

**AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE CLUB AT WELLS POINT**

STATE OF TEXAS *
 *
COUNTY OF TRAVIS *

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE CLUB AT WELLS POINT (this “Declaration”) is made and executed by SUTTON WELLS POINT, LTD., a Texas limited partnership (“Declarant”), as follows:

RECITALS:

A. Sutton Wells Point, LTD., a Texas Limited partnership, hereinafter called the Declarant, is, or may be, the owner, subdivider and/or developer of all or a portion of The Club at Wells Point, a phased development of the Development (as defined below). Declarant is the owner of a majority of the Lots (as defined below) in Section One, as defined below and holds a majority of the votes of the Association (as defined below).

B. Except for the Common Areas and Facilities (as defined below), the Lots (as defined below) are intended to be developed for single family residential purposes.

C. Declarant desires to create upon the Property (as defined below) a residential community and to carry out a uniform plan for the improvement and development of the Property for the benefit of the present and future owners of the Lots.

D. Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of common areas and, to that end, desires to subject the Property to the covenants, conditions and restrictions set forth in this Declaration, each of which is for the benefit of the Property and each Owner (as defined below).

E. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an owners association, to which association Declarant, on and subject to the provisions of this Declaration, shall delegate and assign its powers and obligations with respect to (i) maintaining, administering and enforcing these covenants and restrictions, (ii) operating, repairing and maintaining the Park Tract, the Improvements on the Park Tract and all other Common Area and Facilities, and (iii) collecting and disbursing the assessments and charges created or provided in this Declaration.

F. Declarant has previously executed that certain Declaration of Covenants, Conditions and Restrictions for The Club at Wells Point, executed by Declarant and recorded at Volume 12204, Page 1914 of the Real Property Records of Travis County, Texas (the "Original Declaration"), as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for The Club at Wells Point, executed by Declarant and recorded at Volume 12320, Page 1104 of the Real Property Records of Travis County, Texas (the "First Amendment," the Original Declaration, as amended by the First Amendment, the "Prior Declaration"). Pursuant to the provisions of the Prior Declaration, Declarant imposed certain covenants, conditions and restrictions on the Property, as more fully set forth in the Prior Declaration.

G. As of the date of execution of this Declaration, Declarant holds a majority of the votes of the Association. Under the provisions of Section 7.3(a) of the Prior Declaration, Declarant, acting alone, is entitled to amend the Prior Declaration.

H. Declarant desires to amend, and restate in full, the Prior Declaration, as provided in this Declaration, to promote and enhance the development of the Property for the purposes provided in the Prior Declaration and in this Declaration.

DECLARATION

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarant has declared, and by this instrument does declare that (i) all of the Property (now or hereafter subject to this Declaration) shall be held, owned, encumbered, leased, used, sold, conveyed, occupied and enjoyed subject to the following covenants, conditions, restrictions, agreements, terms and conditions which are for the purpose of protecting the value and desirability of, (ii) the covenants, conditions, restrictions, agreements, terms and provisions of this Declaration shall run with the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof; and (iii) each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions and restrictions regardless of whether or not the covenants, conditions, restrictions, agreements, terms and provisions of this Declaration are set out or referred to in said contract or deed.

ARTICLE 1 DEFINITIONS

In addition to words and phrases defined in other provisions of this Declaration, when used in this Declaration, the following words and phrases (unless the context otherwise specifies or requires), shall have the meanings specified below when used in this Declaration:

1.1 Architectural Committee. “Architectural Committee” shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property.

1.2 Architectural Committee Rules. “Architectural Committee Rules” shall mean the rules and regulations adopted by the Architectural Committee in accordance with the provisions of this Declaration, as the same may be amended from time to time.

1.3 Articles. “Articles” shall mean the Articles of Incorporation of The Club at Wells Point Owners Association, Inc., which have been filed in the office of the Secretary of State of the State of Texas, and as amended from time to time.

1.4 Assessment. “Assessment” or “Assessments” shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration and shall include Initial Assessments, Regular Assessments and Special Assessments, as those terms are defined in Article 5 below.

1.5 Association. “Association” shall mean the Club at Wells Point Owners Association, Inc., a Texas non-profit corporation.

1.6 Association Property. “Association Property” shall mean the Common Areas and Facilities and all other real or personal property now or hereafter owned by, or leased to, the Association.

1.7 Board. “Board” shall mean the Board of Directors of the Association.

1.8 Builder. “Builder” shall mean any residential building company which acquires Lots from Declarant or another residential building company active a Development Subdivision for the purpose of building, marketing and/or selling single family residences constructed on such Lots, which Builders include, but are not limited to, Kimball Hill Homes Texas, Inc., and Buffington Homes, Inc.

1.9 Builder Residence. “Builder Residence” shall mean any single-family residence and related Improvements constructed, or to be constructed, by a Builder on a Lot.

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

1.11 City. “City” shall mean the City of Pflugerville, Texas.

1.12 Common Area and Facilities. “Common Area and Facilities” shall mean (a) all portions of any Development Subdivision designated as common area on a Development Plat, (b) any and all lots, tracts or parcels of land out of the Development designated by Declarant as common area or for the benefit of the Owners and conveyed to the Association for the common benefit of the Owners, (c) any and all walls, fences, signs, monuments, gates, lights and lighting and Landscaping placed in or about a Development Subdivision by Declarant for the benefit of the Association and the Owners, (d) all easements (except public utility easements), access easements, rights-of-way, median strips, sidewalks, paths, trails, and other areas of the Property which service the Lots (or any of the Lots) or are dedicated for the benefit of the Association and/or the Owners and are not maintained and repaired by a Governmental Authority (e) any drainage, filtration, detention, and other storm water or water quality facilities which service any Development Subdivision and/or any Lots and require maintenance, repair or management by the Owners or the Association, (f) the Park Tract and all Improvements and Landscaping located on or about the Park Tract and (g) all improvements, equipment, and other facilities located on any of the above described properties which are owned, operated, maintained, and/or repaired by the Association.

1.13 County. “County” shall mean the County of Travis, Texas, a political subdivision of the State of Texas.

1.14 Declarant. “Declarant” shall mean Sutton Wells Point, Ltd., a Texas limited partnership, its duly authorized representatives and any of its assignees under the provisions of Section 7.8(a) below; provided that any assignment of the rights of Sutton Wells Point Ltd. as Declarant must be expressly set forth in writing and the mere conveyance of a Lot or other 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.

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

1.16 Development. “Development” shall mean the development commonly known as The Club at Wells Point, which is or will be located on tracts and parcels of real property described on Exhibit A attached to, and for all purposes made a part of, this Declaration. The tract of real property subject to the Development Plat for Section One is included in the Development.

1.17 Development Plat. “Development Plat” shall mean any map or plat of record in the Deed and Plat Records of Travis County, Texas, evidencing and providing for the creation and subdivision of a Development Subdivision, including, without limitation, the plat of Section One, recorded at Volume 93, Pages 112-114 of the Plat Records of Travis County, Texas, and, upon its recordation in the Plat Records of Travis County, Texas, the plat of Section Three A.

1.18 Development Subdivision. “Development Subdivision” shall mean (a) Section One, (b), effective on the date provided in Section 8.2(c) below, Section Three A and/or (c) any subdivision formed and created out of any other portion of the Development in accordance with applicable Governmental Requirements which is annexed as a part the Property and made subject to this Declaration in accordance with the provisions of Article 8 of this Declaration.

1.19 FHA. “FHA” shall mean the Federal Housing Administration.

1.20 Governmental Authority. “Governmental Authority” shall mean the United States of America, the State of Texas, the County, the City, and any other political or governmental subdivision in which the Property is located, in whole or part, and any other political subdivision, agency or instrumentality exercising jurisdiction over the Property.

1.21 Governmental Requirements. “Governmental Requirements” shall mean all laws, statutes, codes, ordinances, rules and regulations of any government authority applicable to the Property and/or the use, enjoyment, operation, maintenance or ownership of the Property.

1.22 Improvement. “Improvement” shall mean every structure and all appurtenances thereto of every type and kind constructed on, located on or attached to a Lot, including by not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, jacuzzis, hot tubs, spas, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, Landscaping, playscapes, basketball goals, sports courts, all other recreational and athletic equipment poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.23 Landscaping. “Landscaping” shall mean growing plants (including grass, vines, groundcover, trees, shrubs, flowers and bulbs) and related materials (including mulch, landscape edging and other materials used to fertilize, cultivate and sustain such growing plants), underground sprinkler irrigation systems, terraces, planters, screening walls, retaining walls, lights, wiring and lighting systems, and such other improvements for the landscaping and scenic enhancement of any of the Lots, any entry area into any Development Subdivision, or any other portion of the Property.

1.24 Lot. “Lot” or “Lots” shall mean any lot included in any Development Subdivision (as shown on the Development Plat of such Development Subdivision).

1.25 Member. “Member” shall mean any Person holding membership rights in the Association.

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

1.27 Mortgagee. “Mortgagee” shall mean the holder of any Mortgage.

1.28 Notice of Addition of Land. “Notice of Addition of Land” shall mean a notice executed in accordance with the provisions of Section 8.2 of this Declaration providing for the inclusion of a portion of the Development with the tracts of real property included in the Property.

1.29 Owner. “Owner” shall mean a Person, including, but not limited to, Declarant, holding a fee simple interest in any Lot, but shall not mean a Mortgagee until and unless any such Mortgagee acquires and owns a fee simple interest in the subject Lot.

1.30 Person. “Person” shall mean any individual, corporation, partnership (general or limited), joint venture, trust (or trustee), executor, administrator, guardian, association, estate or other entity having the legal right to hold title to real property.

1.31 Park Tract. “Park Tract” shall mean Lot 8 in Block M of Section One, as shown on the Development Plat of Section One.

1.32 Park Tract Improvements. Park Tract Improvements. “Park Tract Improvements” shall mean any and all Improvements placed, located, installed, constructed, altered and/or replaced on or about the Park Tract by Declarant and/or the Association.

1.33 Plans and Specifications. “Plans and Specifications” shall mean any and all documents designed to guide or control the construction, erection, removal or material alteration of any Improvement on any Lot, 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.

1.34 Property. “Property” shall mean and refer to Section One, Section Three A (effective as of the date provided in Section 8.2(c) below), and any and all other Development Subdivisions and all other portions of the Development made subject to this Declaration, whether in accordance with the provisions of Article 8 below, or otherwise. The Property includes (a) all Lots and all Common Area and Facilities in Section One, and (b), effective as of the date provided in Section 8.2(c) below, all Lots and any and all Common Area and Facilities in Section Three A, and (c) all Lots and any and all Common Area and Facilities in each and every Development Subdivision made subject to this Declaration under Section 8.2 below.

1.35 Restrictions. “Restrictions” shall mean (a) this Declaration (as it may be amended from time to time), (b) any and all Rules in effect from time to time, (c) any and all Architectural Committee Rules in effect from time to time and (d) the Articles and Bylaws of the Association in effect from time to time.

1.36 Rules. “Rules” shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

1.37 Section One. “Section One” shall mean The Club at Wells Point, Phase A, Section One, a subdivision in Travis County, Texas, created out of the Development according to the plat of record at Volume 93, Pages 112-114 of the Plat Records in Travis County, Texas.

1.38 Section Three A. “Section Three A” shall mean The Club at Wells Point, Phase A, Section Three A, a subdivision in Travis County, Texas, created or to be created out of the Development according to the plat recorded, or to be recorded, in the Plat Records in Travis County, Texas.

1.39 Supplemental Declaration. “Supplemental Declaration” shall mean any supplemental declaration of covenants, conditions, and restrictions supplementing the covenants, conditions and restrictions of this Declaration which may be hereafter executed and recorded in accordance with and subject to all of the covenants, conditions, restrictions, terms and provisions of this Declaration, and not in conflict with the covenants, conditions, restrictions, terms and restrictions of this Declaration, including, without limitation, any such supplemental declaration executed and recorded in accordance with the provisions of Section 8.2 of this Declaration.

1.40 VA. “VA” shall mean the Veterans Administration.

ARTICLE 2 GENERAL RESTRICTIONS

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

2.1 Residential Use of Lots. Each and every Lot shall be improved and used solely for (a) detached single family residential use and accessory uses, including, without limitation, a dwelling, a garage, fencing, recreational and athletic facilities, and such other Improvements as are necessary or customarily incident to residential use, (b) the construction, marketing and sale of single

family residences by Declarant or a Builder, and (c) any other use permitted under the provisions of this Declaration. Except for the construction of Improvements and the marketing and sale of single family residences located in a Development Subdivision, any business permitted under the provisions of Section 2.2 below, and any garage sales permitted under Section 2.17 below, no business or commercial activity to which the general public is invited shall be conducted on or about any of the Lots. No Improvement constructed on a Lot may be used as an apartment house, flat, lodging house or hotel, but such Improvements may be leased to the same Person or Persons for single family residential purposes for a minimum term of thirty (30) days within each six month period.

2.2 Home Occupations. Subject to applicable Governmental Requirements and except as expressly otherwise provided below, the Owner of any Lot may use the single family residence and any ancillary buildings located on the subject Lot for a home occupation, subject to the following terms, conditions and limitations:

- (a) The home occupation shall be conducted entirely within the single family residence and/or any ancillary building(s) located on the Lot. The single family residence located on the Lot shall be the bona fide residence of the Owner and the practitioner of the home occupation conducted on the subject Lot.
- (b) In addition to the Owner's family members residing in the single family residence located on the Lot, no more than three (3) natural persons may participate in any and all home occupations conducted on the subject Lot.
- (c) The residential character of the Lot and the single family residence located on the subject Lot shall be maintained at all times. Neither the interior nor the exterior of the single family residence, or any other Improvement located on the Lot shall be structurally altered so as to require compliance with non-residential construction codes to accommodate any home occupation conducted on the subject Lot.
- (d) Any and all home occupations conducted on the Lot shall not generate customer related vehicular traffic in the Subdivision in excess of eight (8) vehicles per twenty-four (24) hour period (excluding vehicle trips for family, household or other residential purposes). Parking for all vehicular traffic generated from any and all home occupations conducted on any Lot shall be provided on the subject Lot and not on any other Lot or any Common Area and Facilities.

