

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

TUSCANY SUBDIVISION

THIS DECLARATION ("Declaration") is made this _____ day of _____, 2009, by Ball Airport Road Development, LLC, a Texas Limited Liability Company, and shall be binding on its successors and assigns, hereinafter collectively referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant, is the owner of certain property in the County of Victoria, State of Texas, which is more particularly described as follows ("Property"), to-wit:

TUSCANY SECTION 1A, a Subdivision of the City of Victoria, Texas, as shown by the map or plat thereof ("Plat") recorded in Volume 8, Pages 198 A and 198 B, Map Records of Victoria County, Texas, to which reference is here made for all pertinent purposes.

WHEREAS, Declarant desires to establish a uniform set of easements, restrictions, covenants and conditions under which the Property shall be held, developed, sold and conveyed:

NOW THEREFORE Declarant hereby declares that all of the Property described above shall be held, developed, sold and conveyed subject to the following easements, restrictions, covenants and conditions ("Restrictions") which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Property or any part thereof, its successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to TUSCANY HOMEOWNER'S ASSOCIATION, INC., a Texas Non-Profit corporation, its successors and assigns.

Section 2. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the streets which have been dedicated to the City of Victoria, Texas and with the exception of Common Areas. "Lot" may also be referred to as "building site".

"Corner Lot" shall mean and refer to a Lot that abuts on more than one street.

Each Lot, except a Corner Lot, shall be deemed to "front" upon the street which it abuts. A Corner Lot shall be deemed to front upon the street abutting its small dimension.

Section 3. "Common Area" shall mean all real property (including the improvements thereto) owned and/or maintained by the Association for the common use and enjoyment of the Owners. The Common Area to be unencumbered and owned by the Association upon conveyance from the Declarant is described as follows:

Lot 10, Block One (1), TUSCANY SECTION 1A, a Subdivision of the City of Victoria, Texas, as shown by the map or plat thereof ("Plat") recorded in Volume 8, Pages 198 A and 198 B, Map Records of Victoria County, Texas.

Additional Common Area may be created in future phases to be annexed as described herein. "Common Area" shall also mean and include common recreational infrastructure - i.e. a hike and bike trail, benches, lights, and trees, along drainage facilities in lands dedicated to the City of Victoria that are adjacent to any of the Lots and may also be included in adjacent Drainage and Public Access Right of Way, having been constructed under permission granted in a License Agreement between the City of Victoria, Texas and a representative of the subdivision that is deemed appropriate by the City of Victoria.

Section 4. "Declarant" shall mean and refer to Ball Airport Road Development, LLC, a Texas Limited Liability Company, its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign, and shall also include the owner of any of the annexed property, successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligation of the Declarant with respect to the Lots acquired by such successor or assign.

Section 5. "Home" shall refer to the improvements constructed upon any Lot (including the garage, if any), subject to this Declaration, for use as a single family dwelling, as that term is defined by local ordinance.

Section 6. "Member" shall mean a member of THE TUSCANY HOMEOWNER'S ASSOCIATION, INC., a Texas Non-Profit Corporation.

Section 7. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Property" shall mean and refer to that certain real property hereinbefore described, and such additions hereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of access and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (A) The right and obligation of the Association to maintain the grounds and any and all signage naming the subdivision as may be placed on the Common Area by the Declarant; and
- (B) The right of the Association to suspend the voting rights and right to use of the recreational facilities, if any, by an Owner for 1) any period during which any assessment against his Lot remains unpaid, and 2) a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and
- (C) The right of the Association to dedicate or transfer all or any part of the Common Area to

any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 75% of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of access and enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. **However, all voting rights for Class A members shall be suspended and not in effect until Class B membership has ceased.** When more than one (1) person holds an interest in any Lot all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. As provided in the Articles of Incorporation for the Association, if requested by the Association, multiple owners must designate in writing one owner to exercise the single vote attributable to the jointly owned Lot.

