of the Association. Because the ownership of lots may change during a year, the ownership as of the Record Date is used to produce the membership list for use in connection with the meeting.

5.6.2. Voting. The board may determine that a member may not vote at a meeting of the Association if the member's financial account with the Association is in arrears on the Record Date, provided (1) the ineligibility applies to every member whose financial account is delinquent, and (2) each ineligible member is given notice of the arrearage and an opportunity to become eligible. The board may specify the manner, place, and time for payment for purposes of restoring eligibility. The Record Date determination of members entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than 30 days after the original meeting. The board is not required to disqualify owners with delinquent accounts, and may allow all owners to vote regardless of arrearages.

5.7. QUORUM.<sup>54</sup> At any meeting of the Association, the presence in person or by proxy of owners of at least 10 percent of the lots in the Property constitutes a quorum. Members present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of members constituting a quorum.

5.8. LACK OF QUORUM. If a quorum is not present at any meeting of the Association for which proper notice was given, members representing at least a majority of the votes present at the meeting, although not constituting a quorum, may vote to recess the meeting for not more than 24 hours in order to attain a quorum, provided the place of the meeting remains as stated in the notice. If the meeting is adjourned without attainment of a quorum, notice of a new meeting for the same purposes within 15 to 30 days may be given to an owner of each lot, at which re-called meeting the quorum requirement is lowered to half the number of lots required for the first call of the meeting.

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<sup>52</sup> TBOC §6.101 + §22.163

<sup>53</sup> The distinction between eligibility for notice and eligibility for voting is important. Inexperienced directors and managers are prone to think that delinquent owners are not entitled to even know about the HOA meeting.

<sup>54</sup> In setting the quorum requirement, consider that there is NO quorum requirement for the election of public officials. Whomever shows up at the polls - even if only 1% of the electorate - decides the race. The quorum requirement is based on a corporate model of governance - to establish a MINIMUM threshold for the legitimacy of the membership meeting. The most important decisions of the HOA, such as amendment of the CC&Rs, require certain levels of owner consents that are independent of the quorum levels for a meeting. As a practical matter, it is advisable to keep quorums low enough to be attainable. The exact percentage should reflect the association's size and nature. Generally, the larger the association, the smaller the percentage. The drafter who sets a high quorum requirement and makes it difficult to amend the bylaws should be staked in the desert and left for the buzzards.

5.9. VOTES.<sup>55</sup> The vote of members representing at least a majority of the votes cast at any meeting at which a quorum is present binds all members for all purposes, except when a higher percentage is required by these Bylaws, the Declaration, or by applicable law. Cumulative voting is prohibited.<sup>56</sup>

5.9.1. Co-Owned Lots. If a lot is owned by more than one member, the vote appurtenant to that lot is cast as follows. If only one of the multiple owners of a lot is present at a meeting of the Association, that person may cast the vote allocated to the lot. If more than one of the multiple owners is present, the vote allocated to the lot may be cast only in accordance with the owners' unanimous agreement. Multiple owners are in unanimous agreement if one of the multiple owners casts the vote allocated to a lot and none of the other owners makes prompt protest to the person presiding over the meeting.

5.9.2. Entity-Owned Lots. If a lot is owned by an entity, such as a corporation or partnership, the vote appurtenant to that lot may be cast by any officer, manager, or partner of the entity in the absence of the entity's written appointment of a specific person to exercise its vote. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of an entity is qualified to vote.

5.9.3. Association-Owned Lots.<sup>57</sup> Votes allocated to a lot owned by the Association may be counted towards a quorum only, and may not be voted.

5.9.4. Lots Owned by Declarant or Builders.<sup>58</sup> Article 16 of the Declaration may establish different voting rights during the Development Period.

5.10. PARTICIPATION.<sup>59</sup> Members may participate in person or by proxy at meetings of the Association. A member who participates is deemed "present" and may be counted towards a quorum unless the member participates for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.11. PROXIES.<sup>60</sup> A member may participate in the affairs of the Association through a power of attorney or through a proxy. To be valid, each proxy must (1) be signed and dated by a member or his attorney-in-fact; (2) identify the lot to which the vote is appurtenant; (3) designate the person or position (such as "presiding officer") in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (4) identify the meeting for which the proxy is given; (5) not purport to be revocable without notice; and (6) be delivered to the secretary, to the person presiding over the Association meeting for which the proxy is designated, or to a person or company designated by the board. Unless the proxy specifies a shorter or longer time, it terminates 11 months after the date of its execution.<sup>61</sup> Perpetual or self-renewing proxies are permitted, provided they are revocable. To revoke a proxy, the granting member must give actual notice of revocation to the person presiding over the Association meeting for which the proxy is designated. Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled is valid when the meeting reconvenes. A proxy delivered by email or by fax may be counted if any of the following occurs: (1) the proxy's authenticity can be confirmed to the reasonable satisfaction of the board, (2) the proxy has been acknowledged or sworn

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<sup>55</sup> TBOC §22.160

<sup>56</sup> Cumulative voting is not allowed unless permitted by the Articles of Association. (See TBOC §22.161.) Although the Articles also prohibit cumulative voting, it is stated again in the Bylaws merely as a convenience to the users. The question seems to come up at HOA meetings, at which the Bylaws are more likely to be available than the TBOC and the Articles.

<sup>57</sup> TBOC §6.152 prohibits voting of interests owned by the entity.

<sup>58</sup> TBOC §22.160(a) allows different voting rights by class IF provided in the Articles or Bylaws. Because the CC&Rs is not a "governing document" by TBOC's definition, it may be advisable to incorporate the CC&Rs provision by reference in the Bylaws and the Articles.

<sup>59</sup> TBOC §6.003. The concept that participation by proxy counts as "being present" at a meeting is sometimes confusing to HOA members and managers.

<sup>60</sup> TBOC §22.260(b) permits proxy voting unless the bylaws or articles of incorporation provide otherwise.

<sup>61</sup> TBOC §22.160(c)

to by the member, before and certified by an officer authorized to take acknowledgments and oaths, or (3) the Association also receives the original proxy within 5 days after the vote.

5.12. CONDUCT OF MEETINGS. The president, or any person designated by the board, presides over meetings of the Association. The secretary keeps, or causes to be kept, the minutes of the meeting which should record all resolutions adopted and all transactions occurring at the meeting, as well as a record of any votes taken at the meeting. The person presiding over the meeting may appoint a parliamentarian. The then current edition of Robert's Rules of Order governs the conduct of meetings of the Association when not in conflict with the Governing Documents. Votes should be tallied by tellers appointed by the person presiding over the meeting.

5.13. ORDER OF BUSINESS. Unless the notice of meeting states otherwise, or the assembly adopts a different agenda at the meeting, the order of business at meetings of the Association is as follows:

- Determine votes present by roll call or check-in procedure
- Announcement of quorum
- Proof of notice of meeting
- Approval of minutes of preceding meeting
- Reports
- Election of directors (when required)
- Unfinished or old business
- New business

5.14. ADJOURNMENT OF MEETING. At any meeting of the Association, a majority of the members present at that meeting, either in person or by proxy, may adjourn the meeting to another time and place.

5.15. ACTION WITHOUT MEETING. Subject to board approval, any action which may be taken by a vote of the members at a meeting of the Association may also be taken without a meeting by written consents. The board may permit members to vote by ballots delivered by any method allowed by applicable law, which may include hand delivery, mail, fax, email, electronic balloting or any combination of these. Written consents by members representing at least a majority of votes in the Association, or such higher percentage as may be required by the Governing Documents, constitutes approval by written consent. This Section may not be used to avoid the requirement of an annual meeting.

5.16. MEETINGS BY REMOTE COMMUNICATIONS.<sup>62</sup> Members of the Association may participate in and hold meetings of the Association by means of electronic town halls, conference telephone or similar communications equipment by means of which all persons participating in the meeting can communicate concurrently. Participation in the meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. By acquiring an interest in a lot, each owner automatically consents<sup>63</sup> to the use of communication technology to effect meetings of the Association, provided the owners of at least 85 percent of the lots in the Property have access to the form of technology chosen by the board, and further provided that the Association arranges a place or method of participation for those who do not have the technology.

