

**SECOND AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
EASEMENTS, CHARGES AND LIENS
LAKE FOREST ADDITION**

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**SECOND AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS**

LAKE FOREST ADDITION

This SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS is made and effective as of the 15th day of September, 2005 (the “**Effective Date**”), by FOREST/HILLCREST PARTNERS, a Texas joint venture (sometimes referred to herein as the “**Declarant**”):

PREAMBLE

The Declarant has developed certain real property commonly known and described as the Lake Forest Addition, a master planned mixed-use community consisting of an approximately 171.9759 acre tract of land (the “Addition”). The Addition is currently zoned by the City of Dallas, Texas, as a Planned Development in accordance with the Zoning Ordinance, as hereinafter defined. In connection with the development of the Addition, as of September 27, 1996, the Declarant filed that certain Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens in Volume 96191 at Page 538 of the Records, as hereinafter defined (the “**Original Declaration**”), which was amended and restated as of April 16, 1998, and filed in Volume 98148 at Page 03823 of the Records, as amended on or about August 7, 2000, and filed in Volume 2000153 at Page 02168 of the Records, and as further amended on or about August 28, 2000, and filed in Volume 2000177 at Page 02918 of the Records (as so amended, the “**1998 Amended Declaration**”). The Declarant desires to modify the 1998 Amended Declaration in certain respects and to amend and restate the 1998 Amended Declaration in its entirety in the manner hereinafter set forth.

The Declarant has taken advantage of the unique features of the Addition, including property located within the Existing Properties, as hereinafter defined, and has implemented and proposes to maintain highly sophisticated plans for residential living, office use, recreation, aesthetic and quality-of-life considerations. The purposes of this Declaration are to (a) protect the Owners against the improper development and use of Lots, as hereinafter defined, within the Addition; (b) assure compatibility of design of improvements within the Existing Properties and the balance of the Addition; (c) secure and preserve sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment; (d) provide for landscaping and the maintenance thereof and of the Common Properties, as hereinafter defined; and (e) in general, encourage construction and maintenance of attractive, high quality, permanent improvements that will promote the general welfare of the Owners. In view of the long-range plans for the Addition, the Owners desire to retain restrictions on the Existing Properties and retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the first-class quality and distinction of the Addition. The restrictive covenants set forth herein are designed to also comply with the requirements of Zoning Ordinance and the Existing Restrictions, as hereinafter defined, to better ensure the care and maintenance of the properties located within the Addition, including the Common Properties,

and to preserve the best interests of the Owners of Lots located within the Addition after completion of all development and construction therein.

The Lake Forest Community Association, Inc. has been chartered as a non-profit Texas corporation to assist in the ownership, management, use and care of the various properties located within the Addition, including the Common Properties, and to assist in the administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration.

The 1998 Amended Declaration is hereby amended and restated in its entirety to be and read as follows:

DECLARATION

The Declarant hereby declares that the Existing Properties and such additions thereto as may hereafter be made pursuant to Article II hereof, are and shall be owned, held, mortgaged, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or in any amended or supplementary Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

“**Access Road Easement Area**” shall mean that certain portion of the Tract B Common Properties within which a forty-five (45) foot right of way and roadway currently exists that provides access to and from the Office Tract and Forest Lane, which portion is more particularly described on Exhibit “A” attached hereto and made a part hereof for all purposes.

“**Addition**” shall mean and refer to the tracts or parcels of real property more particularly described on Exhibit “B” attached hereto and made a part hereof for all purposes, together with all and singular all easements in or upon or benefiting the Addition and all other rights and appurtenances belonging or in anywise pertaining thereto.

“**Amended Declaration**” shall mean and refer to each and every instrument recorded in the Records which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

“**Annual Assessment**” shall have the meaning specified in Section 5.3 below.

“**Approved Builder List**” shall mean a list established from time to time by the Declarant or the RARC which shall set forth the names of the Approved Builders, as contemplated by Section 8.5 hereof.

“Approved Builder” shall mean those contractors and subcontractors who the Declarant or the RARC has designated as “Approved” as contemplated by Section 8.5 hereof, and who shall be permitted to construct, as a contractor or subcontractor, all or any portion of the Structures or Improvements on any Residential Lot.

“Articles” shall mean and refer to the Articles of Incorporation of the Association, as the same may be from time to time duly amended or modified.

“ARC” or **“ARCS”** shall mean one or more of the Architectural Control Committees which may be from time to time appointed or selected pursuant to Article VIII hereof.

“Assessment” or **“Assessments”** shall mean and refer individually or collectively to the Annual Assessments, the Special Group Assessments and the Individual Assessments, where the context requires.

“Association” shall mean and refer to THE LAKE FOREST COMMUNITY ASSOCIATION, INC., an existing non-profit Texas corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Addition and all of the Common Properties, administering and enforcing the Covenants and otherwise maintaining and enhancing the quality of life within the Existing Properties and/or the Subdivision.

“Board” shall mean and refer to the Board of Directors of the Association.

“Bylaws” shall mean and refer to the Bylaws of the Association, as adopted and amended from time to time in accordance with the provisions of this Declaration and the Texas Non-Profit Corporation Act or other applicable laws promulgated by the State of Texas.

“Charges” shall mean and refer to charges imposed against an Owner delinquent in the payment of his/her/its Assessments, including, but not limited to the “fines” as described in Section 6.2(d) hereof, together with the charges and fees contemplated by Section 4.7 hereof.

“Class A Member” shall mean each Owner of a Residential Lot and each Resident (other than an Owner) of a Residential Lot.

“Class B Member(s)” shall mean the Owner or Owners of the Office Tract.

“Class C Member” shall mean the Declarant.

“City” shall mean and refer to the City of Dallas, Texas.

“Common Facilities” shall mean and refer to (a) the Front Yards, and (b) the Common Properties.

“Common Properties” shall mean and refer to any and all areas of land within the Addition which are known, described or designated as green areas, common areas, the Streets and Alleys, any controlled access areas and monitoring devices, flood gates, street lighting and signs (and all elements thereof), parks, creek easement areas, entryways, monuments, gates and gate houses, recreational easements, lakes, ponds, dams, perimeter fences and columns, off-site

monuments and directional signs, landscape easements, greenbelt, swimming pool(s), tennis courts(s), open spaces, paths and trails, and the like, including, without limitation, those shown on any Plat, as well as those not shown on a Plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The “Common Properties” shall also include any and all public right-of-way lands for which the City has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as, but not limited to, street medians, streetscape, hike and bike trails and park areas. The “Common Properties” shall specifically consist of and be divided into those portions of the Addition, each containing certain features or amenities and which are located within, but may not encompass the entirety of, those certain tracts or parcels of real property designated herein as the “Tract A Common Properties” and the “Tract B Common Properties.”

“**Covenants**” shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration or any Amended Declaration.

“**Declarant**” shall mean and refer to FOREST/HILLCREST PARTNERS, a Texas joint venture and any or all successor(s) and assign(s) of FOREST/HILLCREST PARTNERS with respect to the voluntary disposition of all (or substantially all) of the right, title and interest of FOREST/HILLCREST PARTNERS in and to the Addition; provided, however, no Person merely purchasing one or more Lots from FOREST/HILLCREST PARTNERS or its successor or assigns in the ordinary course of business shall be considered a “Declarant.”

“**Declaration**” shall mean and refer to this particular instrument entitled “SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS ON AND FOR LAKE FOREST ADDITION,” together with any and all amendments or supplements hereto.

“**Deed**” shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

“**Design Guidelines**” shall mean and refer to either the Office Design Guidelines or the Residential Design Guidelines.

“**Development Period**” shall mean a period commencing on the date of the recording of the Original Declaration in the Records and continuing thereafter until and ending on the earlier of (a) the date of the sale by the Declarant of the last Lot owned by Declarant in the Development Tract, or (b) the date the Declarant voluntarily terminates its Class C Member status by recording a written notice of such termination in the Records.

“**Development Tract**” shall mean and refer to those portions of the Addition, which (a) initially constituted a portion of the Existing Properties or constitutes a portion of the property (the “**Released Property**”) described on Exhibit “G” attached hereto and made a part hereof for all purposes, (b) have been (i) platted into Lots and become a part of the Subdivision pursuant to a Plat filed and recorded in the Records, (ii) assessed by any one or more of the

Taxing Authorities, and (iii) developed by the Declarant in accordance with the uses permitted by the Zoning Ordinance and the Existing Restrictions, and (c) were not intended to constitute any portion of the Office Tract or the Common Properties (except for the Released Property, which originally constituted a portion of the Tract B Common Properties).

“**Director**” shall mean and refer to any duly elected member of the Board.

“**Dwelling Unit**” shall mean and refer to any building or portion of a building situated upon any Residential Lot which is designed and intended for Residential Use.

“**Easement Areas**” shall mean and refer to those areas which may be covered by an easement specified in Article X below.

“**Eligible Insurers**” is defined in Article XII below.

“**Eligible Mortgagees**” is defined in Article XII below.

“**Estate Area**” shall mean that portion of the Addition lying within the Existing Properties which is specifically designated as the “Estate Area” in a separate Plat heretofore filed by Declarant in Volume 97237 at Page 81 of the Records.

“**Exempt Property**” shall mean and refer to the following portions of the Addition: (a) all land and Improvements owned by the United States of America, the State of Texas, Dallas County or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental (rather than a proprietary) capacity; and (b) all land and Improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties.

“**Existing Office Improvements**” shall mean and refer to collectively (a) that certain eight (8) story office building (commonly known as the “**Administration Building**”) heretofore constructed on the Office Tract containing approximately 162,138 square feet of gross building area, together with (b) that certain three (3) story office building (commonly known as the “**Computer Building**”) heretofore constructed on the Office Tract containing approximately 93,240 square feet of gross building area, and (c) the Parking Facilities.

“**Existing Properties**” shall mean and refer to certain portions of the Addition being more particularly described on Exhibit “C” attached hereto and made a part hereof for all purposes, which include the Development Tract, as now configured, the Office Tract and the Common Properties, as now configured.

“**Existing Restrictions**” shall mean that certain Declaration of Restrictive Covenants, effective February 24, 1993, recorded March 1, 1993, in Volume 93040, at Page 4467, *et seq.* of the Records, as amended, together with the Original Declaration and the 1998 Amended Declaration.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on the following December 31, unless the Board shall otherwise select an alternative twelve month period.

“Front Yard” shall mean and refer to (a) as to interior Lots, the front yard area of the residence between the street (on the one hand) and the dwelling exterior and fence (on the other hand) and (b) as to corner Lots, the front yard area of the residence between the street (on the one hand) and the dwelling exterior and fence (on the other hand), and that portion of the side yard area exposed to the street, between the street (on the one hand) and the dwelling exterior and fence (on the other hand), but excluding patios, courtyards and fenced areas, unless otherwise defined by the Board.

“Front Yard Maintenance” shall mean and refer to normal and routine maintenance of Front Yards, as determined from time to time by the Board, including but not limited to (a) mowing and edging Front Yards, (b) trimming Front Yards with lawn maintenance equipment, and (c) fertilizing, trimming shrubbery, turning flower beds and applying insect control chemicals to Front Yards. The term “Front Yard Maintenance” shall not, in any event, include the trimming of trees, planting of shrubbery, grass, trees or other landscaping, installing or maintaining irrigation systems, or any other maintenance or service determined by the Board not to be within normal and routine maintenance of Front Yards.

“Improvement” shall mean any physical change to raw land or to an existing Structure which alters the physical appearance, characteristics or properties of the land or Structure, including but not limited to the new construction of a Structure or Structures and related amenities, adding or removing square footage area or space to or from a Structure, painting or repainting a Structure, or in any way altering the size, shape or physical appearance of any Structure or any building or other improvement, temporary or permanent, located on any Lot.

“Individual Assessments” shall mean and refer to the assessments that may be from time to time imposed upon an individual Owner in accordance with the provisions of Section 5.1 hereof.

“Institutional Mortgage” shall mean and refer to any bona-fide mortgage, lien or security interest held by a bank, trust company, insurance company, savings and loan association or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association (“**FNMA**”), Federal Home Loan Mortgage Corporation (“**FHLMC**”), The Federal Housing Administration (“**FHA**”), The Veterans Administration (“**VA**”), or their successors, or guaranteed or subsidized by the FHA and/or VA.

“Lot” or **“Lots”** shall mean and refer to a Residential Lot or the Office Tract or any other type of lot reflected on any Plat or all of the Residential Lots together with the Office Tract and such other lots.

“Managing Agent” shall mean and refer to any Person who has been designated or engaged by the Board to manage the affairs of the Association, to the extent the Board elects to make such designation.

“Maximum Rate” shall mean and refer to the lesser of (a) the maximum rate of interest permitted to be charged from time to time for the use or forbearance of money by applicable law, or (b) eighteen per cent (18%) per annum.

“Member” shall mean and refer to each Resident or Owner, who is in good standing with the Association, who has filed a proper statement of residency with the Association, who has complied with all directives and requirements of the Association, and who otherwise satisfies the requirements set forth in Section 3.1 hereof. Membership shall consist of three (3) classes, the Class A Members, the Class B Member(s) and the Class C Member.

“New Office Improvements” shall mean any Improvements hereafter constructed on the Pad Site by the Owner or Owners of the Office Tract.

“Office Design Guidelines” shall mean and refer to the standards, restrictions, guidelines and specifications, described herein applicable to the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Office Tract.

“Office Tract” shall mean and refer to the tracts or parcels of real property more particularly described on Exhibit “D-1” attached hereto and made a part hereof for all purposes, together with all and singular all easements in or upon or benefiting the Office Tract and all other rights and appurtenances belonging or in anywise pertaining thereto.

“Office Tract Architectural Review Committee” or **“OTARC”** shall mean and refer to that particular committee which may be from time to time appointed or selected pursuant to Section 8.5 hereof.

“Owner” shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot.

“Pad Site” shall mean that certain area located within the boundaries of the Office Tract and designated on a diagram of the Office Tract attached hereto as Exhibit “D-2” and made a part hereof for all purposes, upon which the New Office Improvements may be constructed.

“Parking Facilities” shall mean the existing parking areas located within the boundaries of the Office Tract and designated on a diagram of the Office Tract attached hereto as Exhibit “D-2” and made a part hereof for all purposes.

“Payment and Performance Lien” shall mean and refer to the lien described within Sections 5.8 and 5.9 below.

“Person” shall mean an individual, partnership, joint venture, corporation, limited liability company, joint stock company, trust (including a business trust), unincorporated association or other entity, or a government or any political subdivision or agency thereof.

“Plat” or **“Plats”** shall mean and refer to the formal subdivision plat or plats of the Subdivisions, which have been approved by the City and filed and recorded in the Records.

“Records” shall mean the Public Real Estate Records of Dallas County, Texas, including the Map and Plat Records of Dallas County, Texas.

“Released Property” is defined in this Article I in the definition of “Development Tract.”

“Resident” shall mean and refer to:

- (a) each Owner of the fee simple title to any Residential Lot within the Development Tract; and
- (b) each Person residing within any part of the Development Tract who is a bond-fide lessee pursuant to a legally cognizable lease agreement with an Owner; and
- (c) each individual lawfully domiciled in a Dwelling Unit other than an Owner or bona-fide lessee.

“Residential Architectural Review Committee” or **“RARC”** shall mean and refer to that particular committee which may be from time to time appointed or selected pursuant to Section 8.1 hereof.

“Residential Design Guidelines” shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications, described herein or from time to time promulgated by the RARC, applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to any Residential Lot within the Development Tract, and all amendments, bulletins, modifications, supplements and interpretations thereof.

“Residential Lot” shall mean and refer to each separately identifiable portion of the Addition which is (a) platted into individual Lots and becomes a part of the Subdivision pursuant to a Plat filed and recorded in the Records, (b) assessed by any one or more of the Taxing Authorities, (c) to be used solely for a Residential Use and (d) not intended to constitute any portion of the Common Properties or the Office Tract.

