

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS FOR WOLF CREEK RANCH**  
**BURNET COUNTY, TEXAS**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WOLF CREEK RANCH (the "Declaration") is made and entered into this 18<sup>th</sup> day of February, 2009, by **BUCHANAN INVESTMENTS, LTD.**, a Texas limited partnership ("Declarant").

**RECITALS**

WHEREAS, Declarant is the Declarant under that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WOLF CREEK RANCH dated the 16<sup>th</sup> day of March, 2000, recorded in Volume 905, Page 905, Official Public Records, Burnet County, Texas, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions For Wolf Creek Ranch dated the 16<sup>th</sup> day of August, 2002, recorded in Volume 1085, Page 27, Official Public Records, Burnet County, Texas (as amended, the "Original Declaration") regarding certain real property more particularly described in the Original Declaration, reference to which is hereby made for all purposes (the "Property");

WHEREAS, Section 6.7(g) of the Original Declaration provides that during the Declarant Control Period the Declarant shall have the complete and unfettered right and privilege to alter, amend, modify or restate the Original Declaration at Declarant's sole option and discretion;

WHEREAS, the Original Declaration provides that the Declarant Control Period commenced upon the recordation of the Original Declaration in the Records and continues until the earlier of (a) the date of the sale by the Declarant of the last Tract owned by Declarant or (b) the date the Declarant voluntarily terminates its Class B Member status by recording a written notice of such termination in the Deed Records of Burnet County, Texas;

WHEREAS, as of the date hereof the Declarant continues to own Tracts and has not voluntarily terminated its Class B Member status as provided in the Original Declaration; therefore, Declarant has the complete and unfettered right and privilege to make and execute this Declaration;

WHEREAS, in order to incorporate recommendations of the Board of Directors, to reflect the completion of the development of the Property, and in order to correct and clarify the Original Declaration, it is the intent of the Declarant that this Declaration shall amend and restate the Original Declaration.

NOW THEREFOR, to further the general purposes herein expressed, Declarant for itself, its successors and assigns, hereby amends and restates the Original Declaration affecting all real property hereinafter defined as Wolf Creek Ranch, and that such property shall, at all times, be owned, held, used and occupied subject to the provisions of this Declaration and to the

covenants, conditions and restrictions herein contained. To the extent there is a conflict between this Declaration and the Original Declaration the terms of this Declaration shall control.

## ARTICLE I

### DECLARATION OF PURPOSE

#### 1.1 General Purposes:

(a) Declarant is the developer of a residential and recreational community for persons residing or lawfully visiting the real property hereinafter defined as Wolf Creek Ranch.

(b) The Wolf Creek Ranch Owners Association (hereinafter referred to as the "Association"), a Texas non-profit corporation, has been formed to hold, manage, and maintain certain property for the common benefit of Owners; to administer and enforce the covenants, conditions, restrictions, reservations, and easements created hereby; to collect and enforce the assessments, charges, liens imposed pursuant hereto; and for all other purposes as set forth in the Articles of Incorporation of the Association. This Declaration defines certain rights and obligations of the Owners and Guests with respect to the Association and with respect to Functions undertaken and the Commons held by the Association.

(c) By this Declaration, Declarant intends to establish a means to provide for and maintain the area within the Ranch as a reasonably pleasant and desirable environment for all persons residing at or lawfully visiting the Ranch.

1.2 Declaration: To further the general purposes herein expressed, Declarant for itself, its successors and assigns, hereby declares that all real property hereinafter defined as Wolf Creek Ranch, including any property added to the same as hereinafter provided shall, at all times, be owned, held, used, occupied, sold and conveyed subject to and conditioned upon the provisions of this Declaration and to the covenants, conditions, restrictions, reservations, easements, assessments, charges, and liens herein contained, which shall run with the Property and benefit Declarant, and all other parties having any right, title, interest in the Ranch or any portion thereof, and their respective successors, assigns, heirs, devisees and other personal representatives.

## ARTICLE II

### CURRENT DEFINITIONS

2.1 Articles: Articles mean the Articles of Incorporation of the Association, as same may be amended from time to time.

2.2 Association: Association means the Wolf Creek Ranch Owners Association, a Texas non-profit corporation, including without limitation its successors, assigns, and transferees.

2.3 Association Documents: Association Documents mean this Declaration, any plat affecting the Ranch, the Articles, the Bylaws, and the Rules and Regulations, as same may be amended from time to time.