## **ARTICLE 6 RULES**

6.1. RULES. The board has the right to establish and amend, from time to time, reasonable rules and regulations for: (1) the administration of the Association and the Governing Documents; (2) the maintenance, management, operation, use, conservation, and beautification of the Property; and (3) the health, comfort, and general welfare of the residents; provided, however, that such rules may not be in conflict with applicable law or the Governing Documents. The board will, at all times, maintain the then current and complete rules in a written form which can be copied and distributed to the members.

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<sup>62</sup> TBOC §22.002

<sup>63</sup> TBOC §22.002(1) requires the consent of each person entitled to participate in the meeting.

6.2. ADOPTION AND AMENDMENT. Any rule may be adopted, amended, or terminated by the board, provided that the rule and the requisite board approval are properly recorded as a resolution in the minutes of the meeting of the board.

6.3. NOTICE AND COMMENT. At least 10 days before the effective date, the board will give written notice to an owner of each lot of any amendment, termination, or adoption of a rule, or will publish same in a newsletter, on the Association's website, or in any form or medium that is circulated or available to the members. The board may, but is not be required, to give similar notice to residents who are not members. Any member or resident so notified has the right to comment orally or in writing to the board on the proposed action.

6.4. DISTRIBUTION. On request from any member or resident, the board will provide a current and complete copy of rules. Additionally, the board will, from time to time, distribute copies of the current and complete rules to owners and, if the board so chooses, to non-member residents.

## **ARTICLE 7** **ENFORCEMENT**

7.1. ACTIONS REQUIRING NOTICE AND HEARING. Before taking any of the below-described actions, the Association must give written notice and an opportunity for a hearing according to the requirements of this Article and the notice and hearing requirements of applicable law, such as Chapter 209 Texas Property Code. The following actions by or with the approval of the board, the Association, or the Architectural Reviewer, require notice and hearing as provided by this Article:

- a. Suspension of use of a common area.<sup>64</sup>
- b. Imposition of a fine for violation of any provision of the Governing Documents, other than fines, interest, or collection fees charged for delinquent accounts.<sup>65</sup>
- c. Charging an owner or a lot for property damage.<sup>66</sup>
- d. Filing suit against an owner other than a suit related to the collection of assessments or foreclosure of the Association's assessment lien.<sup>67</sup>

7.2. NOTICE.<sup>68</sup> The required written notice must contain (1) the date the violation notice is prepared or mailed; (2) a statement that not later than the 30th day after the date the owner receives the notice, the owner may request a hearing to discuss and verify facts and resolve the matter in issue, pursuant to this Article and applicable law, such as Section 209.007 Texas Property Code; (3) a statement of how or where the request for hearing should be made or delivered; (4) a statement that if the hearing is before a committee or any body other than the board, the owner has the right to appeal the decision to the board by written notice to the board; (5) a statement that the owner may be liable for reimbursement of attorneys fees and costs if the violation continues or the damage is not paid by a stated date; and (6) the following contents applicable to violations or damage claims, as the case may be:

7.2.1. Notice of Violation. In the case of a violation of a provision of the Governing Documents, the written notice must also contain the following: (1) a description of the violation; (2) a reference to the rule or provision of the Governing Documents that is being violated, if applicable; (3) a description of the action required to cure the violation; (4) the amount of the fine or charge to be levied, the nature of the common area suspension, and/or the abatement action to be taken; (5) unless the owner was given notice and a reasonable opportunity to

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<sup>64</sup> TPC §209.006

<sup>65</sup> TPC §209.006

<sup>66</sup> TPC §209.006

<sup>67</sup> TPC §209.006

<sup>68</sup> TPC §§209.006 + 209.008

cure a similar violation within the preceding 6 months, a statement that the owner may avoid the fine or suspension by curing the violation in a reasonable period of time, which may be specified in the notice.

7.2.2. Notice of Damage. In the case of property damage for which the Association seeks reimbursement or imposition of a charge on the owner or the lot, the written notice must also contain (1) a description of the property damage and (2) the amount of the Association's claim against the owner or the lot.

7.2.3. Notice to Resident. In addition to giving the violation notice to the owner, the board may also give a copy of the notice to the non-owner resident, if the board deems it appropriate.

7.2.4. Receipt of Notice. Unless applicable law provides otherwise, any notice given to an owner pursuant to this Article will be deemed received by the owner (1) on personal delivery to the owner or to a person at the owner's address, or (2) on the third business day after the notice is deposited with the U.S. Postal Service, addressed to the owner at the most recent address shown on the Association's records, whether or not the owner actually receives the notice.

### 7.3. HEARING.

7.3.1. Request for Hearing. To request a hearing, an owner must submit a written request within 30 days after receiving the Association's written notice. Within 10 days after receiving the owner's request for a hearing, and at least 10 days before the hearing date, the Association will give the owner notice of the date, time, and place of the hearing. If the Association or the owner requests a postponement of the hearing, the hearing will be postponed for up to 10 days. Additional postponements may be granted by agreement of the parties.

7.3.2. Pending Hearing. Pending the hearing, the board may continue to exercise the Association's other rights and remedies for the violation, as if the declared violation were valid. The owner's request for a hearing suspends only the action described in the Association's written notice.

7.3.3. Attendance.<sup>69</sup> The hearing may be held with or without the presence of the owner or the owner's representative.

7.3.4. Hearing. The hearing may be held in a closed or executive session of the board. At the hearing, the board will consider the facts and circumstances surrounding the violation. The owner may attend the hearing in person, or may be represented by another person or written communication.

7.3.5. Minutes of Hearing. The minutes of the hearing must contain a statement of the results of the hearing and the amount of fine or charge, if any, imposed, or abatement or suspension action, if any, authorized. A copy of the notice and request for hearing should be placed in the minutes of the hearing. If the owner appears at the hearing, the notice requirement will be deemed satisfied.

7.4. ACTIONS EXEMPT FROM NOTICE AND HEARING REQUIREMENTS. As a general rule, every action other than the above-described actions requiring notice and hearing are impliedly exempt from the requirements of this Article. As permitted by applicable law, such as Section 209.007 of Texas Property Code, the following actions are expressly exempt:

- a. A temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the Property. The temporary suspension is effective until the board makes a final determination on the suspension action after following the notice and hearing procedures prescribed by this Article.
- b. A lawsuit in which the Association seeks a temporary restraining order or temporary injunctive relief.
- c. A lawsuit filed by the Association that includes foreclosure as a cause of action.

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<sup>69</sup> TPC §209.008(b)

d. The collection of delinquent assessments.

7.5. **IMPOSITION OF FINE.** Within 30 days after levying the fine or authorizing the abatement, the board must give the owner notice of the levied fine or abatement action. If the fine or action is announced at the hearing at which the owner is actually present, the notice requirement will be satisfied. Otherwise, the notice must be in writing.

7.5.1. **Amount.** The board may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The board may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation. If the board allows fines to accumulate, it may establish a maximum amount for a particular fine, at which point the total fine will be capped.

7.5.2. **Type of Fine.** If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, weekly, or monthly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.

7.5.3. **Other Fine-Related.** The Association is not entitled to collect a fine from an owner to whom it has not given notice and an opportunity to be heard. The Association may not charge interest on unpaid fines. The Association may not foreclose its assessment lien on a debt consisting solely of fines.

7.6. **REIMBURSEMENT OF EXPENSES AND LEGAL FEES.** In addition to any other rights set forth in the Governing Documents for violation of a provision of the Governing Documents, the board may levy and collect individual assessments for reimbursement of reasonable fees and expenses, including without limitation legal fees, incurred by the Association to enforce the Governing Documents, including the collection of delinquent assessments, subject to the following conditions:

7.6.1. **Notice.**<sup>70</sup> The Association must give the owner written notice that the owner will be liable for reimbursement of any such fees and expenses incurred by the Association if the delinquency or violation continues after a date certain that is stated in the notice. This notice requirement does not apply to legal fees incurred by the Association in connection with the Association's counterclaim in a lawsuit to which an owner is a plaintiff.

7.6.2. **Hearing.**<sup>71</sup> If legal fees are incurred by the Association for an action requiring notice and hearing, the owner is not liable for reimbursement of legal fees incurred (1) before the date by which the owner must request a hearing, if the owner does not request a hearing, or (2) before conclusion of the hearing, if the owner does request a hearing.

