

**FIRST AMENDED, SUPERSEDING AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS  
FOR  
MESSINA HOF ESTATES**

THIS FIRST AMENDED, SUPERSEDING AND RESTATED DECLARATION OF PROTECTIVE COVENANTS is made this 18<sup>th</sup> day of January, 2019, by BONSCOTT-MERKA PROPERTIES, LLC. a Texas limited liability company (hereinafter referred to as "Declarant").

Declarant is the owner of the real property described as 35.62 acres, more or less, and platted as Messina Hof Estates in plat recorded in Volume 13445, Page 294, Official Records, Brazos County, Texas ("the Property"). By a document dated August 10, 2016, recorded in Volume 13538, page 62, Official Records, Brazos County, Texas ("the Original Declaration"), Declarant imposed certain covenants, conditions and restrictions upon the Property, and reserved the sole, unilateral right replace, amend and revise the Original Declaration. This document ("the Declaration") replaces and supersedes the Original Declaration in its entirety, and the Original Declaration has no further force and effect. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Property. The purpose of these covenants is to assure as far as can be, that Messina Hof Estates will be free of undesirable buildings and activities. It is intended that these regulations and restrictions on use and these bans on certain undesirable activities and events will make and keep Messina Hof Estates a desirable, safe and orderly place to live and will make properties in Messina Hof Estates more saleable in the years to come, and preserve and improve their value.

Declarant hereby declares that all of the Property and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed 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 real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successor-in-title, and assigns, and shall inure to the benefit of each owner thereof.

This Declaration does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code. Ann. §§81.001-81.210 (Vernon 1983).

**ARTICLE 1  
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<sup>st</sup> Amended Declarations/Messina Hoff/Protective Covenants*

- 1.01 **Architectural Committee.** "Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements on the Property.
- 1.02 **Architectural Committee Rules.** "Architectural Committee Rules" shall mean the Architectural Design Policy, and the procedures, rules and regulations adopted by the Architectural Committee, as the same may be amended from time to time.
- 1.03 **Articles.** "Articles" shall mean Certificate of Formation of Messina Hof Estates Property Owners Association, Inc., as that instrument may be amended from time to time, which instrument is or shall be filed in the office of the Secretary of State of the State of Texas.
- 1.04 **Assessment.** "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.
- 1.05 **Association.** "Association" shall mean Messina Hof Estates Property Owners Association, Inc., a Texas non-profit corporation, which shall have authority and responsibility for all of the communities and subdivisions of Messina Hof Estates, as hereafter defined.
- 1.06 **Board.** "Board" shall mean the Board of Directors of the Association. Board members may, but need not be, Members of the Association.
- 1.07 **Builder.** "Builder" shall mean a qualified residential construction contractor who has been approved by the Architectural Committee, who acquires a Lot and is an Owner or enters into a construction contract with Declarant or an Owner to a build a residential structure.
- 1.08 **Bylaws.** "Bylaws" shall mean the Bylaws of the Association as adopted by the Board, and from time to time amended.
- 1.09 **Common Area.** "Common Area" shall mean and refer to all property and the improvements thereon which may be conveyed by the Developer to the Association for the use and enjoyment of the Owners. No property shall be considered or deemed to be "Common Area" unless and until such property has been conveyed by the Developer to the Association pursuant to a recorded deed.
- 1.10 **Declarant.** "Declarant" shall mean BONSCOTT-MERKA PROPERTIES, LLC, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of BONSCOTT-MERKA PROPERTIES, LLC, Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without

written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

- 1.11 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.
- 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, walls, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, septic systems, gas, electric, telephone, regular or cable television, or other utilities.
- 1.13 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on a recorded plat of the Property, together with all Improvements located thereon.
- 1.14 Member. "Member" or "Members" shall mean any person(s), entity, or entities holding membership rights in the Association.
- 1.15 Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.
- 1.16 Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.
- 1.17 Owner. "Owner" or "Owners" shall mean a person or persons, entity or entities, including Declarant, holding a fee simple interest in any Lot on the Property, but shall not include a Mortgagee.
- 1.18 Person. "Person" or "Persons" shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.
- 1.19 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to 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 techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.20 Supplemental Declaration. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein or designated Voting Groups as specified in Article 9, Section 9.03, hereof. The term shall also refer to the instrument recorded by the Association pursuant to Article 2, Section 2.02, of this Declaration to subject additional property to this Declaration.

1.21 Messina Hof Estates Residential Restrictions. "Messina Hof Estates Residential Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with the Messina Hof Estates Rules, Architectural Committee Rules and the Articles and Bylaws of the Association as the same are in effect from time to time.

1.22 Messina Hof Estates Rules. "Messina Hof Estates Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

## ARTICLE 2 DEVELOPMENT OF THE PROPERTY

2.01 Development by Declarant. Declarant may divide or subdivide the Property into several areas, develop some of the Property, and, at Declarant's option, sell any portion of the Property free of the restrictions set forth in this Declaration.

2.02 Addition of Land. Declarant may, at any time and from time to time, add any other lands to the Property, and upon such addition, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall apply to the added land, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as they are with respect to the lands originally covered by this Declaration. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a notice of addition of land containing the following provisions:

- (1) A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
- (2) A statement that the provisions of this Declaration shall apply to the added land; and
- (3) A legal description of the added land.

2.03 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw areas from the Property, and upon such withdrawal, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to those lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a notice of withdrawal of land containing the following provisions:

- (1) A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
- (2) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
- (3) A legal description of the withdrawn land.

### ARTICLE 3 GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

3.01 Construction of Improvements. No Improvements shall hereafter be constructed upon any of the Property without the prior approval of the Architectural Committee.

3.02 Parking and Prohibited Vehicles.

(1) Parking. It is the intent of these covenants that, to the extent there are sufficient bays, the automotive vehicles owned by Lot Owners will be regularly and normally parked within the garage. The Brazos County Sheriff's Department, and, if applicable, the city police department of any municipality which may annex Messina Hof Estates, in whole or in part, will not enforce this provision. Rather, enforcement of this provision will be by the Association, and fines may be assessed for parking violations. No vehicle may be parked on the street for more than 72 hours.

(2) Parties or Other Functions. Any Owner hosting a party or other function at his residence shall insure that visitors park only on one side of the street (to the extent street parking is necessary) to accommodate an orderly flow of traffic.

(3) Dangerous Substances. No vehicle normally or actually used for the transportation of inflammatory, explosive or other hazardous or dangerous substances may be kept within Messina Hof Estates

either on the public street or on privately-owned property at any time.