2.4 Board of Directors: Board of Directors means the board which shall act on behalf of the Association, as more particularly described and defined in the Bylaws.

2.5 Bylaws: Bylaws mean the Bylaws of the Association, as same may be amended from time to time.

2.6 Commons: Commons mean, to the extent of the Association's interest in such real estate and/or improvements, and real estate within the Ranch (i) that is owned by the Association, (ii) that is owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to a lease, license, easement, or other agreement, (iii) that the Association is otherwise required to operate, manage, maintain or repair, together with any improvements located thereon, or (iv) the Association's interest in easements outside the Ranch.

2.7 Common Expenses: Common Expenses mean allocations to reserves and all costs, expenses and liabilities incurred by or on behalf of the Association, including but not limited to costs, expenses and liabilities for (i) acquiring, leasing, renting, designing, constructing, managing, operating, maintaining, repairing, or improving the Commons; (ii) administering or enforcing the covenants, conditions, restrictions, reservations, or easements created by this Declaration; (iii) levying, collecting, or enforcing the assessments, charges, or liens imposed pursuant to this Declaration; (iv) regulating or managing the Ranch, including without limitation performing any and all Functions permitted by this Declaration; (v) operating the Association; (vi) paying rentals; and (vii) any other cost or expense legally incurred by the Association.

2.8 Declarant: Declarant means collectively, Buchanan Investments, Ltd., its successors, assigns, and any party that (i) acquires all or substantially all of the property in the Ranch and (ii) prior to the time of such acquisition is designated by Buchanan Investments, Ltd. in a written instrument as a successor or assignee of Declarant under this Declaration. Such instrument may specify the extent and portion of the rights or interests as a Declarant that are being assigned or otherwise transferred.

2.9 Declarant Control Period: Declarant Control Period means a period commencing on the date of the recording of Original Declaration in the public real estate records of Burnet County, Texas and continuing thereafter until and ending on the earlier of (a) the date of the sale by the Declarant of the last Tract owned by Declarant in the Ranch, or (b) the date the Declarant voluntarily terminates its Class B Member status by recording a written notice of such termination in the public real estate records of Burnet County, Texas. After termination of the Declarant Control Period, Declarant, if still an Owner, will have all of the rights and duties given to Members under the Association Documents and will retain all of the rights belonging to the Declarant under the Association Documents (including without limitation the Special Declarant

Rights set forth in Section 6.7 below) other than those which expire by their terms upon the expiration of the Declarant Control Period.

2.10 Declaration: Declaration means the Original Declaration as amended and restated by this instrument and all amendments or supplements hereto and hereafter recorded in the real property records of Burnet County, Texas together with any and all plats for the Ranch.

2.11 Design Review Board: Design Review Board means the Design Review Board established hereunder.

2.12 Function: Function means any activity, function, or service undertaken or performed by the Association, at its sole discretion.

2.13 Guest: Guest means any family member, customer, agent, employee, independent contractor, guest or invitee of any Owner, and any family member, customer, agent, employee, independent contractor, guest or invitee of such person or persons, entity or entities.

2.14 Lake: Lake means Buchanan Lake located in Burnet and Llano Counties, Texas, which results from impoundment of waters of the Colorado River by Buchanan Dam.

2.15 Lessee: Lessee means the person or persons, entity or entities who is the lessee under a lease on any part or all of a Tract for which the Declarant or an Owner is the lessor under such lease. The term Lessee shall not include the Association or any governmental entity.

2.16 Member: Member means each person or entity who holds a Membership in the Association.

2.17 Membership: Membership means a membership in the Association which is appurtenant to ownership of any Tract, and the rights granted to Owners pursuant to this Declaration to participate in the Association.

2.18 Owner: Owner means the record holder of legal title to the fee simple interest. Each Owner shall also be the holder or holders of a Membership in the Association, which is appurtenant to ownership of such Tract. The term Owner shall include Declarant to the extent it is the record owner of a Tract.

2.19 Person: Person means any natural person, corporation, partnership, limited liability company, association, trustee or any other entity recognized as being capable of owning real property under the laws of the State of Texas.