- (e) No equipment or materials associated with any home occupation conducted on the Lot shall be displayed or stored where visible from any other location in the Subdivision outside the boundaries of the subject Lot.
- (f) Any home occupation conducted on the Lot shall not produce external noise, vibration, smoke, dust, odor, heat, fumes, electrical interference or waste runoff outside the residence and buildings located on the subject Lot or on any portion of the Lots surrounding the single family residence and other buildings located on the subject Lot.
- (g) Neither the home occupation conducted on the Lot, nor the street address of such home occupation may be advertised by any means, medium or manner, including, but not limited to, signs on the Lot or any other portion of the Subdivision, signs located anywhere outside the boundaries of the Subdivision, newspaper advertisements, television advertisements, radio advertisements, “yellow pages” advertisements or advertisement in any other printed, published, electronic or communication media or network.
- (h) Notwithstanding anything in this Declaration to the contrary, the following businesses or occupations may not be conducted or carried out on any Lot or any other portion of the Property: animal hospitals, animal breeding, clinics, hospitals, contractors’ yards, dancing schools, junk yards, massage parlors, restaurants, rental outlets, vehicle repair shops, or any other business or occupation that is not permitted to be conducted in property zoned for single family residential purposes under the zoning ordinances of the City.

2.3 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.

2.4 Subdividing. Except as otherwise expressly provided in this Declaration, no Lot shall be further divided or subdivided, nor may any easements or other interests 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.

2.5 Signs. No sign of any kind shall be displayed on any Lot except as permitted under the provisions of this Section 2.5.

- (a) A Builder who is engaged in construction of a single-family residence upon a Lot may advertise such Lot or any residential structure thereon for sale until such time as the Lot and/or any residential structure situated thereon is sold.
- (b) Any Owner may display one (1) sign with a surface area of not more than four (4) square feet on said Owner’s Lot to advertise such Lot or any residential structure located thereon for sale or rent.

(c) Signs required for legal proceedings may be placed on any Lot.

(d) No more than three (3) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such sign shall not be erected more than ninety (90) days in advance of an election to which they pertain and are removed within fifteen (15) days after such election.

2.6 Garbage, Rubbish and Debris. Except in connection with construction activities by Declarant or a Builder, 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. Except in connection with construction activities by Declarant or a Builder, 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. The Association shall have the right, but not the obligation to adopt Rules governing the type, location and screening of containers for refuse, garbage and trash.

2.7 Noise. Without the prior written consent of the Association, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any Lot or any other portion of the Property. No noise or other 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 its occupants. No noxious or offensive activity shall be conducted on any portion of the Property. The Board, in its sole discretion, shall determine whether an action or activity constitutes a violation of this Section 2.7.

2.8 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on the Property. No more than three (3) domestic pets may be kept on any Lot, unless permitted by the Association. No domestic pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operations will be allowed. No domestic pet shall be allowed to run at large and all domestic pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

2.9 Hazardous Activities; Fertilizers, Pesticides and Herbicides.

- (a) No activities shall be conducted or allowed to exist on any portion of the Property and no Improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, activities that are expressly prohibited include (1) mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth, (2) the use or discharge of firecrackers or other fireworks within the Property, (3) the use or storage of liquid propane gas, gasoline, oil or any type of flammable liquids or gases in other than closed tanks with capacities of five (5) gallons or less within an enclosed structure or permanently screened from view, provided, however, only such liquids and gases as are customarily used for residential purposes shall be allowed on the Property, (4) any activities, other than construction activities, which may be offensive or hazardous by reason of odor, fumes, dust, smoke, noise, vibration or

pollution, or which are hazardous by reason of excessive danger, fire or explosion, (5) hunting, trapping and the discharge of firearms, (6) open fires in other than a contained barbecue unit for cooking purposes, while attended and in use, or within a safe and well designed interior fireplace, (7) the use of bows and arrows, crossbows, slingshots, darts or other projectile devices, or (8) the discharge or leakage of any type of hazardous or toxic chemical or material, such as oil, fertilizers, pesticides or herbicides, provided, however, only such materials as are customarily used for residential purposes or residential construction activities shall be allowed on the Property.

- (b) No fertilizers, pesticides or herbicides other than those generally available for consumer use and approved by a governmental agency, such as the Food and Drug Administration, for the purpose intended shall be placed, used or stored on any Lot. All Owners using any such materials shall strictly comply with all instructions provided with such materials and shall take proper precautions in placing, using and storing such materials so that such materials are contained at all times and do not result in the unnecessary discharge thereof into any creek, stream, river, pond, lake or aquifer or onto any other Lot.

2.10 Exterior Lighting. All exterior lighting on any Improvement must be approved by the Architectural Committee and shall be designed so as to avoid the directing of lighting towards any other building, excluding buildings on the Lot containing such lighting; provided, however, Christmas and other holiday lights shall be permitted without prior approval after Thanksgiving of each year and during the month of December each year, but must be removed by January 15 of the next year. No lighting shall be permitted that constitutes a nuisance or hazard to any Owner or occupant of any Lot. The Board in its sole discretion shall determine whether the provisions of this Section 2.10 have been satisfied.

2.11 Antennae; Satellite Dishes. Except as otherwise provided below, no exterior radio, television antenna or aerial or satellite dish shall be erected or maintained within the Property without the prior written approval of the Architectural Committee; provided, however, that installation on a Lot of a satellite dish with a diameter of 36 inches or less which is not visible from a public street and is screened from view from any other Lot shall not be prohibited under this Section 2.11.

2.12 Temporary Structures. Except as otherwise provided below, no tent, shack or other temporary building, improvement or structure shall be placed upon the Property without prior written approval of the Architectural Committee; provided, however, that with the prior approval of Declarant, such approval to include the nature, size, composition, design, components, duration and location of such building, improvement or structure, (a) temporary buildings, improvements or structures necessary for storage of tools and equipment, restrooms and office space for architects, builders and foremen may be maintained on a Lot during the period of actual construction of any Improvement, and (b) any Builder may place and maintain one (1) temporary building or structure on one (1) Lot owned by the subject Builder to be used for marketing and sales purposes. Any temporary building, improvement or structure permitted under this Section 2.12 shall comply with all provisions of this Declaration, except as expressly otherwise provided in this Section 2.12.

2.13 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

2.14 Unightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks (other than pickup trucks), boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. No Owner shall keep, or permit to be kept, more than two (2) automobiles on the driveway or other areas of the Owner's Lot in such manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72) consecutive hours. No automobiles or other vehicles may be parked overnight for more than two (2) consecutive nights on any roadway within the Property. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse of trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. Window or wall air conditioning units shall not be installed in any Improvement except within enclosed structures approved by the Architectural Committee or appropriately screened from view in a manner approved by the Architectural Committee.

2.15 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers, recreational vehicles or similar vehicles shall be parked on any portion of the Property so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) consecutive hours.

2.16 Athletic and Recreational Facilities. Except as permitted below or as otherwise permitted or approved by the Architectural Committee, outdoor athletic and recreational facilities such as swing sets, tennis courts, playscapes, and sport courts of either a permanent or temporary nature shall not be placed upon any Lot between any roadway within the Property and the front of the single family residential structure located upon the Lot. Notwithstanding the foregoing provision, basketball goals (both portable and attached) shall be permitted to be placed and located on any Lot; provided, however, any basketball goal placed and located on a Lot must be (i) located on or adjacent to the principal driveway of the single-family residential structure located upon the Lot, and (ii) positioned no closer than twenty (20) feet from the nearest curb on the roadway adjacent to and intersecting such principal driveway.

2.17 Garage Sales. Subject to the terms and conditions of this Section 2.17, “garage sales” are permitted to be conducted on any Lot owned by any Person other than Declarant or a Builder and on which a single-family residence has been constructed. No Owner or occupant of a single-family residence on a Lot shall conduct more than one (1) garage sale every six (6) months. No garage sale shall be conducted for a period in excess of two (2) days.

2.18 Construction, Repair, Alteration and/or Removal of Improvements.

- (a) Except for Improvements placed, located, installed, constructed, removed or altered by Declarant, no Improvement may be placed, located, installed, constructed, removed or materially altered upon or from any portion of the Property without the prior written approval of the Architectural Committee. All dwellings constructed on the Property

shall be built in place on the Lot and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Committee.

- (b) All Improvements upon any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof.
- (c) Any construction, alteration, addition or renovation of any Improvements on any Lot, other than normal maintenance, which in any way materially alters the exterior appearance of the subject Improvements, or the removal of any material portion of any Improvement on any Lot, shall be performed only with the prior written approval of the Architectural Committee.

2.19 Construction Activities. Notwithstanding any provision in this Declaration 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. 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. 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.

2.20 Building Materials. All building materials shall be approved by the Architectural Committee, and, except as expressly otherwise permitted and approved by the Architectural Committee, only new building materials (except for used brick) shall be used in constructing any Improvements. Exposed metal roof decks which reflect light in a glaring manner such as galvanized steel sheets are specifically prohibited. Other roofing materials may be used with the prior written consent of the Architectural Committee, which may specify a minimum quality or grade of materials. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the color of the surface from which they project, or shall be of a color approved by the Architectural Committee. All chimney flues, smoke stacks, and spark arresters shall be completely enclosed with materials approved by the Architectural Committee, or screened from view from other Lots in a manner approved by the Architectural Committee. Without the prior written approval of the Architectural Committee no highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including without limitation the exterior surfaces of any Improvements. The exposed surface of the exterior walls of all single-family dwellings (exclusive of roofs, eaves, soffits, windows, gables, and trim work) shall be constructed of 50% masonry, stone or other materials specifically approved in writing by the Architectural Committee; provided that at least 90% of the exposed surface of the front exterior walls of each single-family residence constructed in the Development shall be constructed of masonry, stone or other materials specifically approved in writing by the Architectural Committee.

2.21 Window Treatment. No aluminum foil, reflective film or similar treatment shall be placed on any Improvement located upon a Lot.

2.22 Drainage. There shall be no material interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Committee. In connection with the construction of Improvements on a Lot which causes a material interference with the established drainage patterns over any of the Property (other than the subject Lot), the Architectural Committee, as a condition to the approval of the Plans and Specifications for any Improvements to be constructed on the subject Lot, may require that the Owner of the subject Lot provide adequate drainage facilities which will direct the flow of storm water and surface water from the area of the subject Lot in which the established drainage patterns will be affected by the subject construction into drainage easements and/or storm water drainage facilities located in the Subdivision and/or disburse and spread the flow of surface water and storm water on, over and across the subject Lot in a manner that will avoid damage to any property located outside the boundaries of the subject Lot.

2.23 Underground Utility Lines. Except for (i) those portions of the public utility easements located within the Property in which the electric utility has constructed above-ground utility lines due to conditions (economic, geographic, geological or otherwise) which make underground lines impracticable, and (ii) Lots which receive service from such above-ground utility lines, no utility lines including, but not limited to, wires or other devices for the communications or transmission of telephone or electric current or power, cable television or any other type of line or wire shall 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 buildings or other 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 buildings or other 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.

2.24 Fences. Subject to the provisions of this Section 2.24 and except for any fence or wall constructed by, or with the approval of, Declarant along or adjacent to the rear or side lot lines of any Lots or on any Common Area and Facilities, the construction of fences on any Lot shall be restricted, and no fence shall be constructed on any Lot without the prior written consent of the Architectural Committee. Except as otherwise expressly otherwise provided below and for any fence or wall constructed by, or with the approval of, Declarant along or adjacent to the rear or side lot lines of any Lots or on any Common Area and Facilities, the Architectural Committee, in its discretion, may prohibit the construction of any proposed fence, specify the height or location of the proposed fence, specify the materials of which any proposed fence must be constructed, or require that any proposed fence be screened by vegetation or otherwise so as not to be visible from other portions of the Property. Notwithstanding anything in this Section 2.24 to the contrary, a fence having a height of six (6) feet and constructed of redwood, oak or cedar wood boards, masonry or wrought iron may be placed and located along the rear property line of a Lot and along the side property lines of a Lot within the area from the rear property line of the Lot to a point ten (10) feet to the rear of the wall of the dwelling located on the subject Lot which is closest to the front property line of the subject Lot. Each fence located on a Lot shall be maintained and repaired by the Owner of the subject Lot. In the case of a fence located on, or immediately adjacent to, the property line between two Lots, (i), if the rear and side yards of each of the two Lots are enclosed by a fence, the respective Owners of the two Lots shall be jointly and severally obligated to maintain and repair the subject fence, (ii), if the rear and side yards of each of the two Lots are enclosed by a fence, the respective Owners of the two Lots shall be jointly and severally obligated to maintain and repair the subject fence, and (iii), if the rear and side yards of only one of the two Lots is enclosed by a fence, only the Owner of the Lot on which the rear and side yards are enclosed by a fence shall be obligated to maintain the fence located on, or immediately adjacent to, the property line between the two Lots. No barbed-wire, cloth, agricultural or chain link fences shall be constructed on any Lot except (i) temporarily during construction, erection and installation of any Improvements and (ii) black, brown or green plastic or p.v.c. coated chain link fences on any Common Area and Facilities.

