

**COLONIA SERENDIPITY
DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS Colonia Serendipity, LLC, a Texas Limited Liability Company, and Sharon A. Seligman, hereinafter jointly called the Declarant, are the owners of Colonia Serendipity Subdivision, a subdivision of record according to the map or plat of record in Document No. _____, Official Public Records of Travis County, Texas, together with any real property which may be added to this Declaration according to the terms hereof, all of which said property is herein sometimes referred to as the “Community” or the “Property”; and

WHEREAS, the Declarant desires to convey the Lots within the subdivision of the Property subject to certain protective covenants, conditions, restrictions, liens and charges hereinafter set forth; and

WHEREAS, Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Lots for the benefit of the present and future owners of the Property. Declarant hereby adopts and establishes the following declaration, reservations, restrictions, covenants, and easements to apply uniformly to the use, improvement, occupancy and conveyance of all the Property.

NOW, THEREFORE, it is hereby declared that all of the Property shall be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Lots and shall be binding on all parties having any right, title, or interest in or to any Lot, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.01 Articles. “Articles” shall mean the Articles of Incorporation of Colonia Serendipity Homeowners Association, Inc. which will be filed in the office of the Secretary of State of the State of Texas, and as from time to time amended.

1.02 Assessments. “Assessments” shall mean assessments of the Association and includes both regular and special assessments.

1.03 Association. “Association” shall mean and refer to Colonia Serendipity Homeowner’s Association, Inc.

1.04 Association Property. “Association Property” shall mean all real or personal property now or hereafter owned by or leased to the Association.

1.05. Beneficiary. “Beneficiary” shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust.

1.06 Board. “Board” shall mean the Board of Directors of the Association created pursuant to these restrictions with authority to review and approve plans for the construction of improvements upon the Property.

1.07 Board of Directors Rules. “Board of Directors Rules” (hereinafter sometimes called “Rules”) shall mean the rules adopted by the Board of Directors.

1.08 Bylaws. “Bylaws” shall mean the Bylaws of the Association which may be adopted by the Board and as, from time to time, amended.

1.09 Declarant. “Declarant” shall mean Colonia Serendipity, LLC, a Texas Limited Liability Co. and Sharon A. Seligman.

1.10 Declaration. “Declaration” shall mean this instrument as it may be amended from time to time.

1.11 Designated Improvements Envelope. “Designated Improvements Envelope” shall mean that area of each Lot in the subdivision which has been designated by Declarant as the envelope within which the residence, garage, all outbuildings, and all improvements (except fence and driveway) must be located. The Designated Improvements Envelopes are attached hereto as Exhibits 1 through 12.

1.12 Improvement. “Improvement” shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.13 Lot. “Lot” shall mean any unit of land which is designated on the recorded subdivision plat of Colonia Serendipity Subdivision for single-family residence only, whether or not improved.

1.14 Maintenance Fund. “Maintenance Fund” shall mean the fund created for the receipts and disbursements of the Association.

1.15 Manager. “Manager” shall mean the person, firm or corporation, if any, employed by the Association pursuant to this Declaration and delegated the dues, powers or functions of the Association.

1.16 Member. “Member” shall mean any person who is a member of the Association.

1.17 Mortgage. “Mortgage” shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.

1.18 Owner(s). “Owner(s)” shall mean the person or entity including Declarant, holding a fee simple interest in any portion of the Property, but shall not include the Beneficiary of a Mortgage.

1.19 Person. “Person” shall mean an individual or entity having the legal right to hold title to real property.

1.20 Plans and Specification. “Plans and Specification” shall mean any and all documents designed to prescribe, guide or control the construction or erection of any improvement, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction technique, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such improvement.

1.21 Record, Recorded, and Recordation. “Record, Recorded, and Recordation” shall mean with respect to any document, the recordation of such document in the office of the County Clerk of Travis County, Texas.

1.22 Open Space. “Open Space” shall mean any portion of the Property designated by Declarant or the Association as common areas thereafter to be held for recreational purposes for the benefit of all Owners; provided, however, that access to any such area or facility maybe limited to persons currently paying assessments fees and other charges, or otherwise conditioned or restricted, or made available to non-Owners. Open Space may be owned by Declarant, or the Association, an incorporated association in which all Owners shall be entitled to membership.