- (4) (4) Other Vehicles. Except in an emergency, no truck of tonnage in excess of 1 ton, inoperable automotive vehicle, mobile home, utility trailer, school bus, commercial vehicle or industrial or commercial equipment shall be stored, kept, allowed to remain parked or repaired upon any public street or upon any privately owned property lying within Messina Hof Estates.
- (5) Recreational Vehicles, Boats, Campers, Trailers, and Motor Coaches. Boats, Campers, Trailers, and Motor Coaches and other recreational vehicle parking must be in a covered, enclosed parking area and must be screened from view. Parking accommodations for commercial or semi-truck vehicles will not be approved by the ARCHITECTURAL COMMITTEE.
- (6) Repair of Vehicles. No repair work of any kind may be performed on any vehicle of any kind on any Lot, street or driveway. Such repair work may only be performed within an enclosed garage with a door closed.
- (7) Sale of Vehicles. No vehicle of any type shall be offered for sale within Messina Hof Estates or allowed to remain on a Lot with a "For Sale" or similar sign on or near such vehicle.

- 3.03 Antennae and Signals. No antenna or other device for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot, whether attached to a building or structure or otherwise, without the prior written approval of the Architectural Committee. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot so as to unreasonably interfere with the reception of television or radio signals on any other Lot. Notwithstanding the provisions of this paragraph to the contrary, it shall be permissible for the Owner of any Lot to have two small satellite dishes no more than 18 inches in diameter for receipt and transmission of television, satellite internet or satellite phone signals provided it is not visible from the street in front or on the side of the lot. The Architectural Committee may grant variances to allow signal receiver devices or antennae of other types in other locations of a Lot, in its sole discretion.
- 3.04 Insurance Rates. 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 any of the Improvements located thereon without the prior written approval of the Board.

3.05 Subdividing and Consolidating Lots. No Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee. Adjacent Lots may be consolidated into a single Lot by the Owner or Owners of the adjacent Lots, subject to (i) platting approval from Brazos County (or the municipality which may later annex Messina Hof Estates or the Lots in question); (ii) approval of Declarant during the Declarant Control Period and (iii) approval of the Architectural Committee.

3.06 Signs. All signage within Messina Hof Estates shall be subject to the approval and control of, and removal by, the Architectural Committee. Subject to Architectural Committee approval, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five square feet advertising the property for sale, or signs used by a Builder or the Developer to advertise the property during the construction and sales period. Any sign, temporarily or permanently displayed within the subdivision shall be neatly constructed and neatly lettered in a professional style acceptable to the Architectural Committee. Generally speaking, signs that promote the sale of items or goods other than homes or Lots will not be permitted in Messina Hof Estates, and the Architectural Committee shall remove and discard any nonconforming sign. Any signs related to a social issue or political campaign may only be displayed within thirty (30) days prior to a scheduled public election pertaining to the candidate or social issue, and three (3) days following such date.

3.07 Rubbish and Debris. Garbage and trash shall be set out near the street for pick-up by garbage removal services. In the event garbage or trash removal services will only pick up the garbage and trash from the front of the house, the garbage and trash, and any receptacles thereof, shall not be placed at the front of the house more than twenty-four (24) hours before normal pick-up time nor shall be allowed to remain at the front of the house more than twenty-four (24) hours after actual pick-up time. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. If rubbish or debris accumulates upon any Lot in violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the Lot.

3.08 Noise. Outside of construction activity mentioned in Section 3.33, no other noise nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

3.09 Lighting. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable security or landscape lighting that has the approval of the Architectural Committee.

3.10 Nuisance and Lateral Support. No noxious or offensive activity or work shall be conducted upon any Lot so as to impair the structural soundness or integrity of any Improvement of any other Lot, or which may be or may become an annoyance or nuisance to the neighborhood.

3.11 Repair of Improvements. All Improvements upon the Property, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof.

3.12 Alteration or Removal of Improvements. Exclusive of normal maintenance, any construction or removal in connection with any Improvement which in any way alters the exterior appearance of said Improvement shall be performed only with the prior written approval of the Architectural Committee.

3.13 Solar Equipment. In the event an Owner desires to use solar panels or other solar equipment in connection with the use of any Lot, the location and installation design thereof shall be submitted to the Architectural Committee and approval of such design, including the aesthetics thereof, shall be required before construction may begin. In no event shall solar equipment be visible from the street in front or on the side of the lot.

3.14 Driveway. The Architectural Committee shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways within the Property. All driveway surfaces must have a washed gravel finish.

(1) Circular driveway designs are encouraged where possible to provide a grand approach to all homes. Driveways located within ten feet (10') or less from a property line must be screened from adjacent property owners with landscape materials.

(2) Driveways should be at least ten (10') from the side property line with the exception of lots 4, 5, 12, 13, 20 & 21, which must be setback 110' from the side property line along Merka Road, as stated in Section 4.08 below.

3.15 Occupancy. Occupancy of any residential dwelling on any Lot, shall be restricted to occupancy by (a) any number of related persons, or (b) not more than two unrelated persons and any lineal descendants who qualify as a dependent on the income tax return of such unrelated persons. Persons are related within the meaning of this definition if they are related within the second degree of consanguinity, affinity, or legal guardianship.

3.16 Impervious Surfaces. Not more than thirty percent (30%) of any lot shall be covered with an impervious material (structures, decks, patios, pools, walkways, driveways, and other permanent materials) without approval by the Architectural Committee.

3.17 Tanks and Utility Hook Ups. The Architectural Committee shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil or LPG and including swimming pool filter tanks. All tanks shall be screened so as not to be visible from any other portion of the Property. Any utility hook ups or equipment shall be screened so as not to be visible from any other portion of the Property.

3.18 Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall hereafter be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on Improvements as approved in writing by the Architectural Committee; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the Architectural Committee. The installation method, including but not limited to location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities, shall be subject to review and approval by the Architectural Committee.

3.19 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for property drainage and approved by the Architectural Committee.

3.20 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe

and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

- 3.21 **Firearms.** The discharge of firearms within the Properties is prohibited except in reasonable defense of property and persons. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.
- 3.22 **Mining and Drilling.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon 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.
- 3.23 **Machinery and Equipment.** Without the approval of the Association or Declarant, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Brazos County, Texas, in connection with the use, maintenance, or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association; provided however, such machinery or equipment may be placed, operated or maintained by any governmental or quasi-governmental agency, or by a public utility, in the performance of its legitimate functions. Any air conditioning unit installed in a Unit shall be located or screened so as not to be visible from any street within the Properties.
- 3.24 **Temporary Structures.** No tent, shack or other temporary building, improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Committee; provided however, that the Declarant may maintain or authorize temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen on the Property during any period of actual construction, which authorization, if given, shall include the nature, size, duration and location of such structure or structures.
- 3.25 **Tents, Mobile Homes.** No tents or mobile homes shall be parked or placed on any Lot at any time. Party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board.