2.25 Lawns and Plantings. The front yard of each Lot and the front and the side yard adjacent to the street of each corner Lot shall be fully sodded prior to the occupancy of the residence located on such Lot. The Architectural Committee shall be entitled to make recommendations with respect to tree disease control, whereupon the Owner or Owners to whom the recommendations are directed shall be obligated to comply with such recommendations. Decorative groundcover rock in the front and side yards of each Lot may not exceed ten (10) percent of the total area of the front and side yard of such Lot. 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. In the event any Owner fails to do so, Declarant, or the Association shall have the right at any reasonable time to enter upon such Owner's Lot to replace, maintain and cultivate shrubs, trees, grass or any other Landscaping located thereon and to charge the cost thereof to the Owner of the Lot as provided in Section 4.5(b) below. For purposes of this Section 2.25 the yard of each Lot shall be deemed to include the area between any lot line(s) of the subject Lot and the curb and pavement of any street bordering such lot line(s).

2.26 Garages. Each single-family residential structure constructed upon a Lot shall have sufficient garage space to accommodate at least two (2) automobiles. All garages shall be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation.

2.27 Detached Accessory Buildings. No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior written consent of the Architectural Committee. Every detached accessory building shall be compatible with the design of and materials utilized in the single-family residential structure located upon the Lot. Notwithstanding any other provision in the Declaration to the contrary, in no event shall any detached accessory building exceed one (1) story in height or have a total floor area in excess of ten percent (10%) of the floor area of the single-family residential structure located upon the Lot.

2.28 Driveways. Any driveway on a Lot shall be located, designed and constructed in compliance with all applicable Governmental Requirements. Only those materials expressly permitted in this Section 2.28 and other materials approved by Declarant or the Architectural Committee may be used in the construction of any driveway located on a Lot. Concrete, pebbled concrete, brick, brick pavers, tile, and stone may be used as materials for any driveway located on a Lot. Any driveway located on a Lot shall be constructed in a manner that will allow the surface water and storm water drainage along the curb line of the street adjacent to the subject driveway to continue without a material interruption or change in direction of flow.

2.29 Building Height. Without the prior written approval of the Architectural Committee, no Improvement on any Lot in the Subdivision may have more than two (2) stories and exceed a height equal to the greater of (i) thirty-five (35) feet, or (ii) the maximum height of a single family residence permitted to be placed on the subject Lot under applicable Governmental Requirements. For purposes of this Section 2.29, the height of any Improvement on any Lot shall be measured in accordance with the provisions of applicable Governmental Requirements for measuring the maximum permitted height of a single-family residence on the subject Lot; provided, that in the event no Governmental Requirement governs the manner in which the height of a single-family residence on the subject Lot is to be measured, the height of any Improvement constructed on the subject Lot shall be measured from an elevation derived from the average of the highest and lowest grades of the subject Lot adjacent to the subject Improvement, to (i) the highest point of the coping of a flat roof, (ii) the deck line of a mansard roof, (iii) the average height of the highest gable on a pitched or hipped roof, or (iv), if none of the above apply, the highest point of the subject Improvement.

2.30 Dwelling Size. Except as otherwise expressly allowed or approved in writing by the Architectural Committee (i) all single-story dwellings on any Lot shall contain not less than 1,400 square feet enclosed living space, exclusive of porches (open or covered), decks, garages and carports; (ii) all two-story dwellings on any Lot shall contain not less than 1,600 square feet of enclosed living space, exclusive of porches (open or covered), decks, garages and carports; and (iii) the first floor area of all two-story dwellings shall contain no less than 900 square feet of living area.

2.31 Setback Requirements. Except as expressly allowed or approved in writing by the Architectural Committee, no Improvement shall be located or erected (i) nearer to any Lot bordering a public street or right of way than is indicated by the building line shown on the Development Plat of the Development Subdivision in which the Lot is situated; (ii) nearer than 7« feet from any side Lot line; (iii) nearer than 20 feet from any rear Lot line or (iv) within an easement (whether shown on the applicable Development Plat or otherwise of record). For purposes of these covenants, eaves, steps and open porches shall not be considered as part of the building; provided, however, that this shall not be construed to allow any such structure to encroach upon another Lot.

2.32 Sight Distance at Intersection. With respect to any Lot which is located adjacent to the intersection of any streets in a Development Subdivision, no fence, wall, tree, hedge or shrub planting that obstructs sight-lines at elevations between two (2) and nine (9) feet above the roadway shall be placed or permitted to remain on the subject Lot within the triangular area formed by the Lot lines adjacent to the intersecting streets and a line connecting these lot lines at points twenty-five (25) feet from the point at which the subject lot lines meet at the intersection of the subject streets, or in the case of a rounded property corner, from the point at which the subject lot lines would meet if the subject lot lines were extended into the adjacent intersecting streets. With respect to the intersection of the driveway(s) located on any Lot and the street accessed from such driveway(s), no fence, wall, tree, hedge or shrub planting that obstructs sight-lines at elevations between two (2) and nine (9) feet above the roadway shall be placed or permitted to remain on the subject Lot within the triangular areas formed along each side of the subject driveway by the line connecting a line extending along the edge of the subject driveway for a distance of ten (10) feet from the subject driveway-street intersection with a line extending from the subject driveway-street intersection along the edge of the pavement of the street for a distance of ten (10) feet. All tree foliage within any and all triangular areas described in the preceding two sentences shall be maintained to meet the sight-line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, at a minimum, sight distances required by any applicable governmental authority shall be complied with.

2.33 Rules. The Association, acting through the Board, shall have the power and authority to promulgate, adopt, enact and enforce rules, not in conflict with the provisions of this Declaration, which are necessary or proper to enforce, carry out, interpret and implement the restrictions imposed on the Lots and the Property under this Article 2.

2.34 Compliance with Restrictions. Each Owner shall comply strictly with (i) the provisions of the Restrictions as the same may be amended from time to time, and (ii) all Governmental Requirements applicable to the ownership, occupancy, maintenance, use and enjoyment of the Lots. Failure to comply with any of the 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 an aggrieved Owner.

2.35 Liability of Owners for Damage to Common Area and Facilities. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area and Facilities without the prior written approval of the Board. To the extent of the Owner's liability under applicable State law, each Owner shall be liable to the Association for any and all damages caused by the negligence or willful misconduct of such Owner or such Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner to (i) the Common Area and Facilities, or (ii) to any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association. The full cost of all repairs of any damage to the Common Area and Facilities or any Improvements on any Lot for which an Owner is liable under this Section 2.35 and applicable State law shall be an Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectible in the same manner as provided in Article 5 below, including but not limited to foreclosure of such lien.

ARTICLE 3
ARCHITECTURAL COMMITTEE

3.1 Membership and Duties of Architectural Committee.

(a) The Architectural Committee shall be composed of not more than three (3) persons. The following persons are hereby designated as the initial members of the Architectural Committee: Karen L. Burks, Rigo Salinas, and Connie D. Davis.

(b) 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 duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board. The Architectural Committee shall review Plans and Specifications submitted for its review and such other information as it may require to (i) assure that the Improvements contemplated by the subject Plans and Specifications and the development of the subject Lot in accordance with the subject Plans and Specifications comply with the requirements of this Declaration and will conform to the aesthetic and conceptual standards established for the Development. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in this Declaration and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee may hire consultants, including engineers and architects, to assist it in its duties hereunder. The Architectural Committee, and its agents and employees, shall not be responsible for inspecting any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval of any Improvement as to structural safety, engineering soundness or conformance with any building or other codes, regardless of the hiring by the Architectural Committee of any consultants to assist it in its duties hereunder.

3.2 Term. Each member of the Architectural Committee shall hold office until such time as he has resigned or has been removed and his successor has been appointed.

3.3 Declarant's Rights of Appointment. Declarant, its successors and assigns, shall have the right to appoint and remove any and all members of the Architectural Committee at any time and from time to time until this right has been delegated or deemed delegated as provided below. Declarant may delegate this right to the Board by written instrument, and such right shall be deemed delegated to the Board effective upon any termination of Declarant's privileges, exemptions, rights and duties hereunder as provided in Section 7.8(b) below. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee.

3.4 Review of Construction, Alteration or Removal of Developments.

(a) Whenever in this Declaration the approval of the Architectural Committee is required, (i) 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, materials, construction samples, reports and other information which it considers, in its sole discretion, to be relevant, and (ii) the approval of the Architectural Committee must be obtained in writing prior to commencement of any construction, alteration, renovation, addition or refurbishment for which such approval was required. As provided in Article 2 above, prior to commencement of any construction, any removal or any material alteration of any

Improvement on any Lot, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and such construction, alteration or removal may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. All such construction, alteration or removal shall conform to the approved Plans and Specifications.

(b) An Owner, other than Declarant, proposing to construct, remove or materially alter an Improvement or the landscaping on any Lot shall submit an application to the Architectural Committee together with three (3) sets of the Plans and Specifications for such construction, removal or alteration, and the application fee described below. The Plans and Specifications submitted to the Architectural Committee in accordance with the provisions of this Section 3.4 should be preliminary plans which contain such information, and as in a form, designated and required by the Architectural Committee, acting reasonably.

(c) Within thirty (30) days after receipt by the Architectural Committee of such Plans and Specifications, it shall act on the Plans and Specifications as follows:

(i) The Architectural Committee may request in writing that the Owner submit to it such additional materials, construction samples, reports and information that the Architectural Committee considers relevant in reviewing the Plans and Specifications for compliance with this Declaration and the Development Agreement. Until receipt by the Architectural Committee of all information requested by it, it may postpone review of such Plans and Specifications. Upon receipt of all such information requested by it, the Architectural Committee shall act upon such Plans and Specifications within thirty (30) days.

(ii) If the Architectural Committee approves such Plans and Specifications, it shall mark all sets of the Plans and Specifications "Approved" with the date thereof, and retain one set for its records and return two sets to the Owner. The Owner must commence construction of the Development or activity shown in approved Plans and Specifications within ninety (90) days of the Architectural Committee's approval thereof or such approval shall lapse. Upon written request of an Owner, the Architectural Committee shall grant up to two (2) thirty (30) day extensions of such approval.

(iii) If the Architectural Committee disapproves such Plans and Specifications, it shall mark all sets of the Plans and Specifications "Disapproved" with the date thereof, and retain one set for its records and return two sets to the Owner, with a written statement of all of the items that were found not to comply with this Declaration and/or the Development Agreement. Thereafter, the Owner shall submit to the Architectural Committee three (3) revised sets of Plans and Specifications, with notations thereon sufficient to identify the revised portions, and the Architectural Committee shall act on such revised Plans and Specifications within thirty (30) days after receipt by it of such revised Plans and Specifications and all information requested by it as provided in this Declaration with respect to initial Plans and Specifications.

(iv) If the Architectural Committee fails to act on any Plans and Specifications submitted to it within thirty (30) days after receipt by the Architectural Committee of all information requested by it in connection with such Plans and Specifications, approval of the matters submitted to it shall be presumed.

(d) The Board shall establish and may thereafter amend from time to time an application fee that shall be paid in cash by each Owner at the time of submittal of any application and Plans and Specifications to the Architectural Committee. Such fee may be in different amounts based upon the activity proposed in such application. Such fee shall not exceed the reasonable costs and expenses of the Board and the Architectural Committee for the processing and review of Plans and Specifications and the reasonable costs and expenses of any consultants hired by the Architectural Committee as provided in this Declaration.

3.5 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 its behalf. In the absence of such designation, the vote of a majority of all of the members of the Architectural Committee taken at a meeting shall constitute an act of the Architectural Committee. In the event that the members of the Architectural Committee cannot agree by majority vote on any matter submitted to them, the matter may be raised at any meeting of the Board and decided by a majority of the Board members present, provided that a quorum is present.

3.6 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with the provisions of this Declaration, as it may deem necessary or proper for the performance of its duties, including, but not limited to, a building code, a housing code, a fire code, a landscaping code, and other similar codes as may be deemed necessary and desirable. Any and all rules adopted by the Architectural Committee may be amended, repealed or otherwise modified at any time and from time to time by the Architectural Committee.

3.7 No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans or 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 Plans and Specifications, or other matter whatsoever, subsequently or additionally submitted for approval or consent by the same or a different Owner.

3.8 Variations. The Architectural Committee may grant variances from compliance with any of the covenants, conditions, restrictions or provisions of this Declaration with respect to any Improvements constructed or to be constructed on a Lot, or any use or condition of any Lot when (i) the specific Section of this Declaration with respect to which the variance is to be granted states (expressly or impliedly) that the Architectural Committee may modify the restrictions imposed under the subject Section of this Declaration, approve or otherwise consent to a variance or waiver of the provision of the subject Section of this Declaration, or consent to an Improvement, use or condition which does not conform with, or conflicts with, the restrictions imposed under the subject Section of this Declaration, (ii), the specific Section of this Declaration prohibits or restricts the requested Improvement, use or condition without the prior approval or consent of the Architectural Committee, or (iii), in the opinion of the Committee, such variance will not be materially adverse to the overall quality of the Property and any other Improvements in the Development, or is justified due to unusual or aesthetic considerations, topographic considerations or similar circumstances; provided, however, that the Architectural Committee shall not permit or grant any such variance which would in any way

violate or cause the Lot(s) or the Owner(s) to fail to comply with any Governmental Requirement. Such variances must be evidenced in writing and must be signed by at least a majority of the members of the Committee. In the event a requested variance requires any license, permit, consent or approval of a Governmental Authority or other evidence of compliance with a Governmental Requirement, the Architectural Committee may grant the variance subject to and conditioned upon the Owner requesting such variance obtaining such required license, permit, consent or approval of the Governmental Authority or providing evidence of compliance with any such Governmental Requirement. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance in accordance with the provisions of this Section 3.8 shall not operate to waive any of the covenants, conditions, restrictions or provisions of this Declaration for any purpose except for the particular purpose(s) of the subject variance and only as to the Lot or Lots with respect to which the subject variance was granted.