1.23 Restrictions. “Restrictions” shall mean this Declaration of Covenants, Conditions and Restrictions, together with any and all Supplemental Declarations, as the same may be amended from time to time, together with the

Colonia Serendipity Rules, Board Rules and the Articles and Bylaws of the Association from time to time in effect.

1.24 Subdivision. “Subdivision” shall mean that portion of the Property which has been shown on a final subdivision plat, recorded in the Plat Records of Travis County, Texas.

1.25 Supplemental Declaration. “Supplemental Declaration” shall mean any declaration of covenants, conditions, and restrictions which may be hereafter recorded by Declarant, subject to all of the terms and restrictions of this Declaration and not in conflict herewith.

1.26 Colonia Serendipity Restrictions. “Colonia Serendipity Restrictions” shall mean this Declaration together with any and all Supplemental Declarations, as the same may be amended from time to time, together with the Colonia Serendipity Rules, Board Rules and the Articles and Bylaws of the Association from time to time in effect.

1.27 Colonia Serendipity Rules. “Colonia Serendipity Rules” shall mean the rules adopted by the Board pursuant to Section 4.04 (c) hereof, as same may be amended from time to time.

ARTICLE II **USE RESTRICTIONS**

2.01. All Lots and all property in the Colonia Serendipity subdivision shall be restricted as follows:

(a) Nuisances. No nuisances shall be allowed upon any Lot nor any noise, odor, exterior lighting, use or practice permitted which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of any Lot by its residents. All parts of a Lot shall be kept in a clean and sanitary condition, and no rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot and no odors shall be permitted to arise therefrom so as to render any Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or to its occupants.

The existence of a nuisance shall be conclusively determined by a majority of the Board in its sole discretion and may include, but not be limited to, animals or children, bicycles, recreational equipment, or toys. Barking dogs harbored on any Lot and animal feces shall be conclusively deemed a nuisance. Outside storage visible from a public street or visible from any Lot shall be deemed a nuisance. Exterior loudspeakers, flashing lights, exterior radio or television antennas, or satellite dishes, shall not be allowed upon any Lot and are deemed a nuisance

(b) Signs; Mailboxes. No sign of any kind shall be displayed to the public view, except for signs which are part of Declarant's overall marketing plan for the Lots. The only sign which will be allowed upon the property shall be a brochure box, the design and location of which must be approved by the Board. All Owners must receive mail at the cluster boxes designated by USPS.

(c) Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot and no odors shall be permitted to arise there from so as to render any Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and any such container shall be kept within an enclosed structure and appropriately screened from view. Garbage containers shall not remain in the street or otherwise exposed except on scheduled pickup days.

(d) Noise. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental, in the sole judgment of the Board, to any other Lot or to its occupants. Exterior speakers are permitted only when used in a non-offensive manner to other Lots and their occupants, in the sole judgment of the Board. Security devices used exclusively for security purposes are allowed. A/C Condensers must be screened from view from the street with masonry, stone, wood, or metal screen.

(e) Construction of Improvements. No Improvements shall be constructed upon any Lot without the prior written approval of the Board.

(f) Repair of Buildings. All Improvements upon any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof. The opinion of the Board as to condition and repairs shall be final.

(g) Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement, shall be performed only with the prior written approval of the Board.

(h) Open Spaces. No land within any Open Space shall be improved, used or occupied, except in such manner as shall have been approved by Declarant or the Association, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and improvement, and may be given by recorded Supplemental Declaration. Declarant may delegate its right to grant such approvals to the Board.

(h) Drainage. There shall be no interference with established drainage patterns over any Lot, except by Declarant, unless adequate engineering plans are made for proper drainage and approved by the Board.

(i) Hazardous Activities. No activities shall be conducted on any Lot or any portion of the subdivision, and no Improvements constructed on any Lot, which are or might be unsafe or hazardous to any person or to any Lot. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon any Lot or any portion of the subdivision, no open fires shall be lighted or permitted except in a contained barbeque unit while attended and in use for cooking purposes, or within a safe and well-designed interior fireplace. Nothing shall be done or kept on the Property, which would increase the rate of insurance or cause the cancellation of insurance on any Lot or the Association Property.