### 3.26 Fences, Walls and Screens.

- (1) All fences, screens and walls must be approved by the Architectural Committee. Other than perimeter fencing allowed by Section 3.26(2) below, no fences shall be allowed within fifteen (15) feet of the side or rear boundary lines of any Lot ("the Buffer"), and the natural vegetation, brush, trees or shrubs on any Lot within the Buffer shall remain undisturbed, unless replaced with acceptable replacement vegetation approved in advance by the Architectural Committee, in its sole discretion. No fence, wall, or hedge shall be built or maintained forward of the front wall line of the main structure, not including decorative walls or fences which are part of the architectural design of the main structure, and which are not to be built or maintained nearer than the building setback line of any lot. An exception shall be made in the case of retaining walls not to exceed twenty-four inches (24") above the ground. Notwithstanding the foregoing, the Architectural Committee is empowered to waive the aforesaid height or setback limitation in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material and the resulting decorative wall and/or retaining wall will not detract from the general appearance of the neighborhood, or in the case where a Lot has a side yard which is adjacent to the backyard of an adjacent Lot. No chain-link, barbed wire or wood fences may be built or maintained on any Lot.
- (2) Perimeter fences are recommended but not required. Fences must be black, powder coated, flat top, three rail steel ornamental fence sections 4 to 5' in height and approximately 93" long with posts and end caps approved by the Architectural Committee, or such other types of fencing as the Architectural Committee may, in its discretion, approve. Bell Fence and other suppliers carry fencing material meeting these specifications.

Accents to the wrought iron fencing with stucco or brick footings, consistent with the same material used in the home on the Lot enclosed by the fence, may be considered for approval by the Architectural Committee. All side boundaries of Lots adjacent to Merka Road are required to have such fences, if a fence is placed on the property. Elsewhere, fences or shrubbery may be used by the Owner of a Lot. Developer, in its sole discretion and expertise, may (but is not required to) erect wrought iron fencing on any Lot and the Owner of the Lot shall be responsible for maintenance and repair of the fence once erected. On any Lot where Developer erects such a fence, all fencing on that Lot subsequently built by

the Owner of the Lot on the side boundary lines shall be the same wrought iron material.

High fencing may be allowed for protection of vineyard grapevine or garden plantings from animals with approval by the ACC. All high fencing must utilize t-post with black vinyl deer netting.

(3) Retaining/Retention Walls. Retaining/retention walls over three feet in height shall be cast-in-place concrete and block masonry units. Walls over two feet in height shall provide proof of structural integrity and drainage. These must be included with the home plans. All surfaces of the wall clearly visible from the road or adjoining property shall be covered with brick or stone to match the same material and color of the dwelling.

3.27 Porches, Decks and Patios. All porches, decks and patios shall have an appearance consistent with the dwelling and must be approved by the ARCHITECTURAL COMMITTEE. Covered walkway or gazebo structures, decks and patios not attached to the home shall be considered on a case by case basis with strong considerations on proximity to neighbors and association property.

3.28 Animals - Household Pets.

(1) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot; except that dogs, cats, or other household pets may be kept in the total number of not more than three (3) animals in the aggregate, excluding young of not more than sixty (60) days of age, but may not at any time be kept, bred, or maintained for any commercial purpose. It is the intent of this Article to prohibit the keeping of groups of animals in such number that they create a nuisance due to excessive noise or noxious odors brought about by the keeping of such animals. Notwithstanding any provision herein, snakes, poultry, rats, venomous or large carnivorous animals, dogs, cats, horses, goats, sheep, camels, zoo animals, agricultural animals typically used for the production of food, breeder animals, animals with known aggressive characteristics, and swine are not allowed in the Property.

(2) All dogs must be fenced in a back yard or leashed when taken outside of the house. Owner is responsible for the pick-up and disposal of any waste left by their animal.

3.29 Tree Preservation. Clear-cutting of a lot will not be allowed. A plan for preservation of trees must be submitted with a site plan for approval by the ARCHITECTURAL COMMITTEE. The plan should make a good faith attempt to preserve as much existing tree cover as possible.

3.30 Maintenance of Lawns and Plantings. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot cultivated, pruned, and free of trash and other unsightly material. Trees, shrubs, vines and plants that die shall be promptly removed and replaced. Declarant, the Association and the Architectural Committee shall have the right at any reasonable time after not less than ten days' notice to Owner to cure any violation of this provision within such 10-day period, to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, and to charge the cost thereof to the Owner of the Lot as provided in Section 7.04(2) below. To ensure consistency, all right of way areas along the roadways shall be maintained by a lawn service chosen by the Association. The cost of such service is included in the assessments. Owner shall be responsible for maintenance of the front, back and side yard.

3.31 Landscape Design. All landscaping shall be designed so as to protect and promote, as far as practicable, the natural local landscape environment through use of native materials, natural drainage, indigenous plant selection and site design. All landscaping designs shall install Bermuda hydromulch or live, growing sod covering the front, install live, growing sod covering the front, side and back yards, within thirty (30) days of occupancy of any residence constructed on a Lot, and shall maintain it in a healthy and growing condition. All front and side yards must be irrigated with automatic sprinkler systems, and have landscaping acceptable to the Architectural Committee. At all times after improvements are constructed on any lot, the Owner of such lot shall keep and maintain one living oak tree with a diameter of at least two inches in the front yard of the Lot.

3.32 Landscape Plan Submittal Procedures. On new construction, landscape plans will be submitted with the house plans as mentioned in paragraph 4.01. Major landscape changes i.e.; removal of trees six inches (6") in diameter or greater, removal and replacement of beds, lawns, or change of the overall look of established landscape plans shall be submitted via the "Architectural Change Request" (Attached).

3.33 Construction and Sales Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property, or the sale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. No building material of any kind shall be placed or stored upon any Lot for more than five (5) days until the Owner thereof is ready to commence Improvements,

and then the material shall be placed within the property lines of the Lot upon which the Improvements are to be erected and shall not be placed on the street or on any other part of the Property. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction. At such time as the Declarant ceases using any portion of the Property as a model home or sales office, the affected Property shall be altered and/or remodeled, if necessary or desirable, to comply with the covenants and restrictions contained herein.