7.6.3. **Records.**<sup>72</sup> By written request, an owner may obtain from the Association copies of any invoices for charges, including legal fees, for which the Association seeks reimbursement.

7.6.4. **Foreclosure.** In connection with a nonjudicial foreclosure of the Association's assessment lien, applicable law, such as Chapter 209 of the Texas Property Code, may establish a limit for the amount of attorneys fees that the Association may include in its lien.

7.7. **ADDITIONAL ENFORCEMENT RIGHTS.** Notwithstanding the notice and hearing requirement, the board may take immediate and appropriate action, without giving the notices required in this Article, against violations of the Governing Documents which, in the board's opinion, are (1) self-evident, such as vehicles parked illegally or in violation of posted signs; (2) threatening to life or property; or (3) repeat violations of the same provision by the same owner to whom prior notices and demands have been given for the same violation. Further, the provisions of this Article do not apply to specific remedies provided in the Governing Documents for certain violations, such as nonpayment of assessments.

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<sup>70</sup> TPC §209.008

<sup>71</sup> TPC §209.008(b)

<sup>72</sup> TPC §209.008(d)

**ARTICLE 8**  
**OBLIGATIONS OF THE OWNERS**

8.1. **NOTICE OF SALE.** Any owner intending to sell or convey his lot or any interest therein must give written notice to the board of his intention, together with (1) the address or legal description of the lot being conveyed, (2) the name and address of the intended purchaser, (3) the name, address, and phone number of the title company or attorney designated to close the transaction, (4) names and phone numbers of real estate agents, if any, representing seller and purchaser, and (5) scheduled date of closing. An owner will furnish this information to the board at least 10 business days before the scheduled date of closing or conveyance. The requirements of this Section may be satisfied by giving the Association a copy of an accepted resale contract in connection with the owner's request to the Association for a resale certificate.

8.2. **PROOF OF OWNERSHIP.** Except for those owners who initially purchase a lot from Declarant, any person, on becoming an owner of a lot, must furnish to the board evidence of ownership in the lot, which copy will remain in the files of the Association. A copy of the recorded deed is the customary evidence. The Association may refuse to recognize a person as a member unless this requirement is first met. This requirement may be satisfied by receipt of a board-approved form that is completed and acknowledged by a title company or attorney at time of conveyance of the lot or any interest therein.

8.3. **OWNERS' INFORMATION.** Within 30 days after acquiring an ownership interest in a lot, the owner must provide the Association with the owner's mailing address, telephone number, and driver's license number, if any; the name and telephone number of any resident other than the owner; and the name, address, and telephone number of any person managing the lot as agent of the lot owner. An owner must notify the Association within 30 days after he has notice of a change in any information required by this Section, and must provide the information on request by the Association from time to time.

8.4. **MAILING ADDRESS.** The owner or the several co-owners of a lot must register and maintain one mailing address to be used by the Association for mailing of notices, demands, and all other communications. If an owner fails to maintain a current mailing address with the Association, the address of the owner's lot is deemed to be his mailing address.

8.5. **REGISTRATION OF MORTGAGEES.** Within 30 days after granting a lien against his lot, the owner must provide the Association with the name and address of the holder of the lien and the loan number. The owner must notify the Association within 30 days after he has notice of a change in the information required by this Section. Also, the owner will provide the information on request by the Association from time to time.

8.6. **ASSESSMENTS.** All owners are obligated to pay assessments imposed by the Association to meet the common expenses as defined in the Declaration. A member is deemed to be in good standing and entitled to vote at any meeting of the Association if he is current in the assessments made or levied against him and his lot.

8.7. **COMPLIANCE WITH DOCUMENTS.** Each owner will comply with the provisions and terms of the Governing Documents, and any amendments thereto. Further, each owner will always endeavor to observe and promote the cooperative purposes for which the Property was established.

**ARTICLE 9**  
**ASSOCIATION RECORDS**

9.1. **INSPECTION OF BOOKS AND RECORDS.** Books and records of the Association will be made available for inspection and copying pursuant to applicable law, such as Section 22.351 of the Code and Section 209.005 Texas Property Code.<sup>73</sup>

9.1.1. **Proper Purpose.** The board may require a member to submit a written demand for inspection, stating the purpose for which the member will inspect the books and records. The board has the following rights:

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<sup>73</sup> Note that TBOC §22.352 + 22.353 (Financial Records + Annual Reports) do NOT apply to corporations that solicit funds only from the corporation's members. See TBOC §22.355.

(1) to determine whether the member's purpose for inspection is proper; (2) to deny the request if the board determines that the member's purpose is not proper; (3) if granting the request, to identify which books and records are relevant to the member's stated purpose for inspection.

9.1.2. Copies. A member, at member's expense, may obtain photocopies of books and records for which the board grants the right of inspection. The board has the right to retain possession of the original books and records, to make copies requested by the member, and to charge the member a reasonable fee for copying.

9.1.3. Member's Agent. A member's inspection of the books and records may be assisted or performed by the member's agent, accountant, or attorney.

9.1.4. Records of Attorneys and Accountants. The files and records of an attorney or accountant who performs services for the Association are not records of the Association, are not subject to inspection by members, and are not subject to production in a legal proceeding.

9.2. RESALE CERTIFICATES. Any officer may prepare, or cause to be prepared, assessment estoppel certificates or resale certificates pursuant to applicable law, such as Chapter 207 of the Texas Property Code, titled Disclosure of Information by Property Owners Association. The Association may charge a reasonable fee for preparing such certificates, and may refuse to furnish such certificates until the fee is paid. Any unpaid fees may be assessed against the lot for which the certificate is furnished. The Association may delegate the responsibility for a resale certificate to its managing agent, if any.

9.3. MANAGEMENT CERTIFICATE. As required by applicable law, such as Section 209.004 of the Texas Property Code, the Association will maintain a current management certificate in the county's public records. When the Association has notice of a change in any information in the recorded certificate, the Association will prepare a restated or amended certificate and deliver it to the county clerk for filing. Absent gross negligence, the Association is not liable for a delay or failure to record a certificate. The Association may delegate the responsibility for a management certificate to its managing agent, if any.

9.4. MEMBERSHIP LIST. The board must maintain a comprehensive list of Association members for compliance with the Code as well as the Governing Documents. The Association must make the membership list available to any owner on written request, and may charge a reasonable fee for cost of copying and delivering the owners list.

9.4.1. Types of Information. At a minimum, the Association must maintain for each lot the name and mailing address of at least one owner, and a description of the lot owned (if different from the mailing address). The Association may also maintain, as an Association record, additional contact information for owners, such as phone numbers, fax numbers, email addresses, places of employment, emergency contact information, mortgage information, and any other items of information provided by owners or obtained by the Association.

9.4.2. Source of Ownership Information. In compiling the ownership or membership list, the Association may rely on any combination of (1) public records, such as tax rolls, (2) documentation provided by title insurance companies, (3) self-reporting by owners and residents, and (4) any other reasonably reliable and customary source of ownership information. The requirement of maintaining ownership records may not be construed to require the Association to affirmatively investigate or research title to a lot.

9.4.3. Information Available to Members. Membership information to be maintained by the Association is similar to what is typically available to the public on the website of the appraisal district, and may not be considered confidential, private, or protected information<sup>74</sup> as between the Association and its members. Neither the Association nor a member of the Association may sell or otherwise market the Association's membership information without the express prior consent of the owners. Each owner, by acquiring an ownership interest in a lot, acknowledges that the owner's contact information is a record of the Association that is available to all members of the Association.

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<sup>74</sup> It is not uncommon for an HOA board to refuse to make ownership information available to individual owners on the grounds of vague "privacy rights" and the alleged duty to protect confidential information. This is a "power to the people" provision. The drafter who is a proponent of iron-rule boards will want to say less.

9.4.4. Inspection List.<sup>75</sup> In accordance with applicable law, the Association will prepare a list of owners of all lots in the Property for inspection by the members prior to the meeting. The purpose of the list is to enable members to communicate with each other about the meeting. The inspection list must be available for inspection by the members from the second business day after the date notice of the meeting is given until adjournment of the meeting for which it was prepared. The list may be inspected or copied by an owner or the owner's attorney or agent. The inspection list must have the following characteristics:

- a. The list must be in alphabetical order of owners' surnames, or in numerical order of street addresses.
- b. The list must contain the name of at least one owner of each lot, or an indication that the current ownership cannot be determined and the identify of the last known owner.
- c. The list must contain an address for each member.
- d. The list must identify how many lots are owned by each owner, if that cannot otherwise be determined from the list.
- e. If all lots do not have uniform votes, such as lots owned by Declarant during the Declarant Control Period, the list must identify the number or weight of votes attached to each lot.
- f. The list must identify which owners or lots are ineligible to vote at the meeting due to an assessment delinquency or other disqualifying condition.