2.20 Property: Property means any and all real property subject to this Declaration from time to time.

2.21 Wolf Creek Ranch: Wolf Creek Ranch (also herein referred to as the "Ranch") means all the real property located in Burnet County, Texas, described in Exhibit "A" attached to the Original Declaration, including such real property as replated pursuant to such plats and/or

maps thereof recorded in the Office of the Clerk and Recorder of Burnet County, Texas, as well as all real property that becomes part of the Ranch as provided in this Section. Any real property included in the definition of the Ranch pursuant to this Section which is hereafter incorporated as, or becomes a part of, a municipal corporation may be excluded from and be deemed outside of the Ranch by the action of the Association and the written consent of Declarant upon the recording in the Office of the Clerk and Recorder of Burnet County, Texas, of a written instrument signed by Declarant and the Association containing a legal description of the real property to be excluded and declaring that such real property shall be deemed to be outside the Ranch.

2.22 Rules and Regulations: Rules and Regulations means any instruments adopted by the Association or the Design Review Board for the regulation and management of the Ranch or any portion thereof, as the same may be amended from time to time.

2.23 Tract: At present, there are seventy-four (74) Tracts which are listed on Exhibit "B" attached hereto. Notwithstanding the foregoing, a parcel of land owned, held or used in its entirety (i) by the Association or any governmental entity, (ii) for or in connection with the distribution of electricity, gas, water, sewer, telephone, television or other utility service, or (iii) for access to the Lake or any property within or without the Ranch shall not be considered a Tract. The term "Tract" shall include any improvements that may be constructed from time to time on the land. The number of Tracts may increase or decrease from the above number based on any platting, replatting or additions of property to this Declaration as permitted to Declarant pursuant to this Declaration.

### ARTICLE III

#### CERTAIN OBLIGATIONS AND RIGHTS OF ASSOCIATION

##### 3.1 Property Maintenance Function:

(a) The Association shall provide for the care, operation, management, maintenance, repair and replacement of all the Commons, including roadways. Moreover, the Association may provide for the care and maintenance of other areas of the Property if the Board of Directors, in its sole and exclusive discretion, deems such care and maintenance to be necessary or desirable for access to the boundary of or full utilization of any Tract or any improvements within the Ranch. Such function may include, without limitation, maintenance and care of open space or unimproved areas included in the Commons and of plants, trees and shrubs in such open space or unimproved areas; maintenance of lighting provided for parking areas, roads, walks, drives, and other similar Commons. The Board of Directors shall be the sole judge as to the appropriate care, operation, management, maintenance, repair and/or replacement of the Commons (including roadways) and other areas of the Property.

(b) Unless otherwise agreed in writing, the Association shall be obligated to and shall provide for the care, operation, management, maintenance and repair of any Commons consisting of only a portion of, or defined space within, a building or other improvement owned by Declarant and shall be obligated to and shall bear and pay to Declarant its proportionate share

of Declarant's costs and expenses relating to such building or improvement as a whole, including without limitation, maintenance, taxes and assessments, insurance and depreciation. The proportionate share of the Association's costs and expenses relating to such building or improvement as a whole shall be determined by Declarant based on the actual amounts of such costs and expenses relating to such building or improvement as a whole multiplied by the ratio with a numerator which is the number of square feet of floor area of such defined space within the building or improvement and a denominator which is the number of square feet of floor area of the entire building or improvement.

3.2 Public Health and Safety Function: The Association may provide public health and safety services within the Ranch, including but not limited to, providing health care services and facilities, security personnel, security systems, fire protection facilities, and a fire water system which may include periodic fire prevention inspections and equipment certifications.

3.3 Parking Function: The Association may construct, purchase, lease, care for, operate, manage, maintain, repair or replace parking areas to accommodate Owners, Guests, and members of the general public, including but not limited to, lighting, signs, landscaping and other similar facilities appurtenant to such parking areas. To the extent practicable, the Association shall maintain such parking areas so as to meet any requirements imposed on the Association or on Declarant with respect to the Ranch by any federal, state or local governmental agency.

3.4 Vehicular Access Limitation Function: The Association may provide control over vehicular access to the Ranch which it deems necessary or desirable for the health, safety or welfare of persons residing, visiting or doing business within the Ranch. Such function may include, without limitation, constructing, operating and maintaining access road control gates (at such location(s) as the Association may from time to time determine to be appropriate), restricting non-commercial vehicular traffic within the Ranch except for Owners or Guests, and restricting commercial vehicular traffic within the Ranch. Owners and Lessees may be required to keep the Association informed of all persons who have overnight accommodations at such Owner's or Lessee's property in order to enforce the Rules and Regulations appropriately.