“Residential Use” shall mean and refer to any use and/or occupancy of any Residential Lot as a residence by a single person, a couple, a family or a permitted family size group of persons.

“Special Group Assessments” shall mean and refer to assessments imposed upon the Owners for capital improvements or unusual or emergency matters, in accordance with the provisions of Section 5.4 hereof.

“Street Reserve Funds” shall mean and refer to two (2) separate and distinct street reserve funds to be established and maintained by the Association with a portion of the Assessments collected by the Association, in respect to the Streets and Alleys to be located within the Tract A Common Properties and the Access Road Easement Area, which reserves shall be created and maintained for the purpose of paying future extraordinary maintenance costs of the Streets and Alleys located within the applicable portion of the Tract A Common Properties and the Access Road Easement Area.

“Streets and Alleys” shall mean the right-of-way of all private streets, alleys, sidewalks and other rights-of-way situated within, and shown on the Plats, together with all pavement, curbs, street lights, signs and related facilities thereon.

“Structure” shall mean and refer to (a) any thing or device, other than trees, shrubbery (less than two (2) feet high if in the form of a hedge in respect to a Residential Lot) and landscaping (the placement of which upon any Residential Lot shall not adversely affect the appearance of such Residential Lot), including but not limited to any building, improvement, parking facility or area, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge (more than two (2) feet high if in the form of a hedge in respect to a Residential Lot), signboard or other temporary or permanent living quarters or any temporary or permanent improvement to any Lot; (b) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; (c) with respect to Residential Lots and, to the extent visible from any Residential Lot, with respect to the Office Tract, any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (d) any change in the grade of any Lot which involves a change of more than three (3) inches from the existing grade initially approved by the applicable ARC.

“Subdivision” or **“Subdivisions”** shall mean and refer to a subdivision or subdivisions of all or a portion of the Addition, in accordance with a Plat or Plats thereof heretofore or hereafter filed of record in the Records, as well as any and all revisions, modifications, corrections or clarifications thereto.

“Taxing Authorities” shall mean and refer to Dallas County, the Dallas Independent School District, the Richardson Independent School District, the City and the State of Texas and any and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the Texas Constitution and applicable statutes and codes.

“Tract A Common Properties” shall mean and refer to those portions of the Common Properties which are located within the tracts or parcels of real property more particularly described on Exhibit “E” attached hereto and made a part hereof for all purposes, together with all and singular all easements in or upon or benefiting the Tract A Common Properties and all other rights and appurtenances belonging or in anywise pertaining thereto, including but not limited to all Streets and Alleys now or hereafter located within the Development Tract and such additional portions of the Addition as may hereafter be designated as **“Tract A Common Properties”** pursuant to any Subdivision or Plat and which are located within the tracts or parcels of real property more particularly described on Exhibit “E” attached hereto.

“Tract B Common Properties” shall mean and refer to those portions of the Common Properties which are located or are to be located on or within the tracts or parcels of real property more particularly described on Exhibit “F” attached hereto and made a part hereof for all purposes (save and except for the Released Property, which no longer constitutes a portion of the Tract B Common Properties), together with all and singular all easements in or upon or benefiting the Tract B Common Properties and all other rights and appurtenances belonging or in anywise pertaining thereto, including the Access Road Easement Area and the Street now or hereafter located within the boundaries thereof of those tracts or parcels of real property more particularly described in Exhibit “F” attached hereto.

“Trustee” shall mean the Board or its designee. The Board shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the rights and powers of the afore-named Trustee.

“Zoning Ordinance” shall mean and refer to the provisions relating to Planned Development District No. 381 for mixed uses, Dallas Ordinance No. 21584, dated February 24, 1993, as corrected by Dallas Ordinance No. 21645, dated May 12, 1993 and all amendments thereto.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 2.1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration shall be the real property located within the Existing Properties.

Section 2.2. Additions to Existing Properties. The Existing Properties are within the perimeters of the Addition. Additional land(s) within the Addition may become subject to this Declaration, or the general scheme envisioned by this Declaration, as follows:

(a) The Declarant may (without the joinder and consent of any Person but provided such land area is within the original boundaries of the Addition) add or annex additional real property to the scheme of this Declaration within the term of this Declaration by filing of record an appropriate enabling declaration, generally similar to this Declaration, which may extend the scheme of the Covenants to such property; provided further, however, such other declaration(s) may contain such complementary additions and modifications of these Covenants as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept and purpose of this Declaration, the Zoning Ordinance and the Existing Restrictions.

(b) No land parcels outside the original perimeter of the Addition may be annexed without the consent of (i) at least two-thirds (2/3) of the Owners of Residential Lots, (ii) the Owner or Owners of the Office Tract, and (iii) the Declarant (during the period the Declarant remains a Class C Member).

(c) Any additions made pursuant to this Section 2.2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added and correspondingly subject the properties added to the covenants of the enabling declaration.

In no event shall any additional land be added to or become a part of the Tract B Common Properties without the prior written consent of the Owner or Owners of the Office Tract.

ARTICLE III

MEMBERSHIP; VOTING RIGHTS IN THE ASSOCIATION; ESTATE AREA

Section 3.1. Membership.

(a) Each and every Owner of each and every Lot within the Existing Properties or the Subdivision shall automatically be, and must at all times remain, a Member of the Association in good standing. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a non-voting Member of the Association. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of a Lot. Ownership of any Lot shall be the sole qualification for being a Member; however a Member's privileges to use the Common Properties may be regulated or suspended as provided in this Declaration, the Bylaws or the rules and regulations promulgated by the Board. Any Person who holds an interest in and to all or any part of a Lot merely as security for the performance of an obligation shall not be a Member.

(b) During the Development Period, the Association shall have three (3) classes of Members:

Class A: The Class A Members, shall include:

(i) all Owners (other than the Declarant) of Residential Lots; and

(ii) all Residents (not otherwise Owners) who have properly and timely fulfilled all registration and related requirements prescribed by the Association.

Class B: The Class B Member(s) shall be the Owner or Owners of the Office Tract.

Class C: The Class C Member shall be the Declarant.

(c) From and after the expiration of the Development Period, the Class C membership shall terminate, and thereafter, the Association shall have two (2) classes of Members:

Class A: The Class A Members shall include all Owners of Residential Lots.

Class B: The Class B Member(s) shall be the Owner or Owners of the Office Tract.

Section 3.2. Transfers. The membership of an Owner may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale or assignment of such

Owner's interest in all or any part of such Owner's Lot and then only to the purchaser or assignee as the new Owner of the Lot in question. Each Owner shall notify the Association of any transfer or assignment of the fee title to his/her/its Lot. Such transfer shall automatically operate to transfer the membership to the new Owner thereof.

Section 3.3. Voting Rights.

(a) During the Development Period, the following classes of Members shall constitute the voting Members of the Association:

Class B: The Class B Member(s) shall be entitled to cast that number of votes which is equal to twenty-five percent (25%) of the votes which the Class C Member is entitled to cast.

Class C: The Class C Member shall be entitled to cast one (1) vote for each Residential Lot located within the Subdivision.

During the Development Period all votes relating to the ownership of a Residential Lot shall be cast by the Declarant to the exclusion of the Class A Members.

(b) Following the expiration of the Development Period, the following classes of Members shall constitute the voting Members of the Association:

Class A: The Owner(s) of each Residential Lot in good standing shall be entitled to one (1) vote per Residential Lot. Where more than one (1) Owner owns and holds a record fee interest in a Residential Lot, such Owner(s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote.

Class B: The Class B Member(s) in good standing shall be entitled to cast that number of votes equal to twenty-five percent (25%) of the votes which the Class A Members are entitled to cast.

(c) Any Owner or Member shall not be in "good standing" if such Person is: (i) in violation of any portion of these Covenants, the Design Guidelines applicable to his/her/its Lot, or any rule or regulation promulgated by the Board and/or any portion of the Zoning Ordinance or the Existing Restrictions; or (ii) delinquent in the full, complete and timely payment of any Assessments or Charge which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board. The voting rights of any Member who is not in good standing may be suspended by the Board for any period during which such Member remains not in good standing; provided, however, in no event shall the voting rights or the rights of approval or consent of the Class B Member(s) be affected, notwithstanding the fact that the Class B Member(s) may not be in "good standing," in respect to voting on amendments to this Declaration covered by Section 13.4 hereof or any Section hereof requiring the consent of the Class B Member(s) or the Owner or Owners of the Office

Tract. The preceding clause shall control over any provision of this Declaration to the contrary.

(d) The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for: (i) any meeting of Members; (ii) proof of membership in the Association; (iii) the status of good standing; (iv) evidence of right to vote; (v) the appointment and duties of examiners and inspectors of votes; (vi) the procedures for actual voting in person or by proxy; (vii) registration of Members for voting purposes; and (viii) such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

Section 3.4. Notice Voting Procedures; Meetings. Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Texas law. The Members shall meet annually to deal with and vote on matters relating to the business of the Association, as directed by the Board, including the election of the Directors.

Section 3.5. Matters Generally Subject of the Vote of Members. Additionally, to the extent that the Board desires to encumber any portion of the Common Properties as security for payment of indebtedness incurred in respect to improvements to the Common Properties, the Board shall obtain the prior approval of the Members in the same manner as approval of a Special Group Assessment as provided in Section 5.4 hereof.

Section 3.6. Estate Area.

(a) The Owners of Lots located within the Estate Area (the “**Estate Area Lots**”) subject to the provisions of this Section 3.6 shall have the right to form a Sub-Home Owners Association (the “**Sub-Association**”) for the sole purpose of limited access to the Estate Area from the balance of the areas located within the Addition. The Owners of the Estate Area Lots may call a meeting of Owners of Estate Area Lots for the sole purpose of considering whether or not the Sub-Association should be formed. The election to form the Sub-Association must be made by at least eighty percent (80%) of the Owners of Estate Area Lots. In connection with such vote the Owner(s) of each Estate Area Lot in good standing shall be entitled to one (1) vote per Lot. An eighty percent (80%) affirmative vote of Owners of Estate Area Lots will bind all Owners of Estate Area Lots with respect to the formation of the Sub-Association (the date on which the election to form the Sub-Association is made herein called the “**Sub-Association Formation Date**”).

(b) In the event the Owners of the Estate Area Lots elect to form the Sub-Association in accordance with the foregoing provisions, access to the Estate Area shall be (i) limited exclusively to the Owners of Estate Area Lots located within the Estate Area and their guests and invitees and (ii) prohibited to any other Person. In such event access to the Estate Area may be restricted by gating and fencing to all other Persons.

(c) The Owners of the Estate Area Lots shall continue to remain Members of the Association and shall continue to be responsible for payment of all Assessments contemplated hereby and maintaining their Member status, in good standing, with the Association. As a member of the Sub-Association, each Owner shall be additionally responsible for all costs and assessments associated with (i) costs of installation or construction of gating, fencing and gate houses, if any, (ii) the maintenance (including landscaping where applicable) of manned and unmanned gated areas serving the Estate Area on an exclusive basis, (iii) gate and guard expenses, and (iv) any other similar costs or expenses relating thereto.

(d) In the event that the Owners of Estate Area Lots make the election to form the Sub-Association in accordance with the provisions of this Section 3.6, the Persons appointed by such Owners and the Board shall modify this Declaration to the extent necessary and prepare and execute such additional documentation as may be reasonably necessary to effect the purposes of this Section 3.6.

ARTICLE IV

RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES

Section 4.1. Easements.

(a) Subject to the provisions of Sections 4.2 through 4.7 below, each and every Owner of a Residential Lot in good standing with the Association shall have a non-exclusive right and easement of enjoyment in and to the Tract A Common Properties and the Tract B Common Properties, and such easement shall be appurtenant to and shall pass with every Residential Lot, provided the conveyance and transfer is accomplished in accordance with this Declaration.

(b) Subject to the provisions of Sections 4.2 through 4.7, the Owner or Owners of the Office Tract and its or their employees, agents, guests and invitees, so long as the Owner or Owners of the Office Tract is or are in good standing with the Association, shall have a non-exclusive right and easement of enjoyment in and to all Tract B Common Properties, and such easement shall be appurtenant to and shall pass with the Office Tract.

(c) All Residents in good standing with the Association shall have a non-transferable, non-exclusive privilege to use and enjoy all Common Properties for so long as they are Members in good standing with the Association.

(d) [intentionally omitted].

(e) With the prior approval of the Board, one or more portions of the Common Properties may from time to time be reasonably limited to private functions for use of one or more of the Members and their guests and invitees; and conversely, one or more portions of otherwise private property (subject to the consent of the Owner thereof) may be utilized for Association functions and activities.

(f) No later than thirty (30) days after the the last day of the Development Period, the Declarant shall convey to the Association record title to any Common Properties as to which it then holds record title. Notwithstanding the foregoing, the Declarant shall convey to the Association record title to the Tract B Common Properties within sixty (60) days following receipt of a request to do so from the Owner or Owners of the Office Tract.

(g) [intentionally omitted].

(h) The Tract A Common Properties shall be used exclusively by the Owners of Residential Lots and their guests and invitees and access thereto shall be prohibited to any other Person. Access to the Tract A Common Properties may be restricted by gating and fencing to all other Persons. The Owners of the Residential Lots shall be responsible for all Assessments associated with the costs of the maintenance (including landscaping where applicable) of (i) the Streets and Alleys situated within the Development Tract, (ii) manned and unmanned gated areas serving the Development Tract accessible by the Owners Residential Lots only, (iii) the Creak Easement Areas, as hereinafter defined, and (iv) the balance of the Tract A Common Properties, including amenities constructed or installed in the Tract A Common Properties accessible only by Owners of the Residential Lots, such as pools, hike and bike trails, fountains and other amenities located within the Tract A Common Properties.

(i) The Tract B Common Properties shall be subject to the use and enjoyment of Residential Lot Owners and their guests and invitees and the employees, guests and invitees of the Owner or Owners of the Office Tract. The Board shall have the right to restrict the usage of the Common Properties by the Owners of the Residential Lots and the Office Tract; however any restriction shall be imposed on a uniform basis on the Owners of Residential Lots and the Owner or Owners of the Office Tract. Access to the Tract B Common Properties may be restricted by gating and fencing to all other Persons. The Owners of Residential Lots and the Owner or Owners of the Office Tract shall be responsible for all Assessments relating to or associated with the Tract B Common Properties, including the Access Road Easement Area and the maintenance (including landscaping where applicable) of (i) the Tract B Common Properties (including the Streets located within the Access Road Easement Area), (ii) the perimeter screening wall (in the buffer area) constructed along Forest Lane, Hillcrest Road and Churchill Way, (iii) the screening walls constructed along the common property lines between the Office Tract, the Development Tract and the Common Properties, (iv) landscaping in the buffer area and medians along Forest Lane, Hillcrest Road and Churchill Way (as required by the Zoning Ordinance), (v) amenities, such as hike and bike trails, tennis courts, exercise stations, fountains and other amenities, constructed and installed within the Tract B Common Properties accessible to both the Owners of Residential Lots and the Owner or Owners of the Office Tract, and (vi) manned and unmanned gated entries, if any, serving both the Development Tract and the Office Tract.

(j) The Board shall have the right to amend this Declaration for the specific purposes of granting or creating easements between the Association and certain of the Residential Lot Owners to (i) grant the Association an easement within an area (herein

called the “**Creek Easement Areas**”) from the center line of any creek passing through a Residential Lot to a specified distance permitting the Association restricted access to the area covered thereby for the purpose of landscape maintenance and removal of trees and debris to keep water courses clear, and (ii) grant to certain Owners whose Residential Lots abut or are immediately west of White Rock Creek, an exclusive easement to use (to the exclusion of all other Persons) certain portions of the Tract B Common Properties which are located between the boundaries of the Residential Lot in question and White Rock Creek.