3.34 **Business Use.** No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Properties; (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board; and (e) garage sales or moving sales may be conducted provided they are not more than two days in duration and no such sales take place more than two times per calendar year on any Lot. Without limiting the general covenants set forth above, the following businesses or trades are expressly prohibited: day care facilities or in-home day care, animal boarding, pet care or pet grooming, retail stores or operations, bakeries, restaurants, cafes, catering operations, food production or staging uses, dance classes, gymnasiums, tutoring businesses with on-site instruction, mobile mechanic or mobile tool sales operations or vehicles, real estate sales offices open to the public, or mobile frozen food sales operations.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (I) such activity is engaged in full or part-time; (ii) such activity is intended to or does not be considered a trade or business within the meaning to this section. This Section shall not apply to any activity conducted by the Declarant or conducted by a builder with approval of the Declarant, with respect to its development and sale of the Properties or its

use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

- 3.35 **Mailboxes.** Cluster mailboxes have been mandated by the U.S. Postal Service for the Subdivision. In the event cluster mailboxes are not required in the future, any mailboxes erected on any Lot shall be subject to prior approval of the Architectural Committee with regard to location, height, and materials.
- 3.36 **Sight Lines.** No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot within the area defined by a line drawn between two points located forty (40') feet from the point of intersection of the street right-of-way property lines immediately adjacent to the Lot, as reasonably located by the Architectural Committee. Measurement shall be by chord, not by arc. No tree shall be permitted to remain within such areas, unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.
- 3.37 **Garage Conversions.** No garage may be converted into an enclosed living space. A space may be constructed above a garage for the purpose of storage, guest quarters or additional space, if included in the original plan and design. This space will be included in minimum square footage only if it is heated and air conditioned.
- 3.38 **Clotheslines.** No clothes lines or other clothes drying apparatus shall be permitted on any Lot, except when properly screened from public view with direction from the ARCHITECTURAL COMMITTEE. Clothes line or clothes drying apparatus shall not be installed or erected without the approval of the Architectural Control Committee.
- 3.39 **Dog Kennels and Pens.** Are discouraged but may be approved on a case by case basis and must be screened from public and neighboring views. Considerations are: location on lot, position relative to neighbors, size, type of materials for structure, etc.
- 3.40 **Play Houses/Tree Houses.** These are discouraged and generally will not be approved, unless adequately screened from view of the public or occupants of other Lots. Considerations are the same as for dog kennels, pens and storage buildings. These structures must also be approved by the ARCHITECTURAL COMMITTEE.
- 3.41 **Basketball Goals and Exterior Exercise Equipment or Structures.** No basketball backboards or other sports boards or goals shall be erected or permanently maintained in the front yard or attached to the front of any residence. All basketball backboard locations must be approved in writing by the ARCHITECTURAL COMMITTEE and must be in the rear yard.

Exercise equipment shall not be erected or maintained in the front or side yard or attached to the front of any residence and must be located to minimize the visibility from adjacent lots or common areas.

- 3.42 Swimming Pools. The size, shape and placement of the swimming pool must be carefully considered to achieve compatibility with the surrounding natural and man-made elements. No above ground pools will be permitted. The materials and detail of pool and equipment enclosures should be compatible with the house and other structures in place and shall be approved on a case by case basis.
- 3.43 Pool Houses. Exterior wall materials and design of a pool house structure must be compatible with the dwelling and other structures in place, i.e. same detail, material finishes and colors.
- 3.44 Tennis Courts. Tennis courts are discouraged unless they are compatible with the size and configuration of the lot. Exceptions will be on a case by case basis. Considerations are the proximity to other neighbors and common areas.
- 3.45 Additional Structures. Notwithstanding any contrary provisions in the Declaration, loft apartments, guest houses and mother-in-law quarters will be allowed upon approval by the Architectural Committee.
- 3.46 Doors and Windows. All front doors must be decorative iron or wood. No "burglar bars," steel or wrought iron bars, or similar fixtures, whether designed for decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any dwelling. No signs, numerals or other writing shall be written on or placed in the doors, windows or exterior walls of any dwelling, either temporarily or permanently, except that the Board may, in its discretion, permit house numbers to be written temporarily on a single window of a dwelling while occupants are moving in, provided such numbers are removed within seventy-two (72) hours after the occupants have taken occupancy. Sheets or similar temporary window treatments may be used for a short time after taking occupancy of a dwelling, provided they are removed and replaced with permanent window treatments within a reasonable time, not to exceed 14 days, after taking occupancy of the dwelling, as determined in the sole discretion of the Board of Directors. Foil shall not be used as window coverings at any time. Within 30 days of occupancy, all front and side windows facing a street must have blinds, plantation shutters or similar.
- 3.47                   3.47 Omitted Intentionally
- 3.48 Flag Poles. Flag poles mounted from the ground must be approved by the ARCHITECTURAL COMMITTEE. No more than one flag pole, twenty (20) feet in height, measured from the ground, may be displayed in the

front or rear of a home. As with all structures the flag pole must be of well-constructed, durable material installed per manufacturer's guidelines and maintained both operationally and aesthetically or removed. Flags must be of appropriate proportion for the size of the pole and must be flown in a respectable manner. Worn or damaged flags must be replaced. If there is a question on the display of the American Flag, government procedures and policies will be followed. All flagpole halyards must be secure at all times. Flag poles along with appropriate lighting and locations must be approved by the Architectural Control Committee. Any of the following flags may be displayed:

- (1) The United States of America flag
- (2) The Texas flag
- (3) An official or replica flag of a branch of the armed forces of the United States of America

3.49 Compliance with Provisions of Messina Hof Estates Residential Restrictions. Each Owner shall comply strictly with the provisions of the Messina Hof Estates Residential Restrictions as the same may be amended from time to time. Failure to comply with any of the Messina Hof Estates Residential Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggrieved Owner. Declarant, for itself, its successors or assigns, reserves the right to enforce these restrictive covenants, though it may have previously sold and conveyed all subdivided Lots controlled by these covenants within the Property. The reservation of this right of enforcement shall not create an obligation of any kind to enforce the same.