3.9 Nonconforming or Unapproved Developments. The Architectural Committee, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications. The Architectural Committee may, with the prior approval of the Board, require any Owner to restore such Owner's Lot to the condition existing prior to construction, alteration or removal of any Improvement or landscaping thereon, including without limitation the demolition and removal of any unapproved or nonconforming Improvement or landscaping, if such Improvement or landscaping was constructed or altered in violation of this Article 3. In addition, the Architectural Committee may, with the prior approval of the Board, but has no obligation to, cause such restoration, demolition and removal of any such Improvement or landscaping, and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such unapproved or nonconforming Improvement or landscaping was constructed or altered.

3.10 Nonliability of Architectural Committee and Board Members. Notwithstanding anything to the contrary in this Declaration, neither the Architectural Committee nor the members thereof, nor the Board nor the members thereof, nor such Persons' respective agents, employees, heirs, successors, legal representatives and assigns, shall be liable to any Owner or any other third party due to the construction of any Improvement within the Property or the creation thereby of an obstruction to the view from any Lot or Lots.

3.11 Nondiscrimination. In performing, observing and carrying out its duties, obligations, rights, powers and privileges under this declaration, the Architectural Committee shall (a) act in a nondiscriminatory manner as to each Owner, (b) shall apply the provisions of this Declaration and any of the rules adopted by the Architectural Committee in a uniform and consistent basis to all owners, Lots and Improvements, and (c) shall not act in a manner which is unreasonable or arbitrary.

3.12 Address. Plans and Specifications shall be submitted to the Architectural Committee in care of the Board at the current address of the Board, or such other address as may be designated from time to time in writing by the Architectural Committee.

3.13 Exemption of Declarant. Notwithstanding any provision on 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 Review 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 and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property.

3.14 Builder Requirements. Notwithstanding any provision on this Declaration to the contrary, the requirements and procedures set forth in this Article 3 for approval by the Architectural Committee of any Improvements to be constructed on a Lot shall not apply to any Builder Residence to be constructed on any Lot if the subject Builder has complied with, and received the necessary approvals under, this Section 3.14. In lieu of proceeding under Section 3.4 above, a Builder may elect to submit to the Architectural Committee for its review the following information concerning any types or models of Builder Residences the Builder proposes to construct on any of the Lots owned, or to be purchased, by the subject Builder: (a) floor plans depicting the exterior dimensions of the subject types or models of Builder Residences, (b) renderings, sketches or drawings of exterior elevations for the subject models or types of Builder Residences, and (c) site plans depicting which model or type of Builder Residence will be built on each Lot owned, or to be purchased, by such Builder (the floor plans, renderings, sketches, drawings, site plans and other information submitted by the subject Builder, the “Builder Plans”). The Architectural Committee shall have a period of thirty (30) days from the date it has received all Builder Plans required to be submitted by a Builder under this Section 3.14 in which to review the subject Builder Plans. The Architectural Committee may approve any Builder Plans prior to the expiration of the thirty (30) days review period provided above by giving the subject Builder written notice of approval of the subject Builder Plans. If the Architectural Committee has any objections to any Builder Plans submitted to it for review under this Section 3.14, the Architectural Committee shall notify the subject Builder in writing prior to the expiration of this thirty (30) days review period, specifying the items to which it objects. If the Architectural Committee does not object to any Builder Plans submitted to it for review under this Section 3.14 prior to the expiration of thirty (30) days after all required Builder Plans are submitted to it for review, the subject Builder Plans shall be deemed approved and no further approval shall be required under this Article 3 for the construction of a Builder Residence in accordance with approved Builder Plans except for approval of a Builder Site Plan for the subject Builder Residence as provided below. After Builder Plans for a type or model of Builder Residence a Builder proposes to construct on any Lots owned, or to be purchased, by the subject Builder are approved as provided above, a Builder, prior to construction of any Builder Residence in accordance with approved Builder Plans, shall deliver a site plan and materials specification list (a “Builder Site Plan”) to the Architectural Committee showing the type or model of Builder Residence propose to be constructed by such Builder in accordance with approved Builder Plans on a Lot owned, or to be purchased, by the subject Builder and shown on the subject site plan. The Architectural Committee shall have a period of fifteen (15) days from the date of receipt of a Builder Site Plan submitted to it for review under this Section 3.14 in which to notify the submitting Builder of any objections the Architectural Committee has to the subject Builder Site Plan. The Architectural Committee may approve any Builder Site Plan submitted to it for review under this Section 3.14 prior to the expiration of the fifteen (15) days review period provided above by giving the submitting Builder written notice of approval of the subject Builder Site Plan. If the Architectural Committee has any objections to any Builder Site Plan submitted to it for review under this Section 3.14, the Architectural Committee shall notify the subject Builder in writing prior to the expiration of this fifteen (15) days period, specifying the items to which it objects. If the Architectural Committee does not object to any Builder Site Plan prior to the expiration of fifteen (15) days after the subject Builder Site Plan is submitted to it for review under this Section 3.14, the subject Builder Site Plan and the Builder Residence shown on the subject Builder Site Plan shall be deemed approved and the submitting Builder may construct the approved Builder Residence on the Lot shown and designated on the approved Builder Site Plan.

ARTICLE 4
THE ASSOCIATION

4.1 Organization. The Association is a non-profit corporation created by Declarant for the purposes, and charged with the duties and vested with the powers, prescribed by law and set forth in its Articles and Bylaws and/or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to (a) be inconsistent with this Declaration, or (b) release or diminish the obligations imposed on the Association to operate, repair and maintain the Park Tract.

4.2 Membership. Any Person upon becoming an Owner shall automatically become a Member of the Association. Membership in the Association shall be appurtenant to and shall run with ownership of the Lot which qualifies the Owner thereof for membership in the Association, and membership in the Association may not be severed from, or in any way transferred, pledged, mortgaged, or alienated from a Lot except together with the title to the subject Lot. Every Member shall have the right at all reasonable times during business hours to inspect the book and records of the Association.

4.3 Voting Rights. The Association shall have two (2) classes of voting memberships:

(a) Class A. Class A Members shall be all Owners, with the exception of Declarant, and each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine as provided by the Bylaws, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B Member(s) shall be Declarant, and its successors and assigns, and shall be entitled to three (3) votes for each Lot owned by it. Subject to reinstatement of the Class B membership upon the annexation of a Development Subdivision as a part of the Property in accordance with the provisions of Article 8 below, the Class B membership shall cease and be converted to Class A membership on the happening of the first to occur of the following events:

(i) five (5) years following the date of the complete development of all of the land included in the Development;

(ii) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, (subject to reversion back to Class B membership upon annexation of Development Subdivisions as a part of the Property pursuant to the provisions of Article 8 below); or

(iii) twenty (20) years from the date this Declaration is filed for record in the Real Property Records of Travis County, Texas.

The election of directors to the Board and the act, approval or disapproval of the Members, as the case may be, with respect to all other matters voted, or to be voted, on or by the Members shall be determined by the vote of the majority of the aggregate votes entitled to be cast by the Members present or represented by legitimate proxy at a legally constituted meeting at which a quorum of the Members is present, except where a vote by a greater percentage is required pursuant to other provisions of this Declaration, the Articles, the Bylaws or a Governmental Requirement. Any Member, including Declarant, may give a revocable written proxy to any person authorizing such person to cast all or any portion of the Member's votes on any matter. Such written proxy shall be executed in writing by the Member or by his duly authorized attorney in fact, but no such proxy shall be valid for a period of greater than eleven (11) months. The cumulative system of voting shall not be allowed at any vote of the Members. The rights of any Member to cast votes on Association matters shall automatically be suspended during any period of time when such member owes any past due Assessments to the Association. Any Owner may collaterally assign his voting rights hereunder to the Mortgagee of a first Mortgage affecting the Lot or Lots owned by such Owner, which said assignment shall not be effective until written notice thereof is actually received by the Association, together with evidence of such assignment.

4.4 Duties of the Association. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have and perform each of the following duties:

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

(b) To obtain and maintain in effect policies of insurance, including public liability policies of insurance and errors and omissions policies of insurance, which, in the Board's judgment, are reasonably necessary or appropriate to protect the Association, the Owners and the Association Property and/or to carry out the Association's functions.

(c) To maintain any Landscaping and Improvements along or in the medians located in the public streets and rights-of-way in the Development Subdivisions and to maintain all signs identifying the Development and any Development Subdivision.

(d) To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Association Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

(e) To keep books and records of the Association's affairs.

(f) To perform, satisfy, observe, carry out and enforce all duties, obligations and responsibilities of the Association set forth in this Declaration.

(g) Upon the substantial completion of any Common Area and Facilities by Declarant which are to be dedicated and/or conveyed to the Association in accordance with Section 6.1 below, to (i) accept, own and operate all Common Area and Facilities (including, without limitation, the Park Tract and the Park Tract Improvements), (ii) accept, own and operate all other Association Property, and (iii) maintain and/or repair all Common Areas and Facilities (including, without limitation, the Park Tract and the Park Tract Improvements) and other

Association Property (to the extent not maintained and/or repaired by a Governmental Authority or any other Person).

4.5 Powers and Authority of the Association. Subject to such limitations and restrictions as are set forth in this Declaration, the Association shall have the powers of a Texas non-profit corporation, including, but not limited to, all powers provided under the provisions of the Texas Non-Profit Corporation Act, as amended from time to time, or any successor act or statute. The Association shall further have the power to (i) exercise, enforce and enjoy all rights, powers, benefits, remedies and privileges of the Association set forth in any provisions of this Declaration, (ii) do, perform, carry out, satisfy, and/or observe any and all of the Association's duties set forth in Section 4.4 above or any other provision of this Declaration, and (iii) do, perform, carry out, satisfy and/or observe 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 acting on behalf of the Association, shall have the power and authority at all times as follows:

(a) To levy Assessments as provided in Article 5 below.

(b) To enter upon any Lot at any time in an emergency, or in a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner, for the purpose of enforcing this Declaration or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Declaration, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be secured immediately by a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article 5 hereof for 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 and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of this Declaration. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce this Declaration.

(c) To retain and pay for the services of a Manager to manage and operate the Association, to the extent deemed advisable by the Board. To the extent permitted by law, the Association and the Board may delegate any duties, powers and functions to the Manager. The Members hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

(d) To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(e) To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or the terms of this Declaration.

(f) To enter into contracts with any Person, including, but not limited to, Declarant, to carry out the purposes and duties of the Association on such terms and provisions as the Board shall determine.

(g) To establish and thereafter adjust from time to time as the Board may determine, in its sole discretion, an application fee to be paid in cash by each Owner at the time of submittal of any application to the Architectural Committee as provided in Section 3.4(c) of this Declaration.

4.6 Power to Indemnify and to Purchase Indemnity Insurance. The Association, acting through the Board, shall indemnify and may reimburse and/or advance expenses and/or purchase and maintain insurance, including errors and omission policies of insurance, or any other arrangement on behalf of any person who is or was a director or officer of the Association against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person to the maximum extent permitted by Article 1396 □ 2.22A of the Texas Non-Profit Corporation Act, as such Act may from time to time be amended (without regard, however, to Section Q of such Article with respect to officers of the Association who are not directors of the Association). Further, the Association, acting through the Board, may indemnify and/or reimburse and/or advance expenses and/or purchase and maintain insurance, including errors and omission policies of insurance, or any other arrangement on behalf of any person, other than any person who is a director of the Association, who is or was an officer, employee or agent of the Association or a member of the Architectural Committee, or is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trustee, employee benefit plan or other enterprise, against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person, to such extent (or, in the case of officers of the Association, to such further extent), consistent with applicable law, as the Board may from time to time determine. The provisions of this Section 4.6 shall not be deemed exclusive of any other rights to which any such person may be entitled under any Bylaw, agreement, insurance policy, vote of Members or otherwise. All costs and expenses of the insurance and other arrangements described in this Declaration shall be covered by Assessments.

ARTICLE 5 ASSESSMENTS

5.1 Assessments.

(a) In order to assure funds for the payment of all costs incident to the performance and satisfaction of the obligations of the Association under this Declaration, and the carrying out and realization of the purposes for which Regular Assessments may be levied, as set forth in Section 5.1(f) below, the Association shall, as provided in this Article 5, levy Assessments against each Lot, whether or not such Lot is improved. The Association shall levy Assessments in an amount at least sufficient to provide for payment of all costs incident to the performance and satisfaction of the duties and obligations of the Association under this Declaration. Subject to the provisions of this Section 5.1, the amount of Assessments shall be equal and uniform among all Lots and shall be levied against all Lots owned by Declarant in the same amount as against Lots owned by other Owners. In levying Regular Assessments against the Lots on a uniform basis, the Board, subject to the provisions of this Declaration, may (i) designate different classes of Lots, as long as such designation is made on a reasonable basis consistent with the provisions of this Declaration, (ii) allocate to each class of Lots designated by the Board such portion of the amounts of any Regular Assessments determined by the Board to be necessary pursuant to Sections 5.1 and/or 5.2 of the Declaration as the Board determines on a reasonable basis to be appropriate and, with respect to any differences in the respective amounts of Regular Assessments to be levied against Lots in one class as compared to the Regular Assessments to be levied against lots in any other class, consistent with the basis on which such classes are designated, and (iii), as long as the financial stability of the Association will not be jeopardized, designate as a separate class of Lots all Lots owned by Declarant and all Builders other than those Lots which are improved with a dwelling which is occupied by any Person for residential purposes (and not for marketing or construction purposes). Any classes of Lots designated by the Board for the purpose of levying Regular Assessments shall be established on the basis of reasonable differences in (i) the type or conditions of the Lots designated for each class, (ii) the benefits to be derived from the Association by the Owners of the Lots in each class, and/or (iii) the obligations imposed on the Association with respect to the Lots (or the Owners of the Lots) in each class. If different classes of Lots are designated for purposes of the assessments in accordance with this Section 5.1, Regular Assessments levied against any class shall in no event be less than \$120 per year. Lots owned by Declarant shall not be exempt from Assessments and shall be subject to Assessments on the same basis as any other Lots. Assessments levied against the Lots shall be uniform; provided, that in the event different classes of Lots are designated in accordance with this Section 5.1(a) the Assessments levied against the Lots in any class designated by the Board shall be uniform. In the event the Board does not designate different classes of Lots, the amount of any Assessment against each Lot shall be determined by dividing the total amount determined by the Board to be necessary pursuant to Section 5.2 of the Declaration by the total number of Lots within the Property at the time the Assessment is levied, as determined by reference to each Development Plat of all Development Subdivisions containing Lots included in the Property at the time the Assessment is levied.