## **ARTICLE 10** **NOTICES**

10.1. CO-OWNERS. If a lot is owned by more than one person, notice to one co-owner is deemed notice to all co-owners.<sup>76</sup> Similarly, notice to one resident of a lot is deemed notice to all residents of the lot.

10.2. DELIVERY OF NOTICES. Any written notice required or permitted by these Bylaws may be given personally, by mail, by fax, by email, or by any other method permitted by applicable law, such as the Texas Business Organizations Code. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the member at the address shown on the Association's records. If transmitted by fax or email, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an owner fails to give the Association an effective address, the notice may be sent (1) to the address of the owner's lot and/or (2) to the owner's address shown on the then-current property tax rolls for the lot. If the Association properly transmits the notice, the owner is deemed to have been given notice whether or not he actually receives it.

10.3. WAIVER OF NOTICE. Whenever a notice is required to be given to an owner, member, or director, a written waiver of the notice, signed by the person entitled to the notice, whether before or after the time stated in the notice, is equivalent to giving the notice. Attendance by a member or director at any meeting of the Association or board, respectively, constitutes a waiver of notice by the member or director of the time, place, and purpose of the meeting. If all members or directors are present at any meeting of the Association or board, respectively, no notice is required and any business may be transacted at the meeting.

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<sup>75</sup> TBOC §22.158

<sup>76</sup> Technically, all co-owners of a lot are members of the HOA, even though the lot has one indivisible membership. TBOC has many requirements benefitting "all members" of the entity. No guaranty that a Governing Document provision limiting notice to one of the co-owners of a lot will suffice as compliance with TBOC.

**ARTICLE 11**  
**INDEMNIFICATION**

11.1. GENERAL. The purpose of this Article is to mandate some of the permissive provisions of Chapter 8 of the Code, and to indemnify Association Leaders whether or not the Association is incorporated at the time indemnification is needed. The definitions of Chapter 8 of the Code are hereby incorporated by reference, without regard to the corporate status of the Association. As used in this Article, "**Association Leader**" means a person who is a current or former officer or director of the Association, or a current or former committee chair or committee member of the Association.

11.2. MANDATORY INDEMNIFICATION. The Association will indemnify an Association Leader who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was an Association Leader, if the following determinations are made.

11.2.1. Determinations. It must be determined that the person acted in good faith, and that:

- a. the person reasonably believed (1) in the case of conduct in the person's official capacity, that the person's conduct was in the Association's best interest, or (2) in any other case, that the person's conduct was not opposed to the Association's best interests;
- b. in the case of a criminal proceeding, the person did not have a reasonable cause to believe the person's conduct was unlawful;
- c. with respect to expenses, the amount of expenses other than a judgment is reasonable; and
- d. indemnification should be paid.

11.2.2. Effect of Proceeding Termination. A person does not fail to meet the determination standard solely because of the termination of a proceeding by judgment, order, settlement, conviction, or a plea of nolo contendere or its equivalent.

11.2.3. How Determinations Are Made. If all of the directors are disinterested and independent, as defined in the Code, the determinations required under this Section will be made by a special legal counsel selected by the board. Otherwise, the determinations will be made by the owners of a majority of lots in the Property, other than lots owned by persons who are not disinterested and independent as defined in the Code, or by a special legal counsel selected by those owners.

11.3. EXCEPTIONS TO MANDATORY INDEMNIFICATION. A person who is found liable to the Association or is found liable because the person improperly received a personal benefit is not entitled to indemnification under this Article if, in a legal proceeding, the person has been found liable for (1) wilful or intentional misconduct in the performance of the person's duty to the Association, (2) breach of the person's duty of loyalty owed to the Association, or (3) an act or omission not committed in good faith that constitutes a breach of a duty owed by the person to the Association. In all other instances, indemnification of a person who is found liable to the Association is limited to reasonable expenses actually incurred by the person in connection with the proceeding, excluding a judgment, a penalty, a fine, or any other type of sanction. A person indemnified by the Association is considered to have been found liable in relation to a claim, issue, or matter only if the liability is established by an order, including a judgment or decree of a court, and all appeals of the order are exhausted or foreclosed by applicable law.

11.4. EXPENSES. The indemnification provided by this Article covers reasonable expenses and costs, such as legal fees, actually and necessarily incurred by the indemnified person in connection with a qualified claim.

11.4.1. Advancement of Expenses. The Association may pay or reimburse reasonable expenses incurred by an indemnified person who was, is, or is threatened to be made a respondent in a proceeding in advance of the final disposition of the proceeding without making the determinations required under the Section above titled "Mandatory Indemnification," after the Association receives a written affirmation by the person of the person's good faith belief that the person has met the standard of conduct necessary for indemnification under this Article, and a written undertaking by or on behalf of the person to repay the amount paid or reimbursed if the final

determination is that the person has not met that standard or that indemnification is prohibited by this Article. The required written undertaking must be an unlimited general obligation of the person but need not be secured and may be accepted by the Association without regard to the person's ability to make repayment.

11.4.2. Witness Expenses. The Association may pay or reimburse reasonable expenses incurred by an Association Leader, member, employee, agent, or other person in connection with that person's appearance as a witness or other participation in a proceeding at a time when the person is not a respondent in the proceeding.

11.5. INDEMNIFICATION OF OTHER PERSONS. Subject to the same limitations, determinations, and exceptions for Association Leaders, the Association may indemnify and advance expenses to a person who is not otherwise covered by this Article's indemnification as provided by (1) a provision in a Governing Document of the Association, (2) a contract to which the Association is a party, (3) common law, (4) a board resolution, or (5) a resolution approved by the Association's members. A person indemnified under this Section may seek indemnification or advancement of expenses from the Association to the same extent that an Association Leader may seek indemnification or advancement of expenses under this Article.

## **ARTICLE 12**

### **DECLARANT PROVISIONS**

12.1. CONFLICT. The provisions of this Article control over any provision to the contrary elsewhere in these Bylaws.

12.2. BOARD OF DIRECTORS. During the Declarant Control Period, Article 16 of the Declaration governs the number, qualification, and appointment of directors. The initial directors will be appointed by Declarant and need not be owners or residents. Directors appointed by Declarant may not be removed by the owners and may be removed by Declarant only. Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

12.3. TRANSITION MEETING. As provided by Article 16 of the Declaration, within 60 days after the end of the Declarant Control Period, or sooner at Declarant's option, Declarant will call a meeting of the members of the Association for the purpose of electing directors, by ballot of members. Notice of the transition meeting will be given as if it were notice of an annual meeting.

## **ARTICLE 13**

### **AMENDMENTS TO BYLAWS**

13.1. AUTHORITY.<sup>77</sup> Although the general authority for amending the Bylaws resides with the members of the Association, certain amendments may be made by the board or by Declarant, without a vote of the members.

13.1.1. Amendments by Board. For the following limited purposes, the board may amend these Bylaws with or without approval by the members, provided the proposed amendment has the prior unanimous approval of the directors: (1) to correct mistakes in the Bylaws, (2) to conform the Bylaws to changes in controlling law applicable to any topic addressed in these Bylaws, (3) to change the name of the Association, and (4) to restate previously amended Bylaws for the sole purpose of incorporating the amendments into the body of the Bylaws.

13.1.2. Amendments by Declarant. As provided by Article 16 of the Declaration, during the Development Period, Declarant may amend these Bylaws with or without approval by the board or the members, **for any purpose**.

13.1.3. Amendments by Members. All other amendments of these Bylaws must be approved by the members according to the terms of this Article.

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<sup>77</sup> TBOC §22.102 permits the board to amend the bylaws unless the articles of incorporation reserves the power exclusively to the members. If the bylaws are amendable by the board, consider making certain provisions subject to approval by members -- such as qualifications, number, and term for directors. Drafter, first decide who will have the power to amend the bylaws, and then carefully draft corresponding provisions in the 3 documents.