(j) Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon any Lot without the prior written approval of the Board; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the proper approval of Declarant, such approval to be conditioned upon the nature, size, duration and location of such structure.

(k) Mining and Drilling. No portion of any Lot shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or the removal of water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. Drilling a water well directly related to the provision of domestic water supply to an individual residence is permitted.

(l) Unsightly Articles; Vehicles. No article deemed to be unsightly by the Board shall be permitted to remain on any Lot so as to be visible from any adjoining Lot or public or private thoroughfares. Without limiting the generality of the foregoing, lawn and garden maintenance equipment, motorcycles, motor scooters, except when in actual use, must be in an enclosed structure or screened from view and no repair or maintenance work shall be done on any Lot or on any street, or on any automobile (other than minor emergency repair) except in an enclosed garage or other structure. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clipping, metals, bulk materials or scrap or refuse of trash shall be kept, stored or allowed to accumulate on any portion of any Lot except within an enclosed structure or permanently screened from view. No boat, personal water craft, boat trailer, house trailer, camper trailer, recreational vehicle, truck with a wheel base greater than 120 inches, cab for a commercial vehicle, or commercial vehicle shall be parked on any Lot, on any street, or on any portion of the subdivision for a period of time exceeding 24 hours unless inside an enclosed garage.

(m) Animals. No kennel or other facility for raising or boarding dogs or any animals for commercial purposes shall be kept on any Lot. Ordinary

household pets are allowed, not to exceed two dogs and two cats; however, no breeding, raising, or boarding of such pets for commercial purposes is permitted on such Lots. No poultry may be kept on any Lot. All pets shall be kept on the Owner's Lot and shall not be allowed to roam loose. All pets walking within the subdivision shall be on leashes controlled by a person over the age of ten (10) years and all feces must be picked up and disposed of by the person who controls the pet. A pet deemed to be "vicious" by the Board, in the Board's sole and absolute discretion, shall be removed from the subdivision immediately.

(n) Mobile Homes, Boats, Travel Trailers and Recreational Vehicles. No mobile homes, travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from any adjoining Lot or public or private thoroughfares for more than twenty-four hours.

(o) Fences. No fence shall be constructed on any Lot without the prior written consent of the Board. The construction of boundary fences, that enclose an entire Lot, is prohibited. Only maintenance Zone 1, as defined in 3.07 (a), may be enclosed by a privacy fence. There will be no privacy fences closer than fifty (50) feet to side or rear property line, to adjacent lots or to central street. All privacy fences shall be limited to a maximum height of six (6) feet and must be constructed on stone, steel, wrought iron, stucco, adobe, approved decorative concrete block, or some combination of such designated materials. A privacy fence may not extend closer to the front boundary of the Lot than twenty-five (25) feet from that portion of the front façade of the residence which is located furthest from the front Lot boundary.

. Private areas, for purposes of play areas, animal containment and personal space must be approved by the Board. Control fences for the containment of domestic pets shall not be extended further than 20 feet away from the side or rear of the residence or beyond the defined limits of the privacy fence as stated herein. No control fence or containment fence shall ever extend closer to side or rear property line, or to adjacent lots, or to central street than allowed or defined for a privacy fence.

(p) Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes. All tenants must comply with these use restrictions and Board rules, Articles and Bylaws in effect and as amended from time to time.

ARTICLE III **RESIDENTIAL SPECIFICATIONS**

3.01 Residential Use.

All Lots shall be improved and used solely for residential and home office use inclusive of a garage, fencing and such other improvements as are

necessary or customarily incident to residential use. An office in the home shall allow no parking, no traffic, no customers, no signs, nor any advertising. No Improvement may be constructed on any Lot which in the opinion of the Board would unreasonably obstruct significant views from other portions of any Lot. The Board shall not be required to prevent or allow the construction of a proposed Improvement based upon the effect it will have upon the view from any particular Lot, but rather it may consider the effect the Improvement will have on the Community as a whole. Neither the Board nor the members thereof shall be liable to any Owner in monetary damages or otherwise due to the construction of any Improvement within any Lot or the creating thereby of an obstruction to the view from such Owner's Lot or Lots. The following restrictions shall also apply to all Lots within the subdivision.