Class B. The Class B member shall be the Declarant (or lienholder as provided in Article XII herein) and shall be entitled to two (2) votes for each Lot owned. For the purpose of voting rights, Declarant shall also be entitled to votes for the annexable property described as follows: Declarant shall be deemed to own all the Lots shown as Phase 1B on the preliminary plat dated _____, prepared by Civil-Corp Engineers and shall be entitled to two (2) vote for each Lot. Further, the votes are irrespective of whether the annexable property is actually annexed or not. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When all land to which Declarant has obtained voting rights is either improved with single family residences and sold to bona fide third party purchasers; or
- (b) When Declarant files of record a written instrument terminating Class B membership; or
- (c) On _____, 20____.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each Owner of any Lot, save and except the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. However, Declarant shall be exempt from any such assessments and any Lot Declarant owns shall be assessed such amounts only upon Declarant conveying said Lot to a third party purchaser (other than a successor or assign who consents in writing to assume the duties and obligations of Declarant with respect to the Lots acquired by such successor or assign). In lieu of paying assessments, the Declarant agrees to pay for the difference between the actual cost of maintenance and the amount assessed to Lot Owners. The Owner of any Lot other than Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The covenant in this section shall not constitute a guarantee, or promise of any kind by Declarant to pay any assessment, or any other obligation of any Owner other than Declarant, and Declarant shall have no assessment obligation beyond that set forth in this Article IV. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them. The Association will bill for and collect the annual assessment from each Owner annually and shall be due as of January 1 of each year and shall be past due on January 15 of each year.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively a) to manage the Association, b) to promote the recreation, health, safety, and welfare of the residents in the Property, c) for the improvement and maintenance of the Common Area (including common facilities located on adjoining property owned by the City of Victoria) and d) for the improvement and maintenance of any and all medians in Ball Airport Road that are adjacent to any road or Lot of the Property. The assessments shall be placed in an account ("Common Fund") for such purposes.

Section 3. Maximum Annual Assessment. Until _____, 20____, the maximum annual assessment shall be as provided in Section 6 of this Article and such annual assessment may be increased as follows:

(A) From and after _____, 20____, until _____, 20____ the maximum annual assessment per Lot may be increased each fiscal year not more than ten

percent (10%) above the annual assessment for the previous year and such increase must be approved by action of the Board of Directors of the Association but will not require a vote of the membership.

- (B) From and after _____, 20____, the maximum annual assessment per Lot may be increased not more than ten percent (10%) above the annual assessment for the previous year by action of the Board of Directors of the Association, and may be increased above ten percent (10%) above the annual assessment for the previous year, provided such increase above 10% of the annual assessment for the previous year must be approved by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a special meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a special meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots. The initial annual assessment for each Lot shall be \$ _____ .00 and payable annually.

Section 7. Date of Commencement of Annual Assessments and Due Dates. Except as specifically provided in Section 1 of this Article concerning Declarant, the annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of subsequent annual assessments against each Lot at least thirty (30) days in advance of each annual assessment period (except that the assessments for the first such period need not be fixed within such time period). Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be January 1 of each calendar year

unless otherwise established by the Board of Directors. Unless otherwise provided, the Association or its agent shall collect each year from the Owner of each Lot, the annual assessment for each Lot, payable in advance. Unless and until the Board of Directors establishes otherwise, the due date for any and all monthly assessment payments shall be the first day of the month, payable in advance. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer, or the managing agent, if any, of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments and Remedies of the Association. **THE ASSOCIATION SHALL BE BOUND BY AND SHALL FOLLOW ALL LAWS CONCERNING ENFORCEMENT OF REMEDIES FOR NONPAYMENT OF ASSESSMENTS INCLUDING THOSE CONTAINED IN TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT OF THE TEXAS PROPERTY CODE.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, then it shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or abandonment of his Lot, or by renunciation of membership in the Association.

Each such Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by an action brought in the name of the Association in a like manner as a deed of trust mortgage foreclosure on real property and such Owner hereby expressly grants to the Association a non-judicial power of sale in connection with the foreclosure of said lien.