### 13.2. AMENDMENTS BY MEMBERS.

13.2.1. Proposal. The Association will provide or make available to an owner of each lot with a description, if not exact wording, of any proposed amendment. The proposed amendment, description of the proposed amendment, or instructions for obtaining a copy of the proposed amendment at no cost will be included in the notice of any annual or special meeting of the Association at which the proposed amendment is to be considered.

13.2.2. Consents. Subject to the following limitation, an amendment of these Bylaws must be approved by members representing at least a majority of the votes present (in person or by proxy) at a properly called meeting of the Association for which a quorum is obtained. In other words, if a quorum is present (in person or by proxy) at an Association meeting, the owners of a majority of the lots represented at the meeting (in person or by proxy) -- even if less than a majority of the total lots -- may approve an amendment to these Bylaws. This Section, however, may not be amended without the approval of owners representing at least a majority of the total lots in the Property.

13.3. EFFECTIVE. To be effective, an amendment must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of these Bylaws and any amendments hereto; (2) signed and acknowledged by at least one officer of the Association, certifying the requisite authority and/or approvals; and (3) recorded in the Real Property Records of McLennan County, Texas. An amendment may be effective immediately if adopted at an Association meeting at which owners of two-thirds of the lots are represented. Otherwise, an amendment is not effective until 10 days after an owner of each lot is notified of the amendment and provided with a copy of the amendment or instructions for obtaining a copy.

13.4. MORTGAGEE PROTECTION. If a provision in a Governing Document or applicable law requires notices to and consent of mortgagees for certain actions and amendments, the Association must give the required notices to and obtain the required approvals from applicable mortgagees.

13.5. DECLARANT PROTECTION. During the Development Period, no amendment of these Bylaws may affect Declarant's rights herein without Declarant's written and acknowledged consent. Specifically, this Section, the article titled "Declarant Provisions," and the sections titled "Declarant Control" and "Drafter's Intent" may not be amended during the Development Period without prior written approval of Declarant. Declarant's written consent must be part of the amendment instrument.

## **ARTICLE 14** **GENERAL PROVISIONS**

14.1. DRAFTER'S INTENT. Because Declarant intends these Bylaws to serve the Association for many years beyond the initial development, construction, and marketing of the Property, Declarant purposefully did not draft these Bylaws from its own perspective. Instead, as a courtesy to future users of these Bylaws, Declarant compiled most of the Declarant-related provisions in Article 16 of the Declaration. Although Declarant is initially an owner and a member of the Association, Declarant is intentionally exempt from a number of obligations that apply to other owners, and has a number of rights that other owners do not have. These Bylaws are to be construed liberally to give effect to the drafter's intent of favorable and preferential treatment of Declarant.

14.2. CONFLICTING PROVISIONS. If any provision of these Bylaws conflicts with any provision of the applicable laws of the State of Texas, the conflicting Bylaws provision is null and void, but all other provisions of these Bylaws remains in full force and effect. If a provision of the Association's certificate of formation or Articles of Association conflicts with these Bylaws, the certificate of formation or Articles controls. In the case of any conflict between the Declaration and these Bylaws, the Declaration controls.

14.3. SEVERABILITY. Whenever possible, each provision of these Bylaws will be interpreted in a manner as to be effective and valid. Invalidation of any provision of these Bylaws, by judgment or court order, does not affect any other provision which remains in full force and effect.

14.4. CONSTRUCTION. The effect of a general statement is not limited by the enumerations of specific matters similar to the general. The captions of articles and sections are inserted only for convenience and are in no way to be

construed as defining or modifying the text to which they refer. The singular is construed to mean the plural, when applicable, and the use of masculine or neuter pronouns includes the feminine.

14.5. **FISCAL YEAR.** The fiscal year of the Association will be set by resolution of the board, and is subject to change from time to time as the board determines. In the absence of a resolution by the board, the calendar year is the fiscal year.<sup>78</sup>

14.6. **WAIVER.** No restriction, condition, obligation, or covenant contained in these Bylaws may be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

14.7. **PREPARER.** These Bylaws were prepared in the law offices of Able Attorney of Drafters R Us, 1114 S. University Parks Drive, Waco, Texas 76798.<sup>79</sup>

**CERTIFICATION<sup>80</sup> & ACKNOWLEDGMENT<sup>81</sup>**

As the Declarant of Prairie Chapel Estates and the initial and sole member of the Prairie Chapel Estates Homeowners Association, I certify that the foregoing Bylaws of Prairie Chapel Estates Homeowners Association were adopted for the benefit of the Association by the initial Board of Directors of Prairie Chapel Estates Homeowners Association at the organization meeting of the Board called by a majority of the Directors for the purpose of adopting these Bylaws.

SIGNED this \_\_\_\_\_ day of March 2006.

**P. C. DECLARANT COMPANY, L.P.**, a Texas limited partnership

By: P. C. DECLARANT, INC., a Texas corporation, its general partner

By: \_\_\_\_\_  
Tom Developer, President

[ACKNOWLEDGMENT]

**After recording, please return to:**<sup>82</sup>

Able Attorney  
Drafters R Us  
1114 S. University Parks Drive  
Waco, Texas 76798

<sup>78</sup> Traditionally, the calendar year is used as the default fiscal year. Some HOA managers prefer the January 1 deadline for assessments so they can deny pool use if not paid. Other HOA managers prefer a mid-year deadline that does not compete with Christmas and other year-end expenses. Although boards can change the fiscal year, they hesitate to alter the tradition-bound calendar year. Do not hesitate to change the default fiscal year. "Calendar year" is not sacrosanct.

<sup>79</sup> If you are proud of your document, put your name on it. Otherwise, this Section is not customary or required.

<sup>80</sup> The certification is intentionally self-proving and self-serving for the Declarant, who may not have or keep minutes of an initial meeting at which the Bylaws were adopted.

<sup>81</sup> (OPTIONAL for State, REQUIRED for County) TBOC does not require verification, jurat, or acknowledgment. The acknowledgment is provided for recording the Bylaws in the County Records, pursuant to TPC §202.006.

<sup>82</sup> (OPTIONAL for State, REQUIRED for County) The TBOC does not require a return address. It is provided for recording the Bylaws in the County Records, pursuant to TPC §202.006.

## APPENDIX I

THIS DOCUMENT IS PREPARED FOR USE WITH THE TEXAS BUSINESS ORGANIZATIONS CODE, WHICH BECAME EFFECTIVE JANUARY 1, 2006. THE ENDNOTES CONTAIN CONCEPTS AND OBSERVATIONS THAT MAY BE USEFUL IN ANY JURISDICTION.

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**ARTICLES OF ASSOCIATION<sup>1 2</sup>**  
**OF**  
**PRAIRIE CHAPEL ESTATES HOMEOWNERS ASSOCIATION**

MAY BE FILED WITH THE SECRETARY OF STATE OF TEXAS AS  
A CERTIFICATE OF FORMATION FOR A DOMESTIC NONPROFIT<sup>3</sup> CORPORATION

**REAL PROPERTY<sup>4</sup>**

These Articles of Association pertain to Prairie Chapel Estates, a residential planned community and an addition to the City of Crawford,<sup>5</sup> Texas, according to the plat thereof recorded on November 13, 2005, in Cabinet G, Slide 123, Plat Records, McLennan County, Texas, and which is subject to the Declaration of Covenants, Conditions, and Restrictions for Prairie Chapel Estates, recorded on February 26, 2006, as Document No. 2006-00123, Real Property Records, McLennan County, Texas, as amended, supplemented, and restated from time to time (the "**Declaration**").

ARTICLE 1. NAME<sup>6</sup> & TYPE<sup>7</sup>. The name of this domestic nonprofit entity is **Prairie Chapel Estates Homeowners Association** (hereafter, the "**Association**"). This entity is the mandatory nonprofit property owners association created by the Declaration to govern the above-referenced Real Property. The filing of these Articles of Association with the Secretary of State as a certificate of formation creates a nonprofit corporation status<sup>8</sup> for the Association.

ARTICLE 2. REGISTERED AGENT & ADDRESS<sup>9</sup>. See Articles 20 and 21.