(a) Height. The pitch roof will be limited to a maximum 6:12 pitch, with a 30 foot maximum height limit. If requested by the Board, a ridge-pole must be constructed on site to demonstrate the requested height, and to remain there subject to Rules of the Board. The Board will review all plans and requests on an individual basis to determine compliance with these restrictions. Additional roof lines, such as shed roofs or flat roofs, must comply with height restrictions.

(b) Dwelling size. All single family dwellings shall contain a minimum of 1,500 square feet of enclosed heated and air conditioned living space, exclusive of open and covered porches and decks and garages or carports.

(c) Set-back Requirements. Setbacks and height restrictions are based upon creating a harmonious development that does not restrict views and privacy of other houses. Set-back standards are as follows:

House and Garage. Must be set back fifty (50) feet from all Lot boundaries except where the Designated Improvements Envelope provides otherwise.

Entry Wall. The Entry Wall must be constructed within five (5) feet of the front Lot line.

(d) Entry Wall. An entry wall, as approved by the Board, is required. The entry wall must be constructed from quarried stone and may be in combination with steel, welded wire panels six gauge or heavier, or wrought iron. The Board will publish guidelines and acceptable examples in the procedural and substantive rules which it adopts pursuant to Section 5.02 hereof.

3.02 Site Planning. Site planning must comply with the Designated Improvements Envelopes attached hereto as Exhibits 1 through 12. The residence, garage, all outbuildings, and all improvements (except fence and driveway) must be located within the Designated Improvements Envelope of each Lot.

3.03 Building Envelopes. Building envelopes must be approved by the Board on a lot by lot basis and must be in compliance with the residential specifications contained in this declaration.

3.04 Driveways. Must be either surface treated concrete, asphalt, open pavers, or other environmentally appropriate materials approved by the Board.

3.05 Garage doors. must not be visible from the central street, Serendipity Place. Storage must be included in garage plan, to avoid out buildings. Garages may be detached, and must be of the same materials as the house.

3.06 Utilities. Must be underground. If cable is not available, antennae and dishes shall not be visible from the central street, Serendipity Place. At such time as cable is available, no antennae and dishes shall be permitted, and those in place must be removed. Meter locations must be located in a discrete location, or screened from view from the street.

3.07 Landscape Design. A green, sustainable form of landscape design will be required throughout the development. Based on those goals, the following requirements have been established.

(a) Maintenance zones.

(1) Restriction on landscaping. Maintenance zones are restricted to the following type of landscaping: Zone 1: Only Zone 1 may be planted in turf. Turf must be drought resistant turf which must be buffalo grass or other drought resistant species native to central Texas. Zone 2: Required to be planted in Ground Cover that is xeriscaping and not Turf. At the election of the Lot owner, Zone 2 may be left unmaintained. Zone 3: Native plants and grasses; Zone 3 is required to be left unmaintained. The native plants and grasses provide animal habitat and eliminate extensive maintenance.

(2) Areas and definition. Each Lot owner shall designate the location of Zone 1 which shall not exceed two thousand (2000) square feet. If a water harvesting system is provided for Zone 1, Zone 1 may consist of a maximum of four thousand (4000) square feet.

Each Lot owner shall designate the location of Zone 2 which shall not exceed seven thousand (7000) square feet.

Zone 3 shall be defined as the remainder of the Lot which is not included in either Zone 1 or Zone 2.

(b) Lighting. Lighting is restricted to Moonlighting, to create an overall ambience without harsh lighting. In the immediate areas of the houses, low

voltage path lighting and certain feature lighting is acceptable. The overall illumination of the property must be subtly illuminated.

(c) Water harvesting. Water collection systems are encouraged. Xeriscaping and the use of drought tolerant plants and grasses are required, to assist with water conservation.

(d) Trees must be preserved, wherever possible. No tree with a trunk diameter greater than 6” in diameter shall be removed without the written approval of the Board.