One method of enforcement and foreclosure of such assessment liens, although not to the exclusion of other means of enforcement, shall be by the Association appointing, in writing, a Trustee, and upon requesting the Trustee to foreclose the lien, the Trustee shall do the following:

- (1) Advertise the time, place, and terms of sale and mail notices as required by Section 51.002, Texas Property Code, as then amended, and otherwise comply with that statute and appropriate state law for deed of trust non-judicial sale foreclosures;
- (2) Sell all or part of the property to the purchaser with a general warranty binding the defaulting Owner; and
- (3) From the proceeds of the sale, pay, in this order:

- (a) Expenses of foreclosure, including a reasonable commission to Trustee;
- (b) To the Association, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
- (c) Any amounts required by law to be paid before payment to the defaulting Owner; and
- (d) To the defaulting Owner, any balance.

The Association, acting on behalf of the Owners shall have the power to bid for the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding nonpayment of such defaulting Owner's portion of the premium for fire and other hazard insurance.

If any of the property is sold under this lien, the defaulting Owner shall immediately surrender possession to the purchaser. If the defaulting Owner fails to do so, the defaulting Owner shall become a tenant at will of the purchaser, subject to an action for forcible detainer. Recitals in any trustee's deed conveying the property will be presumed to be true. Notwithstanding anything contained herein to the contrary, an Owner may give to the Association, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate and inferior to any mortgage, vendor's lien, deed of trust or other security instrument which secures any loan made by any lender to an Owner or Declarant for any part of the purchase price of any Lot and the improvements thereon, if improved, when the same is purchased, or for any part of the cost of constructing, repairing, adding to, or remodeling the residence and appurtenances situated on any Lot to be utilized for residential purposes, and which purchase money mortgage (including renewals and extension), and/or construction lien for the construction of the primary residence or add-ons thereto, is filed for record prior to the date on which payment of any such charges or assessments become due and payable. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale of transfer. No sale or transfer shall relieve the Owner of the Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public municipality or authority, and the Common Area shall be exempt from the assessments created herein. However, no land or improvements devoted to single family occupancy shall be exempt from said assessments.

Section 11. Reserves and Surplus. The Association's Board of Directors may establish, from time to time, reserves for such lawful purposes as in its sole discretion it may determine necessary to be desirable for the greater financial security of the Association and the effectuation of its purpose. The

Association shall not be obligated to spend in any fiscal year all of the sums collected in such year, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the annual assessment in the succeeding year, but may carry forward same from year to year.

ARTICLE V INSURANCE

Section 1. Public Liability Insurance. The Association shall obtain broad form public liability insurance protecting the Association, the Board of Directors, Officers, Employees and/or Agents of such Association, in a combined single limit amount of not less than One Million and No/100 Dollars (\$1,000,000.00), or such other comparable insurance as the Association deems desirable. The Association shall also include coverage for individual Owners for occurrences on the Common Area. Premiums for public liability insurance shall be part of the common expense payable out of annual assessments provided herein. Each Owner shall be responsible for his own personal liability insurance for areas within the exclusive use and occupancy of such Owner.

The Association may secure such other forms of insurance coverage as the Board of Directors may from time to time direct, to be paid as a common expense.

Section 2. Limitations on Hazards. Under no circumstance shall an Owner permit or suffer anything to be done or left in his Home which will increase the insurance rate on the Common Area, other than an endorsement for Tenant Occupancy or Vacancy.

Section 3. Common Area. The Association shall also procure and maintain fire and extended coverage for any improvements located on Common Area in an amount sufficient to cover the full replacement cost thereof.

Section 4. Other Insurance. The Association shall have the authority to procure whatever other forms of types of insurance, including Fidelity Bonds, as it deems desirable.

ARTICLE VI EASEMENTS

All Lots in this subdivision are subject to certain easements over and across portions of each Lot, as shown by the map of said subdivision, such easements being deemed appropriate or necessary for the purpose of installing, using, repairing and maintaining public utilities, including water lines, sewer lines, sewer lines, electric lighting and telephone poles or cables, pipelines and drainage ditches or structures, television cable, and/or equipment necessary for the performance of any public or quasi- public utility service and function, with the right of access thereto for the purpose of further construction, maintenance and repairs. Such right of access shall include the right, without liability on the part of any or all of the owners or operators of such utilities, to remove any obstructions on said easement right-of-way as in its or their opinion may interfere with the installation or operation of its or their circuits, lines, pipes, drainage ditches, or structures. Such easements shall be for the general benefit of the subdivision and the property owners

thereof, and are reserved and created in favor of any and all utility companies entering into and upon said subdivision, except that nothing set out above shall prohibit the use of such easements or rights-of-way by abutting owners for the construction of fences, walks or drives, provided no permanent structures are built thereon, and provided no damages shall accrue to the City of Victoria or any utility company because of the removal and non-replacement of all or any portion of such improvements for the purpose of satisfactorily operating utilities in such easements or rights-of-way.

ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Architectural Control Committee. Except as to those improvements constructed by Declarant or Declarant's Authorized Builders (as hereinafter defined) no building shall be erected, placed, or altered on any Lot until the plans, specifications for all improvements, and the plot plan showing the location of all improvements, have been approved, in writing, by the Architectural Control Committee (also called the "Committee") as to conformity and harmony of external design with existing structures in the Subdivision, so that the entire Subdivision and additional annexed lots will be developed with a "Tuscan flair", and, as to location of the improvements, with respect to the topography and finished ground elevations, and, as to compliance with this Declaration. The Architectural Control Committee shall be initially composed Ben Gonzales and Ron Park. In the event of death or resignation of any member of said Committee, until a replacement is properly appointed, the Declarant shall have the authority to name another person or persons to fill the vacancy on such Committee. In the absence of action by Declarant for 30 days after a vacancy occurs, the remaining member or members of the Architectural Control Committee shall have the power to exercise such appointment. No member of the Architectural Control Committee shall be entitled to any compensation for services performed. The Architectural Control Committee shall also be authorized to approve deviations from these restrictions, when, in the opinion of the Architectural Control Committee, such deviation will not detract from the intent of this Declaration. A majority of the Architectural Control Committee may designate any one of its members to exercise any and all of the powers herein granted.

On the date of conveyance by recorded document of the last Lot owned by Declarant in the Subdivision (including the annexable Lots), or on December 31, 20____, whichever occurs first, all terms of the then serving members of the Architectural Control Committee shall terminate automatically, and their successors shall become the present President, Vice-President, if any, Secretary, and Treasurer (or Secretary/Treasurer) of the then current board of the Tuscany Homeowners Association, Inc. At the discretion of the new Architectural Control Committee, the prior committee members may remain as additional members of the acting Architectural Control Committee for no more than one (1) additional year. At all times thereafter, the current President, Vice-President, if any, Secretary and Treasurer (or Secretary/Treasurer) of the Tuscany Homeowners Association, Inc. shall comprise the then current Architectural Control Committee.

Section 2. Approval Process. Final plans and specifications must be submitted in duplicate to the Committee for approval or disapproval prior to the start of any construction. At such time as the plans and specifications meet the approval of the Committee, one complete set of such plans and specifications will be retained by the Committee and the other complete set will be marked "Approved", and returned to the Lot owner. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. In the event such plans and specifications are not submitted, or in the event construction is not in conformity with approved plans and specifications, the owner, contractor and/or builder of said Lot and/or improvements agrees and covenants to conform such construction to the requirements of this Declaration and the Architectural Control Committee.

The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted to it, and if no suit to enjoin the construction is commenced prior to the completion of such construction, then approval is presumed.

Section 3. No Liability. Neither the Committee nor any individual member or members thereof shall have any liability to any party for any reason by virtue of any action taken pursuant to these Restrictions, and all owners of all Lots within said subdivision hereby expressly waive and relinquish all claims of action against said Committee and its members.

ARTICLE VII

USE COVENANTS

Section 1. Estate. Each Lot shall be conveyed as a separately designated and legal described freehold estate subject to the terms, conditions and provisions hereof.

Section 2. Single Family Residential Construction. Except for those construction and sales activities permitted hereunder, no owner shall occupy or use his Lot or building thereon, or permit the same or any part thereof to be occupied or used for any purpose other than as a private single family residence for the owner, his family, guests and single-family tenants. No such residence shall be constructed on less than the equivalent of one full Lot, as defined on the Recorded Plat or any recorded replat thereof approved by the Declarant. Each residence located upon a Lot shall be required to have a minimum of a two-car garage. If the garage is later converted to living quarters or other use, it shall still have the external appearance of a two car garage and be maintained in a manner that looks like it is a two car garage (which means it does not look like it has been converted to a living area or other use).