(b) Assessments for the purposes stated in Section 5.1(f) below and levied pursuant to the provisions of Section 5.2 below are referred to as "Regular Assessments." Assessments levied pursuant to Section 5.1(g) below are referred to as "Initial Assessments." Any other Assessments assessed and levied by the Board are referred to as "Special Assessments." Special Assessments are composed of Special Group Assessments and Special Individual Assessments. Special Assessments levied for costs incurred by the Board or the Association which ordinarily would be covered by Regular Assessments but which were either not anticipated or not included in the Budget that formed the basis of Regular Assessments for a calendar year are referred to as "Special Group Assessments." Special Assessments for any of the costs that result from (i) requests of the Owner of a Lot for approval by the Architectural Committee of the plans and specifications for any Improvements to be placed on such Lot and the performance of the Architectural Committee's duties and obligations with respect to such approval, (ii) the negligence or willful misconduct of an Owner, or any costs or liabilities of the Association incurred as the result of the actions or omissions of an Owner, (iii) the failure or refusal of an Owner to comply with or satisfy any of the requirements and provisions of this Declaration, or (iv) any costs or expenses for which the Association or the Board under any provision of this Declaration is entitled to reimbursement by, or to charge to, the Owner of any Lot are referred to as "Special Individual Assessments."

(c) Where an Owner's obligation to pay Assessments first arises after the commencement of the year or other period for which an Assessment was levied, such Assessment shall be in a prorated amount proportionate to the fraction of the year or other period remaining after said date. Without limiting the application of this Section 5.1(c), this Section 5.1(c) shall apply to the Owners of Lots in any Development Subdivision which is added to the Property pursuant to the provisions of Section 8.2 below after the date on which the initial Regular Assessments are levied pursuant to the provisions of Section 5.2 below.

(d) Each purchaser of any Lot, by acceptance of a deed therefor, shall be deemed to covenant to pay to the Association each Assessment levied hereunder against such Lot, whether or not such covenant shall be expressed in any such deed or other conveyance. Each unpaid Assessment together with interest thereon and costs and expenses of collection thereof, including without limitation reasonable attorneys' fees, as provided below, shall be the personal obligation and debt of the Owner of the Lot against which the Assessment was levied.

(e) The obligation to pay Assessments levied by the Association hereunder is part of the purchase price of each Lot when sold to an Owner. An express vendor's lien is hereby retained to secure the payment of each and every Assessment levied hereunder, and each such vendor's lien is hereby transferred and assigned to the Association, each such vendor's lien to be superior and paramount to any homestead or other exemption provided by law. The Association may enforce the payment of Assessments in accordance with the provisions of this Article 5.

(f) The Regular Assessments shall be used exclusively for the purposes of (i) promoting the comfort, health, safety and welfare of the Owners, (ii) providing for the maintenance and improvement of the Lots in accordance with the provisions of this Declarant, and the maintenance, repair, and improvement of the Common Area and Facilities in accordance with the provisions of this Declarant, (iii) carrying out the purposes of the Board and the Association and the Architectural Committee as stated in this Declaration or as otherwise provided in the Articles and Bylaws of the Association, (iv) performing and/or

satisfying the duties and obligations of the Association and the Board, (v) exercising, enjoying and/or realizing upon the rights, powers and benefits of the Association and the Board as provided in this Declaration and the other Restrictions, and (vi) any other purposes for which Assessments may be used under any other express provisions of this Declaration or any other Restrictions. In particular and without limiting the purposes for which Assessments may be assessed and levied, Regular Assessments levied by the Association shall be used for the payment of the costs of (a) maintenance (including water and power usage) and replacement as necessary of the Association Property; (b) hazard insurance in connection with the Association Property and public liability insurance for the Association with respect to liabilities arising from damages or injuries sustained or occurring on the Association Property; (c) labor, equipment (including the expense of leasing any equipment) and material required for, and management and supervision of, the Association Property; (d) carrying out the duties of the Association and the Board, as set forth in this Declaration, the Bylaws or any other Restrictions, and of the Architectural Committee, as set forth in this Declaration; (e) carrying out the purposes of the Association as stated in this Declaration, the Articles and the other Restrictions; (f) carrying out the various matters set forth or envisioned in this Declaration and the other Restrictions; (g) reimbursing the reasonable expenses of, and paying reasonable compensation to (in such amounts, if any, established by the Board), the members of the Architectural Committee for the performance of their duties under this Declaration; (h) taxes, if any, on any portion of the Association Property; (i) any and all accounting, processing, bookkeeping and auditing expenses incurred in the operation of the Association, including but not limited to expenses relating to the collection and disbursement of Assessments, expenses incurred in the preparation of financial reports and any other accounting activities usually incurred by non-profit incorporated owner's associations in Travis County, Texas; (j) any and all expenses associated with the management and operation of the Association, including but not limited to salaries and fees of any Manager, management personnel and security personnel (including any employees of Declarant who provide management or security services to the Association, the use of such employees and the payment of reasonable salaries to such employees by the Association being expressly authorized hereby), office supplies and equipment, rent for office space, utilities, and tenant finish-out expenses; (k) any and all bank or other financial institution fees relating to the Association's accounts and interest on short term loans to the Association; (l) any and all expenses relating to the maintenance, cleaning, repair and/or replacement, or the employment of any person to maintain, clean, repair and/or replace the Association Property, the right-of-ways adjacent to the Property and any Improvements thereon or thereto, including, without limitation, the following: streets, curbs and gutters, open and closed storm sewers, pavement, crosswalks, painted street directionals, street and pedestrian signage, street embankments, retaining walls, medians and median landscaping, pedestrian foot paths, pedestrian tunnels under roadways, light posts and lighting in street right-of-ways, drainage and repair of lakes, park benches, picnic areas, special events areas, lighting on the Association Property, sidewalks, sprinkler systems, landscaping, irrigation, fertilization, and removal of trash and debris on the Association Property; (m) the general operating and administrative expenses of the Association and the Architectural Committee; and (n) any other purposes required by this Declaration, the Articles, the Bylaws or any other Restrictions.

(g) In addition to the regular annual and special Assessments provided for above in Sections 5.2 and 5.3, a one-time Initial Assessment shall be due and payable to the Association immediately upon the conveyance of any Lot to a new Owner other than a Builder or Declarant. Such initial Assessment shall be the obligation of the new Owner and shall be assessed and levied to provide for the reasonable costs incurred by the Association and/or any Manager as a result of the change in membership in the Association upon the conveyance of the subject Lot and the preparation for the new Owner of information and materials relating to membership in the Association and to the Property. In no event shall the Initial Assessment exceed \$75.00 per Lot.

(h) Until the initial Regular Assessments are levied by the Board in accordance with Section 5.2 below, no Owner shall be responsible or liable for any of the costs and expenses of the Association for which Regular Assessments may be imposed and Declarant shall be responsible for all such costs and expenses.

(i) All properties within the Property dedicated to, and accepted by, a Governmental Authority, all Common Area and Facilities and all Association Property shall be exempt from Assessments levied under the provisions of this Declaration.

5.2 Regular Assessments.

(a) Regular Assessments shall be levied on each Owner of each Lot, and shall be imposed by the Board regularly and at least annually, in accordance with the provisions of Section 5.1 above and this Section 5.2. The date on which the Common Area and Facilities, streets, utilities and drainage facilities for each Development Subdivision are completed by Declarant shall be referred to as the "Assessment Commencement Date" for the subject Development Subdivision. Within eighteen (18) months after the later of the Assessment Commencement Date for Section One or the date on which any Lot in Section One is sold and conveyed by Declarant to any other Person and prior to the beginning of each calendar year for the Association thereafter, the Board shall approve and adopt a budget (a "Budget") based upon: (i) anticipated expenses to be incurred by the Association during the forthcoming calendar year (or, with respect to the initial Budget approved and adopted by the Board, for the remainder of the current calendar year), which said expenses shall include only expenditures for the approved purposes set forth in Section 5.1(f) above; plus (ii) a reasonable provision for contingencies and appropriate replacement reserves; less (iii) any expected surplus or income anticipated to be received from any other source(s). When the Board has approved a Budget for a calendar year (or portion of a calendar year), Regular Assessments sufficient to pay the estimated net expenses of the Association for such calendar year (or partial calendar year), as projected in the Budget for the subject calendar year (or partial calendar year), shall then be levied by the Association on each Owner of each Lot, and the amount of such Regular Assessments as determined by the Board shall be final and binding so long as such determination is made in good faith. The Board may increase or decrease the Regular Assessments each year from the prior year as the Association deems necessary. The Board shall set the Regular Assessments annually for each calendar year (or partial calendar year) based on the Budget approved and adopted as provided above for such calendar year (or partial calendar year). At the end of any given calendar year, any surplus sums held by the Association (whether from Assessments collected from Owners or from other sources of income, revenue or monies) will be applied by the Association to reduce the Assessments needed to be levied for the projected costs and expenses of the Association shown in the

Budget for the following year. In the event that prior to the commencement of any calendar year after the initial Budget has been approved and adopted by the Board, a Budget has not been approved for that particular year, then Regular Assessments will be levied by the Association on each Owner of each Lot based upon the Budget for the prior year until such time as a Budget for the current year has been approved, at which time Regular Assessments will be adjusted and revised to the extent necessary for the amount of the Regular Assessments for the subject calendar year to comply with the provisions of this Section 5.2 regarding levying Regular Assessments based on each calendar year's approved Budget. In the event that, during any calendar year, Lots ("Added Land Lots") are made subject to this Declaration and included in the Property under the provisions of Section 8.2 of the Declaration, the Owners of the Added Land Lots shall be assessed, and shall be obligated to pay, Regular Assessments based on the amount of Regular Assessments imposed on all other Owners for the subject calendar year, but pro-rated as of the Assessment Commencement Date for the Development Subdivision in which the subject Added Land Lots are located pursuant to the provisions of Section 5.1(b) above. All Regular Assessments shall be due and payable to the Association, with respect to Regular Assessments for the calendar year in which the Assessment Commencement Date for a Development Subdivision occurs, within thirty (30) days after being levied by the Association, and, with respect to all subsequent Regular Assessments for each such Development Subdivision, at the beginning of the calendar year for which such Regular Assessments are payable; provided, however, that the Board, at its election, may permit all or any portion of the Regular Assessments levied for any full or partial calendar year to be payable in equal monthly installments on or before the first day of each month of the subject calendar year, or in such other manner as the Board may designate in its sole and absolute discretion.

(b) Until January 1, 1997, the maximum annual Regular Assessment shall be \$420.00 per Lot. For the calendar year beginning January 1, 1997, and for each calendar year thereafter, the maximum annual Regular Assessment may be increased for each such calendar year (i), without a vote of the Members of the Owners, by an amount equal to or less than the product obtained by multiplying the maximum Regular Assessment for the immediately preceding calendar year times the Applicable Percentage (as defined below), and (ii) upon a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, by an amount in excess of the maximum annual Regular Assessment for the immediately preceding calendar year. The Board may fix an annual Regular Assessment for each calendar year at an amount not in excess of the maximum annual Regular Assessment for the subject calendar year, as determined in accordance with this Section 5.2(b). As used in this Section 5.2(b), the term "Applicable Percentage" means the greater of (i) five percent (5%) per annum, or (ii) the percentage increase, if any, in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, U. S. City Average All Items in Major Group Figures for Urban Wage Earners and Clerical Workers (1982-84=100) for the subject calendar year from such Consumer Price Index for the immediately preceding calendar year.

5.3 Special Assessments. In addition to the Regular Assessments provided for above, the Association may levy Special Assessments for the purposes provided in Sections 5.1(b) and 5.1(f) above as are necessary to enable the Board and the Association to carry out the mandatory functions of the Association under this Declaration. The Board may set, assess and levy Special Group Assessments at any time after the incurrence by the Association of costs of the nature intended to be covered by the Regular Assessments but which either were not anticipated or not included in the Budget that formed the basis of Regular Assessments for the year in which such unanticipated or not included costs were incurred or arose. Special Group Assessments shall be allocated and assessed against the Lots in the same manner as are Regular Assessments. The Board may set, assess and levy Special Individual Assessments from time to time as the Association or the Board incurs costs for any purposes for which Special Individual Assessments may be set, assessed and levied, as set forth in Sections 5.1(b) and 5.1(f) above. The Special Individual Assessments shall be assessed only against

(i) the Owner or Owner from whom the Board is entitled to payment or reimbursement in accordance with the provisions of Section 5.1(b) above, and (ii) the Lot owned by the Owner or Owners with respect to whom the subject Special Individual Assessments may be assessed and levied.