Section 4.2. Extent of Members’ Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Association to prescribe reasonable regulations and policies governing, and to charge fees and/or deposits (e.g., key and access card deposits) related to, the use, operation and maintenance of the Common Properties;

(b) Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Association to improve or maintain the Common Properties;

(c) The right of the Association to enter into and execute contracts with any party for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of the Association to suspend the voting rights of any Member, other than the Owner or Owners of the Office Tract (which voting rights may not be suspended or impaired in any manner during the term of this Declaration) and to suspend the right of any Member to use or enjoy any of the Common Properties for any period during which any assessment (including without limitation “fines”) against a Lot owned by such Member remains unpaid, or during which non-compliance with this Declaration or the Design Guidelines applicable to the Lot in question exists, and otherwise for any period deemed reasonable by the Association for an infraction of the then-existing rules and regulations;

(f) The right of the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Declarant or the Board, including the right of the Association to enter into and execute contracts with the owner-operators of any utility system or other similar operations for the purpose of extending utility service on, over or under the Common Properties to ultimately provide service to one or more of the Lots or to adjacent properties; and

(g) The right of the Association to grant permits, licenses and easements over the Common Properties for utilities and other purposes necessary for the proper development of the Addition or for any other reason deemed prudent by the Board.

Section 4.3. Restricted Actions by Members. No Member shall permit anything to be done on or in the Common Properties which would violate any applicable public law or the Zoning Ordinance or the Existing Restrictions or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

Section 4.4. Damage to the Common Properties. Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his/her family and/or guests and/or invitees and/or employees.

Section 4.5. Rules of the Board. All Members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with the rules and regulations established from time to time by the Board by all appropriate legal and equitable remedies, and a Member determined to have violated the Board's rules and regulations shall be liable to the Association for all damages and costs incurred by the Association as a result of such violation or in regard to the enforcement thereof, including reasonable attorneys' fees.

Section 4.6. Use of Common Properties. The Board shall have the power and authority to prescribe rules and regulations which extend to and cover matters such as (but not limited to) smoking, the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, dress and attire and the supervision by attending adults of children. No Person shall use any portion of the Common Properties to:

- (a) solicit, promote or conduct business, religious, political or propaganda matters;
- (b) distribute handbills, newsletters, flyers, circulars or other printed materials,

without the prior written consent of the Board (which consent may be withheld in its sole and absolute discretion).

Section 4.7. User Fees and Charges. The Board may levy and collect charges, user fees and other fees for the operation and maintenance of the Common Properties and services which the Board determines to be necessary for the advancement, benefit and welfare of the Members. In establishing user fees, the Board may formulate reasonable classifications of users. Such fees must be uniform within such classifications but need not be uniform throughout the classifications. If a Member shall fail to pay a Charge when due and payable, the unpaid Charge shall be delinquent and upon written notice to the Member shall become a personal debt of the Member in question. Failure of any Member to pay the Charge when due and payable, in addition, shall be a breach of these Covenants and shall result in suspension of the Member's rights or privileges with respect to the use of the Common Properties.

Section 4.8. Encroachments. If: (a) construction, reconstruction or repair activities which have been approved by the ARCS; or (b) shifting, settlement or other movements of any portion of Improvements which have been approved by the ARCS, results either in the Common Properties encroaching on a Lot or Dwelling Unit or Structure or in a Lot or Dwelling Unit or Structure encroaching on the Common Properties or on another Lot or Dwelling Unit or Structure, and unless otherwise directed by the ARCS, a valid easement shall then and there exist to permit the encroachment and reasonable and necessary maintenance activities related thereto.

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it within the Subdivision, and the Owner or Owners of the Office Tract hereby covenant and agree, and each subsequent Owner of any Lot, by acceptance of a Deed therefor, whether or not reference to the covenants shall be so expressed in any such Deed or other conveyance, shall be deemed to have covenanted and agreed (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot so as to have affected the purchase price) to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

- (a) Regular Annual Assessments;
- (b) Special Group Assessments, to be fixed, established and collected from time to time as hereinafter provided; and
- (c) Individual Assessments and fines levied against individual Owners, Members or Residents to reimburse the Association for (i) extra or unusual costs incurred for items such as (but not limited to) (A) maintenance and repairs to portions of the Addition required to be made as a result of the willful or negligent acts of the individual Owner, Member or Resident; or (B) the remedy, cure or minimizing of problems caused by, or as a result of, violations of these Covenants by an Owner, Member or Resident; and (ii) costs incurred relating to or resulting from violations by individual Owners, Members or Residents of rules and regulations pertaining to the Association and/or the Common Properties.

The Annual, Special Group, and Individual Assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge running with the land and shall be a continuing lien upon each Lot against which each such Assessment is made and shall also be the continuing personal obligation of the then-existing Owner, Member and Resident of such Lot at the time when the Assessment fell due. Each Owner of each Lot shall be directly liable and responsible to the Association for the acts, conduct and omission of each and every Member and Resident and their respective guests, invitees and employees, associated with the Dwelling Unit(s) or Structures located on such Owner's Lot.

Section 5.2. Purposes of Assessments; Maintenance of the Common Facilities.

(a) The Assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Members of the Association and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of the Common Facilities, including, walkways, hike and bike trails, ponds, lakes, recreational areas, Streets and Alleys and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: (i) the payment of taxes on the Common Properties and insurance in connection with the Common Properties; (ii) the payment for utilities and the repair, replacement and additions of various items within the Common Properties; (iii) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (iv) carrying out the duties of the Board as set forth in Article VI of this Declaration; (v) carrying out the other various matters set forth or envisioned herein or in any Amended Declaration related hereto; (vi) performing Front Yard Maintenance, as contemplated by the provisions of subparagraph (b) below, and (vii) for any matter or thing designated by the City in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive but merely illustrative.

(b) All Front Yards situated within the Addition, together with any area containing lawn grasses and situated between the alley and the rear fence of a dwelling, shall be maintained by the Association with sums provided by Assessments to be funded by the Owners of Residential Lots and such maintenance shall include and be limited to the items included within the defined term "Front Yard Maintenance." Each Owner of a Residential Lot shall be obligated to immediately advise the Board in writing of any adverse condition or problem affecting or relating to the Front Yard Maintenance conducted for such Owner as a condition precedent to any obligation of the Association to correct such adverse condition or problem. In the event that the Board shall at any time determine, in its sole discretion, that the correction of any adverse condition or problem relating to any Front Yard Maintenance is in the best interests of the Association, then the costs of such maintenance and correction, if requested by such Owner and carried out by the Board, shall be charged to such Owner by the Board and shall be payable by such Owner within fifteen (15) days after receipt of a statement from the Board requesting payment therefor. Under no circumstance shall the Association, the Board, any Director or any officer or agent of the Association be liable to any Owner for any action or inaction of the Board with respect to any Front Yard Maintenance, and each Owner hereby releases and relinquishes forever any claims, demands or actions which such Owner may at any time have or be deemed to have against the Association, the Board, any Director or any officer or agent of the Association with regard to Front Yard Maintenance, whether arising out of the alleged negligence, misfeasance, malfeasance (but not gross negligence or willful misconduct) of the Association, the Board, any Director or any officer or agent of the Association.

(c) Notwithstanding anything to the contrary in Section 5.2(b), an Owner may elect to hire his, her or its own maintenance company, at such Owner's expense, for Front Yard Maintenance. Such Owner shall not be reimbursed for any expenses incurred for such Front Yard Maintenance, and shall be responsible for the payment of all Assessments, even those used to pay for Front Yard Maintenance for other Owners. In addition, any Owner electing to provide for his, her or its own Front Yard Maintenance shall execute and deliver to the Association a certification that his, her or its front yard will be maintained in an appropriate and acceptable manner, consistent with the Front Yard Maintenance required of other Owners, or the Association may assume control of such Owner's Front Yard Maintenance. In the event that the Board shall at any time determine, in its reasonable discretion, that the correction of any adverse condition or problem relating to any Front Yard Maintenance of an Owner who retains his, her or its own maintenance company therefor is in the best interests of the Association, then the reasonable costs of such maintenance and correction, if carried out by the Board, shall be charged to such Owner by the Board and shall be payable by such Owner within fifteen (15) days after receipt of a statement from the Board requesting payment therefor.

Section 5.3. Basis and Amount of Annual Assessments.

(a) Regular Annual Assessments and Special Group Assessments in respect to the Tract A Common Properties shall be borne one hundred percent (100%) by the Owners of the Residential Lots. Regular Annual Assessments and Special Group Assessments in respect to the Tract B Common Properties shall be borne twenty per cent (20%) by the Owner or Owners of the Office Tract and eighty per cent (80%) by the Owners of Residential Lots.

(b) [intentionally omitted].

(c) The regular Annual Assessments for each Fiscal Year in respect to the Tract B Common Properties shall be established and assessed in the following manner:

(i) On or before each December 1 of each Fiscal Year, the Association shall prepare a budget (the "**Tract B Proposed Budget**") for the Tract B Common Properties expenses taking into consideration the current costs in respect to the Tract B Common Properties and the future needs of the Association in respect thereto, and shall deliver the Tract B Proposed Budget to the Owner or Owners of the Office Tract for its or their review and approval. Within ten (10) days following receipt of the Tract B Proposed Budget the Owner or Owners of the Office Tract shall give any objections to the Tract B Proposed Budget in writing to the Association. The Owner or Owners of the Office Tract and the Association shall thereafter work diligently to resolve any differences with respect to the Tract B Proposed Budget and upon such resolution shall confirm in writing their approval thereof (the budget so approved herein called the "**Tract B Budget**"). To the extent that the Owner or Owners of the Office Tract and the Association are unable to agree upon the Tract B Budget for any Fiscal Year, the matters in dispute shall be submitted to arbitration in the manner set forth in Section 13.11 hereof. Pending a resolution of such disputes the Association shall

utilize the Tract B Budget for the prior Fiscal Year. Upon approval of the Tract B Budget for the current Fiscal Year the regular Annual Assessment for such Fiscal Year for the Owner or Owners of the Office Tract shall be an amount equal to twenty percent (20%) of the budgeted amounts reflected in the applicable Tract B Budget.

(ii) The amount of the regular Annual Assessments for the Office Tract shall be the amount determined by utilizing the expenses reflected in the Tract B Budget for the immediately preceding Fiscal Year, subject to increases as contemplated by subparagraph (g) hereof.

(iii) Sums due in respect to regular Annual Assessments payable by Owners of Residential Lots relating to the Tract B Common Properties shall be included in and covered by the regular Annual Assessments to be imposed upon Owners of Residential Lots.

(iv) [intentionally omitted].

(d) The regular Annual Assessments for each Fiscal Year in respect to the Tract A Common Properties shall be established and assessed in the following manner:

(i) Sums due in respect to Annual Assessments relating to the Tract A Common Properties shall be included in and covered by the regular Annual Assessments to be imposed upon Owners of Residential Lots.

(ii) [intentionally omitted].

(e) In determining each regular Annual Assessment, the Board shall separately assess each Lot in the manner herein provided and each Residential Lot shall be charged with and subjected to a lien for the amount of such separate Assessment which shall be deemed the "Annual Assessment" with respect to such Residential Lot.

(f) [intentionally omitted].

(g) The Board may be permitted at any time during the term of this Declaration to increase the regular Annual Assessment for each Residential Lot without a vote of the Members from Fiscal Year to Fiscal Year, but such an adjustment shall not exceed twenty five percent (25%) of the previous Fiscal Year's regular Annual Assessment assessed against the Residential Lots in question. The Board shall be permitted to increase the regular Annual Assessment for the Office Tract without the consent of the Owner or Owners of the Office Tract from Fiscal Year to Fiscal Year, but such an increase shall not be greater than an amount equal to ten percent (10%) of the previous year's Annual Assessment.

(h) The maximum Annual Assessment may not be otherwise increased beyond the restrictions set forth in subparagraph (g) above without the assent of:

(i) in respect to the Tract A Common Properties more than fifty percent (50%) of the Class A Members, and

(ii) in respect to the Tract B Common Properties by both (i) more than fifty percent (50%) of the Class A Members (as a class) and (ii) the Class B Member(s),

at a meeting or meetings called for that purpose with at least fifty percent (50%) of the Class A Members (or their proxies) and, if applicable, the Owner or Owners of the Office Tract are present, after adequate notice. If at least fifty percent (50%) of the Class A Members (or their proxies) are not in attendance, a second meeting may be called with the same notice and the quorum may be reduced to thirty percent (30%) of the Class A Members. The Board shall not take formal action on the Annual Assessment more than once in any Fiscal Year. Each and every meeting of the Board in which final action on an Annual Assessment or Special Group Assessment is taken shall be open to the Owners.

(i) In addition to regular Annual Assessments, Special Group Assessments and Individual Assessments, each Owner of a Residential Lot shall be obligated, at the time of the purchase of the Lot by such Owner and simultaneously therewith, to pay the Association such sums as determined by the Board from time to time as an acquisition and transfer fee to supplement the funds of the Association.

Section 5.4. Group Assessments. In addition to the regular Annual Assessments authorized by Section 5.3 hereof, the Association may levy in any Fiscal Year a Special Group Assessment, applicable to that Fiscal Year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement upon the Tract A Common Properties or the Tract B Common Properties, including any necessary fixtures and personal property related thereto or for any unusual or emergency purpose(s) (including without limitation those matters arising out of litigation and/or judgments). Any Special Group Assessment in respect to: (a) the Tract A Common Properties must have the affirmative approval of more than fifty percent (50%) of the Class A Members; and (b) the Tract B Common Properties must have the approval of both (i) more than fifty percent (50%) of the Class A Members (as a class) and (ii) the Class B Member(s).

Section 5.5. Rate of Assessments. Both regular Annual Assessments and Special Group Assessments in respect to Residential Lots must be fixed at a uniform rate for all Residential Lots, unless otherwise approved by at least three-fourths (3/4ths) of the individuals comprising the Board appointed by the Class A Members. The rate for the Office Tract for regular Annual Assessments in respect to the Tract B Common Properties shall be determined in accordance with the provisions of Section 5.3 hereof and for Special Group Assessments shall be equal to twenty percent (20%) of the applicable Special Group Assessments.

Section 5.6. Date of Commencement of Assessments Due Dates. The Annual Assessment shall be due and payable in full in advance on the first day of each Fiscal Year and shall, if not paid within thirty (30) consecutive calendar days thereafter, automatically become delinquent. The Board shall use reasonable efforts to provide each Owner with an invoice

statement of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence. The Board may (but is not required to), however, prescribe time-price differential payment schedules which would permit the collection of an amount greater than the Annual Assessment on a semi-annual, quarterly or monthly basis provided that the creditworthiness of the Owner was acceptable to the Board and the inconvenience to the staff of the Association for additional invoicing and collection efforts was minimized or eliminated. The Board may further prescribe (a) procedures for collecting advance regular Annual Assessments from new Owners, Members or Residents out of “closing transactions”; and (b) different procedures for collecting Assessments from Owners who have had a recent history of being untimely in the payment of Assessments. Written notice of the applicable Assessment shall be furnished in a timely manner by the Board to every Owner by mail or personal delivery.

Section 5.7. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien in Respect to a Residential Lot; Office Tract Bond; and Remedies of Association.