ARTICLE 3. MANAGEMENT BY BOARD<sup>10</sup>. The management and affairs of the Association are vested in the board of directors, except for those matters expressly reserved to others in the Governing Documents. The Declaration or Bylaws may determine the number and qualification of directors; the term of office of directors; the methods of electing, removing, and replacing directors; and the methods of holding a board meeting and obtaining consents. Directors may not vote by proxy at meetings of the board.<sup>11</sup> See Article 19 for the names and addresses of the initial directors.<sup>12</sup>

ARTICLE 4. MEMBERSHIP<sup>13</sup>. The Association is a nonstock membership organization - the owners of lots in Prairie Chapel being the members of the Association. The Declaration or Bylaws will determine the number and qualifications of members of the Association; any classes of membership; the voting rights and other privileges of membership; and the obligations and liabilities of members. Cumulative voting is not allowed.<sup>14</sup>

ARTICLE 5. PURPOSES<sup>15</sup>. The general purposes for which the Association is formed are (1) to exercise the rights and powers and to perform the duties and obligations of a Texas property owners association, in accordance with the Governing Documents and State law, as each may be amended from time to time, and (2) for any lawful purpose not expressly prohibited under Chapters 2 or 22 of the Texas Business Organizations Code (the "**Code**"), including any purpose described by Section 2.002 of the Code.

ARTICLE 6. MANNER OF DISTRIBUTION<sup>16</sup>. The Association is authorized on its winding up to distribute its assets in a manner other than as provided by Section 22.304 of the Code. The manner of distribution is as follows. In the event of winding up, the assets of the Association will belong to the members of the Association at the time of winding up and will be distributed, liquidated, or conveyed in accordance with the terms of a termination agreement approved by owners to whom 80 percent or more of the votes in the Association are allocated at the time of winding up.

ARTICLE 7. DURATION.<sup>17</sup> The duration of the Association is perpetual.

ARTICLE 8. POWERS.<sup>18</sup> In furtherance of its purposes, the Association has the following powers which, unless indicated otherwise by the Governing Documents or State law, may be exercised by the board of directors: (1) all rights and powers conferred on nonprofit entities by State law in effect from time to time; (2) all rights and powers conferred on property owners associations by State law, in effect from time to time; (3) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in the Governing Documents or State law.

ARTICLE 9. MEETING LOCATION.<sup>19</sup> Unless the Declaration or Bylaws provides otherwise, meetings of members of the Association will be held at a suitable place convenient to the members, as determined by the board.

ARTICLE 10. LIMITATIONS ON LIABILITY.<sup>20</sup> A director of the Association is not liable to the Association or its members for monetary damages for acts or omissions that occur in the person's capacity as a director, except to the extent a person is found liable for (1) a breach of the director's duty of loyalty to the Association or its members; (2) an act or omission not in good faith that constitutes a breach of duty of the director to the Association; (3) an act or omission that involves intentional misconduct or a knowing violation of the law; (4) a transaction from which the director receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the person's office; or (5) an act or omission for which the liability of a director is expressly provided by an applicable statute. If the director is a member of the Association, this limitation on liability does not eliminate or modify that person's pro rata share of the Association's liability as a member of the Association.

ARTICLE 11. INDEMNIFICATION.<sup>21</sup> As provided by the Bylaws, the Association will indemnify a 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, officer, committee chair, or committee member of the Association. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

ARTICLE 12. IMMUNITY FOR VOLUNTEERS.<sup>22</sup> To preserve the protections for Association volunteers afforded by the Charitable Immunity and Liability Act of 1987 (Chapter 84, Texas Civil Practice & Remedies Code), the Association will operate in a manner that preserves the Association's status as a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986, as amended.

ARTICLE 13. AMENDMENT OF ARTICLES.<sup>23</sup> These Articles may be amended or restated subject to the following:

Section 13.1. General Provisions. (1) An amendment may not conflict with the Declaration, the Bylaws, or applicable State law. (2) An amendment may not impair or dilute a right granted to a person by the Declaration, without that person's written consent. (3) If the Association is incorporated by the State of Texas at the time of amendment, an amendment must be in accordance with applicable provisions of the Code.

Section 13.2. Amendment by Board. The board of directors may unilaterally amend or restate these Articles, without a vote of the owners, for the following limited purposes: (1) to delete the names and addresses of the initial directors, (2) to delete the name and address of the initial registered agent or office, provided a statement of change is on file with the Secretary of State, and (3) to change the name of the Association with the Secretary of State by adding, deleting, or changing a geographical attribute to the name.

Section 13.3. Amendment by Members.<sup>24</sup> For all other purposes, an amendment must be approved by the board and by at least two-thirds of the votes or voting interests present, in person or by proxy, at a properly called meeting of the Association for which a quorum is obtained.

ARTICLE 14. AMENDMENT OF BYLAWS.<sup>25</sup> The Bylaws of the Association may be amended or repealed according to the amendment provision of the Bylaws, which reserve those powers to the members, with limited exceptions for the board acting alone.

ARTICLE 15. ACTION WITHOUT MEETING.<sup>26</sup> Subject to the additional requirements of Code Section 6.202, any action required by the Code or by the Governing Documents to be taken at a meeting of members or owners may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of

members or owners as would be necessary to take that action at a meeting at which the required number of owners or members were present and voted.

ARTICLE 16. DECLARANT CONTROL PERIOD.<sup>27 28</sup> The Declaration provides for a Declarant Control Period during which Declarant determines the number and qualification of officers and directors, who serve at the pleasure of Declarant, who is empowered by the Declaration to appoint, remove, and replace the officers and directors of the Association. The Declaration also determines the weight or numbers of votes allocated to lots owned by Declarant. Because Declarant has powers, rights, and duties in addition to those of other members, Declarant may constitute a membership "class" as described by the Code, the other lot owners constituting a different "class."

ARTICLE 17. CHANGE OF STATUS. The continuing existence of the Association as described in its Governing Documents is vested in its members - the owners of the Real Property - not in its corporate status, its name, or its filing number. During any period in which the Association is not incorporated, it will be subject to the Texas Uniform Unincorporated Nonprofit Association Act (Chapter 252 of the Code), and these Articles of Association will continue to be effective as a Governing Document of the Association.

ARTICLE 18. TERMINOLOGY.<sup>29</sup> Capitalized terms used in these Articles, such as Association, Declarant, Declarant Control Period, Declaration, and Governing Documents, have the same meanings as defined in Article 1 of the Declaration. "Articles of Association" has the same meaning as "Articles of Incorporation," wherever used. As applied to this Association, the following terms which are defined or used in the Code are construed as follows:

Section 18.1. "Governing Documents,"<sup>30</sup> as defined by the Code, is construed by the Association to mean the "Governing Documents," as defined by the Declaration, even though Governing Documents may have been initially adopted by the Declarant of the Real Property for the benefit and use of the members of the Association, rather than having been adopted by the Association, as indicated by the Code's definition of Governing Documents.

Section 18.2. "each member entitled to vote at the meeting," as used in the Code, is construed by the Association to mean that if a lot is co-owned, even though all the co-owners are members of the Association, the co-owners share one membership per lot for notification and voting purposes. Therefore, votes and memberships are tabulated on a lot basis, rather than on a headcount of owners and co-owners.

ARTICLE 19. INITIAL BOARD OF DIRECTORS.<sup>31</sup> The initial board consists of three<sup>32</sup> directors who serve at the pleasure of Declarant during the Declarant Control Period, and who will serve as directors until the earlier of (1) their successors are appointed by Declarant, or (2) their successors are elected by the members of the Association after the Declarant Control Period. The number of directors after the Declarant Control Period is determined by the Bylaws, and may be changed from time to time by amendment of the Bylaws.<sup>33</sup> The name and address<sup>34</sup> of each initial director are as follows:

<u>Name</u>	<u>Address</u>
Tom Developer	621 W. Highway 6, Waco, Texas 76710
Dick Developer	621 W. Highway 6, Waco, Texas 76710
Harry Developer	621 W. Highway 6, Waco, Texas 76710

ARTICLE 20. INITIAL REGISTERED AGENT.<sup>35</sup> The name of the Association's initial registered agent is Rove Management Co.

ARTICLE 21. OFFICE OF INITIAL REGISTERED AGENT.<sup>36</sup> The address of the Association's initial registered agent is 300 South 5th Street, Waco, Texas 76701.