5.4 Owner's Personal Obligation for Payment of Assessments. Each regular and special Assessment provided for in this Declaration shall be the personal and individual debt of the Owner of the Lot against which such Assessment was levied. No Owner may exempt himself from personal liability for such Assessments. In the event of default in the payment of any Assessment, the Owner of the Lot against which such Assessment was levied shall be obligated to pay interest on the unpaid, past due portion of any such Assessments from the date due until paid at an annual rate equal to the lesser of (a) fifteen percent (15%), or (b) at the highest contract rate of interest allowed by applicable usury laws then in effect (or if there is no such highest contract rate, then at the rate of fifteen percent (15%) per annum) together with all costs and expenses of collection, including without limitation reasonable attorneys' fees.

5.5 Assessment Lien and Foreclosure.

(a) This Declaration is executed, in part, to renew, take up, confirm and ratify the liens and charges created and reserved on each Lot against which each unpaid Assessment is levied in accordance with the provisions of Section 5.5 of the Prior Declaration, securing payment of Assessments due by the Owner of each such Lot and other costs and sums, as more fully provided in Section 5.5 of the Prior Declaration. Declarant expressly acknowledges, confirms and agrees that, subject to the terms and conditions of this Section 5.5, (a) the liens and charges against each Lot created, reserved and provided under Section 5.5 of the Prior Declaration are valid and subsisting liens and charges against each Lot to secure unpaid Assessments levied against each such Lot and other costs, expenses and sums as more fully provided in Section 5.5 of the Prior Declaration, (b) the liens and charges created, reserved and provided under Section 5.5 of the Prior Declaration against each Lot are hereby renewed and carried forward in full force and effect on and subject to the terms and conditions of this Section 5.5 to secure payment of the Assessments levied in accordance with this Declaration and the Prior Declaration against each such Lot and the other costs, fees, and sums secured by each such lien and charge, as provided in this Declaration and the Prior Declaration, (c) Section 5.5 of the Prior Declaration is amended and restated in full by this Section 5.5 and the provisions of this Section 5.5 shall supersede and replace the provisions of Section 5.5 of the Prior Declaration with respect to the terms and conditions applicable to and governing the liens and charges against each Lot created, reserved and provided under

Section 5.5 of the Prior Declaration, (d) the Association, on and subject to the terms and conditions of this Section 5.5, shall be subrogated to all of the respective liens and charges reserved, created and provided against each Lot by and under Section 5.5 of the Prior Declaration, provided, however, that the terms and conditions of this Section 5.5 shall govern the rights and remedies of the Association with respect to the liens and charges reserved, created and provided against each Lot by and under Section 5.5 of the Prior Declaration and shall supersede the terms, provisions, rights and remedies granted and created under Section 5.5 of the Prior Declaration with respect to the liens and charges reserved, created and provided against each Lot by and under Section 5.5 of the Prior Declaration, and (e) the ranking and priority of all of the liens and charges reserved, created and provided against each Lot by and under Section 5.5 of the Prior Declaration immediately prior to the execution and delivery of this Declaration shall be preserved and maintained under this Declaration.

(b) To the extent permitted by applicable Governmental Requirements, the payment of the Assessments levied in accordance with this Declaration and the Prior Declaration against each Lot, together with interest thereon as provided this Declaration and the Prior Declaration and the costs and expenses of collection, including reasonable attorneys' fees, as provided in this Declaration and the Prior Declaration, is secured by a continuing lien and charge reserved, created and granted under the provisions of the Prior Declaration (an "Assessment Lien"), as more fully provided in Section 5.5 of the Prior Declaration and in Section 5.5(a) of this Declaration. The lien reserved, granted and created by the Prior Declaration against a Lot for payment of Assessments shall bind and attach to the Lot and shall be valid and subsisting against the Lot, the Owner of such Lot and such Owner's heirs, devisees, personal representatives, successors or assigns, and shall be superior to all other liens and charges against such Lot, except only for (i) tax liens, (ii) all sums unpaid on any obligations evidencing sums owing or borrowed for the purchase of such Lot and any Improvements located on the subject Lot, and secured by a valid and enforceable Mortgage covering the subject Lot, provided that the lien of any such Mortgage shall be superior to the lien created above only with respect to Assessments becoming due after the date the subject Mortgage was recorded in the Real Property Records of Travis County, Texas, and (iii) all sums unpaid on any obligations incurred or borrowed for the costs of installation, construction, alteration addition, renovation and/or completion of any Improvements on or about such Lot and secured by a valid and enforceable Mortgage covering the subject Lot, provided that the lien of any such Mortgage shall be superior to the lien created above only with respect to Assessments becoming due after the date the subject Mortgage was recorded in the Real Property Records of Travis County, Texas. The Association shall have the power, in the Board's sole and absolute discretion, to subordinate any Assessment Lien against any Lot to any other lien. Any such subordination shall be signed by an officer of the Association and recorded in the Official Records of Travis County, Texas. Upon the written request of any Beneficiary holding a lien on any Lot that is superior to the Assessment Lien against the subject Lot, the Association shall report to said Beneficiary the amount of any Assessments levied against such Lot remaining unpaid for a period of more than thirty (30) days after the same are due.

(c) To evidence the Assessment Lien against any Lot, the Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, a description of the Lot encumbered by the subject Assessment Lien and the name of the Owner of such Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Real Property Records of Travis County, Texas. The Assessment Lien against any Lot for payment of Assessments shall attach with the priority set forth in Section 5.5(b) above from the date the payment of such Assessments becomes due. The Association may enforce any Assessment Lien by the foreclosure sale of the defaulting Owner's Lot in like manner as a foreclosure of a mortgage or contractual lien on real property as provided in Section 51.002 of the Texas Property Code, as the same may be amended or modified, or the Association may institute suit against the Owner personally obligated to pay the Assessments for monetary damages and/or for the judicial foreclosure of the aforesaid Assessment Lien securing the subject unpaid Assessments. The Owner of any Lot subject to foreclosure of an Assessment Lien shall be required to pay all costs and expenses, including without limitation reasonable attorneys' fees, incurred by the Association in connection with any foreclosure proceeding, whether judicial or non-judicial, and in connection with any collection proceeding. The Association shall have the power to bid on any Lot at any foreclosure of an Assessment Lien or other legal sale in connection with the enforcement of an Assessment Lien and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

(d) The Assessment Lien for payment of Assessments levied against any Lot provided for in the Prior Declaration and this Declaration shall not be affected or extinguished by the sale or transfer of any Lot, whether by judicial or non-judicial foreclosure sale or otherwise; provided, however, that in the event of the foreclosure of the lien of any Mortgage against a Lot which is superior to the Assessment Lien reserved and created against the subject Lot, the subject Assessment Lien will be extinguished to the extent of the outstanding and unpaid Assessments due as of the date of foreclosure of the subject Mortgage, and the delinquent Assessment shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the first lien Mortgage. The extinguishing of any Assessment Lien as provided above will not relieve any Owner from the obligation to pay Assessments subsequently becoming due and payable or affect or impair the Assessment Lien against the subject Lot to the extent it secures payment of any Assessments levied from and after the date of foreclosure of the subject Mortgage.

ARTICLE 6
COMMON AREAS AND EASEMENTS

6.1 Common Area and Facilities.

(a) Declarant (i) dedicates to the Association for the benefit and use of all Owners, without warranty or representation, all right, title and interest of Declarant in and to the Common Area and Facilities constructed and substantially completed by Declarant in the each Development Subdivision, and (ii), upon substantial completion of the subject Common Area and Facilities, will convey (without warranty) to the Association, for the benefit of the Owners, any tracts of real property owned by Declarant which are included in the Common Area and Facilities and have not been, or are not to be, dedicated or conveyed to any Governmental Authority or Public Utility Provider (as defined in Section 6.3 below); provided, however, that in the event any Common Area and Facilities to be constructed by Declarant in any Development Subdivision which is or becomes a part of the Property are not substantially completed on the date the subject Development Subdivision becomes a part of the Property, the dedication of the subject Common Area and Facilities under this Section 6.1(a) shall be effective as of the date the construction of the subject Common Area and Facilities is substantially completed. As of the date of execution of this Declaration, the Park Tract, and all Park Tract Improvements located in the Park Tract, have been conveyed by Declarant to the Association. Any and all Common Area and Facilities dedicated under this paragraph and conveyed by Declarant to the Association which are not maintained and repaired by a Governmental Authority shall be maintained and repaired by the Association and Declarant shall have no further obligations, responsibilities or liabilities to the Association or the Owners with respect to the Common Areas and Facilities except in Declarant's capacity as an Owner. Any Common Area and Facilities dedicated and conveyed to the Association by Declarant in accordance with this paragraph shall be conveyed free and clear of any liens (other than liens for ad valorem taxes for the current and future years), but shall be conveyed subject to this Declaration, the restrictions and matters set forth on the Development Plat covering the subject Common Area and Facilities, and such other easements, encroachments, restrictions and other matters as are common to the Lots in the Development Subdivision in which the subject Common Area and Facilities are located.

(b) The Common Area and Facilities which are dedicated and conveyed to the Association of Owners in accordance with this Section 6.1 are not dedicated and/or conveyed for the use by the general public, but are dedicated and/or conveyed to the Association solely the common use and enjoyment of the Owners and the Association. The Common Area and Facilities may only be used for activities and purposes permitted under this Declaration and the Plat and, to the extent not in material conflict with this Declaration or the Plat, those activities and purposes permitted by the Association.

(c) If all or any part of the Common Area and Facilities is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall be entitled to participate in proceedings incident thereto. The expense of participation in such proceedings by the Association shall be a common expense to be paid out of Assessments. The Association is specifically authorized to obtain and to pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association, in its discretion, deems necessary or advisable to aid it in any matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association. The Association, in addition to the general powers set out in this Declaration, shall have the sole authority to determine whether to contest or defend any such proceedings, to make any settlement with respect thereto or to convey such property to the condemning authority in lieu of condemnation.

6.2 Reserved Rights and Easements. All dedications, limitations, restrictions and reservations shown on any Development Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to any portion of the Property becoming subject to this Declaration (the "Existing Easements and Restrictions"), are incorporated in this Declaration by reference and made a part of this Declaration for all purposes, as if fully set forth in this Declaration, 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. Subject to compliance with applicable Governmental Requirements, Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to (i) grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of 6 feet on each side of such Lot line, and (ii) locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on any areas owned by Declarant sewer and other pipelines, conduits, wires and any Improvements relating to a public utility function, with the right of access to the same at any time for the purposes of repair and maintenance.

6.3 Installation and Maintenance of Public Utilities. Declarant reserves, creates, grants and dedicates (without warranty) for Declarant and all Persons supplying or providing any and all public utilities servicing all or any portion of any Development Subdivision ("Public Utility Providers") a perpetual, non-exclusive easement upon, across, over and under all portions of the Property designated on the Plat as public utility easements (the "PUE Tracts") for ingress and egress and for constructing, installing, replacing, repairing, operating, and maintaining all public utility service lines and service systems used in the supply and provision of public utilities to the Property, including, but not limited to, telephone, cable television, natural gas, electric power, water distribution and wastewater collection service lines and service systems, together with all lines, pipes, cables, conduits and other equipment, facilities, improvements and appurtenances installed in, under, along and across the PUE Tracts used in the supply and provision of public utilities to the Property. By virtue of this easement, it shall be expressly permissible for Declarant and each of the Public Utility Providers to install and maintain pipes, wires, conduits, service lines or other public utility equipment, facilities, improvements or appurtenances thereto, on, above, across and under the PUE Tracts. Notwithstanding any provision contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Committee. Subject to compliance with applicable Governmental Requirements, each

Public Utility Provider shall have the right to remove all trees situated within the PUE Tracts used by it in accordance with this Section, and to trim overhanging trees and shrubs located on portions of the Property abutting the subject PUE Tracts. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. Neither the Declarant nor any Public Utility Provider using any PUE Tract, however, 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, contractors or assigns, to any of the vegetation and/or Landscaping on any PUE Tract as a result of any activity relating to the construction, maintenance, operation or repair of any public utility facilities, systems or equipment in any such PUE Tract.

6.4 Drainage Easements and Patterns. Easements (collectively, "Drainage Easements") for the installation, operation and maintenance of storm water utilities, storm water retention/detention ponds, and/or storm water and surface water drainage systems and facilities (collectively, the "Drainage Facilities") are reserved as are shown on each Development Plat. No Improvements, Landscaping, or other materials shall be placed or permitted to remain on any Lot or other portion of the Property which may damage or interfere with the installation, operation and maintenance of any Drainage Easements or Drainage Facilities or which may hinder, change, impede, impound, divert or channel the direction of flow of storm water and surface water flow away from the Drainage Easements and any existing waterways (natural and manmade) or other drainage areas located in the Property and receiving storm water or surface water from any portion of the Property or any adjacent property (collectively, the "Property Waterways"). No Owner shall (i) alter, change or modify the existing natural vegetation of the Drainage Easements and/or the Property, Waterways in a manner that materially changes the character of the original environment of the Drainage Easements and/or the Property Waterways; (ii) alter, change or modify in any material way the existing configuration of the Drainage Easements and/or Property Waterways, or fill, excavate or terrace any Drainage Easements and/or Property Waterway, or remove trees therefrom, without the prior written approval of the Association and the Owner of each Lot affected by any such alteration, change, or modification and upon compliance with all applicable Governmental Requirements; (iii) construct, erect or install a fence or other structure within any Drainage Easements and/or Property Waterways which would in any material way inhibit the flow of storm water or surface water in the Drainage Easements and/or Property Waterways; (iv) permit temporary or permanent storage of any kind upon or within Drainage Easements, and/or Property Waterways; or (v) place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon any Drainage Easements and/or Property Waterways, either on a temporary or permanent basis. Additionally, Declarant hereby reserves, creates, grants and dedicates (without warranty) for the benefit of Declarant and the Association a non-exclusive, blanket easement on, over, under and across the Property to maintain and correct drainage and/or flow of surface waters and/or storm waters within the Drainage Easements and the Property Waterways in order to (i) prevent or avoid damage to any Lot, Improvements or adjacent properties as a result of any overflow of storm water or surface water resulting from any diversion, impoundment, channelization or alteration of the flow of storm water or surface water within the Property and (ii) maintain reasonable standards of health, safety and appearance as a result of development in the Subdivision. Each Person for whom this blanket easement is reserved shall be entitled to remove trees, vegetation along and across the surface of the Property, without liability for replacement or damages, as may be necessary for any of the purposes for which this blanket easement is reserved; provided, however, that the blanket easement reserved above shall not permit the removal, modification, rearrangement or alteration of any Improvement place on any Lot with the approval of the Architectural Committee.