(a) Effective as of, and from and after the filing and recordation of the Original Declaration, there has existed, and pursuant to this Declaration, there shall continue to exist, a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Residential Lot to secure the full and timely payment of each and all Assessments and all other Charges and monetary amounts and performance obligations due hereunder in respect to the Residential Lots. Such lien shall be at all times superior to any claim of homestead by or in any Owner of a Residential Lot. If any Assessment or Charge or other monetary amount or any part thereof is not paid by the Owner of a Residential Lot on the date(s) when due, then the unpaid amount of the Assessment or Charge or other monetary amount shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the Maximum Lawful Rate and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Residential Lot of the non-paying Owner/Member/Resident which shall bind such Residential Lot in the hands of the Owner and Owner’s heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid Assessment or other monetary obligation and demand the full payment thereof. Each Owner, and each prospective Owner, of a Residential Lot is hereby placed on notice that the covenant to pay Assessments and all Charges and monetary amounts to the Association shall operate to place upon the Grantee personal liability and the responsibility for payment of Assessments, Charges or other monetary amounts which arose prior to the date of conveyance of the Residential Lot and which were due and payable at the time of conveyance. Whether by voluntary or involuntary conveyance, the purchasing Owner (“**Grantee**”) shall be jointly and severally liable with the selling Owner (“**Grantor**”) for all unpaid Assessments, Charges and monetary obligations levied by the Association against the Grantor or the Grantor’s Residential Lot prior to conveyance of such Residential Lot, without prejudice to the Grantee’s right to seek reimbursement from the Grantor. Any prospective purchaser may request and is entitled, upon payment of a fee to the Association or its managing agent, to obtain issuance of a Resale Certificate as provided in Section 207.003 of the Texas

Property Code (or any successor statute) which shall, among other things, set forth the amount of unpaid Assessments, Charges or monetary obligations against the Grantor or the Grantor's Residential Lot. Notwithstanding the foregoing, any purchaser of a Residential Lot at a foreclosure of a lien which is superior to the Payment and Performance Lien provided for herein, other than the Grantor, who obtains title to a Residential Lot at such foreclosure sale, shall have no personal liability for Assessments, Charges or monetary obligations owed the Association as of the date of the foreclosure sale. However, the lien for unpaid Assessments or other monetary obligation shall be unaffected by any sale, conveyance or transfer of a Residential Lot and shall continue in full force and effect.

(b) In respect to the Office Tract, under no circumstances shall there be or exist any contract Payment and Performance Lien and equitable charge thereon. In lieu thereof the Owner or Owners of the Office Tract shall deposit and maintain with the Association a bond (the "**Office Tract Bond**") issued by a reputable financial institution insuring payment of at least one (1) year's regular Annual Assessment, based upon the then current Fiscal Year's Assessment, and shall have a term of at least two (2) years. The Office Tract Bond shall be replaced or updated and amended to provide increased coverage on or before January 1 of each Fiscal Year based upon the current amount of the regular Annual Assessment due on such date, if any. If any Assessment or Charge or other monetary amount or any part thereof is not paid by the Owner or Owners of the Office Tract on the date(s) when due, then the unpaid amount of the Assessment or Charge or other monetary amount shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the Maximum Lawful Rate and costs of collection thereof, become a continuing debt secured by the Office Tract Bond. The Association shall have the right to reject partial payments of an unpaid Assessment or other monetary obligation and demand the full payment thereof. The personal obligation of the then-existing Owner or Owners of the Office Tract to pay such Assessment or other monetary obligation, however, shall remain the Owner's or Owners' personal obligation and shall not pass to Owner's or Owners' successors in title unless expressly assumed by them. However, the charge against the Office Tract Bond for unpaid Assessments or other monetary obligations shall be unaffected by any sale, conveyance or transfer of the Office Tract. As security for the payment of at least one (1) year's Annual Assessment, based upon the then current Fiscal Year's Assessment, the Owner shall have the option to provide the Association, in lieu of the Office Tract Bond, an irrevocable letter of credit issued by a financial institution with a capital and surplus of at least \$300,000,000 for the account of the Association as beneficiary and otherwise in form and substance acceptable to the Association. In such event, the obligation of the Owner to make payments of Annual Assessments shall be fully or partially, as the case may be, satisfied and discharged to the extent that, at the time any the payment thereof shall be due or owing, with monies drawn under such letter of credit. In the event that the Owner provides such a letter of credit for the purposes set forth above, any reference in this Declaration to "Office Tract Bond" shall be deemed to include such letter of credit.

(c) No Owner may waive or otherwise escape liability for any Assessment or other monetary obligation provided herein by non-use of the Common Properties or

abandonment of his/her/its Lot. No diminution or abatement of Assessments or other monetary obligation shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments or other monetary obligation being a separate and independent covenant on the part of each Owner.

(d) The Association also may give written notification to the holder(s) of any mortgage on the Residential Lot of the non-paying Owner of such Owner's default in paying any Assessment or Charge or other monetary obligation, particularly where the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage, and a written request to receive such notification.

(e) If any Assessment or Charge or other monetary obligation or part thereof is not paid when due, the Association shall have the right and option to impose a late charge to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent Assessment or Charge or other monetary obligation shall bear interest from and after the date when due at the Maximum Lawful Rate until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid Assessments or Charges and delinquent accounts, and there shall also be added to the amount of any unpaid Assessment or Charge or any delinquent account any and all reasonable attorneys' fees and other costs of collection incurred by the Association.

(f) In respect to the Residential Lots, the Association may, at its discretion but subject to all applicable debt collection statutes (i) prepare and file a lien affidavit in the Records which specifically identifies the unpaid Assessments or Charges or other monetary obligation(s); and (ii) publish and post, within one or more locations within the Addition, a list of those individuals or entities who are delinquent and, if applicable, suspend their use and enjoyment of the Common Properties until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.

(g) All agreements between any Owner and the Association, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, *ipso facto*, the obligation to be fulfilled shall be

reduced to the limit of such validity, and if from any such circumstance the Association should ever receive an amount deemed interest by applicable law which shall exceed the Maximum Lawful Rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and not to the payment of interest of, if such excessive interest exceeds the unpaid balance of the actual Annual Assessment due and such other indebtedness, the excess shall be refunded to the Owner in question. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this subparagraph (g) shall control and supersede every other provision of all agreements between any Owner and the Association.

Section 5.8. Power of Sale in Respect to Residential Lots.

(a) The lien covering the Residential Lots described within Section 5.7 above is and shall be a contract Payment and Performance Lien. Each Owner of a Residential Lot, for the purpose of better securing each and all monetary obligations described within these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of its Residential Lot within the Addition, by acceptance of its Deed, is deemed to have granted, sold and conveyed unto the Trustee, such Owner's Residential Lot, to have and to hold such Lot, together with the rights, privileges and appurtenances thereto belonging unto the Trustee, and to its substitutes or successors, forever. Each Owner, by its acceptance of the Deed is deemed to have bound himself and/or herself and/or itself, and his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns to warrant and forever defend such Owner's Residential Lot unto the Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all Persons claiming or to claim the same or any part thereof.

(b) This conveyance by the Owners of the Residential Lots is made in trust to secure payment by the Owners of all Residential Lots of each and all Assessments and other obligations prescribed by these Covenants to and for the benefit of the Association, as the beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, the Association may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject, however, to the notice and cure provisions set forth in Section 51.002 of the Texas Property Code), and in the event of default in the payment of such indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or its successor or substitute as hereinafter provided, at the request of the Association (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Residential Lot then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, Texas Property Code, as then amended

(successor to article 3810, Texas Revised Civil Statutes), and otherwise complying with that statute, the Trustee shall sell the Residential Lot of the non-paying Owner, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Residential Lot then subject to the lien hereof as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the purchaser or purchasers (the "**Purchaser**" or "**Purchasers**" herein), with general warranty binding upon the Owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns (but not on the Trustee); and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees herein provided for, and then to the Association the full amount of principal, interest, attorney's fees and other charges due and unpaid on such indebtedness secured hereby, rendering the balance of the sales price, if any, to the Owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns and/or to any other lienholders (if so required by applicable law); and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to such sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns.

(c) It is agreed that in the event of foreclosure the contract Performance and Payment Lien hereunder should be commenced by the Trustee, or its substitute or successor, the Association may at any time before the sale of the Residential Lot on the non-paying Owner direct the Trustee to abandon the sale, and may then institute suit for the collection of such indebtedness and for the foreclosure of the contract Payment and Performance Lien created hereby. It is further agreed that, if the Association should institute a suit for the collection thereof and/or for a foreclosure of the contract Payment and Performance Lien created hereby, the Association may at any time before the entry of a final judgment in such suit dismiss the same, and require the Trustee, its substitute or successor, to sell the Residential Lot of the non-paying Owner in accordance with the provisions of this Section 5.8. The Association, if it is the highest bidder, shall have the right to purchase at any sale of the Residential Lot in question and to have the amount for which such Residential Lot is sold credited on the debt then owing. The Association in any event is hereby authorized to appoint a substitute Trustee, or a successor Trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor Trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute Trustees successively until the indebtedness hereby secured has been paid in full, or until the Residential Lot of the non-paying Owner is sold hereunder, and each substitute and successor Trustee shall succeed to all of the rights and powers of the original Trustee named herein. In the event any sale is made of the Residential Lot of the non-paying Owner, or any portion thereof, under the terms of this Section 5.8, the Owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the Residential Lot so

sold to the Purchaser or Purchasers at such sale, and in the event of the Owner's failure to do so, the Owner shall thereupon from and after the making of such sale be and continue as a tenant at will of such Purchaser or Purchasers, and in the event of the Owner's failure to surrender possession of the Residential Lot in question upon demand, the Purchaser or Purchasers, his or her or its or their heirs, executors, administrators, devisees, personal representatives, successors and assigns, shall be entitled to institute and maintain an action for forcible detainer of the Residential Lot of the nonpaying Owner in the Justice of the Peace Court in the Justice Precinct in which such Residential Lot, or any part thereof, is situated. The foreclosure of the continuing contract Payment and Performance Lien on any one or more occasions shall not remove, replace, impair or extinguish the same continuing Payment and Performance Lien from securing all obligations arising from and after the date of foreclosure.

Section 5.9. Subordination of the Lien. The lien on the Residential Lots securing the payment of the Assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Residential Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

(a) bona-fide first mortgage or deed of trust liens for purchase money and/or improvement purposes placed against a Residential Lot, including without limitation Institutional Mortgages and Eligible Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;

(b) liens for taxes or other public charges as are by applicable law made superior to the Association's lien; and

(c) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien;

provided, however, such subordination shall apply only to (i) the Assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Residential Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien; and (ii) the permitted Payment and Performance Lien on the Residential Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Such sale shall not relieve such Residential Lot or the Owner thereof from liability for the amount of any Assessment thereafter becoming due nor from the lien of any such subsequent Assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay Assessments and/or to hinder the Association in performing its functions hereunder.

Section 5.10. Exempt Property. The Exempt Property shall be exempted from any Assessments or Charge created herein, save and except a Payment and Performance Lien which shall secure payment and performance of the Declarant's obligations under Section 5.3 hereof and which shall encumber all of the Residential Lots owned by the Declarant during its period of ownership.

ARTICLE VI

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 6.1. Constitution of the Board of Directors.

(a) Prior to the expiration of the Development Period, the affairs of the Association shall be managed by a Board consisting of not less than three (3) and not more than seven (7) individuals, one (1) of whom shall be appointed by the Class B Member(s), and the remainder of whom shall be appointed by the Declarant.

(b) From and after the expiration of the Development Period, the affairs of the Association shall be managed by a Board consisting of not less than five (5) and not more than seven (7) individuals, one (1) of whom shall be appointed by the Class B Member(s), and the remainder of whom shall be elected by the Class A Members.

(c) The Directors elected by the Class A Members shall be Members of the Association; the Directors elected by the Class B Member(s) need not be Members of the Association. Directors shall be elected for two (2) year terms of office and shall serve until their respective successors are elected (or appointed) and qualified. Any vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise of a Director elected by the Class A Members, may be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Directors representing the Class A Members. Any vacancy created by the death, removal, resignation or otherwise of the Director appointed by the Class B Member(s) shall be filled by the Class B Member(s). Any Class A Director elected to fill a vacancy shall serve in such capacity until the next annual meeting of the Members, at which time such Class A Director shall be filled by a vote of the Members as set forth in the Bylaws. Any Class B Director appointed to fill a vacancy shall serve in such capacity until the expiration of the term of the Director whose position he or she was elected to fill.

Section 6.2. Powers and Duties.

(a) The affairs of the Association shall be conducted by its Board. The Board, for the benefit of the Association, the Owners, the Members and the Residents, may provide and may pay for, out of the Assessment fund(s) provided for in Article V above, costs and expenses incurred in connection with the affairs of the Association. If for any reason during the Development Period, the Board is not deemed authorized to act for and on behalf of the Association, and the Owners, Members and Residents, then the Declarant may exercise the powers and authority granted under this Section 6.1, to act for and on behalf of the Association, the Owners, the Members and the Residents, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

(b) The Board may provide and may pay for, out of the Assessment fund(s) provided for in Article V above, one or more of the following:

(i) Care, preservation and maintenance of the Common Facilities (including without limitation the proper maintenance of lake water quality and lake shorelines), the furnishing and upkeep of any desired personal property for use in or on the Common Properties and the performance of Front Yard Maintenance;

(ii) Recreational and social programs and activities for the general benefit of the Residents and programs which are designed only for separately identifiable sub-groups of Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;

(iii) Supplementing (to the extent, if any, deemed necessary, appropriate and affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the Addition traditionally provided by local governmental agencies;

(iv) Taxes, insurance and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to the Common Properties;

(v) The services of any Person to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association, including the hiring and employment of one or more managers, secretarial, clerical, staff and support employees;

(vi) Such fidelity bonds as the Board may determine to be advisable;

(vii) Legal and accounting services (including audit fees) and all costs and expenses reasonably incurred by the Board; and

(viii) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or Assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

(c) The Board shall have the following additional rights, powers and duties:

(i) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(ii) To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on individual Lots and utility companies with respect to (A) any taxes on the Common Properties, (B) monthly escrow and impound payments by a mortgagee regarding the

assessment, collection and disbursement process envisioned by Article V hereinabove, (C) utility installation, consumption and service matters, and (D) the escrow or impounding of monies sufficient to timely pay the Annual Assessment applicable to any Residential Lot;

(iii) To borrow funds to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Association;

(iv) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(v) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;

(vi) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time and to enter into concession agreements regarding food, beverage, vending and other products and services within the Common Properties;

(vii) To prepare an annual operating budget; and to make available for review by each Owner, upon the written request of the Owner desiring such review, at the Association offices within ninety (90) days after the end of each Fiscal Year unaudited financial statements for the Association, and no later than October 31 following each Fiscal Year, an annual report containing audited financial statements for such Fiscal Year;

(viii) Pursuant to Article VII herein, to adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property; and if proceeds are insufficient to repair damaged or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

(ix) To provide adequate reserves for maintenance, repairs, operations, taxes and assessments for the Common Properties;

(x) To engage the services of attorneys and accountants (including an annual audit) in connection the business of the Association; and

(xi) To enforce the provisions of this Declaration and any rules made hereunder or by the Board and to enjoin and seek damages from any Owner, Member or Resident for violation of such provisions or rules.

(d) The Board is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary “fines” system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which,

when pronounced, shall constitute a permitted Individual Assessment secured by the continuing contract Payment and Performance Lien herein established.

Section 6.3. Duties of the Board of Directors with Respect to Assessments.

(a) In the event of a revision to the amount or rate of the Annual Assessment for the prior Fiscal Year or the establishment of a Special Group Assessment, the Board shall fix the amount of the Assessment in question against each Lot and the applicable due date(s) for each Assessment, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association.

(b) The Board shall, upon reasonable demand, furnish to any Owner originally liable for any Assessment, a certificate in writing signed by an officer of the Association or the Managing Agent, setting forth whether the Assessment in question has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

Section 6.4. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner, Member or Resident for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

Section 6.5. Liability Limitations. Neither any Owner, Member or Resident nor a Director nor the officers and managers of the Association, including the Managing Agent, shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another Owner, Member or Resident, whether such other Owner, Member or Resident was acting on behalf of the Association or otherwise. Neither the Declarant, the Association, its Directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any Lot or the Improvements located thereon or portion thereof or for failure to repair or maintain the same. The Declarant, the Association or any other Person liable to make such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Lot or any Improvement located thereon or portion thereof.

Section 6.6. Reserve Funds. The Board may establish reserve funds, including the Street Reserve Funds, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.