ARTICLE 22. ORGANIZER.<sup>37</sup> The name of the organizer is Able Attorney. The organizer's address is 1114 S. University Parks Drive, Waco, Texas 76798.

ARTICLE 23. EFFECTIVENESS OF FILING.<sup>38</sup> This document becomes effective as a certificate of filing for a nonprofit corporation when the document is filed by the Secretary of State.

**EXECUTION**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.<sup>39 40 41</sup>

SIGNED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Able Attorney

THE STATE OF TEXAS §  
                                          §  
COUNTY OF McLELLAN §

This instrument was acknowledged<sup>42</sup> before me on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by Able Attorney.

\_\_\_\_\_  
Notary Public, The State of Texas

AFTER RECORDING RETURN TO<sup>43</sup>  
Able Attorney  
Drafters R Us  
1114 S. University Parks Drive  
Waco, Texas 76798

**ENDNOTES TO ANNOTATED ARTICLES OF ASSOCIATION  
FOR PRAIRIE CHAPEL ESTATES HOMEOWNERS ASSOCIATION**

"TBOC" means Texas Business Organizations Code, effective 1/1/06.  
"TPC" means Texas Property Code.

- 1 The Secretary of State of Texas has a streamlined process for forming entities with online filings. Although the online process is wonderfully efficient, it leaves us without attractive paper for posting on the project website and distributing to homebuyers, and without an original signature for recording in the county records. (Who records Articles of Incorporation? See TPC §202.006 for a unique HOA recording requirement - "all governing documents".)
- 2 (OPTIONAL) A fact of HOA life is that most HOAs lose their corporate status at some time - perhaps more than once, sometimes during the Declarant Control Period. "Articles of Association" is purposefully chosen as a title so the document can ride the waves of the HOA's being incorporated and unincorporated. "Articles of Organization" was considered and rejected as being a possible source of confusion as to what document creates the HOA.
- 3 TBOC does not hyphenate or capitalize "nonprofit". §1.002(59)
- 4 (OPTIONAL) A property description is NOT required by TBOC and is not customary for corporate articles of incorporation. Use of a property description is recommended because Texas law (TPC Sec. 202.006) requires all "governing documents" of an HOA to be recorded in the county's real property records. To record the Articles in the county records requires a property description and an acknowledgment - neither of which is required by TBOC. There are other ways of providing the property description. This particular method is suitable for a single phase project with a recorded plat. Resist incorporating the HOA until the land is platted and the CCRs are recorded or in the process of being recorded. The property description is also important because the corporate name of the HOA may be different from the name of the platted subdivision, and this Article provides an opportunity to link

- the corporate entity with the real property, which may eliminate confusion with similarly named corporations or subdivisions.
- 5 Yes, this is the location of G. W. Bush's Western White House.
- 6 TBOC §3.005(1) REQUIRES the name of the filing entity in the certificate of formation. TBOC does not require "Inc." or other corporate terms in the name of a nonprofit corporation. RECOMMENDED to avoid using "Inc." or corporate terms in name because the Association is likely to lose its charter several times during its existence (due to neglect). During periods of not being chartered as a corporation, the Association becomes an unincorporated association, and having "Inc." in its name creates a false representation.
- 7 TBOC §3.005(2) REQUIRES the type of filing entity to be stated in the certificate of formation. On the Secretary of State's online form, "Name" and "Type" are combined as "Article 1." They are combined here to maintain the Secretary of State's preferred numbering of the Articles (and hence to facilitate processing by clerical staff).
- 8 Technically, the HOA exists by virtue of the CC&Rs. It is the association of owners of lots in the planned community. If the project has more than one owner, it has an HOA, at least on paper. This wording is intentional to distinguish the HOA's existence under the CC&Rs from its corporate status, to counter a future claim that the HOA does not exist when it loses its charter (which tends to happen periodically).
- 9 The Secretary of State's online form has Registered Agent and Address as Article 2, so it is placed here to maintain the Secretary of State's preferred numbering of the Articles (and hence to facilitate processing by clerical staff). The data is purposefully placed at the end where it will be less irritating to the owners who use the Articles after the Declarant Control Period.
- 10 The Secretary of State's online form has Management as Article 3. Many provisions of TBOC distinguish between management by members and management by board. For a layperson trying to read the Articles in light of the TBOC, it is helpful to know the Association's type of management in the language of the TBOC. TBOC §22.201.
- 11 (OPTIONAL) TBOC §22.215 permits proxy voting by directors IF expressly authorized by the Articles or Bylaws.
- 12 The Secretary of State's online form has the names and addresses of the initial directors as part of Article 3 (Management). The reference is placed here to maintain the Secretary of State's preferred numbering of the Articles (and hence to facilitate processing by clerical staff). The data is purposefully placed at the end where it will be less irritating to the owners who use the Articles after the Declarant Control Period.
- 13 The Secretary of State's online form has "Members" as Article 4. It is a one sentence declaration of whether the corporation has members.
- 14 (OPTIONAL) The "default" is that cumulative voting is NOT allowed. To allow cumulative voting requires an affirmative statement in the Articles, per TBOC §22.161. This statement is superfluous, but customary. The question comes up periodically at membership meetings, and it is helpful to have a provision in a governing document to which to point, without having to explain the unseen statute.
- 15 The Secretary of State's online form has "Purpose" as Article 5 and provides a one sentence purpose that is minimally adequate. TBOC §3.005(3) REQUIRES a statement of the purpose or purposes for which the filing entity is formed. A litany of specific purposes is NOT required by TBOC. Drafters who favor specific purposes must avoid duplicating the purposes or powers in the declaration or bylaws, so that amendment of one document over time does not create a conflict with the other.
- 16 The Secretary of State's online form has "Manner of Distribution" as Article 6, and provides the introductory sentence. TBOC §3.009(4) REQUIRES a statement describing the distribution of assets on winding-up the nonprofit corporation IF the distribution differs from TBOC §22.304, which requires conveyance to a tax exempt entity.

- 17 (OPTIONAL) TBOC §3.005(4) does NOT require perpetual duration to be stated in the certificate of formation for a nonprofit corporation. Perpetual duration is provided by TBOC §3.003. This Article is provided as a reminder to include a duration article if you intend something other than perpetual duration.
- 18 (OPTIONAL) TBOC creates powers for the Association and does NOT require that powers be stated in the certificate of formation.
- 19 (OPTIONAL) TBOC §6.001 requires that membership meetings be held at the corporation's registered office unless the location is fixed by the Governing Documents. Location is typically addressed in the Bylaws. This Article is provided as a back-up in case the meeting location provision is missing from the Bylaws.
- 20 (OPTIONAL) TBOC §7.001(b) allows the Articles to contain a limitation of liability provision for "governing persons," who are defined by TBOC to mean directors, but not officers. See TBOC §§1.002(35) + (37). TBOC §22.235 (Nonprofit Law) provides a limitation on officers' liability.
- 21 (OPTIONAL) TBOC §8.051 REQUIRES limited indemnification - on a reimbursement-if-not-guilty basis. Additional indemnification is permitted under Subchapter C (§8.101 et.seq.) if authorized by any of three methods, one of which is a provision in a governing document. This Article constitutes that provision.
- 22 (OPTIONAL) The Charitable Immunity & Liability Act of 1987 (§84.001 et.seq. Civ.Prac.& Rem.Code) includes "homeowners associations" as a "charitable organization" for the protection of volunteers. The Act provides 2 methods of qualifying - one under IRC Section 528, the other being an exemption from federal income tax under IRC Section 501(a) by being listed as an exempt organization in IRC Section 501(c)(4). Because HOAs do not qualify as tax exempt entities, I am not reciting the second qualifying option in the Articles.
- 23 (OPTIONAL). Amendment of the Articles is address by TBOC §§3.051 et.seq, and §22.164. §22.164(b)(1) applies to the HOA, and requires a vote of members to amend the Articles. This Article is written to apply even if the HOA is not incorporated.
- 24 TBOC §22.164(1) requires that amendments be approved by "at least two-thirds of the votes that members present in person or by proxy are entitled to cast . . ."
- 25 TBOC §22.102(c)
- 26 (OPTIONAL) TBOC §6.202(b) allows less than unanimous written consent to an action IF authorized in the Articles.
- 27 (OPTIONAL) TBOC §22.151(b) requires certain disclosures in the Articles or the Bylaws if the corporation has "classes" of members. Because of Declarant's special status, Declarant may be considered a separate "class" even if that terminology is not used. Also, the terms of Declarant's special status are typically found in the Declaration, rather than in the Bylaws, as suggested by TBOC §22.151(b). TBOC §22.208(a) requires that terms of special appointments to the board be contained in the Articles or Bylaws. This Article is intended to be protective of the Declarant, and is not needed in the post-Declarant period.
- 28 Because established HOAs weary of working with documents that contain obsolete provisions, the articles dealing with Declarant, initial directors, initial registered agent, and organizer are intentionally placed at the end of the instrument to make them less bothersome.
- 29 (OPTIONAL) TBOC uses certain terms that are used differently in the CCRs and Bylaws. Also, the Articles use terms from the Declaration that are not defined in TBOC.
- 30 (OPTIONAL) TBOC §1.002(36) defines "Governing Documents" as (1) the certificate of formation (the Articles), and (2) "the other documents or agreements adopted by the entity under this code to govern the formation or the internal affairs of the entity." (emphasis added) Because some governance provisions are typically contained in the Declaration - which is adopted by the "declarant" and not by the Association - this provision strives to link the Declaration to TBOC, and should be matched by a similar provision in the Declaration.