3.5 Recreation Function: The Association may provide for the construction, care, operation, management, maintenance, repair and replacement within the Ranch or on the Lake of courtesy boat docks, grill areas, fire pits, sand beaches and other recreational amenities.

3.6 Animal Control Function: The Association may provide for regulations (and may provide for personnel and funds) to enforce animal control or exclude animals from the Ranch.

3.7 Exterior Maintenance Function:

(a) All Owners are expected to maintain their Tracts as required under this Declaration, and the Association does not intend to provide any exterior maintenance and repair of such property. If any Owner fails to maintain its Tract or related improvements or property or fails to perform any acts of maintenance or repair required under this Declaration; the Association may, but shall not be obligated to, provide exterior maintenance and repair upon

such property thereon pursuant to the provisions of Section 10.5. In addition, the Association may, without notice, make such emergency repairs and maintenance as may be necessary, in its judgment, for the safety of any person or to prevent damage to any other property. The costs of such exterior maintenance and repair shall be assessed against the Owner of such Tract and shall be a lien against and obligation of the Owner pursuant to Article V herein and shall become due and payable in all respects as set forth in Article V herein. For the purpose of performing the exterior maintenance authorized by this Section 3.7, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Owner, to enter upon such site during reasonable hours on any day. The Association or its designee is hereby granted an irrevocable license over all property in the Ranch to inspect in a reasonable manner property within the Ranch in order to determine whether any maintenance or repair is necessary under this Section 3.7.

(b) Neither Declarant, the Association, nor any of their respective directors, members, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any Tract or improvements or portion thereof or to repair or maintain the same. Declarant, the Association or any member of the general public, firm or corporation undertaking such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Tract, improvements or portion thereof.

3.8 Television Function: The Association may, but shall not be obligated to, provide for the installation, operation, maintenance, repair and replacement of satellite dishes, cable television, and related conduits, lines, equipment, and facilities.

3.9 Other Functions: The Association may undertake and perform other functions as it deems reasonable or necessary to carry out the provisions of this Declaration, including without limitation, construction, care, operation, management, maintenance, repair and replacement of one or more mailbox facilities.

3.10 Insurance: The Association shall obtain in its name and keep in full force and effect at all times all insurance that the Board of Directors deems necessary with respect to the Commons or otherwise. Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions herein. The insurance proceeds for any such loss shall be paid in accordance with the terms and conditions herein. Each Owner shall be responsible for insuring its Tract and the Association shall have no responsibility therefor.

3.11 Indemnification: The Association shall be obligated to and shall indemnify Declarant and hold it harmless from all liability, loss, cost, damage and expense, including without limitation attorneys' fees and disbursements, arising with respect to any operations of the Association or with respect to any Commons or Functions.

3.12 Right to Make Rules and Regulations: The Association shall be authorized to and shall have the power to adopt, amend and enforce Rules and Regulations applicable within the Ranch with respect to any Commons or Function, and to implement the provisions of the

Association Documents, including but not limited to, Rules and Regulations to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicle traffic; to regulate animals; to protect wildlife; to regulate signs; to regulate weed and pest control on undeveloped property within the Ranch; to regulate use of any and all Commons to assure fullest enjoyment of use; to promote the general health, safety and welfare of persons residing, visiting and doing business within the Ranch; and to protect and preserve property and property rights. All Rules and Regulations shall comply with the Association Documents, and any supplemental declarations of land use restrictions for the Ranch. The Rules and Regulations shall be uniformly applied, except such rules may differentiate between the categories of Tracts, Owners, Lessees, and Guests. The Association may provide for enforcement of any such Rules and Regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from the Commons or from enjoyment of any Functions, or otherwise. Each Owner, Lessee, and Guest shall be obligated to and shall comply with and abide by such Rules and Regulations and pay such fines or penalties upon failure to comply with or abide by such Rules and Regulations and such unpaid fines and penalties shall be enforceable in accordance with Article V.

3.13 Taxes: The Association shall pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority which shall be imposed, assessed or levied upon, or arise in connection with any Commons or Functions.

3.14 Governmental Successor: Any of the Commons and any Function may be turned over to a governmental entity which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate upon the consent of the Members as provided in the Bylaws.