ARTICLE VII

INSURANCE; REPAIR; RESTORATION

Section 7.1. Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board, officers, managers, agents and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be deemed appropriate by the Board and/or as specifically required by the Eligible Mortgagees or Eligible Insurers. Such insurance may include, but need not be limited to:

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs;
- (b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Board, and the Owners, Members and Residents with respect to the Common Properties;
- (c) Fidelity bonds for all officers and employees of the Association having control over the receipt or disbursement of funds; and
- (d) Liability insurance regarding the errors and omissions of Directors, officers, managers, employees and representatives of the Association.

Section 7.2. Insurance and Condemnation Proceeds. The Association shall be the exclusive representative of the Owners, Members and Residents in any proceedings, negotiations, settlements or agreements concerning insurance or condemnation with respect to the Common Properties. The Association and the Members may use the net insurance or condemnation proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance or condemnation. Any balance from the proceeds of insurance or condemnation paid to the Association, remaining after satisfactory completion of repair, restoration and replacement or after the Board has elected to waive the repair, restoration or replacement, shall be retained by the Association as part of a general reserve fund for repair, restoration, maintenance and replacement of the Common Properties.

Section 7.3. Insufficient Proceeds. If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a Special Group Assessment as provided for in Article V of this Declaration to cover the deficiency.

Section 7.4. Liability Insurance Arrangements. The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, Members or authorized representatives of the Association. The Declarant and Association will not carry any insurance pertaining to, nor does it assume any liabilities or responsibility for, the real or personal property of the Owners, Members and Residents (and their respective family members and guests). Each Owner, Member or Resident expressly understands, covenants and agrees with the Declarant and the Association that:

(a) neither the Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of any Owner, Member or Resident;

(b) each Owner, Member and Resident shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Member's and Resident's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner, Member and Resident covering his or her real and personal property.

Section 7.5. Hazard and Liability Insurance For the Access Road Easement Area. The Association shall maintain (a) insurance with respect to all insurable property affecting the Access Road Easement Area from damages from such hazards as are presently included in a so-called "extended coverage" policy, including vandalism and malicious mischief, and (b) public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use, operation, maintenance and/or occupancy of the Access Road Easement Area by the Association or its members, employees or guests. Such hazard and liability insurance coverage shall be maintained in such amounts and carried with such insurance companies as is commercially reasonable. The Association, upon written request from the Owner or Owners of the Office Tract, shall furnish to the Owner or Owners of the Office Tract one or more certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this provision and showing the Owner or Owners of the Office Tract as an additional insured.

ARTICLE VIII

ARCHITECTURAL REVIEW

Section 8.1. Residential Architectural Review Committee. The Residential Architectural Review Committee ("RARC") shall be composed of at least three (3) individuals selected and appointed by the Board and removable by the Board at its sole discretion, each generally familiar with residential and community development design matters and knowledgeable about the Association's concern for a consistent first class approach to and construction of improvements within the Development Tract. In the event of the death, incapacity, removal or resignation of any member of the RARC, the Board shall designate and appoint a successor. Members of the RARC shall not be required to be Members of the Association. The Board may, in its discretion, provide for the payment of compensation to a member of the RARC that is not a Member of the Association commensurate with the services being provided to the Association by such member of the RARC.

Section 8.2. RARC Jurisdiction.

(a) No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Residential Lot until all plans and specifications have been submitted to and approved in writing by the RARC, or a majority of its members, as to:

- (i) quality of workmanship and materials in, adequacy of site dimensions, proper facing of main elevation with respect to nearby streets, in accordance with this Declaration and/or the Residential Design Guidelines and/or bulletins;
- (ii) minimum finished floor elevation and proposed footprint of the Dwelling Unit;
- (iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (iv) drainage solutions;
- (v) the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors to and from the Common Properties; and
- (vi) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Residential Design Guidelines, bulletins promulgated by the RARC, or matters in which the RARC has been vested with the authority to render a final interpretation and decision.

The RARC is authorized and empowered to consider and review any and all aspects of construction, location and landscaping, which may, in the reasonable opinion of the RARC, adversely affect the living enjoyment of one or more Owner(s) or Residents or the general value of the Subdivision. In addition, the RARC shall be permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the RARC.

(b) The following is a general outline of the steps likely to be involved in the review of plans and specifications:

- (i) Submission of preliminary plans and specifications to the RARC;
and
- (ii) Submission of final plans and specifications to the RARC.

(c) The RARC's approval of any plans and specifications shall not mean that all applicable building requirements of the City have been satisfied.

Section 8.3. Design Guidelines. The RARC may, from time to time, publish and promulgate Residential Design Guidelines and additions or revisions thereto, and such design guidelines shall be explanatory and illustrative of the general intent of the proposed development of Residential Lots to be developed within the Addition and are intended as a guide to assist the RARC in reviewing plans and specifications for Improvements to be located and constructed on each Residential Lot. The RARC shall have the right, power and authority to establish and

prescribe architectural restrictions and guidelines pertaining to items and topics such as (but not necessarily limited to):

- (a) A site plan showing the “footprint” of the Structure, location of all existing trees (indicate size and type) and proposed improvements, including but not limited to, Structures, patios, driveways, parking areas and structures, fences and walls.
- (b) Exterior elevations of all proposed Structures.
- (c) A description and samples of exterior materials, colors, textures and shapes of all Structures.
- (d) Landscape plans, which shall include walkways, fences, walls, details, elevation changes, irrigation and watering systems, vegetation and ground cover (indicating size, spacing and quantity), and the protection and preservation of trees and other existing and introduced vegetation.
- (e) The location of air conditioning compressors and pool equipment.
- (f) Exterior illumination and location.
- (g) Dimensional floor plan of all enclosed spaces and any garages or parking facilities (particularly where the garages face the street).
- (h) Mailbox location and design.
- (i) Drainage solutions.
- (j) Such other matters as may be required by the Zoning Ordinance, the Existing Restrictions and building codes of the City.
- (k) The items described within Section 8.2 above and any other data or information requested or deemed reasonably necessary by the RARC.
- (l) The installation and equipment of first-class fire and burglar alarms, smoke detectors and such other safety and security devices which, from time to time, become technologically feasible for residential use as may be further described and defined by the RARC.

Section 8.4. Preliminary and Final Plan Submissions.

- (a) The RARC is authorized and empowered to and shall consider, review and comment on preliminary plans and specifications submitted in duplicate on an informal basis to assist Owners, developers, homebuilders and prospective purchasers of the Residential Lots in complying with these Covenants and to assist in the completion of any feasibility studies undertaken by such persons or entities. The RARC shall have the right, however, to prescribe reasonable limitations concerning the time, effort and expense likely to be involved in handling such matters on an informal basis. If the

preliminary plans and specifications are approved by the RARC, the Owner or the Owner's designated representative will be so advised by letter. If found not to be in compliance with these Covenants, the Owner or the Owner's designated representative will be so advised by letter containing a reasonably detailed statement and explanation of items found not to comply with these Covenants. If the RARC fails to approve or disapprove such plans and specifications within thirty (30) days after the actual date on which the submission is received, approval of the matters submitted shall be presumed to have been approved; provided, however, that in no event shall the failure to formally approve such plans and specifications be deemed to have approved any plans and specifications that violate in any manner this Declaration, the Residential Design Guidelines, the Zoning Ordinance or the Existing Restrictions. Comments on and approvals of preliminary plans and specifications shall be binding upon the RARC provided that conforming final plans and specifications are submitted within ninety (90) days of such preliminary comments or approvals.

(b) Final plans, specifications and surveys shall be submitted in duplicate to the RARC for approval or disapproval. The RARC is authorized to request the submission of samples of proposed construction materials. At such time as the plans, specifications and surveys meet the approval of the RARC, one complete set of plans, specifications and surveys will be retained by the RARC and the other complete set will be marked "Approved" and returned to the Owner of the Residential Lot in question or his/her/its designated representative. If found not to be in compliance with these Covenants, one set of such plans, specifications and surveys shall be returned marked "Disapproved," accompanied by a reasonably detailed statement and explanation of items found not to comply with these Covenants. Any modification or change to the approved set of plans, specifications and surveys shall be resubmitted to the RARC for its inspection and approval. The RARC's approval or disapproval, as required herein, shall be in writing. If the RARC fails to approve or disapprove such plans, specifications and surveys within thirty (30) days after the actual date on which the submission is received, then the RARC approval shall be presumed.

(c) The RARC may from time to time publish and promulgate architectural standards bulletins and/or lot information sheets which shall be fair and reasonable and shall carry forward the spirit and intention of these Covenants. Such bulletins and lot information sheets shall supplement these Covenants and are incorporated herein by reference.

PRIOR TO THE ACQUISITION OF ANY INTEREST IN, AND CONSTRUCTION ON, A RESIDENTIAL LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF ANY LOT IN THE SUBDIVISION IS STRONGLY ENCOURAGED TO CONTACT THE ASSOCIATION OR THE RARC TO OBTAIN AND REVIEW AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS, BULLETINS AND LOT INFORMATION SHEETS AND THE MOST RECENT RESIDENTIAL DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE RESIDENTIAL LOT IN QUESTION.

Section 8.5. Approved Builder List. The RARC may, from time to time, publish and promulgate an Approved Builder List which shall set forth the names, addresses and other pertinent information relating to the Approved Builders. The names of and the numbers of Approved Builders may change from time to time at the direction of the RARC. In no event shall any Owner of a Residential Lot engage any contractor or subcontractor, other than an Approved Builder, for the purposes of constructing a Structure or Improvement on a Residential Lot, other than minor repairs or replacements, without the prior written approval of the Declarant or the RARC. Notwithstanding the foregoing, any builder who is on the Approved Builder List on the Effective Date who either (i) owns a Residential Lot, or (ii) who has been retained by an Owner of a Residential Lot to construct a residence thereon shall be permitted to construct a residence on the Residential Lot owned by such builder or on the Residential Lot of the Owner who has retained such builder to construct a residence thereon.

Section 8.6. Office Tract Architectural Review Committee. The Office Tract Architectural Review Committee (“OTARC”) shall be composed of three (3) individuals, two (2) of whom shall be selected and appointed by the Owner or Owners of the Office Tract and the third (3rd) to be selected and appointed by the Board, each generally familiar with office development design matters and knowledgeable about the Declarant’s concern for a consistent first class approach to and construction of New Office Improvements and the renovation or alteration to the Existing Office Improvements. In the event of the death, incapacity, removal or resignation of any member of the OTARC, the replacement member shall be designated and appointed by the party who initially appointed the member in question. To the extent a dispute arises among any two (2) members of the OTARC and the third member, either the two (2) members or the third (3rd) member shall have the right to submit the dispute to arbitration in accordance with the provisions of Section 13.11 hereof, in which event the dispute shall be resolved by the process contemplated therein in lieu of the vote of a majority of the members of the OTARC.

Section 8.7. OTARC Jurisdiction.

(a) No building, Structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on the Office Tract until the plans and specifications for same have been submitted to and approved in writing by the OTARC, or a majority of its members, as to:

(i) quality of workmanship and materials in accordance with this Declaration and/or the Office Tract Design Guidelines and/or bulletins;

(ii) location of the footprint of the Structure, if other than the Pad Site, with respect to the New Office Improvements, or the existing footprint, in the case of the renovation to the Existing Office Improvements;

(iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping, consistent with the Existing Office Improvements;

(iv) drainage solutions; and

(v) the other applicable standards set forth within this Declaration (and any amendments hereto).

Subject to the parameters and constraints of the Office Design Guidelines, the OTARC is authorized and empowered to consider and review any and all aspects of construction, location and landscaping, which may, in the reasonable opinion of the OTARC, adversely affect one or more Owner(s) or Resident(s) of the Development Tract or the general value of the Addition. In addition, the OTARC shall be permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the OTARC.

(b) The following is a general outline of the steps likely to be involved in the review of plans and specifications:

- (i) Submission of preliminary plans and specifications to the OTARC;
and
- (ii) Submission of final plans and specifications to the OTARC.

The OTARC's approval of any plans and specifications does not mean that all applicable building requirements of the City have been satisfied.

Section 8.8. Office Design Guidelines. The following architectural restrictions and guidelines shall pertain to the development of the Office Tract and shall constitute the "**Office Design Guidelines**" for the purpose of this Declaration:

(a) Construction of additional improvements consisting of the New Office Improvements shall be constructed on the Pad Site. Signage for the Office Tract shall be located (i) adjacent to Forest Lane at the point of access to the Access Road Easement Area, and (ii) at the point at which access to the Development Tract diverges from access to the Office Tract.

(b) All construction, including material alteration of the Existing Office Improvements, shall be governed by rules, regulations and restrictions imposed by this Declaration.

(c) Generally construction of the New Office Improvements or material alteration or renovation to the Existing Office Improvements shall comply with the following:

- (i) The New Office Improvements to be constructed on the Pad Site shall not exceed six (6) stories (not to exceed 72 feet in height) and the gross building area of the New Office Improvements shall not exceed 194,622 square feet in area.

(ii) No portion of the Office Tract shall be used for a heliport, as defined in the Zoning Ordinance.

(iii) All buildings or appurtenant structures constituting any portion of the New Office Improvements, or exterior remodeling or reconstruction work of Existing Office Improvements shall at all times be of good quality construction and architectural design compatible with Existing Office Improvements and shall at all times be subject to the reasonable approval of the OTARC, so that the exterior of such buildings, including without limitation, exterior elevations and color, shall be architecturally and aesthetically compatible and harmonious with the Existing Office Improvements and the quality and nature of the development on the Development Tract.

(iv) All plans and specifications in respect to the New Office Improvements or material renovations thereto or to the Existing Office Improvements shall be subject to the prior review and approval of the OTARC, which approval shall not be unreasonably withheld or delayed.

(v) Illumination of any Improvements or Structures now or hereafter constituting any portion of New or Existing Office Improvements situated on the Office Tract shall be subject to the approval of the OTARC and shall comply in all respects to the Zoning Ordinance and the Existing Restrictions to the effect that any illumination shall not produce glare or direct illumination across property lines of an intensity that creates a nuisance or detracts from the use or enjoyment of adjacent properties. In such regard, the Owner or Owners of the Office Tract shall have the right to illuminate the Office Tract to ensure adequate security lighting. Any lighting plans with respect thereto shall be subject to the approval of the OTARC, which approval shall not be unreasonably withheld or delayed.

(vi) Any use of exterior signage shall be subject to the approval of the OTARC. Any use of aerials, towers, extrusions, satellite dishes or similar equipment on the roofs of the Existing Office Improvements or the New Office Improvements shall be shielded so as not to be visible from any other areas located with the Addition; provided, however, that the Owner or Owners of the Office Tract shall have the right to place a microwave dish above shielded areas to insure line of sight access, so long as the location, height and size thereof has been approved by the OTARC, which approval will not be unreasonably withheld or delayed; provided, further, if the Owner or Owners of the Office Tract comply or complies with the requirements of the OTARC to the extent feasible or practical, then in such event the OTARC shall not withhold or delay its consent.

(vii) Any improvements to or expansion or relocation of the Parking Facilities shall not involve improvements or Structures that penetrate a plane established by connecting the four points or benchmarks having a height seven (7) feet above the elevations established by such benchmarks, which benchmarks are reflected on Exhibit "H" attached hereto and made a part hereof for all purposes. The height of any new parking structure, inclusive of the height of any automobile

or truck to be parked on the top level of any new parking structure, or the height of the highest point of any portion of the newly constructed parking structure (including any covered parking structure) shall not penetrate such plane.

(viii) The Owner or Owners of the Office Tract shall submit to the OTARC, for its approval, landscape plans in respect to material alterations to existing or future landscaping, which shall include, to the extent applicable, walkways, fences, exterior walls, details, elevation changes, irrigation and watering systems, vegetation, and the protection and preservation of trees and other existing and introduced vegetation. Such approval shall not be unreasonably withheld or delayed.