Section 3. Commercial Use. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other non-residential purposes, except that Declarant, and such single family homebuilders as may be selected and approved by the Declarant (the "Authorized Builders"), in Declarant's sole discretion, may use a Lot or Lots for model home sites, display and sales offices, temporary storage of construction trailers and equipment.

Section 4. Building Sizes and Construction. The living area of the main house or residential structure constructed as a one-story or two-story residence on any Building Plot, exclusive of porches, balconies and garages, shall not be less than 1,300 square foot minimum for those homes backing up to Northside Dr and Ball Airport Rd.; 1,600 square foot minimum for those interior lots; and 2 story homes, wherever located, must have a minimum of 1,000 square foot downstairs. No residence may exceed two and one-half stories in height above grade. No residence may be less than 30' in width.

Section 5. Building Materials. The outer portion of the walls of the front of the principal residence building and the attached garage shall be composed of stucco, synthetic stucco, rock, brick or stone masonry or a combination thereof, in earthtoned neutral colors which must be approved by the Architectural Control Committee prior to installation. Under no circumstances shall concrete or hollow-tile blocks, metallic panels, hardi-plank or asbestos siding be utilized. Garage doors shall be designed to be in conformity with the Tuscan flair or design of the neighborhood. For purposes of clarification, earthtoned neutral colors are intended to be colors shaded toward browns, greys and slate or weather worn colors and does not include, blacks, reds, or oranges.

Only architectural laminated composition shingle roofs of weathered wood or weatherwood color or natural or manmade roof tiles in terra cotta color shall be used on single family dwellings in the Subdivision. No "living roof" shall be permitted.

Section 6. Facing of Residence and Garages. Except as provided herein, houses or residences on corner Lots shall face the street from which the greater Building Set-Back Line is shown on the Recorded Plat, unless alternate facing is authorized by the Architectural Control Committee. Front turn-in garages are permitted. Garages on corner Lots may open directly toward and have driveway entrances from the side street. Notwithstanding the foregoing, no driveway openings are permitted on Ball Airport or Northside Road.

Section 7. Location of Improvements Upon the Lot. No building shall be located on any Lot nearer to the front Lot line or side street Lot line than the minimum Building Set-Bank Lines shown on the Recorded Plat. If a Building Plot consists of more than one Lot then the ownership boundary lines shall be considered the exterior Lot lines as referred to herein.

Section 8. Signs, Advertisements, Billboards. Except as herein provided, no sign, advertisement, billboard or advertising structure of any kind shall be displayed to the public view on any portion of the Properties or any Lot, except one sign on each Building Plot of not more than five square feet (5 sq. ft.), for the purpose of advertising same for sale, rent, or lease. However, the Declarant, its agents and assigns, and/or Authorized Builders, may erect and maintain such signs and other advertising devices or structures as Declarant may deem necessary or proper in connection with the conduct of operations of the development, improvement, subdivision and sale of the Property.

Section 9. Prohibition of Offensive Activities. No obnoxious or offensive activity shall be

conducted on any Lot. No activity, which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quite enjoyment of any owner, or which shall in any way increase the cost of insurance to an owner, or which will degrade Property values, or distract from the aesthetic beauty of the Subdivision, shall be conducted. Any and all compost piles must be properly maintained so they do not produce odors that can be detected on neighboring Lots.

Section 10. Other Structures. Except for construction and sales purposes, no structure of a temporary character or house trailer, mobile home, basement, pre-manufactured home, modular home (except for wall panels and roof trusses), tent, shower, garage, barn or other outbuilding shall be constructed, erected, altered, placed or permitted to remain on any Lot at any time as a residence or other use, either temporarily or permanently, except that a small manufactured storage building with a peak roof height of no more than six feet shall be allowed on a Lot. If one is to be added, it must be put in the rear yard behind a fence that shields it from view from the street and the adjoining Lots.

Section 11. Animal Husbandry. Dogs, cats or usual and ordinary household pets only may be kept in any home upon a Lot, provided they are not kept, bred or maintained for a commercial purpose. Specifically, horses, pigs, pot bellied pigs, hogs, sheep, goats, cattle, peacocks, guinea, chickens and other poultry are prohibited, even if the owner regards same as pets.