3.50 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article 3 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance upon one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

## ARTICLE 4 RESIDENTIAL RESTRICTIONS

4.01 Residential Use. All Lots shall be improved and used solely for residential purposes inclusive of a garage, fencing and such other Improvements as are necessary or customarily incidental to residential use. No Owner shall occupy or use his Lot or any Improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose, including religious, other than as a private residence for the Owner, his family and guests. All Lots within the Property shall be used and improved solely for single family residential purposes, as stated above, with no more than one (1) residential dwelling unit per Lot including an attached garage. Anything herein to the contrary notwithstanding, any Lot may be used or improved for greenbelt, open space and/or drain field purposes in Declarant's discretion. No Improvement may be constructed upon any Lot that would unreasonably obstruct the view from other portions of the Property, and the positioning of all Improvements upon Lots within the Property is hereby expressly made subject to Architectural Committee review. Residential structures may not front on Merka Road or have a Merka Road address. The Architectural Committee may, but 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. The Architectural Committee may consider the effect the Improvement will have on the Property as a whole, it being expressly understood that neither the Architectural Committee nor the members thereof shall be liable to any Owner in monetary damages or otherwise due to the construction of any Improvement within the Property or the creating thereby of an obstruction to the view from such Owner's Lot or Lots.

4.02 Garages and Garage Orientation. Each dwelling shall have an enclosed garage or carport integrated into the primary construction of a residence, adequate to accommodate not less than two automobiles and no more than four automobiles, and shall have a paved concrete driveway surface providing access thereto. No freestanding or metal attached carports shall be allowed. Garage doors, except when the garage entrance is in use, will be kept closed. Side entry garages are encouraged though a garage may face the street if the front garage wall is setback at least 5' from the front of the abutting side wall. Carriage House style garage doors with a stained or painted wood finish are required. In exceptional circumstances, the restriction may be waived by the Architectural Committee with respect to detached garages or on unusually narrow Lots, corner Lots or difficult sites.

4.03 Outbuildings. Every outbuilding, inclusive of such structures as a storage building or greenhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition or be screened from public view in a manner approved by the Architectural

Committee. All such buildings shall be subject to approval by the Architectural Committee. In no instance shall the eaves of an outbuilding exceed fourteen (14) feet height or have total floor area in excess of sixty-five percent (65%) of the floor area of the main dwelling.

4.04 Building Height. No Improvement more than two stories and greater than thirty-two (32) feet in height may be constructed on any Lot without the prior written approval of the Architectural Committee. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

4.05 Building Materials; Dwelling Size. All dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows, and similar openings) shall be constructed as set out below, of a minimum percentage of masonry, on the front, rear and sides, or other material specifically approved in writing by the Architectural Committee. The use of vinyl, cedar shake or aluminum siding material will not be allowed. Other types of siding material may be used only with Architectural Committee approval, and only minimal use of such material will be allowed. Masonry includes stucco, approved colors and types of stone and brick. Masonry does not include siding. Stucco installation details must be provided to the Architectural Committee for review by a professional architect or installer. All chimneys must be have an exterior façade composed of stone, HardiePlank siding or brick materials. Unless an exception is granted by the Architectural Committee, all dwellings shall contain not less than the 2,300 square feet of enclosed living space, exclusive of porches (open or covered), decks and garages set out below. Each residence shall include an enclosed attached garage or other structure sufficient to meet the requirements of Section 4.02 above.

4.06 Exterior Walls and Finishes. To maintain value and in the keeping of an upscale community, materials used on the exterior of the home shall be of high quality (above builder's standard). This includes exterior doors, windows, exterior walls, roofing material, soffits, and trim. The following minimum standards apply

- (1) 100% of the front wall/facade shall be composed of stucco, stone (limestone) or brick with at least 60% of the wall area composed of stone or a stone and brick combination. Patterned brick designs are strongly encouraged where brick is used.
- (2) 75% of the side and rear exterior walls shall be a combination of either brick or stone materials on the first floor. The remainder may be stucco or another masonry siding product approved by the Architectural Committee.

- (3) A minimum of 20% of decorative or supporting posts and columns shall be wrapped in stone or brick at the base.
- (4) All roof surfaces shall be -30-year architectural shingles.
- (5) House numbers with or without the street name must be attached to a medium sized limestone or mock limestone monument measuring 2' wide and approximately 1-2' tall by 1-2' deep and placed at the corner of the driveway and property line. A mock rock monument with a red or brown hue will also be allowed. Landscaping around and behind the rock with plants or flowers is required.

4.07 Construction in Place. The use of prefabricated materials, including antique homes moved from other locations, shall not be allowed.

4.08 Set-back Requirements. All structures shall be constructed within the following minimum setback requirements:

- (1) Front: Fifty feet (50'); if from the front property line with the exception of cul-de-sac Lots 1, 8, 9, 15, 16, 17, 21, 22, 23 and 24, which will have a minimum setback of forty feet (40') from the street. Requests for a setback area less than forty feet (40') on Lots 1, 8, 9, 15, 16, 17, 21, 22, 23 and 24 will be evaluated on a case by case basis depending on the layout and design of the structure..
- (2) Side: Twenty-Five feet (25') from the side property line except for side property lines on Merka Road.
- (3) Side Street: Forty (40') from the property line for lots located off of Merka Road.
- (4) Rear: Forty feet (40') or as approved by the County if an existing creek runs through the property.
- (5) Easements: The thirty foot (30') pipeline easements on parcels 1, 8, 59, 16, 17, 18, 22 and 23 shall be observed and all building locations/setbacks shall be reviewed on a case by case basis.
- (6) Buffer: The fifteen (15) foot buffer for vegetation, trees, shrubs and brush is part of the setback distances set out herein, and is not in addition to such distances.

Eaves, steps, patios, and open porches shall be considered as a part of the building structure in regards to setback requirements. Driveways should be no closer than sixteen feet (16') to the side property line with the exception of lots 4, 5, 12, 13, 20 & 21, where driveway access may not start within one hundred and ten feet (110') of the side property line from Merka Road to provide for corner

clearance to traffic entering and exiting the community. No driveway access from Merka Road will be allowed from any lot.

4.09 Residential Construction Obligation. Each vacant Lot which Declarant conveys to an Owner is hereby made expressly subject to the obligation ("the Residential Construction Obligation") to commence construction of a single-family residence on the Lot on or before the date which is three (3) years from the date of the conveyance to the Owner ("the Construction Deadline"), and to diligently and continually continue construction of the primary single family residence to completion within twelve (12) months after commencement, unless the Architectural Committee grants a variance allowing additional time ("the Completion Deadline"). "Commence Construction" shall mean the actual site preparation for paving a slab foundation. "Completion" shall mean substantial completion including final connection of electrical and water service.

## ARTICLE 5 MESSINA HOF ESTATES OWNERS ASSOCIATION

5.01 Organization. The Declarant has caused the formation and incorporation of the Association as 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.