3.15 Records: The Association shall keep financial records sufficiently detailed to enable the Association to perform all functions set forth herein which the Association has undertaken to perform, including preparation of statements for assessments. After reasonable prior notice to the Association, all financial records shall be made reasonably available for examination by any Owner or such Owner's authorized agents during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials. The financial records may be maintained at Declarant's home offices during the Declarant Control Period and at such location as is designated by the Association thereafter.

3.16 Implied Rights of the Association: The Association shall have and may exercise (but shall have no obligation to do so) any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

- (i) adopt and amend the Bylaws and Rules and Regulations of the Association;



(ii) adopt and amend budgets for revenues, expenditures and reserves and collect assessments, including without limitation assessments for Common Expenses, from Owners;

(iii) hire and terminate managing agents and other employees, agents and independent contractors;

(iv) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Ranch;

(v) make contracts and incur liabilities;

(vi) regulate the use, maintenance, repair, replacement and modification of the Commons;

(vii) cause additional improvements to be made as part of the Commons, including the construction of capital assets, in whole or in part, for the benefit of some or all of the Owners, Lessees, and Guests, including without limitation, boat courtesy docks, grill areas, streets, lake access roads and other limited access roads, trails, a pavilion, entrances, paths, walkways, one or more mailbox structures, other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; cattle guards; fences; recreational areas and facilities; water wells, parking areas; storage facilities for supplies and equipment; trash collection areas and facilities, if any; earth walls; retaining walls; lighting; and signage;

(viii) grant easements, leases, licenses and concessions through or over the Commons. Without limiting the generality of the foregoing, the Association may grant easements, rights-of-way, leases, licenses and concessions to suppliers of utilities serving the Property or property adjacent to the Property and may grant such rights to developers or owners of property adjacent to the Property for the purpose of accommodating minor encroachments onto the Commons or other purposes that do not unreasonably interfere with the use and enjoyment of the Commons;

(ix) impose and receive any payments, fees or charges for the use, rental or operation of the Commons;

(x) impose charges for late payments of assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for assessments and other actions to enforce the rights of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Association Documents;

(xi) impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;

(xii) provide for the indemnification of the Association's officers and directors and maintain directors' and officers' liability insurance;

(xiii) assign its right to future income, including without limitation, its right to receive assessments (by way of example and not limitation, the Association may assign its right to receive assessments to secure financing for improvements to the Commons or performance of Functions);

(xiv) obtain and pay for legal, accounting and other professional services;

(xv) perform any Function by, through or under contracting arrangements, licenses, or other arrangements, licenses, or other governmental or private entity as may be necessary or desirable; and

(xvi) enjoy and exercise any other power of authority which similar associations may now or hereafter enjoy or exercise in the State of Texas.

3.17 Association Documents:

(a) Each Owner shall comply with and may benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Association Documents. The obligations, burdens and benefits of Membership in the Association touch and concern the property comprising the Ranch and are, and shall be, equitable servitudes and covenants running with the land for each Tract for the benefit of all other Tracts and the Commons.

(b) In the event that there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. In the event that there is any conflict or inconsistency between the terms and conditions of Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. In the event of any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

**3.18 THE ASSOCIATION SHALL NOT BE REQUIRED TO PERFORM ANY FUNCTION WHICH IS NOT OBLIGATORY AS SET FORTH IN THIS DECLARATION ("PERMISSIVE FUNCTIONS"). THE ASSOCIATION AND DECLARANT MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER THAT ANY PERMISSIVE FUNCTION WILL BE UNDERTAKEN OR PERFORMED BY THE ASSOCIATION OR DECLARANT AT ANY TIME AND THE DETERMINATION OF WHETHER TO AND/OR WHEN TO UNDERTAKE ANY PERMISSIVE FUNCTION WILL BE DETERMINED IN THE ASSOCIATION'S SOLE DISCRETION.**

## ARTICLE IV

### WOLF CREEK RANCH ASSOCIATION - MEMBERSHIP AND VOTING

#### 4.1 Membership:

(a) There shall be one Membership in the Association attributable to ownership of each Tract. Each such Membership shall be appurtenant to the Tract. The Owner of a Tract shall automatically be the holder of the Membership appurtenant to that Tract and title to and ownership of the Membership for that Tract shall automatically pass with ownership of the Tract. Each Owner of a Tract shall automatically be entitled to the benefits and subject to the burdens relating to the Membership for its Tract as set forth in the Association Documents as from time to time in force and effect. If ownership of a Tract is held by more than one person or entity, the Membership appurtenant to that Tract shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as the Tract is held.