3.08 Architectural Design.

The Board shall use, but not be limited to, the following criteria and guidelines for approving plans and specifications: Design must be unique, site-specific, and compatible with a Texas Hill Country environment. Residence designs shall be linear, and designed to fit into the landscape rather than rise above it. Single family dwellings shall be constructed of stone, glass, steel, stucco, Hardieplank shiplap or lap and groove exterior, or other environmentally responsible materials and shall contain not less than 1500 square feet of enclosed living space. Carports are prohibited. Roofs must be metal, with Galvalume or equivalent gutters. The Board’s expectation is one of diversity and continuity. Color palette must be subtle. Builders, architects and homeowners must make decisions that are sensitive to the overall goals of the project: sustainable development, nature preserves, and a sense of community. The Board will review preliminary design and final designs to determine compliance with this Declaration and the guidelines herein. A homeowner’s association will be established to insure compliance with standards set forth in these guidelines and this Declaration.

3.09 Entry Court. Each residence plan shall create an “Entry Court” at or near Serendipity Place as a link to the residence. Each Entry Court shall provide parking niches for at least two automobiles and must feature a metal gate, address marker, and lighting consistent with the subdivision. The Entry Court must consist of rough block limestone and a metal material consistent with the fencing design constructed on the Lot.

3.10 Subdividing. No Lot shall be further divided or subdivided. No easement, water rights, or mineral interests may be conveyed by the Owner thereof except as included within the conveyance of the whole Lot.

ARTICLE IV **COLONIA SERENDIPITY HOMEOWNERS ASSOCIATION**

4.01 Organization. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the

Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.02 Membership. Any Person or entity upon becoming an Owner of a Lot shall automatically become a member of the Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to the property interest.

Members shall have the use of common areas, including parking niches along Serendipity Place. Common areas include gardens, park or recreation area, walking trails, or any other space or building that is designated by the Board for community use of Lot 5.

4.03 Voting Rights.

The Owner of each Lot or the legally authorized representative and proxy shall be entitled to one vote at all meetings of the Association, maximum voting strength being fourteen (14) except as to Declarant as set out herein. So long as Declarant owns any Lot in the subdivision, Declarant shall be entitled to vote seven (7) votes per Lot until Declarant has sold all Lots in the subdivision, except Lot 3. At such time as Declarant owns only Lot 3, the owner of each Lot, including Declarant, shall be entitled to one vote at all meetings of the Association. The purpose of the foregoing is to give control of the subdivision to Declarant during the Construction and Marketing Phase for an orderly construction and initial operation of the subdivision. In the event a Lot shall be jointly owned by more than person, then the one vote allocated to such Lot shall be exercised by the joint owners, acting jointly. The Declarant, through any officer or representative, may exercise the voting rights with respect to unsold Lots while owned by the Declarant. An Owner=s voting rights in the Association may by written notice be suspended by the Association during any period of noncompliance with the Declaration, Bylaws, Rules and Regulations.

4.04 Duties of the Association. Subject to and in accordance with these restrictions, the Association, acting through the Board shall have and perform each of the following duties:

a. Association Property

(1) Ownership. To accept, own, and operate and maintain all Open Spaces and common areas which may be conveyed or leased to it, together with all improvements of whatever kind and for whatever purpose which may be located in said areas including mailboxes designated by USPS; and to accept, own, operate and maintain all other real or personal property conveyed to, leased to, or purchased by the Association.

(2) Repair and Maintenance. To maintain in good repair and condition all lands, improvements, and other Association Property owned by or leased to the Association.

(3) Taxes To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any other property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and amount of such taxes and assessments.

(4) Management and Control. Each Owner and family members residing with an Owner and each lessee residing on an improved Lot shall be entitled to use the Association property subject to Colonia Serendipity Rules promulgated by the Board from time to time. The Association may charge reasonable assessments, dues and use fees and may suspend the rights to the use of Association property by any Owner, such Owner's family, guests and invitees because of delinquency in payment of assessments or noncompliance with Colonia Serendipity Rules.

(5) Damages. Each Owner shall be liable to the Association for any damage to property of the Association sustained by reason of acts or negligence of such Owner, his family members, guests, invitees, or lessees. Should insurance proceeds be insufficient to pay all of the costs of repairing and rebuilding the damage, the Association may levy a special assessment to complete the repair and rebuilding.

b. Insurance. To obtain and maintain in effect the policies of insurance adequate, in the opinion of the Board, in kind and amount to carry out the Association functions.

c. Colonia Serendipity Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and reenact, such Colonia Serendipity Rules and Association Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions, including the use and occupancy of Association property. Without limiting the generality of the foregoing, such rules may set dues and fees and prescribe the regulations governing the operation of Association Property.