6.5 Entry Easement. Declarant reserves, creates, grants and dedicates (without warranty) for the Association and Declarant a non-exclusive easement upon, over and across each Lot for ingress and egress for any and all of the purposes stated in Section 4.5(b) above and to exercise, enjoy and carry out any and all of the rights and powers provided in Section 4.5(b) above, on and subject to the terms and conditions of Section 4.5(b) above. Entry upon any Lot as provided in this Section 6.5 shall not be deemed a trespass, and the Association and Declarant shall not be liable for any damage so created unless such damage is caused by the willful misconduct or negligence of the party against whom damages are sought to be collected.

6.6 Temporary Completion Easement. Declarant reserves, creates, grants and dedicates (without warranty) for the benefit of Declarant and any Person building or constructing any Improvements on any Lot, and their respective employees, subcontractors, successors and assigns, a non-exclusive easement of ingress and egress over, along, within and upon the front side and rear yards of each Lot, any and all Common Area and Facilities and any and all easements located within the Development as may be expediently necessary for the construction, servicing, and completion of Improvements and Landscaping upon any Lot, any and all Common Area and Facilities and any and all easements located within the Development.

6.7 Owners' Easements of Enjoyment. Each and every Owner upon conveyance of legal title to a Lot is granted (without warranty or representation by Declarant) a non-exclusive right and easement in and to the Common Area and Facilities and a non-exclusive right and easement of ingress and egress to, from and through the Common Areas and Facilities, which non-exclusive rights and easements shall be appurtenant to and shall pass with title to each and every Lot, subject to the following provisions:

(a) the right of the Association to establish and publish rules and regulations governing the use of the Common Area and Facilities affecting the health, safety and welfare of Members;

(b) the right of the Association to suspend the right of use of the Common Area and Facilities and the voting rights of any Owner for any period during which any Assessment against the subject Owner's Lot remains unpaid beyond the period in which such Assessment is due, and for a period not to exceed sixty (60) days for any other infraction of any of the Restrictions by the subject Owner;

(c) the right of the Association, subject to the provisions of this Declaration or any of the Restrictions, to dedicate or transfer all or any part of the Common Area and Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by two-thirds (2/3) or more of the Members, excluding Declarant; provided, that no such dedication or transfer shall be effective unless an instrument is signed by two-thirds (2/3) or more of the Members, excluding Declarant;

(d) the right of the Association, subject to the provisions of this Declaration or any of the restrictions, to sell, mortgage or encumbered all or any part of the Common Area and Facilities for any Association purpose; provided, that no such sale, mortgage, or encumbrance shall be effective unless an instrument agreeing to such sale, mortgage or encumbrance is signed by two-thirds (2/3) or more of the Members, excluding Declarant, and an instrument providing for such sale, mortgage or encumbrance is executed and acknowledged by the President and Secretary of the Association, providing for such sale, mortgage or encumbrance and certifying that such sale, mortgage or encumbrance has been approved by at least two-thirds (2/3) of the Members, excluding Declarant; and

(e) all of the rights of the easements granted and provided under this Section 6.7 are easements appurtenant to and running with each Lot; and any such easement shall at all times inure to the benefit of and be binding upon Declarant, each Owner and all their respective grantees, heirs, successors, personal representatives or assigns, perpetually and in full force.

6.8 The Park Tract and the Park Tract Improvements. Declarant reserves for itself, and grants and dedicates to the Association, each Owner, and the respective employees, agents, representatives, guests, contractors, and other invitees of the Association and the Owners (hereinafter collectively called the "Park Tract Users" and individually called a "Park Tract User") (i) the right of access to the Park Tract and the Park Tract Improvements for the purposes provided in clause (iii) below, (ii) a use and privilege with respect to any and all Park Tract Improvements for the purposes provided in clause (iii) below, and (iii) a non-exclusive easement on, over, across and with respect to the Park Tract and the Park Tract Improvements for the use and enjoyment of the Park Tract and Park Street as a park and for related recreational, sporting, leisure and pleasure activities, events and purposes, subject to such Rules as may be promulgated by the Board regarding the use and enjoyment of the Park Tract and the Park Tract Improvements. Notwithstanding anything in this Declaration to the contrary, in no event shall any Park Tract User be permitted to use or enjoy the Park Tract and Park Street Improvements in any manner which is prohibited by or which would violate a Governmental Requirement or any Rules. Additionally, no Park Tract User may in any way or manner remove, alter, damage or destroy any portion of the Park Tract and Park Street Improvements. The Association shall have the power and authority to promulgate Rules regarding the use and enjoyment of the Park Tract and Park Street Improvements by the Park Tract Users and shall have the power and authority to enforce such Rules regarding the use and enjoyment of the Park Tract and Park Street Improvements. Subject to the terms and provisions of this Declaration and to the Rules promulgated by the Association with respect to the use and enjoyment of the Park Tract and Park Street Improvements, all Park Tract Users shall have access to the Park Tract and Park Street Improvements for the purposes provided above and shall have ingress and egress to the Park Tract and Park Street Improvements at the boundaries of the Park Tract adjacent to a dedicated road or street for the purposes provided above. Declarant reserves for itself and the Association (and the respective employees, agents contractors, and representatives of Declarant and the Association) an easement on, over, across and under the Park Tract and Park Street Improvements for the purpose of constructing, installing, maintaining, repairing, and replacing any Park Tract and Park Street Improvements and maintaining, policing and protecting the Park Tract and Park Street Improvements. No Owner or other Park Tract User shall be permitted to place any Improvements on any portion of the Park Tract and Park Street Improvements without the prior written approval of the Board. Neither Declarant nor the Association shall be liable for any damage done by either them or their assigns, agents, employees, contractors or servants to any Landscaping, Improvements or other property of any Owner or Person in connection with the construction, installation, repair, maintenance, replacement, policing and protecting of the Park Tract and Park Street Improvements. The Association shall maintain public

liability insurance policies covering the Park Tract and Park Street Improvements in favor of the Association and all Owners in such amounts and with such limits as are determined by the Board to be sufficient to protect the Association and the Owners from all risks incident to the ownership, use, maintenance, repair, policing, protecting and enjoyment of the Park Tract and Park Street Improvements. Declarant has conveyed, without warranty other than a special warranty of title, the Park Tract and Park Street Improvements to the Association as part of the Common Areas and Facilities, subject to the conditions, covenants, restrictions, easements, terms and conditions of this Declaration and to any and all easements, restrictions, and other encumbrances of record in the Real Property Records of Travis County, Texas, to the extent in force and effect and binding on the Park Tract and Park Street Improvements.

6.9 Maintenance, Operation and Repair of Park Tract and Park Street Improvements. The Association (a) shall be solely and exclusively responsible for the maintenance, repair, replacement, management, operation and condition of the Park Tract and Park Street Improvements, (b) shall at all times maintain, repair and replace the Park Tract and Park Street Improvements in good repair and order, (c) shall manage, operate and oversee the Park Tract and Park Street Improvements in a manner complying with the provisions of this Declaration, all applicable Rules, and any Governmental Requirements which may be imposed at any time, and from time to time, by the City or any other Governmental Authority, and (d) is and shall be authorized to promulgate and adopt Rules concerning the use, enjoyment, operation, management, maintenance, repair, replacement and improvement of the Park Tract and Park Street Improvements, subject to the terms and conditions of this Declaration. In the event that the City determines that the Park Tract, or any Park Tract Improvements, require maintenance and/or repair, the Association, upon being notified by the City, shall proceed to perform all necessary maintenance and repairs of which the City provides the Association with notice.

**ARTICLE 7
MISCELLANEOUS**

7.1 Power of Declarant. Notwithstanding anything in this Declaration to the contrary, so long as Declarant owns any Lot, each Owner, by acceptance of record title conveying a Lot to such Owner, does hereby irrevocably constitute and appoint Sutton Wells Point, Ltd., its true and lawful attorney-in-fact and agent to execute, acknowledge, verify, swear to, deliver, record and file in that Owner's name, place and stead all instruments, documents and certificates which may from time to time be required in order to affect any amendment, correction, vacating, replatting or other modification of the Plat and/or any release or vacating of any easement or restriction imposed on the Property by the Plat or prior to the recording of the Plat, provided that (i) the boundaries and contours of such Owner's Lot are not in any way changed, altered or modified; (ii) access to such Owner's Lot to and from a public street and/or the Private Street is not changed or altered in any material respect; (iii) the public utility services to such Owner's Lot are not materially and adversely altered; and (iv) no costs or expenses are imposed on such Owner. In furtherance of this appointment, each Owner agrees to join in the execution, upon request of Declarant, of any instrument required to acknowledge such authorization and/or affect any such amendment, vacating, replatting or other modification of the Plat or release or vacating of any such easement or restriction mentioned above.

7.2 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall continue in force and effect until January 1, 2020, unless amended as provided in this Declaration. After January 1, 2020, this Declaration, including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless extinguished by a written instrument executed by Owners entitled to cast at least eighty percent (80%) of the number of votes entitled to be cast pursuant to Section 4.3 of this Declaration.

7.3 Amendment.

(a) Subject to the limitations set forth in Paragraph (c) of this Section 7.3, this Declaration may be amended by Declarant at any time (i) to correct typographical and grammatical errors, and (ii) in order to comply with VA or FHA requirements for approval of the Property.

(b) Subject to the restrictions imposed under paragraph (c) of this Section 7.3, this Declaration may be amended at any time (i) if the subject amendment is approved pursuant to an instrument signed by at least two-thirds (2/3s) of the Members of each and every class of Members, and (ii) an instrument setting forth the amendment is executed and acknowledged by the President and Secretary of the Association and recorded in the Real Property Records of Travis County, Texas. Any amendment of this Declaration executed under this paragraph must certify that such amendment has been approved by at least two-thirds of the Members in each and every class of Members.

(c) Without the prior consent of the City, this Declaration may not be amended so as to materially affect the obligations of the Association to operate, maintain, repair and improve the Park Tract and Park Street Improvements or to levy Assessments for the operation, maintenance, repair and improvement of the Park Tract and Park Street Improvements.

7.4 No Warranty of Enforceability. While Declarant has no reason to believe that any of the covenants, conditions, restrictions, or other terms and provisions contained 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 covenants, conditions, restrictions, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of the covenants, conditions, restrictions, terms or provisions set forth in this Declaration shall assume all risks of the validity and enforceability thereof and agrees that Declarant shall not be liable to such Owner in any way or manner due to the invalidity or unenforceability of any covenant, condition, restriction, term or provision set forth in this Declaration, by acquiring the Lot agrees to hold Declarant harmless from.

7.5 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 Saturday, Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address given by such person to the Association for the purposes of service of notices, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such person to the Association.

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

7.7 Assignment by Declarant; Termination of Declarant's Privileges Exemptions, Rights and Duties.

(a) Notwithstanding anything in this Declaration to the contrary, Declarant by written instrument recorded in the Real Property Records of Travis County, Texas, may assign or delegate, in whole or in part, any of its privileges, exemptions, rights, powers, benefits, obligations and duties under this Declaration to any other Person, including the Board or the owner of any Added Land or any other portion of the Property, and may permit the participation, in whole or in part, by any other Person, including the Board or the owner of any Added Land or any other portion of the Property, in the exercise, enforcement and/or enjoyment of any of Declarant's privileges, exemptions, rights, powers, benefits, obligations and duties under this Declaration; provided, however, that, except as, and only to the extent, expressly otherwise provided in the written instrument executed by Declarant conveying a Lot or other portion of the Property to another Person, the conveyance by Declarant of a Lot or any other portion of the Property to any other Person shall not assign to such Person any of the privileges, exemptions, rights, powers, benefits, obligations and duties of Declarant under this Declaration. Any assignment or delegation of all or any of Declarant's privileges, exemptions, rights, powers, benefits, obligations and duties under this Declaration shall be evidenced by a written instrument, executed by Declarant and the assignee and recorded in the Real Property Records of Travis County, Texas. Any assignee of Declarant shall be Declarant under this Declaration with respect to all privileges, exemptions, rights, powers, benefits, obligations and duties assigned to such assignee in accordance with the provisions of this Section 7.7(a).