(b) Membership in the Association shall be limited to Owners.

#### 4.2 Voting:

(a) The Association shall have two classes of voting Membership as set forth below:

(i) Class A. Class A Members shall be all of the Owners of the Tracts other than the Declarant. A Class A Member shall be entitled to one vote for each Tract owned by such Class A Member. When more than one person holds such interest(s) in any Tract, all such persons shall be Members, and the vote for such Tract shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Tract (and such vote shall not be split), and such Members shall designate in writing to the Association the member who shall be entitled to cast the vote of such Tract and the failure to designate such Member shall preclude the vote of such Tract.

(ii) Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to four votes for each Tract owned by such Class B Member. The Class B Membership shall be converted to a Class A membership at the time of the termination of the Declarant Control Period.

(b) No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. If a Membership in any class is held by more than one person or entity and only one of the holders is present at the meeting, such holder is entitled to cast all of the votes allocated to that Membership. If, however, more than one of the holders are present, such holders may vote in any manner in which they all agree. If such holders cannot

agree about how to cast their vote on any specific issue, no vote for that issue shall be recorded for their Membership.

(c) In any election of the directors, the candidates receiving the highest number of votes shall be deemed elected. Cumulative voting shall not be allowed in the election of directors or for any other purpose.

4.3 Declarant: So long as Declarant is an Owner, Declarant will have all the rights and duties given to Members under the Association Documents, and will have all of the rights belonging to Declarant under the Association Documents (including, without limitation, the Special Declarant Rights) for the duration of those rights as set forth in the Association Documents.

## ARTICLE V

### ASSESSMENTS, COMMON EXPENSES, OTHER AMOUNTS AND LIENS

5.1 Obligations for Assessments and Other Amounts: Each Owner by acceptance of a deed to its Tract, whether or not it shall be so expressed in any such deed, assignment or other conveyance, shall be deemed to covenant and agree, to pay to the Association all assessments, charges, fines, penalties, or other amounts, including the following (a) annual assessments; (b) special assessments to be fixed and established from time to time as provided in Section 5.3; and (c) special individual assessments levied against individual Owners (i) to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the Owner or its Lessees and Guests, (ii) to reimburse the Association for costs incurred by the Association or Design Review Board resulting from any Owner's failure to comply with the terms and provisions hereof, or (iii) to pay charges and fines against the Owner for failure to comply with the terms and provisions hereof. The annual, special, and special individual assessments, together with late fees, interest, and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Tract against which each such assessment is made. Each such assessment, together with such late fees, interest, and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment becomes due. No Owner shall be exempt from liability under this Section by waiving the use or enjoyment of any of the Commons or by abandoning a Tract against which such assessments are made.

5.2 Purpose of Assessments and Other Amounts: The assessments levied and any charge, fine, penalty or other amount collected by the Association shall be used exclusively to pay expenses and other obligations that the Association may incur in performing any actions permitted or required under the Association Documents as from time to time in force and effect, including but not limited to, Common Expenses, the costs of constructing or purchasing the Commons and performing Functions, repayment of debt and debt service, providing security for third party obligations as provided in the Association Documents, payment of rentals or other charges owing, Common Access Area Leases, and allocations to reserves. The Association may invest any funds allocated to reserves in a prudent manner. Unless expressly required by an

Association Document, the Association need not refund or credit to Owners excess funds collected by the Association or any interest earned thereon.

5.3 Special Assessments: In addition to the annual assessment, the Association may levy in any year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of (i) any construction or reconstruction, maintenance, unexpected repair or replacement of a described capital improvement upon the Commons, including the necessary fixtures and personal property related thereto, or (ii) any other unexpected expense. Except as set forth in Section 5.7(c) establishing a one time assessment for a Sinking Fund, no special assessments will be levied to Owners prior to calendar year 2001.