- 31 TBOC §3.009(3) REQUIRES a statement of the number of initial directors.
- 32 TBOC §22.204(a) REQUIRES a minimum of 3 directors for nonprofit corporations. TBOC §22.204(c) provides that the number of initial directors stated in the Articles will be the same number of directors required for the owner-controlled HOA unless the Bylaws states a different number.
- 33 (OPTIONAL) TBOC requires only the number of initial directors. The statement that the number of post-Declarant directors may be other than 3 is given to eliminate a homeowner's confusion about having one number in the Articles, and another number in the Bylaws.
- 34 TBOC §3.009(3), which applies to nonprofit corporations, REQUIRES the names and addresses of the initial directors. TBOC §22.205, requires ONLY the names of the initial directors of a nonprofit corporation.
- 35 TBOC §3.005(a)(5) REQUIRES the name of the initial registered agent.
- 36 TBOC §3.005(a)(5) REQUIRES the street address of the initial registered office.
- 37 TBOC §3.005(a)(6) REQUIRES the name and address of the organizer. "Organizer" is the TBOC term for "Incorporator." §3.004
- 38 TBOC §4.051 is the "default" provision that incorporation occurs at time of filing. TBOC §§ 4.052 & 4.053 allow the organizer to delay the effective date.
- 39 This language is taken verbatim from the Secretary of State's online form under the heading of "Execution."
- 40 TBOC §4.001 requires the filing to be signed by an authorized person.
- 41 It is too soon to know whether "Articles of Incorporation" will be retained by drafters as a document name, or replaced with "Certificate of Incorporation." §1.006 suggests the two terms are synonymous.
- 42 (OPTIONAL for State, REQUIRED for County) TBOC does not require verification, jurat, or acknowledgment. The acknowledgment is provided for recording the Articles in the County Records, pursuant to TPC §202.006.
- 43 (OPTIONAL for State, REQUIRED for County) The TBOC does not require a return address. It is provided for recording the Articles in the County Records, pursuant to TPC §202.006.

## APPENDIX J

THE STATE OF TEXAS §  
 COUNTY OF MCLENNAN §

**PRAIRIE CHAPEL ESTATES  
 COMMON AREA DEED**

**DATE:** May 7, 2006

**GRANTOR:** P. C. Declarant Company, L.P.

**GRANTOR'S MAILING ADDRESS:** 1111 Herring Avenue, Waco, Texas 76708

**GRANTEE:** Prairie Chapel Estates Homeowners Association

**GRANTEE'S MAILING ADDRESS:** c/o Rove Management Co., 300 S. 5th Street, Waco, Texas 76701

**PROPERTY (including any improvements):**

The following Common Areas of Prairie Chapel Estates, an addition to the City of Crawford, Texas, according to the plat thereof recorded on November 13, 2005, in Cabinet G, Slide 123, Plat Records, McLennan County, Texas:

- LOT 14X, BLOCK A, PRAIRIE CHAPEL ESTATES
- LOT 34X, BLOCK C, PRAIRIE CHAPEL ESTATES

This conveyance is made in connection with Grantor's development of Prairie Chapel Estates, a planned development in the City of Crawford, Texas, pursuant to the Declaration of Covenants, Conditions, and Restrictions for Prairie Chapel Estates, recorded on February 26, 2006, as Document No. 2006-00123, Real Property Records, McLennan County, Texas (the "**Declaration**"), and pursuant to the plat which requires the Property to be "dedicated to and maintained by H.O.A."

By this instrument, Grantor conveys the above-described common areas of Prairie Chapel Estates to Prairie Chapel Estates Homeowners Association, the "**Association**" as defined in the Declaration, being the association of owners of property in Prairie Chapel Estates. This conveyance is subject to all recorded instruments affecting the Property, including the Declaration and the rights, reservations, and easements contained in Article 16 of the Declaration for the benefit of Grantor as Declarant. This conveyance is a ministerial task that fulfills a duty of Grantor under the Declaration.

For good and valuable consideration, Grantor does **GRANT, SELL, AND CONVEY** unto Grantee all the Property, **TO HAVE AND TO HOLD** the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever, subject to the matters herein stated.

This Common Area Deed is not intended to be a quitclaim deed and is intended to be a conveyance of the Property rather than merely a conveyance of Grantor's interest therein. **NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THIS CONVEYANCE IS MADE WITHOUT WARRANTY OF TITLE OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED.**

*(Executed on next page.)*

SIGNED to be effective on the date shown above.

**P. C. DECLARANT COMPANY, L.P.**, a Texas limited partnership

By: P. C. DECLARANT, INC., a Texas corporation, its general partner

By: \_\_\_\_\_  
Tom Developer, President

[GRANTOR'S ACKNOWLEDGMENT]

**ACCEPTED BY GRANTEE**

Grantee hereby accepts the Property.

Signed on the \_\_\_\_\_ day of May 2006.

**PRAIRIE CHAPEL ESTATES HOMEOWNERS ASSOCIATION**, a Texas property owners association

By: \_\_\_\_\_  
Tom Developer, President

[GRANTEE'S ACKNOWLEDGMENT]

**AFTER RECORDING, PLEASE RETURN TO:**

Able Attorney  
Drafters R Us  
1114 S. University Parks Drive  
Waco, Texas 76798

## APPENDIX K

*(To be recorded in Real Property Records of McLennan County, Texas)*

## PRAIRIE CHAPEL ESTATES MANAGEMENT CERTIFICATE

As Required by Section 209.004, Texas Property Code

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1. **Name of development,** if different from subdivision. N/A (Same Name)
2. **Subdivision information.** Prairie Chapel Estates Addition is an addition to the City of Crawford, Texas, according to the plat thereof recorded on November 13, 2005, in Cabinet G, Slide 123, Plat Records, McLennan County, Texas.
3. **Declaration information.** Lots in Prairie Chapel Estates are subject to the Declaration of Covenants, Conditions, and Restrictions for Prairie Chapel Estates, recorded on February 26, 2006, as Document No. 2006-00123, Real Property Records, McLennan County, Texas, as it may be amended or supplemented from time to time.
4. **Name of property owners association.** Prairie Chapel Estates Homeowners Association
5. **How to contact the association through its managing agent.**

c/o Rove Management Co.	Phone: (254) 757-1025
300 South 5th Street	Fax: (254) 757-2221
Waco, Texas 76701	Website: <a href="http://www.rovemgmt.com">http://www.rovemgmt.com</a>
6. **Other information the association considers appropriate.** Prairie Chapel Estates Homeowners Association has no affiliation with Prairie Chapel Ranch, also known as the "Western White House."

**DATED** May 7, 2006.

**PRAIRIE CHAPEL ESTATES HOMEOWNERS  
ASSOCIATION**, a Texas property owners association

By: \_\_\_\_\_  
Tom Developer, President

[ACKNOWLEDGMENT]

**AFTER RECORDING, PLEASE RETURN TO:**

Able Attorney  
Drafters R Us  
1114 S. University Parks Drive  
Waco, Texas 76798