Section 8.9. Preliminary and Final Plan Submissions.

(a) The OTARC is authorized and empowered to and shall consider, review and comment on preliminary plans and specifications submitted in duplicate on an informal basis to assist the Owner or Owners of the Office Tract in complying with these Covenants and to assist in the completion of any feasibility studies undertaken by such Persons. The OTARC shall have the right, however, to prescribe reasonable limitations concerning the time, effort and expense likely to be involved in handling such matters on an informal basis. If the preliminary plans and specifications are approved by the OTARC, the Owner or Owners of the Office Tract or its or their designated representative will be so advised by letter. If found not to be in compliance with these Covenants, the Owner or Owners or its or their designated representative will be so advised by letter containing a reasonable statement and explanation of items found not to comply with these Covenants. If the OTARC fails to approve or disapprove such plans and specifications within thirty (30) days after the actual date on which the submission is received, approval of the matters submitted shall be presumed; provided, however, that in no event shall the failure to formally approve such plans and specifications be deemed to have approved any plans and specifications that violate in any manner the Zoning Ordinance or the Existing Restrictions. Comments on and approvals of preliminary plans and specifications shall be binding upon the OTARC provided that conforming final plans and specifications are submitted within one hundred eighty (180) days of such preliminary comments or approvals.

(b) Final plans, specifications and surveys shall be submitted in duplicate to the OTARC for approval or disapproval. The OTARC is authorized to request the submission of samples of proposed construction materials. At such time as the plans, specifications and surveys meet the approval of the OTARC, one complete set of plans, specifications and surveys will be retained by the OTARC and the other complete set will be marked "Approved" and returned to the Owner or Owners of the Office Tract or its or their designated representative. If found not to be in compliance with these Covenants, one set of such plans, specifications and surveys shall be returned marked "Disapproved," accompanied by a reasonably detailed statement and explanation of items found not to comply with these Covenants. Any modification or change to the approved set of plans, specifications and surveys must be resubmitted to the OTARC for its inspection and approval. The OTARC's approval or disapproval, as required herein, shall be in writing.

If the OTARC fails to approve or disapprove such plans, specifications and surveys within thirty (30) days after the actual date on which the submission is received, then the OTARC approval shall be presumed.

(c) To the extent any dispute (including, without limitation, architectural matters and issues concerning substantial completion) arises among the members of the OTARC in respect to the development of the New Office Improvements or the remodeling or reconstruction of the Existing Office Improvements, such dispute, at the election of any of the parties shall be resolved in the manner prescribed in Section 13.11(b) hereof.

Section 8.10. General.

(a) The following declarations within this Section 8.10 apply to the ARCS. The ARCS shall be entitled, at any time and from time to time, to associate or employ a staff and to seek and obtain professional advice and counsel (including but not limited to architects, attorneys, designers, engineers and landscape technicians) in connection with the performance of its duties with all reasonable costs and expenses related thereto paid for or reimbursed by the Association. The Association may, in turn, reasonably recoup some or all of these expenses from the applicants seeking review and approval of plans and specifications.

(b) The Association and/or the ARCS may require any Owner to restore such Owner's improvements or alteration to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements or alterations were commenced or constructed in violation of this Article VIII. In addition, the Association and/or the ARCS may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as an Individual Assessment against the Lot upon which such improvements or alterations were commenced or constructed. A material violation of these Covenants shall be deemed to have occurred if no prior express written approval of the appropriate ARC has been obtained where it was originally required, even if hindsight reveals that the actual plans and specifications would have been approved by the appropriate ARC had they been properly and timely submitted.

(c) Neither the Declarant, nor the Association, nor the ARCS, nor the Board nor the officers, directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. No approval of plans and specifications and no publication of any Design Guidelines, architectural bulletins or lot information sheets shall be construed as representing or implying that such plans, specifications, guidelines, bulletins or sheets will, if followed, result in properly designed improvements and/or improvements built in a good and workmanlike manner. Every Person who submits plans or specifications, and every Owner of each and every Lot, agrees that he/she/it will not bring any action or suit

against the Declarant, the Association, the ARCS, the Board, or the officers, managers, members, employees and agents of any of them, to recover any such damages and each and every Owner hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

(d) After reasonable notice to the Owner (and any applicable Resident), any member or agent of the applicable ARC may from time to time at any reasonable hour or hours enter and inspect any Lot or the Improvements located thereon subject to the jurisdiction of the applicable ARC to confirm improvement or maintenance or alteration in compliance with the provisions hereof. No Improvements or addition or change or alteration thereof shall be constructed, erected, placed, altered or maintained on any Lot which is in violation of the Zoning Ordinance, the Existing Restrictions or any of the other laws or ordinances of the City or any other applicable governmental laws, rules or regulations. However, the Declarant, the Association, the ARCS and their respective officers, directors, managers, agents and employees shall have no obligation to enforce or to report the violation of any such law, ordinance, rule or regulation.

(e) The ARCS shall have the power to grant variances, waivers, tolerances or modifications of the standards set forth within the Covenants under circumstances and conditions deemed reasonable, appropriate and prudent by the ARC in question. Matters of "quality," "adequacy" and "propriety" are to be considered by each ARC generally from an aesthetic standpoint, rather than from an engineering standpoint. Plans and specifications are not to be reviewed or approved for engineering or structural design or technical quality of materials, and by approving such plans and specifications neither the ARCS, nor the members thereof, nor the Association shall have any liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications, all such liability being disclaimed.

ARTICLE IX

USE OF LOTS IN THE ADDITION; PROTECTIVE COVENANTS

Each Lot situated in the Addition shall be constructed, developed, reconstructed, repaired, occupied and used as follows:

Section 9.1. Residential Lots. All Lots within the Development Tract shall be used, known and described as Residential Lots, unless otherwise indicated on the applicable Plat. Lots shall not be further subdivided and the boundaries between Lots shall not be relocated without the prior express written consent of the RARC. No Structure shall be erected, altered, placed or permitted to remain on any Residential Lot other than one (1) single-family dwelling and, if any, its customary and usual accessory structures (unless otherwise prohibited herein). No building or structure intended for or adapted to business or commercial purposes or commercial use shall be erected, placed, permitted or maintained on any Residential Lot, or any part hereof, save and except those related to development, construction and sales purposes of a bona-fide homebuilder.

No Owner, Member or Resident shall conduct, transmit, permit or allow any type or kind of home business or home profession or hobby on any Lot or within any Dwelling Unit which would (a) attract automobile, vehicular or pedestrian traffic to the Residential Lot, or (b) involve lights, sounds, smells, visual effects, pollution and the like which would adversely affect the peace and tranquility of any one or more of the Residents within the Development Tract. No Owner, Member or Resident shall conduct, permit or allow any type or kind of estate sale or garage sale on any Lot or within any Dwelling Unit. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the Zoning Ordinance, the Existing Restrictions or any other statutes, rules, regulations and ordinances of the City or any other governmental authority having jurisdiction over the Addition.

Section 9.2. Minimum Floor Space. Each Dwelling Unit shall contain such minimum square feet of air-conditioned floor area (exclusive of all porches, garages or breezeways attached to the main dwelling) as may be specified or provided by the Existing Restrictions and/or the Residential Design Guidelines.

Section 9.3. Garages. Each single-family residential Dwelling Unit erected on any Residential Lot shall provide garage space for a minimum of two (2) conventional automobiles, unless otherwise specifically approved by the RARC. Each Owner, Member and Resident shall use their respective best efforts to park and store their automobiles within the garage space. All garage doors shall (a) be equipped with an automatic and remote controlled door opener, and (b) be closed at all times when not in use. Detached garages, servants quarters, storage rooms, and carports may be permitted under limited rigid circumstances if, as and when, in the absolute opinion of the RARC, the exterior surface and appearance will substantially compare with a garage and if absolutely no storage of items, which would otherwise be visible, will occur thereunder. Any and all proposed garage or carport plans and specifications must be submitted to the RARC for review and approval. Additionally, no garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles unless approved in writing by the RARC.

Section 9.4. Parking. Each Owner, Member and Resident shall use their respective best efforts to refrain from (a) habitually parking any automobile or vehicle on any Residential Lot outside of an approved garage area between any Dwelling Unit and the abutting front street or between any Dwelling Unit and an abutting side street, and (b) performing, permitting or allowing repair or maintenance work to any automobile or other vehicle outside the garage and visible to the abutting street(s). On-site parking shall be subject to such reasonable rules and regulations as may be from time to time adopted by the Board. Under no circumstances or conditions shall any automobile or other vehicle be parked on a non-paved portion of any Residential Lot.

Section 9.5. Setback Requirements. Setback requirements shall be described within the Residential Design Guidelines. The RARC may establish additional setback lines (for fences, walls and for buildings) from the front property line of each Residential Lot at varying distances. In order to allow flexibility for (a) implementation of state-of-the-art construction designs, and (b) any consolidation of two (2) or more Lots to accommodate the construction of a lesser number of Dwelling Units thereon, the RARC shall also have the authority to develop and refine

rear and side yard setback requirements. Within the setback areas for each Residential Lot and subject to the construction or installation of any other items otherwise permitted, a non-exclusive surface easement and right-of-way is reserved for the Association in order to properly facilitate and carry out its duties and responsibilities under this Declaration.

Section 9.6. Height Limitations. No Structure on any Residential Lot shall contain more than two (2) stories or exceed, in height, the maximum height allowed by the City, such height to be measured and determined in accordance with the methods approved by the City.

Section 9.7. Fences. No fence, wall or hedge (which serves as a barrier) shall be erected, placed or altered on any Residential Lot nearer to any street than the minimum front building setback line indicated on the Plats or established in the Residential Design Guidelines, unless otherwise approved by the RARC. All exterior mechanical or service equipment must be enclosed within fences, walls or landscaping so as not to be visible from the immediate residential Street. The design of and the type and material of all fences or walls shall be governed by the Residential Design Guidelines. No fence, wall or hedge shall be erected, placed or altered on any Residential Lot without the approval of the RARC.

Section 9.8. Signs. No sign or signs shall be displayed to the public view on any Residential Lot without the prior written approval of the RARC, except (a) any builder, during the applicable initial construction and sales period of a Dwelling Unit, but not thereafter, may utilize one (1) professional sign of not more than six (6) square feet in size per Residential Lot for advertising and sales purposes, and (b) thereafter, a dignified "For Sale" or "For Lease" sign of not more than six (6) square feet in size may be utilized by the Owner of the respective Residential Lot for the applicable sale or lease situation. The RARC shall have the right and privilege to develop and implement uniform signage specifications and requirements applicable throughout the Development Tract. In all events any and all signs, if allowed, shall comply with the sign standards of the City applicable to the Development Tract.

Section 9.9. Temporary Structures and Vehicles.

(a) No temporary Structure of any kind shall be erected or placed upon any Residential Lot. Temporary Structures shall include, but not be limited to, any garage, servant's house or other improvement erected more than one hundred twenty (120) days prior to the completion of the main portion of the single-family Dwelling Unit. However, upon receiving the prior, express written approval of the RARC, any bona-fide homebuilder may maintain temporary sales or construction offices, provided such sales or construction offices are removed within sixty (60) days after completion of sales or construction, as the case may be.

(b) Any truck (over 3/4 ton and excluding conventional pickups), bus, boat, boat trailer, trailer, mobile home, golf cart, motorcycle, recreational vehicle, campmobile, camper and any vehicle other than a conventional automobile shall, if brought within the Addition by or on behalf of any Owner, Member or Resident, be stored, placed or parked within the enclosed garage on the appropriate Lot unless otherwise directed by the RARC.

Section 9.10. Site Maintenance, Garbage and Trash Collection.

(a) Owners of Lots shall be responsible to keep construction sites free of rubbish on a daily basis and streets (to the crown) scraped clear of any mud accumulation. Owners will not be allowed to store any excavation of soil on streets or adjacent sites. Soil runoff due to rain or irrigation will be removed promptly from streets and sidewalks by the Owner in question.

(b) All garbage shall be kept in plastic bags or other containers required by (and meeting the specifications of) the City. Each Owner, Member and Resident shall observe and comply with any and all regulations or requirements promulgated by the Association and/or the City in connection with the storage and removal of trash and garbage, particularly where the collection point is in front of the Dwelling Units.

(c) No Lot, or any portion of the Common Properties or any public right-of-way area, shall be used or maintained as a dumping ground for rubbish, trash or garbage. No Owner, Member or Resident shall dump grass clippings, landscape debris, garbage or trash of any kind on another Lot or the Common Properties. Each Owner shall be responsible for the appearance and condition of such Owner's Lot.

(d) If more than five (5) days after prior written notice an Owner shall fail to: (i) control weeds, grass and/or other unsightly growth; (ii) remove trash, rubble, building and construction debris; or (iii) exercise reasonable care or conduct to prevent or remedy an unclean, untidy or unsightly condition, then in such events the Declarant or the Association shall have the authority and right to go onto the Lot in question for the purpose of mowing and cleaning such Lot and shall have the authority and right to assess and collect from the Owner of the Lot in question a reasonable charge for mowing or cleaning such Lot on each respective occasion of such mowing or cleaning, which charge shall constitute an Individual Assessment hereunder.

Section 9.11. Offensive Activities; Pets.

(a) No noxious or offensive activity or pollution affecting sight/sound/smell, as determined by the ARCS, shall be conducted or permitted on any portion of the Addition. Excluding activities of the Declarant and bona-fide homebuilders, no direct sales activities, garage sales, yard sales, patio sales, flea markets, bazaars, sample sales, promotional dinner parties or similar activities shall be conducted on any portion of the Development Tract. The Owner or Owners of the Office Tract shall be expressly permitted to install and maintain emergency generating systems, which may create some noise during use. Such generating systems shall be in operation only during the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, except in the case of a power outage, in which event the system will be in operation pending a return of normal power.

(b) Any noise or odor emitted by, and any discharge or waste from, any animal (including without limitation dogs and cats) which can be seen, heard or smelled outside the perimeter of the subject Owner's (or Member's or Resident's) Lot shall be deemed noxious and offensive and is therefore prohibited. No animals, livestock or

poultry of any kind shall be raised, bred or kept on any Residential Lot, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes and they are not noxious, offensive, vicious (e.g., pit bull terriers shall not be permitted within the Addition) or dangerous. Any outside pen, cage, kennel, shelter, concrete pet pad, run, track or other building, structure or device directly or indirectly related to animals which can be seen, heard or smelled by anyone other than the subject Lot Owner must be approved by the RARC in its sole and absolute discretion. Each and every dog, cat or other household pet, if not kept and confined within an enclosed non-visible portion of the Owner's/Member's/Resident's Lot, must be leashed and accompanied by its corresponding Owner/Member/Resident, particularly when traveling beyond the perimeter of the Owner's/Member's/Resident's Lot, and such Owner/Member/Resident shall promptly clean and remove the discharge and waste of any pet.

Section 9.12. Landscaping; Sprinkler System; and Maintenance.

(a) Construction of each and every Dwelling Unit on a Residential Lot or Structure on any Residential Lot or the Office Tract within the Addition shall include the installation and placement of appropriate landscaping. Any and all plans and specifications of front yards and side yards not enclosed by solid fencing, including alterations, changes or additions thereto, shall be subject to the prior approval of the RARC. Each Residential Lot shall be planted with trees as required by the Residential Design Guidelines. Preservation of existing trees is encouraged and credit may be given toward planting requirements for trees preserved in a healthy manner. The grass in all front yards and side yards shall be solid sod common Bermuda grass, unless otherwise approved in writing by the RARC. Each Owner and Resident of any Lot shall have the duty and responsibility, at their sole cost and expense, to keep, maintain and landscape their Lot in a well maintained, clean and attractive condition at all times, including, without limitation, (i) the proper sodding, consistent watering and mowing (excluding Front Yards) of all lawns, (ii) the pruning and cutting of all trees and shrubbery, (iii) watering of all landscape, (iv) keeping lawn and garden areas alive, free of weeds and attractive, all in a manner and with such frequency as is consistent with aesthetics and good property management.