Section 12. Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment;
Garage Doors. No mobile home, trailer, camper, boat or truck larger than a three-quarter (3/4) ton pickup, or similar equipment shall be parked or stored permanently or semi-permanently on any public street, right-of-way or in driveways. All permanent or semi-permanent storage on a Lot of such vehicles or items must be screened from public view. No motor vehicle or any type may be constructed, reconstructed or repaired upon any Subdivision street or a Lot in any manner that will be visible from any other Lot or the streets. Garage doors must be kept closed at all times except when entering or exiting the garage.

Section 13. Fences. No fences shall be constructed forward of the front wall of any residence, or in violation of the traffic safety sight lines regulated by the City of Victoria. Only fences constructed of wood, brick or similar materials are allowed; chain-link, barbed wire and cyclone fences of any type are prohibited. Fences facing the street, whether on the front of a residence or on corner Lots facing the side street, must be constructed with the pickets or other finished surface facing the street. Corner fences facing the side street must be located on the more restrictive of the setback line or building line for the side street so as not to obstruct visibility at the intersection. Any fence located within six (6) inches of the property line of any Lot shall be presumed to be located within a reciprocal easement hereby created between the Owners of such adjacent Lots, regardless of which Owner constructed such fence, and such fence in no way shall be construed as an encroachment upon either Lot within such area.

Section 14. Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks,

tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 15. Visual Screening on Lots. The drying of clothes in public view is prohibited. Similarly, all yard maintenance equipment, woodpiles, or storage piles shall be kept screened by a service yard or other similar facility, in order to conceal them from view of neighboring Lots or the streets. All trash containers, including those provided by the City of Victoria, shall be kept screened or located where they are not visible from the street except when they are placed at the curb of the Lot on the day designated for trash pick up.

Section 16. Lot Maintenance. All Lots shall be kept at all times in a sanitary, healthful and attractive condition, and the owner or occupants of all Lots shall keep under control and mow all weeds and grass thereon and shall in no event use any Lot for storage of material and equipment except for normal residential requirements, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish thereon.

Section 17. Attachments. No permanent flag poles, satellite dishes over eighteen inches (18"), shortwave or radio antennas of any sort shall be placed, allowed or maintained on any Lot or upon any structure situated upon any Lot. Satellite dishes may not be mounted on the front facing of the home or that portion of the roof that faces the street.

Section 18. Front Yard Grass. Prior to initial occupancy of any dwelling, the front yard shall be sodded in solid grass to the front corners and street curbline of the improvements. Prior to initial occupancy of any dwelling, landscaping improvements shall be installed at a minimum of five shrubs and one 4' live oak tree.

Section 19. ACC Approval. The Architectural Control Committee must approve the initial construction exterior colors and materials of any portion of the improvements.

Section 20. Solar Panels, Windmills, Environmental Improvements. No solar panels, windmills or power generating devices designed to generate electrical or alternate power shall be erected on any Lot in a location that makes them visible from the street. No compost bins or piles shall be placed in a location that makes them visible from the street.

Section 21. Modification of Improvements. No modification of any kind to the exterior of the Home, either to the structure or the appearance thereof, including, but not limited to, the walls, roof, windows and doors, the color of exterior walls, roof, windows, doors, trim, awnings, mechanical devices, flags, or storage structures (other than those addressed in Section 10) shall be made without first obtaining the express written consent of the Association's Board of Directors, upon due written application made. The Board of Directors shall adopt such rules and regulations to enforce this Section as it, from time to time, deem necessary. Nothing contained herein shall be interpreted to circumvent the obligation of a Lot owner from obtaining approval by the Architectural Control Committee for any and all initial construction or erection of improvements to the Lot.

Section 22. Other Rules. The Board of Directors may, from time to time, adopt additional rules and regulations governing the use of the Common Area and the conduct of all residents and guests on the Property. No action shall be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner in favor of the other Owners.

Section 23. Specific Restrictions. This Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws (if any), or the laws, rules or regulations of any governmental authority, or by specific restrictions of record. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations, restrictions of record, or this Declaration shall be taken to govern and control.