5.02 Membership. Any Person or entity upon becoming an Owner shall automatically become a Member of the Association, and shall enjoy all of the benefits, privileges and responsibilities of a VIP Estate Membership to Messina Hof Winery and Resort ("the Winery"). Membership in the Association and Estate Membership in the Winery 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 said property interest. Estate Membership in the Winery is mandatory and shall include all of the benefits of Estate Membership, and shall obligate an Owner to pay the assessed Winery membership dues as part of the HOA fee, and follow the rules and policies of the Winery.

5.03 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of directors to the Board on all other matters to be voted on by the Members shall be calculated as follows:

(1) The Owner, whether one or more (including Declarant) of each Lot within the Property shall have one vote for each Lot so owned.

(2) In addition to the votes to which Declarant is entitled by reason of Subparagraph (1) of this Section, for every such vote Declarant shall have three (3) additional votes, until such time as the votes described in Subparagraph (1) of this Section, owned by Owners other than Declarant, total in the aggregate ninety (90%) of the total number of votes outstanding under Subparagraph 1. Thereafter Declarant shall have only the votes, if any, to which it is entitled under Subparagraph (1) of this Section.

5.04 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to any 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 two preceding sentences, the Association, and the Board or a Neighborhood Committee (as applicable) acting on behalf of the Association, shall have the following powers and authority at all times:

- (1) Messina Hof Estates Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Messina Hof Estates Rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions. The Association shall have the authority to establish committees pertaining only to specific sections of Messina Hof Estates. Any committee which elects to oversee a particular section shall have the power to establish section rules, which shall apply only to sections over which the Committee has oversight. Any such section rules may be more restrictive than the provisions hereof, but shall not be less restrictive.
- (2) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.
- (3) Records. To keep books and records of the Association's affairs.
- (4) Assessments. To levy Assessments as provided in Article 7 below.
- (5) Right of Entry and Enforcement. To enter at any time in an emergency, or in a non-emergency, after ten (10) days written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Messina Hof Estates Residential Restrictions or for the purpose of erecting, maintaining or repairing any Improvement to conform to the Messina Hof Estates Residential Restrictions, and the expense

incurred by the Association in connection with the entry upon any Lot and the work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered on and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article 7 hereof for regular and special Assessments. 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 an 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 Messina Hof Estates Residential Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Messina Hof Estates Residential Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

- (6) Legal and Accounting Services. To retain and pay for Legal and accounting services necessary or proper for the operation of the Association.
- (7) Delegation to Committees. To set up one or more committees as authorized by the Texas Non-Profit Corporation Act, as the same is amended from time to time.
- (8) Employees. To engage such employees as may be reasonably necessary in the management of the Association and the performance of its duties.

5.05 Landscape and Maintenance. The Association shall be authorized to landscape, maintain and repair easements, rights-of-way, common areas, entry ways, sidewalks, paths, trails, detention ponds, lakes, waterfall pumps, irrigation equipment, water wells, entrance buildings, and other areas of the Property, as appropriate. The Association shall be authorized, but shall not have the duty, to mow the right-of-way along the roadway frontage in a manner deemed appropriate by the Association.

5.06 Common Areas.

- (1) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:
  - (a) To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Declarant, together with any Improvements of any kind or purpose

located in said areas; and to accept, own, operate and maintain all other property, real and personal, conveyed or leased to the Association by Declarant; and to maintain in good repair and condition all lands, Improvements, and other Association property owned by or leased to the Association, whether by Declarant or by other Persons.

- (b) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon individual Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (c) To execute mortgages, both construction and permanent, for construction of Improvements on property owned by or leased to the Association, and to accept lands in Common Areas, whether or not improved, from Declarant subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien, as deemed appropriate by borrower, whether Declarant or the Association, on the Improvement to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. 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 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.

(2) In addition to, and not in limitation of, the power and authority of the Association as set forth in Section 5.05 of this Declaration, the Association, acting through the Board, shall have the power and authority:

- (a) To grant and convey portions of Association property, including fee title, leasehold estates, easements, right-of-way, and/or mortgages, to any person or entity for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, street, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other means of providing utilities;
- (iv) Water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar public, quasi-public or private Improvements.

Nothing contained in this Subparagraph, however, shall be construed to permit use or occupancy of any Common Area or Improvement in a way that would violate applicable use and occupancy restrictions imposed by other provisions of this Declaration, or by any statute, rule, regulation, ordinance or other law of any governmental entity, including but not limited to rules and orders of the Texas Water Development Board, Texas Water Commission, and any flood plain, industrial waste or other ordinance of Brazos County or any municipality which may annex all or part of Messina Hof Estates..

- (3) To pay for water, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association, or within entrance ways, or street rights of way which the Association desires to maintain or pay for, in the best interest of the Association and the aesthetic appearance of the Subdivision as a whole.
- (4) To pay for any other services necessary or proper in the performance of Association functions, and to pay for any other taxes or assessments that the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.
- (5) To own and operate any and all types of facilities for both active and passive recreation.
- (6) To construct new Improvements or additions to Association properties, subject to the approval of the Architectural Committee as required in this Declaration.
- (7) To enter into contracts with Declarant and other persons, on such terms and provisions as the Board shall determine, to operate and

maintain any of the Common Areas or to provide any service or perform any function on behalf of Declarant or the Association in connection with the purposes of the Association.

- (8) To acquire and own and to dispose of all manner of real and personal property, whether by purchase, grant, lease, gift or otherwise.

#### 5.07 Maintenance

Association's Responsibility. In addition to the power and authority of the Association, conferred elsewhere, and not in limitation, the Association shall maintain and keep in good repair the Common Areas. The Area of Common Responsibility shall include, but need not be limited to, all landscaping and improvements on the Common Areas, landscaping within public rights-of-way in or adjacent to the Properties, landscaping on any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto), electrical expenses related to lighting of streets or Common Areas, and such portions of any additional property within the Common Areas. The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the community-wide standard.

There are hereby reserved to the Association blanket easements over the Properties as reasonably necessary to enable the Association to fulfill its responsibilities under this Section.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Areas shall be a Common Expense to be allocated among all Lots as part of the Assessment, subject to the right of the Association to seek reimbursement from the owner(s) of, or other persons responsible for certain portions of the Common Areas pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

#### 5.08 Owner's Responsibility. Each Owner shall maintain his or her Lot and all structures, parking area and other improvements comprising the Lot. Owners of Lots adjacent to any roadway within the Properties shall maintain driveways serving their respective Lots, whether or not lying within the Lot boundaries, and shall maintain and irrigate landscaping on that portion of the Common Area, if any, or right-of-way between the Lot boundary and the back-of-curb of the adjacent street.