5.4 Allocation of Assessments: Annual and special assessments shall be allocated to each owner by multiplying such assessment times a ratio, the numerator of the ratio shall be the number of Tracts owned by such Owner, and the denominator of the ratio shall be the total number of Tracts within the Ranch. Notwithstanding the preceding sentence, no annual or special assessments shall be made against the Declarant during the Declarant Control Period; however, during the Declarant Control Period, the Declarant shall pay to the Association any shortfall in the annual and special assessments by the Association which are not payable by or collected from Owners but not in excess of the amount which the Owner of the unsold Tracts which are owned by Declarant would be obligated to pay if they had been sold and were owned by an Owner other than Declarant.

5.5 Date of Commencement and Due Dates of Assessments: The annual assessments provided for herein shall commence as to all Tracts upon the date of the Original Declaration and shall be due and payable on the date and in the manner as the Board of Directors may provide; however, if no date is provided, then such annual assessments shall be due and payable on the first business day of each January. For Tracts sold to an Owner by the Declarant, the assessment for a pro rata portion of the year shall be payable on the date the Tract is sold by Declarant to a buyer. The due date (or dates if it is to be paid in installments) of any special assessment under Section 5.3 shall be fixed in the resolution authorizing such assessment. Any special individual assessment shall be paid by the applicable Owner upon demand by the Association. The Association may levy a late payment fee equal to \$25.00 per month for each month that any assessment is delinquent. The Association may also charge interest on such amounts at the rate of eighteen percent (18%) per annum, or such other interest rate as may from time to time be established by the Board of Directors not to exceed eighteen percent (18%) per annum, from the date due and payable until paid and there shall be added to any delinquent assessment the cost of collection, including reasonable attorneys' fees. In addition, during the period of any delinquency, the Association may suspend an Owner's voting privileges or any other privileges to use or enjoy the Commons.

5.6 Omission of Assessments: The omission of the Board of Directors, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, and the annual assessment filed for the preceding year shall apply until a new annual assessment is made.

5.7 Maintenance Fund; Working Capital Fund; Sinking Fund:

(a) The Association may establish and maintain a maintenance fund for the periodic maintenance of the Commons into which funds collected from annual and special assessments pertaining to such maintenance shall be deposited. The Board may at any time ratably increase or decrease the amount of the annual assessments to such level as shall be reasonably necessary in the judgment of the Board to cover the estimated obligations of the Association under this Declaration, including provisions of reasonable reserves.

(b) The Association may establish a working capital fund for the initial operation of the Commons in such amount as the Board shall determine.

(c) There is hereby established a sinking fund for the purpose of funding necessary or appropriate (as determined in the sole discretion of the Association) capital expenditures related to the Commons, including common roadways, entrances, a pavilion, courtesy boat dock, barn and related amenities to be initially funded by a one time special assessment on each Tract in the amount of \$250.00, payable by the initial purchaser of a Tract from the Declarant at the time of closing of the purchase of such Tract. Declarant shall deposit into such fund, at the time of such purchase, the sum of \$500.00. To the extent additional capital funds are required, the Association may make additional annual and special assessments from time to time as otherwise provided in Article V.

5.8 Collection and Enforcement: The Association shall have a lien on each Tract (including any and all improvements), securing payment of any annual, special or special individual assessment (including penalties), together with late payment fees and interest thereon as provided herein and reasonable attorneys' fees and costs incurred in the collection of same and the enforcement of said lien, whether or not suit is filed. The Association shall take such action as it deems necessary to collect assessments and may settle and compromise the same if it is in the best interest of the Association. Such liens shall be effective as and in the manner provided for herein and shall have the priorities established in the covenants, conditions and restrictions contained herein. The Association may (i) bring an action for a money judgment against any Owner for any unpaid assessment without foreclosing or waiving any lien securing same, or (ii) foreclose the lien against such Owner's Tract, or (iii) both, and late fees, interest, costs and reasonable attorneys' fees shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed and/or leasehold assignment of a Tract, hereby expressly vests in the Association or its agent the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including, but not limited to, nonjudicial foreclosure pursuant to Texas Property Code in force and effect on the date of this Declaration, or in accordance with the prescribed manner for foreclosure of deed of trust as provided by any future amendment to such Property Code or any other statute or article enacted in substitution therefor, and such Owner hereby expressly grants to the Board of Directors a power of sale in connection with said lien. James T. Porter, 16475 Dallas Parkway, Suite 400, Addison, Texas 75001-6837 is hereby appointed trustee, unless and until the Board of Directors shall designate a substitute or successor trustee, as hereinafter provided, to post the required notices as provided by law and