ARTICLE X

ANNEXATION

Additional Lots and Common Area may be annexed to the Property with the consent of two-thirds (2/3rds) of each class of members, unless otherwise provided herein.

The Declarant may annex Lots and Common Area without the consent of members within eight (8) years from the date of this instrument or prior to when Class B membership ceases, whichever occurs last. Declarant intends to annex additional Phases as shown on the preliminary plat described above, however, Declarant is in no way bound to annex this additional property and/or Declarant may annex the property with different Lot sizes or configurations.

In the event of an annexation by Declarant, it is agreed that 1) all infrastructure improvements to the annexed property will be substantially completed prior to annexation; 2) all Owners shall be assessed based on the same methodology used to obtain assessment rates in this Declaration and each Lot shall have one association vote; and 3) the annexation shall be evidenced by recordation in the Victoria County Clerk's Office of an "Annexation Certificate" executed by the Declarant and duly acknowledged and notarized.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Damages shall not be deemed adequate relief for any breach or violation of any provisions hereof. Any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as any other available relief either at law or in equity. Any party to a proceeding who succeeds in enforcing any provision herein or enjoining the violation of any provision herein against an Owner shall be awarded a reasonable attorney's fee and court costs against such Owner.

Section 2. Right to Abate. Violation or breach of any provision herein contained shall give

Declarant, or the Association, their respective legal representatives, heirs, successors and assigns, in addition to all other remedies, the right to enter upon the land upon or as to which such violation or breach exists and summarily to abate and remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and the said parties shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal. Nothing herein contained shall be deemed to affect or limit the rights of the Owners of the Lot within the Property to enforce this Declaration by appropriate judicial proceeding.

Section 3. No Waiver. The failure of Declarant, the Association or the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns, to enforce any provision herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violations or breach or as to such a violation or breach occurring prior or subsequent thereto.

Section 4. Severability. The determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

Section 5. Authorization of Board. The Association shall be entitled to contract with any corporation, firm, person or other entity for the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance of the Association hereunder.

The Association's Board of Directors where specifically authorized herein to act, shall have the right to construe and interpret the provisions of this Declaration, and in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions hereof. Any conflict between any construction or interpretation of the Association's Board of Directors or any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association's Board of Directors.

The Association's Board of Directors, to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association's Board of Directors shall take into consideration the best interests of the Owners and of the Property to the end that the Property shall be preserved and maintained as a high quality community developed and maintained in accordance with the Tuscan flair and appearance described in this Declaration.

In granting any permit, authorization, or approval, as herein provided, the Association's Board of Directors may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

The Association shall indemnify and hold harmless its Board of Directors, Officers, Employees and/or Agents from any and all liability in connection with such capacities, so long as the causes of liability were not caused by fraud or gross negligence on the part of the party or parties being indemnified.

Section 6. Observance Hereof. Each grantee accepting a deed, lease or other instrument conveying any interest in any Lot, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by this Declaration and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto.

Section 7. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, until and unless amended or terminated upon a vote of not less than 75% of all votes entitled to be cast, which shall be evidenced by an instrument signed by the voting parties and recorded in the Official Records of Victoria County, Texas.

Section 8. Regulatory Requirements. Declarant hereby reserves the right, without the necessity of joining any Owner or Mortgagee, to further amend this Declaration to meet any requirement of the Federal Housing Administration, Veteran's Administration, Federal Home Loan Mortgage Corporation, or Federal National Mortgage Association, or any successors of the same, so long as Declarant is the Owner of any Class B Membership as set forth herein. Each Owner, by accepting conveyance of any Lot subject to this Declaration does hereby grant to Declarant a specific irrevocable power of attorney, which power is coupled with an interest, to execute and file for record any such amendments to this Declaration as may hereafter be necessary to meet the requirements of the said Federal Housing Administration, Veteran's Administration, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association, or any successors of the same.