d. Enforcement. To enforce, on its own behalf and on behalf of all Owners, this Declaration; and to perform all other acts, whether or not anywhere expressly authorized herein, as may be reasonably necessary to enforce any of the provisions of Colonia Serendipity Restrictions. The Board shall be authorized to institute litigation, settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the provisions of the Declaration and/or any rules, restrictions or regulations promulgated by the Board; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against the Declarant, its successors or assigns.

e. Financing. To execute Mortgages, both construction and permanent, for construction of facilities, including improvements on property owned by or leased to the Association, and to accept lands in Open Spaces whether or not improved, from Declarant subject to such Mortgages or by assuming such Mortgages. The debt secured by such Mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of the Members, or otherwise, or any combination thereof, as may be deemed appropriate by Declarant or the Association, as the case may be, but subject to the limitations imposed by this Declaration.

f. Records. To keep books and records of the Association's affairs.

g. Other. To carry out and enforce all duties of the Association set forth in the Colonia Serendipity Restrictions.

4.05 Powers and Authority of the Association.

The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the preceding sentences, the Association shall have the power and authority at all times as follows:

a. Assessments. To levy assessments as provided in Article VI below.

b. Enforcement of Restrictions. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions.

c. Conveyance. The Association shall have the power to lease or convey its property, both real property and personal property.

4.06 Indemnity of Officers and Directors. By acceptance of a deed or lease, owners and tenants, as well as persons on the property at their invitation or with their permission, **are deemed to have released the Association and its officers and directors from liability to the extent authorized by law.** The Association shall Indemnify Directors and Officers from all claims, demands, actions and proceedings and any expenses in connection with the performance of the duties of such office.

ARTICLE V
ARCHITECTURAL REVIEW

5.01 Review of Proposed Construction. The approval by a majority of the Board is required for any proposed construction of any type within the Colonia Serendipity Subdivision. The Board shall have the right and duty to review all Plans and Specifications, as well as any other facts which, in the judgment of the Board, are relevant to the approval of any improvement within the subdivision.

Prior to commencement of any construction of any Improvement on any Lot within the subdivision by anyone other than Declarant, the Plans and Specifications for such Improvement shall be submitted to the Board and construction thereof may not commence unless and until the Board has approved such Plans and Specifications in writing. The Board shall review and act upon all Plans and Specifications submitted for its approval, including without limitation any permits, percolation tests, septic drain field, environmental impact statements and such other information as it deems proper, and any information as it may require relating to the question whether any proposed Improvement would unreasonably obstruct the view from any Lot or portion of Property within the subdivision. Until receipt by the Board of any information or document deemed necessary by the Board, it may postpone review of any Plans and Specifications submitted for approval. The Board has the authority to inspect construction in progress to assure that it conforms with Plans and Specifications approved by the Board. No Improvement shall be allowed which in the opinion of the Board would unreasonably obstruct the view from any other Lot or portion of the Property, or which might adversely affect another Lot.

5.02 Action by Board. Approval of Plans and Specifications submitted to the Board shall be decided by a majority vote of the Board members. The Board may take into consideration the aesthetic aspects of architectural design, placement of buildings, landscaping, color schemes, exterior finishes, materials, and similar features. The Board may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the review of proposed Plans and Specifications, appeals thereof, site planning, landscape design, architectural design, design review process, construction procedures, construction regulations, variances and appeals thereof. All procedural and substantive rules adopted by the Board shall be published and distributed to all Lot owners within the subdivision. The Board may require review of any Plans and Specifications by licensed professionals, in the discretion of the Board, whose fees must be paid by the Applicant.

5.03 Construction Procedures and Construction Regulations. All agents, representatives, builders, contractors, subcontractors, and all persons working

within the subdivision must comply with the construction procedures and construction regulations. Any Owner who hires agents, representatives, builders, contractors, subcontractors, or other persons working within the subdivision, acknowledges that the construction procedures and construction regulations adopted by the Board are reasonable and necessary for the protection of the legitimate interests of Declarant, the Association, and other Lot owners and acknowledges that monetary damages are not an adequate remedy for the breach, violation or threatened violation of the construction procedures and construction regulations adopted by the Board and agrees that Declarant, the Association and the Board shall, in addition to their rights or remedies for any breach, violation or threatened violation, be entitled to injunctive relief.