(b) Each Lot shall have and contain an underground water sprinkler system for the purpose of providing sufficient water to all front yards and all side yards not enclosed with solid fencing.

(c) Each Owner and Resident of any Lot shall have the duty and responsibility, at their sole cost and expense, to keep and maintain their Lot, and all improvements therein and thereon, in a well maintained, safe, clean and attractive condition at all times, including, without limitation (i) prompt removal of all litter, trash, refuse and waste, (ii) keeping exterior lighting and mechanical facilities in working order, (iii) keeping driveways in good repair and condition, (iv) promptly repairing any exterior damage, (v) complying with all governmental health and police requirements, and (vi) repainting Improvements when required, all in a manner and with such frequency as is consistent with aesthetics, safety and good property management.

(d) The Association, and its agents, during normal business hours, shall have the right (after five (5) days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any Person) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement will be paid to the Association upon demand and if not paid within thirty (30) days thereof, shall become a lien upon the Lot affected. The Association, or its agent, shall further have the right (upon like notice and conditions) to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance. The contract Performance and Payment Lien provided under this Section 9.12 will constitute a lien retained against the Lot in question with the same force and effect as the Payment and Performance Lien for Assessments set forth in these Covenants.

Section 9.13. Exterior Surfaces; Construction.

(a) All roofs of any Dwelling Unit located on any Residential Lot shall be constructed of wood shingle, wood shake, slate, tile, metal, composition, built-up roof or other materials approved by the RARC taking into account harmony, conformity, color, appearance, quality and similar considerations.

(b) The exterior surface of all Dwelling Units shall be constructed of glass, brick, stone, stucco or other materials approved by the RARC. The RARC shall establish restrictions on the percentages of materials to be utilized on exterior surfaces. The exterior portions of each chimney or fireplace will be one hundred percent (100%) brick, stone or stucco construction. Installation of all types of exterior items and surfaces such as address numbers or external ornamentation, outdoor illumination, lights, mail chutes, exterior paint or stain and the like shall be subject to the prior approval of the applicable ARC. No previously used materials, other than fired antique brick, shall be permitted on the exterior of any Dwelling Unit, without the prior approval of the RARC.

(c) No above ground-level swimming pools shall be installed on any Lot.

(d) Matters relating to the construction of, composition of and/or location of sidewalks, porches and other appurtenances or appendages of every kind or character, interior construction, projections above roof lines and the location of sports equipment or installations shall be governed by the Residential Design Guidelines. Additionally each Owner shall at all times comply with the Existing Restrictions in regard to matters relating to roofs, materials and exterior surfaces.

(e) Each Owner shall keep and maintain the quality and appearance of all exterior surfaces, particularly those areas covered by an approved paint or stain, in good repair, condition and appearance.

Section 9.14. Mailboxes. Each Residential Lot shall have a mailbox of a design, material and location as provided by the Residential Design Guidelines and approved by the RARC.

Section 9.15. Exterior Lighting. No exterior lighting, including landscaping lighting, shall be installed or maintained on any Residential Lot which is not in compliance with the Residential Design Guidelines, the Existing Restrictions, the Zoning Ordinance or otherwise approved in writing by the RARC.

Section 9.16. Window Coolers. No window or wall type air-conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any Dwelling Unit on any Residential Lot.

Section 9.17. Antennae Restrictions. All antennae or aerial wires (including, without limitation, radio or television transmitting or receiving antennae and satellite dishes) shall be installed within the Dwelling Unit so that no exterior or free standing antennas, wires, discs or satellite dishes are visible except as expressly permitted by the Residential Design Guidelines, the RARC or applicable law.

Section 9.18. Solar Panels. No solar panels shall be permitted on the roof of any Structure constructed on any Residential Lot unless approved in writing by the RARC.

Section 9.19. Removal of Dirt. The digging of dirt or the removal of any dirt from any Residential Lot is hereby expressly prohibited, except as may be necessary in conjunction with landscaping or construction of Improvements. Minimum finished elevations established on the Plats shall be maintained at all times, unless a variance is secured by the Owner from the RARC.

ARTICLE X

EASEMENTS; STREETS AND ALLEYS

Section 10.1. Easements Utilities. Easements for the installation and maintenance of utilities and drainage facilities shall be reserved as shown on the Plat thereof for the applicable Subdivision. Utility service may be installed along or near the front and/or side and/or rear Lot lines and each Lot Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the applicable ARC (e.g., fencing, flatwork, landscaping, etc.), no Owner shall erect, construct or permit any obstructions or permanent improvements of any type or kind to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Electrical (and possibly other utility) easements may be located at, near or along the front or rear lot line(s), and each Lot Owner assumes full, complete and exclusive liability and responsibility for all cost and expense related to damage, repair, relocation and restoration of any improvements or fence located within the easement area. Except as to special street lighting or other aerial facilities which may be required by the City or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground

facilities) shall be erected or installed within the Subdivision whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other Person, including, but not limited to, any Person owning or acquiring any part of the Subdivision, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility. The foregoing notwithstanding, aerial utility facilities may be required to deliver services to the property line of the Subdivision. All utility meters, equipment, air conditioning compressors, pool equipment and similar items must be visually screened and located in areas designated by the applicable ARC. Full rights of ingress and egress shall be had by the Association, and all utility companies serving the Subdivision, and their respective successors and assigns, at all times over the Subdivision for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction (excluding, however, any driveway, fence or other Improvement or Structure which has been theretofore specifically approved by the applicable ARC or the Board) that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

Section 10.2. Sign Easements. The Association shall have the right, privilege, duty and responsibility to reasonably maintain and care for any and all signs, monuments, landscaping and the like installed or placed on any “sign easement area” depicted within the applicable Plat.

Section 10.3. Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon the setback and sign easement areas applicable for each Lot for the carrying out by the Association of its functions, duties and obligations hereunder; provided, however, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association at the expense of the Association’s maintenance fund.

Section 10.4. Private Streets and Alleys. The Streets and Alleys situated and to be situated within the Addition are and shall be private streets and alleys which have not been dedicated to, and are not owned by, the City, unless and until the Street located within the Access Road Easement Area is dedicated to the City. The following special provisions shall be applicable to the Streets and Alleys

(a) All Streets and Alleys situated from time to time within the Development Tract and the Common Properties shall be owned by the Association; provided, however, that neither the Declarant nor the Association makes any commitment nor shall either be under any obligation whatsoever to assure that the Streets and Alleys located within the Development Tract and the Common Properties will at all times remain private. All Streets and Alleys located within the Office Tract shall be maintained by the Owner or Owners of the Office Tract and the Association shall not have any responsibility therefor. The Association expressly reserves the right at any time or from time to time to dedicate all or any portion of the Streets and Alleys located within the Development Tract and the Common Properties to the City. All Streets and Alleys located within the Subdivision shall at all times be subject to the lawful exercise by the City of its police powers.

(b) If in connection with the development of the New Office Improvements, the City requires the dedication of the Street located within the Access Road Easement Area, the Owner or Owners of the Office Tract shall have the right to request and cause the Association, by appropriate documentation, to cause such dedication to be implemented in accordance with the requirements of the City. All costs relating to the foregoing dedication, including improvements or alterations to the Streets, shall be borne by the Owner or Owners of the Office Tract. To the extent required at any time, the Association shall dedicate additional land on either side of the Access Road Easement Area to satisfy the requirements of the City.

(c) The Association shall, and has the sole responsibility to, maintain the Streets and Alleys located within the Development Tract and the Common Properties, in a condition not less than the minimum standards required for public streets and alleys in the City, and the Association shall make all repairs to the Streets and Alleys located within the Development Tract and the Common Properties deemed reasonably necessary by the City from time to time to insure emergency access. The City, so long as the Streets and Alleys remain private and are owned by the Association, shall have no obligation or right to maintain the Streets and Alleys or to provide any street cleaning services. All costs and expenses incurred by the Association in maintaining the Streets and Alleys shall be paid from funds generated by the Annual Assessment process herein provided for.

(d) The Association shall establish and maintain the Street Reserve Funds to pay future extraordinary maintenance costs of the Streets and Alleys constituting a portion of the Tract A Common Properties and the Tract B Common Properties. The amount of the Assessments allocable to the Street Reserve Funds shall be as determined from time to time by the Board.

(e) Non-exclusive easements are hereby reserved for the benefit of, and granted to, the City, all providers of utility services within the Addition, and all other governmental providers of the Addition (including without limitation the U.S. Postal Service), to enter onto and use the Streets and Alleys for the provision of all governmental and utility services necessary and/or required for the benefit of the Owners in the proper exercise of governmental functions and the providing of utility services, including, without limitation, the right of the City to remove any vehicle or obstacle from the Streets and Alleys that impairs emergency access.

(f) Utilities serving the Addition shall be installed only in the Streets and Alleys or in designated utility easement(s) shown on the Plats (except for individual utility connections from the common utility lines to Improvements constructed on a Lot).

(g) The Plats shall contain a dedication to the City and to all public utility entities providing utility service to the Addition of the right to use the Streets and Alleys to construct, install, maintain, operate, inspect, remove and reconstruct the facilities, equipment and systems that serve the Addition, by the City, and such utility companies shall repair any damage to the pavement or other improvements on the Streets and Alleys resulting from any such installation, maintenance, reconstruction or such other work.

(h) If the Association maintains mechanism(s) to control access to the Streets and Alleys, the Association shall maintain such mechanism(s) in good operating condition so as to allow twenty-four (24) hour access to the Streets and Alleys by the City and the providers of utility services to the Addition.

(i) With respect to the Development Tract and the Tract A and Tract B Common Properties, the Association, after having obtained the approval by Owners of more than fifty percent (50%) of the Residential Lots in respect to Streets and Alleys located within the Development Tract, and the foregoing approval of Owners of Residential Lots together with the approval of the Owner or Owners of the Office Tract in respect to the Street located within the Access Road Easement Area, shall have the right to request the City to accept dedication of all (but not less than all) of the Streets and Alleys located within the Development Tract and/or the applicable portion of the Common Properties to the City as public streets. The decision as to whether or not Streets and Alleys located within the Office Tract should ever be dedicated to the City shall rest solely with the Owner or Owners of the Office Tract.

Section 10.5. Limited Access System. Declarant shall install a mechanical system that limits vehicular access to the Streets and Alleys located within the Development Tract from public streets (the "System"). By accepting a Deed to a Residential Lot, each Owner shall be deemed to have acknowledged and agreed to the following:

(a) The Board will have the sole authority, in the Board's sole and exclusive discretion, to determine when the System will be operational.

(b) Neither the Declarant nor the Association shall be responsible for providing security to the Owners of Residential Lots, or Members or Residents or their respective family members, guests, invitees or their property. The purpose of the System shall be to provide some degree of restriction of vehicular access onto the Streets and Alleys located within the Development Tract. NEITHER THE DECLARANT, THE ASSOCIATION NOR ANY OWNER GUARANTEES OR ASSURES TO ANY OTHER OWNER NOR ANY OTHER PARTY WHOMSOEVER THAT THE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER, SUCH OWNER'S PERSONAL POSSESSIONS OR MEMBERS, RESIDENTS, GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF ITS DEED, SHALL BE DEEMED TO HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR THE ASSOCIATION FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE ADDITION ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE SYSTEM OR OTHERWISE.

(c) The City shall have access to the Development Tract for law enforcement purposes. Each Owner shall look solely to the City for the provision of law enforcement and police protection.

(d) The System is not intended to replace or to serve in lieu of individual alarm systems or other measures to provide security at a residence or within any

Residential Lot or Lots. Each Owner is encouraged to install personal security devices upon and within such Owner's Dwelling Unit to the same extent that would be prudent if the System did not exist.

(e) The System will be installed based upon the representations of vendors regarding the operation and performance capabilities of the components of the System. THE DECLARANT AND THE ASSOCIATION DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND THE DECLARANT AND THE ASSOCIATION MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSE FOR WHICH IT WAS DESIGNED. Neither the Declarant nor the Association expressly or impliedly guarantees that the System will avert or prevent occurrences or consequences which the System is designed to avert or prevent.

(f) The System shall be owned, operated and maintained by the Association at its sole cost and expense. The Declarant shall not be required to operate or maintain the System.

(g) Each residence constructed on a Residential Lot must be connected into the System, and each Owner shall be responsible for using the System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Board.

(h) Neither the Owner or Owners of the Office Tract nor its or their employees, agents, guests or invitees shall have access to the Development Tract to the extent the System is in operation, except in the case of emergency to protect life or property or in the limited situations where the Access Road Easement Area becomes impassible.

Section 10.6. Zero Lot Line Easement.

(a) Each Residential Lot having a zero side or zero lot line, as designated by the RARC, and the Owner of such Residential Lot, are hereby granted an easement on the Residential Lot adjacent to such zero lot line side (the "Burdened Lot"), together with a right of reasonable ingress and egress during reasonable times and with prior notice to the Owner or occupant of the Burdened Lot, with such easement having a minimum width of three (3) feet and a maximum of five (5) feet depending upon the width of the Residential Lot in question as determined by the Board, along and adjacent to such zero lot line side for the purpose of repair and maintenance of such Owner's Improvements and Structures adjacent thereto; and

(b) Each Residential Lot adjacent to a Residential Lot having a zero side or zero lot line, as designated by the RARC, and the Owner of such Residential Lot, are hereby granted an easement on the Residential Lot having a zero lot line side, such easement having a maximum width of one (1) foot along such zero lot line side for the

purpose of installing decorative non-permanent improvements or landscaping. This easement is inferior to the maintenance easement set forth in subparagraph (a) above of this Section 10.6 such that the right to conduct repair and maintenance shall not be unreasonably interfered with by virtue of the installation of decorative non-permanent improvements or landscaping. The installation of decorative non-permanent improvements or landscaping must receive prior written approval from the RARC. In no event shall there be a merger of the easement area created herein with the fee estate of the Residential Lot adjacent to such zero lot line side.

ARTICLE XI

REGISTRATION

Section 11.1. Registration with the Association.

(a) In order that the Association can properly acquaint every Lot purchaser and every Owner, Member and Resident with these Covenants and the day-to-day matters within the Association's jurisdiction, no acquisition of any Lot within the Subdivision shall become effective until and unless all directives by, and all obligations to, the Association have been properly and timely satisfied.

(b) Each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as: (a) the full name and address of each Owner, Member and Resident; (b) the full name of each individual family member who resides within the Dwelling Unit of the Lot Owner in question; (c) the business address, occupation and telephone numbers of each Resident; (d) the description and license plate number of each automobile owned or used by a Resident and brought within the Addition; (e) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Resident cannot be located) in case of an emergency; and (f) such other information as may be reasonably requested from time to time by the Association. In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information, and the offending Owner, Member and Resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

ARTICLE XII

RIGHTS OF CERTAIN MORTGAGEES AND MORTGAGE INSURERS

Section 12.1. Applicability. The provisions within this Article XII are for the primary benefit of:

(a) The owners and holders of Institutional Mortgages which are required to satisfy the applicable requirements of FHA, VA, FNMA, FHLMC and other similar

governmental, quasi-governmental and nationally recognized public and/or private sources of end financing (such mortgagees sometimes collectively referred to herein as “**Eligible Mortgagees**” and their mortgages referred to as “**Eligible Mortgages**”); and

(b) The insurers, guarantors, participants and subsidizers of the Eligible Mortgages, sometimes collectively referred to herein as the “**Eligible Insurers.**”

To the extent applicable, necessary or proper, the provisions of this Article XII apply not only to this Declaration but also to the Articles and Bylaws of the Association. This Article XII is supplemental to, and not in substitution of, any other provisions of this Declaration, the Articles and Bylaws, but in the event of ambiguity or conflict, this Article XII shall control.