All maintenance required by this Section shall be performed in a manner consistent with the community-wide-standard and all applicable covenants

unless such maintenance responsibility is otherwise assumed by or assigned to a Neighborhood pursuant to any additional declaration of covenants applicable to such Lot. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibility the Association may perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Associate against the Lot and the owner thereof in accordance with Article 7, Section 7.04 (2) of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the owner reasonable notice and an opportunity to cure the problem prior to entry.

5.09 Agreement with City of Bryan, State of Texas, and County of Brazos. The Declarant, as the agent of the Association, or the Association, may enter into one or more agreements with the City of Bryan or State of Texas or Brazos County, with respect to (1) the landscaping and maintenance of portions of public streets, private street, highways or rights of way, or (2) the dedication of any drainage basin, park or other common area within the property for municipal maintenance. The Association shall accept, without further requirement or documentation, said agreement and the requirements and benefits associated therewith, for any agreement reached by the Declarant.

5.10 Indemnification. The Association shall indemnify any director, officer, or member of a committee duly appointed pursuant to the Articles or Bylaws who was, is, or is threatened to be made a named defendant or respondent in any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding (hereinafter a "Proceeding") by reason of the fact that such person is or was a director, officer or member of such a committee of the Association, against all judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with any such Proceeding to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time. Such authorization of indemnification shall be deemed to be mandatory and deemed to constitute authorization of indemnification and advancement of expenses to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time.

## ARTICLE 6 ARCHITECTURAL COMMITTEE

6.01 Membership of Architectural Committee. The Architectural Committee shall consist of not less than one (1) and not more than three (3) voting

members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate. The following persons are hereby designated as the initial Voting Members of the Architectural Committee: Bentley Scott, Paul Bonarrigo, and Merrill Bonarrigo.

- 6.02 Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.
- 6.03 Advisory Members. The Voting Members may from time to time designate Advisory Members.
- 6.04 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed as provided herein.
- 6.05 Declarant's Rights of Appointment. Until Declarant has less than seventy-five percent (75%) of the votes in the Association (the Transition Date), Declarant, its successors or assigns shall have the right to appoint and remove all Voting Members of the Architectural Committee, which persons need not be drawn from Association Members. Notwithstanding the preceding sentence, Declarant may delegate its right of appointment, or any portion thereof, to the Board by written instrument before such date. Whenever the Transition Date occurs, the Board shall have the right to appoint all Voting Members. At such time as the Board gains the right to appoint and remove Voting Members of the Architectural Committee, or any portion of this right, a majority of the Voting Members so appointed shall be drawn from Members of the Association. Advisory Members shall, when reasonably possible, be drawn from Members of the Association.
- 6.06 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it deems necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, and other similar codes.
- 6.07 Review of Proposed Construction. Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, are relevant. The Architectural Committee may charge a review fee, and inspection fees, in such amounts and on such terms as the Architectural Committee may, in its reasonable discretion, elect. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and

Specifications therefore shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications and issued an Architectural Committee building permit. Until receipt by the Architectural Committee of any information or document deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. Upon receipt of all necessary information, the Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other related duties assigned or authorized by this Declaration, including at its option inspection of construction in progress to assure its conformance with previously approved Plans and Specifications. The Architectural Committee shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one construction. The Architectural Committee may, in its review of Plans and Specifications and such other information as it deems proper, consider whether any proposed Improvement upon a Lot would unreasonably obstruct the view from other portions of the Property. The Architectural Committee may, but shall not be required to, disapprove any Improvement upon any Lot that would unreasonably obstruct the view from any other portion of the Property. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property and the surrounding area. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans and Specifications be deemed an endorsement, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes not of its authorship.

- 6.08 Actions of the Architectural Committee. The Architectural Committee may, by resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all the members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.
- 6.09 No Waiver of Future Approvals. The approval or consent of the Architectural Committee of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the

approval or consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any other Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

- 6.10 Work in Progress. The Architectural Committee may at its option inspect all work in progress to insure compliance with approved Plans and Specifications.
- 6.11 Nonliability of Architectural Committee Members. Neither the Architectural Committee 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 their being in any way connected with the performance of the Architectural Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its members, as the case may be. Neither the Architectural Committee nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots.
- 6.12 Address. Plans and Specifications shall be submitted by electronic mail or paper submission to the Architectural Committee in care of Bentley Scott, P.O. Box 5832, Bryan, TX 77805, or [info@bonscottcommunities.com](mailto:info@bonscottcommunities.com) or in care of such other person at such other address as may be designated by Declarant or the Board, as the case may be, from time to time on the Association website (if any) or letterhead.
- 6.13 Failure to Act. In the event the Architectural Committee or its designated representative fails to approve or disapprove any Plans and Specifications within twenty (20) days after the same have been received by it, complete with all other information requested by the Architectural Committee in connection with such submission, approval shall be assumed.
- 6.14 Variances. Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any individual Lot or Lots upon the Property, variance from any restrictions set out in this Declaration may be granted by a unanimous decision of the Architectural Committee in a written instrument to be duly acknowledged, if and when such a variance shall ever be granted.
- 6.15 Governmental Agency Approval. Nothing in this Declaration shall be construed to relieve any Owner from securing such approvals, certificates and/or permits as may be required by law in connection with the construction of any Improvements on any Lot.

6.16 Relationship with Association. The Architectural Committee has been created pursuant to this Declaration to perform certain functions specified herein relating to the review and approval of Plans and Specifications for Improvements built on the Property. The Architectural Committee does not exercise the authority of the Board, and shall not do so unless and until (I) the Board shall have duly appointed a majority of Board members to the Architectural Committee, and (ii) the Board shall by unanimous resolution, duly recorded in the records of the Association, make the Architectural Committee a committee of the Board in accordance with the Texas Non-Profit Corporation Act.

6.17 Notice to Association. The Architectural Committee shall give notice to the Board if any Owner commences construction on a Lot prior to issuance of a building permit by the Architectural Committee.

## ARTICLE 7 FUNDS AND ASSESSMENTS

### 7.01 Assessments.

- (1) The Association may from time to time levy Assessments against each Lot whether or not improved. The level of Assessments shall be equal and uniform between all Lots, provided, however, that no Assessments hereunder shall be levied against Declarant.
- (2) 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.
- (3) 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 Lot against which the Assessment falls 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.

7.02 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and 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 authorized by this Declaration, as it may from time to time be amended.

7.03 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 the Messina Hof Estates Residential Restrictions, including but not limited to the cost of all entry ways, landscaping, greenbelts, common areas, median strip, and right-of-way maintenance, the cost of enforcing the Messina Hof Estates Residential Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's funds. Assessments sufficient to pay such estimated note expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, 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.