5.04 No Waiver of Future Approvals. The approval or consent of the Board to any Plans or Specifications shall not be deemed a waiver of the right to withhold approval or consent to any other Plans and Specifications subsequently or additionally submitted for approval by the same or a different Lot owner. This provision shall be interpreted to mean that approval of Plans and Specifications, or approval by inspection of construction materials or work done, so long as the Board acts in good faith, shall not constitute a binding precedent upon the Board requiring approval of such matter in the future.

5.05 Nonliability of Board Members. The approval of any Plans or Specifications shall not be deemed approval of structural safety, engineering soundness, or conformance with building or other codes. Neither the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage, or injury arising out of the good faith performance of the Board's respective duties under this Declaration.

5.06 Variances. Any Lot Owner may submit an application to the Board for a variance from any provision of this Declaration or any Supplemental Declaration, or from any provision of the Board's procedural and substantial rules for review, or from any provision of the Board's construction procedures and construction regulations. The application must be in writing and must state (a) how the existing provision does not allow for a reasonable use of Applicant's property, (b) how the hardship for which the variance is requested is unique to Applicant's property, (c) why the variance will not alter the character or impair the use of adjacent property, and (d) why the variance will not impair the purpose of the existing Declaration provision, rule or regulation. The Board must distribute the variance application to all Lot owners within the subdivision and must provide a procedure to hear all opposition or support of such proposed variance from other Lot owners, either by public hearing or by written notice to the Board, or both. A variance may be granted only by 100% vote of the Board.

5.07 Appeals and Administrative Remedies. Any Lot Owner aggrieved by a Board decision regarding approval of Plans and Specifications, or by the grant or denial of a variance, may appeal such action by giving the Board written notice of

appeal within thirty (30) days of such final decision. The Board shall appoint an Appeals Panel to hear such appeal within thirty (30) days following receipt of written notice of appeal and required appeal bond. The Appeals Panel shall consist of three (3) persons, who are not Lot Owners in the subdivision, and each of whom must have one or more of the following qualifications: licensed architect, engineer, landscape architect, attorney, residential real estate appraiser; a college degree or the equivalent in city planning; a current or retired staff member of LCRA, Travis County, or a municipality; a professional in business in the specific area of dispute. The cost of hiring the Appeals Panel members shall be paid by the appellant, who shall be required to deposit an appeals bond in an amount to be fixed by the Board. The Appeals Panel shall convene on the site of the Lot in question within thirty (30) days of being appointed. The Appeals Panel shall render its decision in writing no later than thirty (30) days following the date it hears the appeal.

5.08 Declarant's Rights. The provisions of Article V shall not apply to Declarant, except Section 5.05 which is designed to protect any Board member from liability.

ARTICLE VI **ASSESSMENTS**

6.01 Assessments.

a, The Association may levy from time to time assessments against each Lot in the Community whether or not improved.

b. Where the obligation to pay an assessment first arises after the commencement of the year or other period for which the assessment was levied, the assessment shall be prorated as of the date when said obligation first arose, in proportion to the amount of the assessment year or other period remaining after said date.

c. Each unpaid assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the property against which the assessment fall due, and shall become a lien against each such Lot and all improvements thereon. The Association may enforce payment of such assessments in accordance with the provisions of this Article and may enforce the lien in accordance with the Texas Property Code.

6.02 Maintenance Fund. The Board shall establish a fund (the "Maintenance Fund" into which shall be deposited all monies paid to the Association from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes related to the areas and improvements owned by, under control of, or leased to the Association, or subject to these Restrictions for maintenance or operation by the Association or otherwise for purposes authorized by this Declaration, as it may from time to time be amended.

6.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under Colonia Serendipity Restrictions, including a reasonable provision for contingencies and appropriate reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied upon each Lot as herein provided. The amount of the assessments shall be equal and uniform, regardless of Lot size. The Association may at any time, and from time to time, levy further assessments in the same manner as aforesaid. All such regular assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

6.04 Special Assessments. In addition to the regular annual assessments provided for the above, the Board may levy special assessments whenever, in the Board's opinion, such special assessments are necessary to enable the Board to carry out the mandatory functions of the Association.