(b) Notwithstanding anything in this Declaration to the contrary, at such time as a single family residence has been constructed and substantially completed on each Lot included in the Property and Declarant does not own any Lot or any other portion of the Property or the Development, all privileges, exemptions, rights, powers and duties of Declarant under this Declaration which have not previously been assigned by Declarant to another Person in accordance with the provisions of Section 7.7(a) above shall terminate as to Declarant and shall automatically be transferred to, and held and performed by, the Board. No instrument or document shall be required in order to evidence a termination as to Declarant pursuant to the preceding sentence of Declarant's privileges, exemptions, rights, powers and duties under this Declaration; provided, however, Declarant, at Declarant's option, at any time may execute and record in the Real Property Records of Travis County, Texas, a written notice of termination of Declarant's privileges, exemptions, rights, powers and duties under this Declaration. Effective upon the execution and recording of a written notice of termination pursuant to the preceding sentence or the termination of Declarant's privileges, exemptions, rights, powers and duties under this Declaration pursuant to the provisions of the first sentence of this Section 7.7(b), all privileges, exemptions, rights, powers and duties of Declarant under this Declaration which have not previously been assigned by Declarant to another Person in accordance with the provisions of Section 7.7(a) above shall be transferred to, and held and performed by, the Board.

7.8 Enforcement and Nonwaiver.

(a) Any Owner (at his own expense), Declarant and/or the Board shall have the right to enforce the provisions of this Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach or threatened breach of any such provision.

(b) Every act or omission whereby any provision of this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined by any Owner (at his own expense), Declarant or the Board.

(c) Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any portion of the Property is hereby declared to be a violation of this Declaration.

(d) The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

(e) The Association shall have the right, when appropriate in its judgment, to claim and impose a lien upon any Lot or Development constructed thereon in order to enforce any right under, or effect compliance with, this Declaration.

(f) Declarant grants to the City, and the City shall have, the right, power and authority to enforce all covenants, agreements, conditions, restrictions and obligations imposed on the Association under this Declaration with respect to the operation, maintenance, repair and improvement of the Park Tract and Park Street Improvements. The rights granted to the City under this paragraph may be enforced by any and all appropriate proceedings in equity or at law and the City shall have all necessary powers and rights to enforce the covenants, conditions, restrictions and obligations of the Association with respect to the maintenance, repair, operation and improvement of the Park Tract and Park Street Improvements. Nothing contained in this paragraph shall be deemed to limit any of the rights or remedies available to the City with respect to the enforcement of the above mentioned covenants, conditions, restrictions and obligations of the Association with respect to the Park Tract and Park Street Improvements, whether such rights and remedies or available under this Declaration, or under general principles of law and equity.

7.9 Construction.

(a) The provisions of this Declaration 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.

(b) 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.

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

7.10 Mortgagees. The following provisions shall control any other provisions of this Declaration or of the Articles and Bylaws:

(a) The following actions will require notice to all institutional holders of first Mortgage liens: (i) abandonment or termination of the Association; or (ii) material amendment to the Declaration.

(b) Upon the request of any first Mortgagee of a dwelling on a Lot, the Association shall furnish to such Mortgagee a written notice of any default by the Owner of such dwelling in the performance of such Owner's obligations under the within Declaration or the Bylaws or Association rules or regulations which is not cured within thirty (30) days. Any first Mortgagee of a dwelling who comes into possession of the said dwelling pursuant to the remedies provided in the Mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged dwelling which accrued prior to the time such holder comes into possession of the dwelling.

(c) Unless at least seventy-five percent (75%) of the first Mortgagees (based upon one vote for each mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(i) by act or omission seek to abandon, partition, encumber, or transfer the Common Area and Facilities, if any, or any portion thereof or interest therein (the granting of easements for public utilities or other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause);

(ii) substantially change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner by the Association;

(iii) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of dwellings on the Lots or maintenance of such dwellings or the Lots;

(iv) fail to maintain liability and extended coverage insurance on insurable property comprising a part of the Common Area and Facilities on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).

(d) No Mortgagee, in its capacity as a Mortgagee, shall have any obligation under this Declaration to collect any Assessment.

7.11 FHA Approval. If the Development is approved by FHA for mortgage financing, the following actions will require approval of the FHA at any time there is a Class B membership in the Association: (i) annexation of additional properties, (ii) dedication of any Common Area and Facilities, and (iii) amendment of this Declaration.

7.12 Prior Declaration. Except as otherwise provided in this Declaration, this Declaration amends, restates, replaces and supersedes the Prior Declaration in its entirety. Upon, from and after the execution of this Declaration by Declarant and the recordation of this executed Declaration in the Real Property Records of Travis County, Texas, the Prior Declaration is, and shall be, superseded in its entirety by this Declaration and shall have no further force and effect from and after the date this Declaration is recorded in the Real Property Records of Travis County, Texas.

ARTICLE 8
DEVELOPMENT AND ANNEXATION OF LAND

8.1 Development by Declarant. As long as Declarant owns all or any portion of the Development and except for the Lots and Common Area and Facilities in Section One, Section Three A or any other Development Subdivision, Declarant, at Declarant's election, may subdivide and plat all or any portion of the Development owned by Declarant (collectively, "Declarant's Property") into several areas, sell some of Declarant's Property, develop some of Declarant's Property and, at Declarant's option, dedicate some of the Declarant's Property as Common Area and Facilities. As each portion of the Declarant's Property is subdivided, platted, developed and/or dedicated, Declarant, at Declarant's option, may include such portions of Declarant's Property in the Property pursuant to the provisions of Section 8.2 below.

8.2 Annexation.

(a) Staged Subdivision. The Property is part of a staged development of the tracts and parcels of land in the Development. Tracts of land out of the Development may be subdivided and platted by Declarant into single-family lots, and related common areas, in accordance with applicable Governmental Requirements of the City and the County and pursuant to a general plan for the staged development of the remaining property included in the Development filed with, or provided to, FHA and, to the extent required by applicable statutes, rules or regulations, approved by FHA. Declarant, its successors and assigns, shall have the right at any time prior to December 31, 2006 to annex as a part of the Property and bring within the scheme of, and make subject to, this Declaration tracts of land out of the Development which have been subdivided and platted by Declarant into single-family lots, and related common areas, in accordance with applicable Governmental Requirements of the City and the County, as long the inclusion of the subject subdivided and platted tracts out of the Development is made pursuant to a general plan for the staged development of the remaining property included in the Development filed with, or provided to, FHA and, to the extent required by applicable statutes, rules or regulations, approved by FHA. Furthermore, additional properties may be annexed into the Property at any time with the consent of two-thirds (2/3rds) of the Members of each class of Members of the Association. As any additional Development Subdivision is annexed as a part of the Property and made subject to this Declaration by Declarant in accordance with the provisions of this Declaration, Declarant, with respect to each such Development Subdivision, shall execute and record a Notice of Addition of Land and may execute and record a Supplemental Declaration which may incorporate this Declaration therein by reference and supplement or modify this Declaration as to the subject Development Subdivision with such additional covenants, restrictions and conditions as may be appropriate for the subject Development Subdivision and which are not inconsistent with the provisions of this Declaration in any material manner. Upon the recordation of a Notice of Added Land annexing a Development Subdivision as a part of the Property and making such Development Subdivision subject to the provisions of this Declaration, the Owners of all Lots in the subject Development Subdivision shall have the same rights, privileges, powers, benefits, duties, liabilities and obligations as the Owners of all Lots which are subject to this Declaration immediately prior to the annexation of the subject Development Subdivision and all Lots in the subject Development Subdivision shall be subject to the covenants, conditions, restrictions, easements, assessments, liens, terms and provisions of this Declaration to the same extent and in the same manner as the Lots which are

subject to this Declaration immediately prior to the annexation of the subject Development Subdivision.

(b) With respect to each tract of land out of the Development which is subdivided and platted by Declarant into single-family lots, and related common areas, in accordance with applicable Governmental Requirements of the City and the County and annexed and brought into the scheme of this Declaration as a Development Subdivision pursuant to the provisions of this Section 8.2 (other than Section Three A), a Notice of Addition of Land shall be executed and recorded designating the subject Development Subdivision. Upon the execution and recording of a Notice of Addition of Land with respect to any Development Subdivision containing the provisions set forth below (which Notice of Addition of Land may be contained within any Supplemental Declaration affecting such Development Subdivision and executed in accordance with the provisions of subparagraph (a) of this Section 8.2), (i) the subject Development Subdivision shall be a Development Subdivision for all purposes under this Declaration, (ii) the subject Development Subdivision (including all Lots and any Common Area and Facilities in the subject Development Subdivision) shall be subject to the covenants, conditions, restrictions, easements, assessments, liens, terms and provisions of this Declaration to the same extent as all of the Property which is subject to this Declaration immediately prior to the annexation of the subject Development Subdivision, (iii) the rights, privileges, powers, benefits, duties, liabilities and obligations of the Persons who own Lots or any other real property in the subject Development Subdivision shall be the same as the rights, privileges, powers, benefits, duties, liabilities and obligations of the Persons who own Lots in the Property which is subject to this Declaration immediately prior to the annexation of the subject Development Subdivision, and (iii) any reference in this Declaration to the term "Property" shall mean, include and refer to the subject Development Subdivision (including all Lots and any Common Area and Facilities in the subject Development Subdivision) and all other Development Subdivisions (including all Lots and any Common Area and Facilities in such Development Subdivisions) and other portions of the Development which are subject to this Declaration immediately prior to the annexation of the subject Development Subdivision. The Notice of Addition of Land referred to above shall contain the following provisions:

(i) A reference to this Declaration, which reference shall state the date or recordation of this Declaration and the volume and page numbers in the Real Property Records of Travis County, Texas, at which this Declaration is recorded;

(ii) A statement that the provisions of this Declaration shall apply to the subject Development Subdivision as provided above;

(iii) A legal description of the subject Development Subdivision, which may be made by reference to the volume and page at which the plat of the subject Development Subdivision is recorded in the Plat Records of Travis County, Texas; and

(iv) The written consent of the Owner of the subject Development Subdivision to the inclusion of such Development Subdivision to the property subject to this Declaration if the subject Development Subdivision is not owned by Declarant. As part of such written consent, Declarant may agree with the Person who owns such Development Subdivision as to the terms and conditions upon which Declarant will exercise its rights, powers, benefits, privileges, obligations and duties, as Declarant under this Declaration, with respect to such Development Subdivision. Such terms and conditions may provide, among other things, for (i) the joint exercise,

performance and observation, of Declarant's rights, powers, benefits, privileges, duties and obligations under this Declaration as and with respect to the subject Development Subdivision, or (ii) the delegation to, and assumption by, the Person who owns subject Development Subdivision (or such Person's nominee) of Declarant's rights, powers, benefits, privileges, duties and obligations under this Declaration and with respect to the subject Development Subdivision.

(c) The Development Plat for Section Three A has been approved as a final plat by the City, subject to completion of the streets, utilities and drainage facilities required under the subdivision ordinance of the City. As of the date of execution of this Declaration, however, the Development Plat for Section Three A has not been filed as a final plat in the Plat Records of Travis County, Texas. Notwithstanding anything in this Section 8.2 to the contrary, Section Three A automatically shall be and become a Development Subdivision for all purposes under this Declaration and all Lots and Common Area and Facilities in Section Three A automatically shall be and become a part of the Property for all purposes under this Declaration, on the date that the Development Plat for Section Three A is filed as a final plat in the Plat Records of Travis County, Texas. Accordingly, on the date that the Development Plat for Section Three A is filed as a final plat in the Plat Records of Travis County, Texas, (i) the Section Three A (including all Lots in Section Three A) shall be a Development Subdivision under this Declaration, (ii) Section Three A (including all Lots in Section Three A) shall be subject to the covenants, conditions, restrictions, easements, assessments, liens, terms and provisions of this Declaration to the same extent as all of the Property which is subject to this Declaration immediately prior to the annexation of the subject Development Subdivision, (iii) the rights, privileges, powers, benefits, duties, liabilities and obligations of the Persons who own Lots in, or any other portion of, Section Three A shall be the same as the rights, privileges, powers, benefits, duties, liabilities and obligations of the Persons who own Lots or any other portion of the Property which is subject to this Declaration immediately prior to the annexation of the subject Development Subdivision, and (iv) any reference in this Declaration to the term "Property" shall mean, include and refer to the Section Three A (including all Lots in Section Three A) and the real property which is subject to this Declaration immediately prior to the annexation of the subject Development Subdivision.

(d) Notwithstanding anything in this Declaration to the contrary, Declarant is not obligated to include any portion of the Development in the Property as a future section or phase of this development other than Section One and Section Three A; provided, however, that Declarant will not exclude future developed phases or sections of the portions of the Development owned by Declarant from the Property if such exclusion will jeopardize the ability of the Association to perform its duties and obligations under this Declaration or impose a severe economic burden on the Owners of the Lots subject to this Declaration.

8.3 Effect of Annexation on Class B Membership. Whenever the total number of votes to which Declarant is entitled under Section 4.3 above is to be determined for any purpose under this Declaration or any of the other Restrictions, the total number of all Lots included in the Property and subject to this Declaration which are owned by Declarant at the time of the subject determination shall be taken into account, including all Lots located in all Development Subdivisions as of the date of the subject determination. If (i) the Class B membership has ceased and converted to Class A membership under Section 4.3(b)(ii) above (but not under any other clause in Section 4.3 above), and (ii) Declarant subsequently becomes the Owner of twenty-five percent (25%) or more of all Lots included in the Property, whether as a result of the annexation by Declarant of any Development Subdivision under the provisions of this Article 8 or otherwise, the Class B Membership of Declarant

shall be reinstated and Declarant shall have all of the attendant rights, privileges, powers and benefits of Class B Membership. Notwithstanding anything in this Section 8.3 to the contrary, Declarant's right to reinstate the Class B membership shall fully and finally terminate when the Class B membership has ceased and been converted to Class A membership under either clause (i) or (ii) of Section 4.3(b) above.

8.4 Merger or Consolidation. Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated associate or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions, restrictions, terms and provisions established by this Declaration within the Property together with the covenants, conditions, restrictions, terms and provisions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration pertaining to the Property except as otherwise expressly provided in this Declaration.