ARTICLE XII

LIENHOLDER

The owners and holders of the only liens covering the Property, if any, have executed this Declaration to evidence their joinder in, consent to, and ratification of the imposition of the foregoing covenants, conditions and restrictions. However, the joinder of the lienholder is not to be construed as a representation by the lienholder as to the adequacy of this Declaration or the Property in general, but instead their joinder is merely to evidence their consent to this Declaration. No violation of any of any restrictions or covenants herein shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided however, that any mortgage in actual possession, or any purchaser at any mortgagee's foreclosure sale, shall be bound by and subject to this Declaration as fully as any Owner of any portion of the Property.

ARTICLE XIII

AMENDMENT

Section 1. Prior to Termination of Class B Members. Before the termination of the Class B members, the Declarant may unilaterally amend this Declaration for any purpose by recordation of a written amendment filed in the Official Records of Victoria County, Texas.

Section 2. Material Amendments. After the termination of the Class B members, the consent of the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated (and the approval of eligible mortgage holders ((those holders of a first mortgage on a Lot which have requested the Association to notify them of any proposed action that requires the consent of a specified percentage of eligible mortgage holders)) holding Mortgages on Lots which have at least fifty-one ((51%)) of the votes of Homes subject to Mortgages held by eligible holders) shall be required to add or amend any material provisions to this Declaration or to the Bylaws including those provisions which provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordinations of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Area;
- (d) Insurance or fidelity bonds;
- (e) Rights to use of the Common Area;
- (f) Responsibility for maintenance and repair of the Common Area;
- (g) Annexation; provided, however, that Declarant's right to annex to the Property additional Lots or Common Area shall not be modified by amendment without Declarant's written consent;
- (h) Convertibility of Homes into Common Area or Common Area into Lots;
- (i) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot;
- (j) A decision by the Association to establish self-management when professional management had been required previously by an eligible mortgage holder;
- (k) Restoration or repair of the improvements on the Common Area (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- (l) Any action to terminate the legal status of the Property, in a manner other than that specified in this Declaration, after substantial destruction or condemnation occurs;
- (m) Any provisions which are for the express benefit of First Mortgage holders, insurers, or guarantors of First Mortgages;
- (n) By act or omission, seek to abandon, partition, subdivide, encumber, or transfer the Common Area, other than the granting of easements for public utilities or other public uses.

Section 3. Time Limit for Mortgage Disapproval. Any eligible mortgage holder which receives a written request to approve additions or amendments to the Declaration or Bylaws, and which does not deliver or post to the requesting party a response within thirty (30) days after the written proposal was mailed via certified mail-return receipt requested, shall be deemed to have approved such request.

Section 4. General Amendments. Except as provided in Section 2 of this Article, and in Article

XI, Section 7, this Declaration may be amended by an instrument signed by Owners representing sixty-seven percent (67%) of the votes of the Association. Any amendment must be recorded.

Section 5. Environmental Covenants. No Owner of any interest of any Property in the Subdivision subject to this Declaration will engage in, or permit any other party to engage in, any activity on the Owner's Property which will violate, or create liability of either the Owner or the Property, under any environmental law, statute, regulation, ordinance or ruling, including, but not limited to, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901, et seq., as amended, the Texas Solid Waste Disposal Act ("TSWDA"), Chapter 361 Texas Health and Safety Code (Vernon's) as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. §9601, et seq., as amended, the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., or the Clean Air Act, 42 U.S.C. §7401, et seq. In the event the Property subject to this Declaration is used in any way which is in violation of the terms and conditions of any applicable environmental law, statute, regulation, ordinance or ruling, the Owner of the Property which engaged in, or permitted, such activity shall indemnify and hold harmless all other owners of Property in the Subdivision from any loss, drainage, or liability arising as a consequence of such improper use.

DECLARANT

Ball Airport Road Development, LLC

By: Ron Park, Managing Member

STATE OF TEXAS §
COUNTY OF NUECES §

This instrument was acknowledged before me on this _____ day of _____, 2009,
by **Ron Park, Managing Member of Ball Airport Road Development, LLC, a Texas Limited Liability Company** in said capacity and on behalf of said company.

Notary Public, State of Texas

After Recording Return To:

Janis L. Scott
Anderson, Smith, Null & Stofer, LLP
One O'Connor Plaza, 7th Floor
Victoria, TX 77901

J:\JLS\Tuscany\Restrictions revised 12-09.wpd