6.05 Special Charges. In addition to the regular and special assessments, the Board may levy such special charges as it deems appropriate for the use by individual Members of any Association facilities not available for general use by all Members. All special charges shall constitute a lien on the Lot assessed and such liens shall be enforced in the same manner and to the same extent as provided in this Article for regular and special assessments.

6.06 Late Charges. If any assessment, whether regular or special or special charge, is not paid within fifteen (15) days after it is due, the Owner may be required by the Board to pay a late charge at such rate as the Board may designate from time to time; provided however such charge shall never exceed the maximum charge permitted under applicable law.

6.07 Unpaid Assessments and Special Charges as Liens. The amount of any delinquent assessment, whether regular or special, or special charges assessed against any property and any late payment charges attributable thereto, plus interest on such assessment; special charge or late payment charge (not to exceed the maximum charge permitted under applicable law) and the costs of collecting the same, including reasonable attorneys' fees, shall be the personal obligation of the owner of the Lot against which the assessment, special charge or late payment charge fell due and shall be a lien upon such Lot and the improvements thereon. A certificate executed and acknowledged by the President of the Board stating the amount of indebtedness secured by such lien shall be conclusive upon the Association as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good

faith, and such certificate shall be furnished to any Owner upon request at a reasonable fee.

6.08 Mortgagee Protection. Notwithstanding any other provision of Colonia Serendipity Restrictions, no lien created under this Article VI or under any other article of this Declaration, nor any lien arising by reason of any breach of Colonia Serendipity Restrictions, nor the enforcement of any provision of this Declaration or of any Supplemental Declaration shall defeat or render invalid the rights of the Beneficiary under any recorded Mortgage of first and senior priority now or hereafter given upon a Lot made in faith and for value. However, after the foreclosure of any such first Mortgage or after conveyance in lieu of foreclosure, such Lot shall remain subject to Colonia Serendipity Restrictions and shall be liable for all regular and special assessments levied prior to completion of such foreclosure or delivery of such conveyance whether falling due before or after such completion or such delivery.

6.09 Effect of Amendments on Mortgages. Notwithstanding the provision of Section 7.02 below, no amendment of this Declaration shall affect the rights of any Beneficiary whose Mortgage has the first and senior priority as in Section 6.08 provided and who does not join in the execution thereof, provided that such Mortgage is recorded in the Official Public Records of Travis County, Texas, prior to the recordation of such amendment; provided however, that after foreclosure, or conveyance in lieu of foreclosure the property which was subject to such mortgage or deed of trust shall be subject to such amendment.

6.10 Subordination. By subordination agreement executed by the Board, the benefits of Sections 6.08 and 6.09 above may, in the sole and absolute discretion of the Board, be extended to a Beneficiary not otherwise entitled thereto if the Board deems such action to be appropriate.

ARTICLE VII **MISCELLANEOUS**

7.01 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2050, unless amended as herein provided. After December 31, 2050, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least ninety two percent (92%) of the Lots in the subdivision subject to this Declaration.

7.02 Amendment.

a. By Declarant. This Declaration may be amended by the Declarant so long as Declarant holds a majority of the votes of the Association. No amendment by Declarant shall be effective until there has been recorded in the Official Public Records of Travis County, Texas, an Instrument executed and

acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Board certifying that the Declarant had the requisite number of votes.

b. By Owners. In addition to the method in Section 7.02 (a) this Declaration may be amended by the recording in the Official Public Records of Travis County, an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least ninety two percent (92%) of the number of votes entitled to be cast pursuant to Section 4.03.

7.03 Utility Easements. The Declarant reserves the right to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on any areas conveyed to the Association or reserved as Open Space, sewer, and other pipe-lines, conduits, wires, and any public utility function beneath or above the surface of the ground, and the right of access to the same at any time for the purposes of repair and maintenance.

7.04 Notices. Any notice permitted or required to be given by the Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, certified mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices, or to the residence of such person if no address has been given to the Association.

7.05 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of Colonia Serendipity Subdivision and of promoting and effectuating the fundamental concepts of Colonia Serendipity Subdivision set forth in the Recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

7.06 Exemption of Declarant. Notwithstanding anything in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Board or Association. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of improvements, construction, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property.