7.04 Special Assessments.

- (1) In addition to the regular annual Assessments provided for 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 under the Messina Hof Estates Residential Restrictions. The amount and due date of any special Assessments shall be at the reasonable discretion of the Board.
- (2) Less Than All Members. The Association may levy a Special Assessment against any Member individually and against such Member's Lot to (I) impose a daily fine to be set by the Board in its sole discretion for each day after construction commences until a building permit is issued from the Architectural Committee, or (ii) reimburse the Association for costs incurred in bringing a Member and the Member's Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, or the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.
- (3) Special Assessments for Breach of Residential Construction Obligation. In addition to the regular annual assessments and other special assessments, a special assessment shall be levied against any Member individually and against any Member's Lot due to the Member's failure to perform the Residential Construction

Obligation set out in Section 4.09. A Special Assessment for Breach of Residential Construction Obligation shall be due and payable on or before (a) 30 days after the Construction Deadline, in the amount of \$3,500.00, or (b) 30 days after the Completion Deadline or (c) both. On the same date of each year following the date of a Special Assessment for Breach of Residential Construction Obligation by the Member, if the failure to perform the Residential Construction Obligation continues, an additional assessment of \$3,500.00 will be due and payable for each full year thereafter that the breach continues.

7.05 Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the owner of the Lot covered by such assessments. Except as otherwise provided in Section 7.01(1) hereof, no Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from due date thereof (or if there is no such highest rate, then at the rate of 1-1/2% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

7.06 Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but paid, shall, together with interest as provided in Section 7.06 hereof and the cost of collection, including attorney's fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust filed of record, securing in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination shall be effectuated by an officer of the Association, duly authorized by the Board. To evidence an Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, and a description of the Lot. Such notice shall be signed by an officer of the Association, duly authorized by the Board, and shall be recorded in the office of the County Clerk of Brazos County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth from the date that such payment becomes delinquent, and may be enforced subsequent to the recording of a notice of Assessment lien as provided above, by the foreclosure of the defaulting Owner's Lot by

the Association in like manner as a mortgage on real property, or the Association may institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee the status of any Assessments relating to the Mortgagee's mortgage and remaining unpaid for longer than thirty (30) days after due.

## ARTICLE 8 EASEMENTS

- 8.01 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most effectively, efficiently and economically developing and marketing the property. Further, Declarant reserves the right, without the necessity of the joinder of any owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, common areas, rights-of-way and easements for public utility purposes (including, without limitation, gas, cable, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, any such easement having a maximum width of five (5) feet on each side of such Lot line.
- 8.02 Installation and Maintenance. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, if any, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all Improvements in such area shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements described or created herein shall be liable for any damages done by them or their assigns, agents, employees,

or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

8.03 **Surface Areas.** The surface of easement areas for underground utility services may be used for planting of shrubbery, trees lawns or flowers. However, neither the Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity reasonably relating to the construction, maintenance, operation or repair of any facility in any such easement area.

8.04 **Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the Architectural Committee.

8.05 **Blanket Easement.** An easement is hereby retained in favor of the Association over all Lots and the Common Area for the purpose of enforcing the Messina Hof Estates Residential Restrictions in accordance with Section 5.04(5) hereof, and for the construction of a common cable television system, a common sprinkler system, maintenance of landscaping, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot or the Common Areas to effectuate the foregoing purposes shall not be deemed as trespass.

#### ARTICLE 9 MISCELLANEOUS

9.01 **Term.** This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2065, unless amended as herein provided. After December 31, 2065, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive period of ten (10) years each, unless amended as provided in Section 9.03 below or terminated by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots within the property then subject to this Declaration, filed of record in the Official Records of Brazos County, Texas.

9.02 **Dissolution.** Upon termination of this Declaration in accordance with Section 9.01 above, the Association shall be dissolved. In the event of any such dissolution of the Association, other than incident to a merger or

consolidation, the assets of the Association shall be dedicated to any appropriate public agency to be used for purposes similar to those of the Association with respect to the Common Areas. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

9.03 Amendment.

(1) By Declarant. This Declaration may be amended by the Declarant, acting alone, until December 1, 2025, and thereafter for 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 Records of Brazos County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the Secretary of the Association, certifying that the Declarant had the requisite number of votes.

(2) By Owners. In addition to the method in Section 9.03 (1), after December 1, 2025, this Declaration may be amended by the recording in the Official Records of Brazos County of 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 sixty percent (60%) of the number of votes entitled to be cast pursuant to Section 5.03 hereof.

9.04 Notices. Any notice permitted or required to be given by this 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, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

9.05 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 the property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

9.06 Exemption of Declarant. Notwithstanding any provision 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 Architectural Committee. 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, sales offices, and similar facilities, and to post signs incidental to construction, sales, anywhere within the Property.

9.07 Assignment of Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

9.08 Enforcement and Non-waiver.

- (1) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce any and all of the provisions of the Messina Hof Estates Residential Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.
- (2) Non-waiver. The failure to enforce any provision of the Messina Hof Estates Residential Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.
- (3) Liens. The Association shall have the right, when appropriate in this judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

9.09 Construction.

- (1) Restrictions Severable. The provisions of the Messina Hof Estates Residential Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.
- (2) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.

(3) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles.

(4) Deadlines on Business Day. If any deadline in this Declaration should fall on a Saturday, Sunday or a Texas or federal holiday, such deadline shall automatically be extended to the next business day.

(5) Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this day of 18 January 2019.

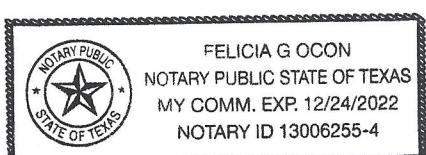
BONSCOTT-MERKA PROPERTIES, LLC,

BY: Paul V. Bonarrigo

STATE OF TEXAS

COUNTY OF Brazos

This instrument was acknowledged before me on the 18<sup>th</sup> day of January, 2019, by Paul V. Bonarrigo, President of BONSCOTT-MERKA PROPERTIES, LLC, on behalf of said limited Company, in the capacity therein stated.



Felicia G Ocon  
NOTARY PUBLIC, State of Texas

PREPARED BY HOELSCHER, LIPSEY, ELMORE, POOLE & TURNBILL, P.C.  
1021 University Drive East  
College Station, Texas 77840  
1<sup>ST</sup> AMENDMENT TO DECLARATION/MESSINA HOF/CCRs (kt)  
1<sup>st</sup> Amended Declarations/Messina Hoff/Protective Covenants