Section 12.2. Notices of Action. An Eligible Mortgagee or Eligible Insurer who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and a reasonable description of the Dwelling Unit covered by the Eligible Mortgage) will be entitled to receive timely written notice of:

- (a) any proposed termination of the Association;
- (b) any condemnation loss or any casualty loss which affects a material portion of the Subdivision or which materially affects any Dwelling Unit on which there is an Eligible Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;
- (c) any delinquency in the payment of Assessments or charges owed by an Owner of a Dwelling Unit subject to the Eligible Mortgage of such Eligible Mortgagee or Eligible Insurer, where such delinquency has continued for a period of sixty (60) days;
- (d) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of the Eligible Mortgagees as required hereinbelow.

Section 12.3. Joinder to Documents.

(a) In addition to the provisions set forth within Article XIII, Eligible Mortgagees who have requested the Association to notify them concerning any proposed action that requires the consent of a specified percentage of Eligible Mortgagees also have the right to join in the decision making about certain amendments to this Declaration. In such regard amendments of a “material nature,” as hereinafter defined, must be approved by (i) the Owners as specified in Section 13.4 hereof, and (ii) Eligible Mortgagees representing at least fifty-one percent (51%) of the Dwelling Units that are subject to Eligible Mortgages. Additionally the following matters must be approved by Eligible Mortgagees representing at least fifty-one percent (51%) of the Dwelling Units that are subject to Eligible Mortgages:

(i) The redefinition of the boundaries of any Lot covered by an Eligible Mortgage;

(ii) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgagee; or

(iii) Any provisions that expressly benefit Eligible Mortgagees or Eligible Insurers.

(b) If and when the Owners are considering termination of the coverage of this Declaration over the Subdivision for reasons other than substantial destruction or condemnation, the Eligible Mortgagees representing at least sixty-seven percent (67%) of the mortgaged Dwelling Units in the Subdivision must approve such termination.

Section 12.4. Special FHLMC Provision.

(a) So long as required by the FHLMC, the following provisions apply in addition to and not in lieu of the other provisions of Article XII. Unless two-thirds (2/3) of the Eligible Mortgagees or Owners of Residential Lots give their consent (together with the approval of the Owners, as herein provided), and subject to the condition that any proposed action of the Association purportedly covered by the following requirements must be material and adverse, the Association shall not:

(i) except as expressly permitted hereby, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Properties which the Association owns, directly or indirectly (exclusive of the granting of easements for public utilities or for other public purposes consistent with the intended use of the Addition);

(ii) change the method of determining the obligations in respect to Assessments, Charges or other monetary obligations which may be levied against an Owner;

(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 as contemplated by this Declaration and maintenance of Dwelling Units and of the Common Properties;

(iv) assign any future income of the Association, including its right to receive Assessments;

(v) fail to maintain fire and extended coverage insurance on assets owned by the Association, as required by this Declaration; or

(vi) use hazard insurance proceeds for any losses to the Common Properties for any purpose other than the repair, replacement or reconstruction of such properties.

(b) The provisions of this Section 12.4 shall not be construed to reduce the percentage vote that must be obtained from Eligible Mortgagees when a larger percentage vote is otherwise required for any of the actions described in this Section 12.4.

(c) Eligible Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Properties (if any) and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Properties owned by the Association, and Eligible Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

(d) No provision of this Declaration or the Bylaws shall give or shall be construed as giving any Owner or other party priority over any right of the first mortgage of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of a Common Property (if any).

(e) Upon request, each Owner shall be obligated to furnish the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

(f) Should FNMA or FHLMC subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without the approval of the Owners, may cause an amendment to this Article to be recorded to reflect such change or changes.

Section 12.5. Approval of Amendments. The failure of an Eligible Mortgagee or Eligible Insurer to respond within thirty (30) days to any written request of the Association or the Board for approval of an addition or amendment shall constitute an implied written approval of the addition or amendment.

Section 12.6. Inspection of Books. The Association shall have current copies of the Declaration, Articles, Bylaws, rules and regulations, books, records and financial statements available for inspection by the Owners and by Eligible Mortgagees and Eligible Insurers during normal business hours or under other reasonable circumstances and for a proper Association purpose.

Section 12.7. Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request with a copy of an annual financial statement within ninety (90) days following the end of each Fiscal Year. Each such Eligible Mortgagee and Eligible Insurer shall have the right to have such statements audited by an independent certified public accountant at its sole cost and expense, which audited report shall be made available to the Association within thirty (30) days following completion. In addition to inspection and review of same by the Owner or Owners of the Office Tract, the Owner or Owners of the Office Tract shall have the right to have the books and records of Association, in respect to the Tract B Common Properties, audited by an independent certified public accountant selected by the Board at the expense of the Association, which audited report shall be made available to the Association within thirty (30) days following completion. The Association shall not be obligated to cause its financial statements to be audited by more than one (1) Eligible

Mortgagee or Eligible Insurer or by the Owner or Owners of the Office Tract more than once in any Fiscal Year.

Section 12.8. Enforcement. The provisions of this Article XII are and shall be for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means, at law, or in equity.

Section 12.9. Attendance at Meetings. Any authorized representative(s) of an Eligible Insurer may attend and address any meeting of the Association which an Owner may attend.

Section 12.10. Annexation. With respect to any annexation of additional lands within the scheme of this Declaration, the following additional provisions shall apply:

- (a) The legal method of expansion shall be generally in accordance with Article II herein;
- (b) The potential annexable property is legally described within Article II;
- (c) Prescribing Assessments and/or granting voting rights to the annexed properties shall be generally in accordance with Articles III and V herein;
- (d) All improvements intended for future phases will be substantially completed prior to annexation and will be consistent with the initial improvements in terms of quality of construction; and
- (e) The annexation document(s) that will be recorded will likely be a Declaration similar to this Document or an Amended Declaration.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. [intentionally omitted].

Section 13.2. Further Development. During the Development Period, each and every Owner, Member and Resident waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities, and the Association shall not devote or expend any monies or personnel, regarding the contest, objection to, challenge, dispute, obstruction, hindrance or any manner of disagreement with the proposed or actual development (including, without limitation, zoning or re-zoning efforts or processes pertaining to residential uses) of any real property owned by the Declarant or by the affiliates, assignees or successors of the Declarant within the Addition which is generally consistent with the scheme contemplated by this Declaration and the provisions of the Zoning Ordinance and the Existing Restrictions. Additionally, each and every Owner, Member and Resident of a Residential Lot waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities, and the Association shall not devote or expend any monies or personnel, regarding the contest, objection, challenge, dispute, obstruction, hindrance or any manner of disagreement with the proposed or actual development of the Office Tract which is generally consistent with the

scheme contemplated by this Declaration and the provisions of the Zoning Ordinance and the Existing Restrictions.

Section 13.3. Duration. The Covenants of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owners and Residents of any Lot subject to this Declaration, their respective legal representatives, heirs, devisees, personal representatives, successors and assigns, for an original fifty (50) year term expiring on the fiftieth (50th) anniversary of the date of recordation of the Original Declaration, after which time these Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of more than fifty percent (50%) of all Residential Lots within this Subdivision together with the Owner or Owners of the Office Tract and recorded in the Records, which contains and sets forth an agreement to abolish these Covenants; provided, however, no such agreement where approved by less than seventy-five percent (75%) of the Owners of all Residential Lots within this Subdivision together with the Owner or Owners of the Office Tract to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

Section 13.4. Amendments. The Covenants set forth herein are expressly subject to change, modification and/or deletion by means of amendment, at any time and from time to time, on the following basis:

- (a) [intentionally omitted].
- (b) From and after conclusion of the Development Period, these Covenants, other than amendments of a “material nature”, may be amended or changed upon the express written consent of the Board, without the approval of any Owner, Member or Resident.
- (c) Amendments of a “material nature” to the Declaration must be agreed to and approved:
 - (i) during the Development Period, by the Declarant and the Owner or Owners of the Office Tract; and
 - (ii) from and after the expiration of the Development Period, by Residential Lot Owners owning more than fifty percent (50%) of the Residential Lots and by the Owner or Owners of the Office Tract.
- (d) A substantive change to any provision dealing with or governing any of the following items will be considered an amendment of a “material nature”:
 - (i) voting rights of any Member or other approval rights of the Owner or Owners of the Office Tract;
 - (ii) increases in Annual Assessments that raise the previous Annual Assessment amount for each Residential Lot by more than twenty-five percent (25%) or that raise the previous Annual Assessment amount for the Office Tract by more than ten percent (10%), liens securing the payment of Assessments, or

subordination of liens securing the payment of Assessments, or materially and adversely changing the method of determining the obligations in respect to Assessments, Charges or other monetary obligations which may be levied against an Owner;

(iii) material reduction of reserves for maintenance, repair and replacement of Common Properties;

(iv) responsibility for maintenance and repairs;

(v) except as expressly permitted herein, convertibility of any Lot into Common Properties or vice versa;

(vi) expansion or contraction of the Subdivision, or the addition, annexation, or withdrawal of the property to or from the Subdivision, except as expressly permitted by the provisions of Article II hereof;

(vii) hazard or fidelity insurance requirements;

(viii) imposition of any restrictions on an Owner's right to sell or transfer his/her/its Lot;

(ix) restoration or repair (after a hazard damage or partial condemnation) of the Common Properties in a manner other than that specified herein;

(x) any change to the Office Design Guidelines;

(xi) any thing that directly affects the development or operation of the Office Tract in any material manner;

(xii) any change in the rights granted to the Owner or Owners of the Office Tract in respect to its right to require the audit of the books and records of the Association;

(xiii) any action to terminate the legal status of the Subdivision after substantial destruction or condemnation occurs or any action which materially and adversely alters the use of hazard insurance proceeds in respect to any losses to the Common Properties for any purpose other than the repair, replacement or reconstruction of the Common Properties; or

(xiv) modifications to the express provisions of Section 2.2 hereof.

(e) A substantive change to any provision dealing with or governing any of the following items will be considered as "material," subject to the condition that any proposed action of the Association purportedly covered by the following must be material and adverse:

(i) except as expressly permitted hereby, any act or omission to act seeking to abandon, partition, subdivide, encumber, sell or transfer the Common Properties which the Association owns, directly or indirectly (exclusive of the granting of easements for public utilities or for other public purposes consistent with the intended use of the Addition);

(ii) any act or omission to act changing, waiving or abandoning any scheme of regulations or enforcement thereof pertaining to the design or the exterior appearance as contemplated by this Declaration and maintenance of Structures and of the Common Properties;

(iii) any act assigning any future income of the Association, including its right to receive Assessments; or

(iv) failing to maintain fire and extended coverage insurance on assets owned by the Association, as required by this Declaration.

(f) Additions or amendments to the Declaration such as the correction of a technical error or the clarification of a statement shall not be considered or construed as being “material,” which amendment or amendments may be made by the Board. Any and all amendments shall be duly recorded in the Records.

(g) In the event a dispute arises between the Association and the Owner or Owners of the Office Tract in respect to an amendment to this Declaration of a “material nature,” or whether an amendment is of a “material nature,” either party shall have the right to submit the dispute to arbitration in accordance with the provisions of Section 13.11 hereof.

Section 13.5. Enforcement. Each Owner of each Residential Lot shall be deemed, and held responsible and liable for the acts, conduct and omissions of each and every Member, Resident, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Member(s), Resident(s), guests and invitees. The Owner or Owners of the Office Tract shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every employee, guest and invitee of the Owner or Owners of the Office Tract, and of any tenant thereof, and such liability and responsibility of such Owner or Owners shall be joint and several with its or their employees, guests and invitees. The contract Performance and Payment Lien covering Residential Lots shall extend to, cover and secure the proper payment and performance of all obligations under this Declaration by each and every Member, Resident, guest and invitee affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional restraints and restrictions on the “good standing” qualifications of any Person who occupies such Owner’s Lot. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of eighteen (18) years) within the Subdivision. Enforcement of these Covenants may be initiated by any proceeding at law or in equity against any Person or Persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants; but failure by the

Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including court costs and reasonable attorneys' fees, from the non-prevailing party.

Section 13.6. Validity. Violation of or failure to comply with these Covenants shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of these Covenants, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by the City (including, without limitation, the Zoning Ordinance), then such municipal requirement shall control.

Section 13.7. [intentionally omitted].

Section 13.8. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

Section 13.9. Notices to Member/Owner/Resident. Any notice required to be given to any Owner, Member or Resident of a Residential Lot under the provisions of this Declaration shall be deemed to have been properly delivered when: (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the Person who appears as the Owner, Member or Resident on the records of the Association at the time of such mailing; or when (ii) delivered by hand or by messenger to the last known address of such Person within the Addition. Any notice required to be given to the Owner or Owners of the Office Tract shall be deemed to have been properly delivered when deposited in the United States Mail, postage prepaid, addressed to its or their last known address, attention Treasurer.

Section 13.10. Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

Section 13.11. Disputes.

(a) Matters of dispute or disagreement between Owners, Members or Residents with respect to interpretation or application of the provisions (excluding Article VIII architectural matters and issues concerning "substantial completion") of this Declaration or the Bylaws, shall be determined by the Board. Matters pertaining to

Article VIII architectural matters and issues concerning “substantial completion” shall be determined by the ARCS. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners, Members and Residents.

(b) The provisions of this Section 13.11 shall only apply with respect to the resolution of a dispute which is, pursuant to the provisions of this Declaration, expressly agreed to be subject to resolution by arbitration. To institute the provisions of this Section 13.11(b) the party desiring to initiate the procedure (“**First Party**”) shall notify the other party (“**Second Party**”) and in such notice shall designate the first arbitrator (“**Arbitrator One**”). If Arbitrator One is acceptable to the Second Party, the Second Party shall so notify the First Party within ten (10) days after such notice is given and Arbitrator One shall proceed to determine the matter or dispute within thirty (30) days thereafter. If Arbitrator One is not acceptable to the Second Party, then within ten (10) days after the giving of the First Party’s notice, the Second Party shall designate, in a written notice, the second arbitrator (“**Arbitrator Two**”). If the Second Party fails to timely approve Arbitrator One or designate Arbitrator Two, then Arbitrator One shall proceed to determine the matter or dispute within thirty (30) days of the expiration of the ten (10) day period within which the Second Party may appoint Arbitrator Two. If Arbitrator Two is designated, Arbitrator One and Arbitrator Two shall meet within ten (10) days after the designation of Arbitrator Two and proceed to jointly appoint a third arbitrator (“**Arbitrator Three**”) within ten (10) days after the date Arbitrator One and Arbitrator Two first convene for the purpose of selecting Arbitrator Three, and the decision of Arbitrator Three shall be made within ten (10) days after his or her appointment. A decision of Arbitrator One (if Arbitrator Two is not designated pursuant to this subparagraph (b)) or Arbitrator Three, as applicable, shall be binding and conclusive on the parties hereto. If any arbitrator shall fail, refuse or become unable to act, a new arbitrator shall be appointed in his place following the same method as was originally followed with respect to the arbitrator to be replaced. The Association shall pay the fees and expenses of the arbitrators so appointed. All other expenses of arbitration shall be borne equally by the parties. All hearings and proceedings held and all investigations and actions taken by the arbitrators shall take place in Dallas County, Texas.

(c) Should it be necessary to appoint Arbitrator Three as provided for in subparagraph (b) above and the initial two arbitrators are unable to agree upon Arbitrator Three within ten (10) days, then any party may apply to the Senior Federal Judge of the Northern District of Texas for the appointment of Arbitrator Three.

(d) Any arbitration carried out pursuant to this Agreement shall be governed by the applicable rules of the American Arbitration Association; provided that regardless of any conflict with any such rules the arbitrators shall afford the parties a hearing and the right to submit testimony and other evidence with respect to the matter in question, as well as the privilege of cross-examining any witnesses presented by or on behalf of the other party.

(e) Any arbitrator appointed by the parties shall have not less than ten (10) years experience in connection with the matters at issue in the metropolitan Dallas, Texas area; provided, however, that arbitrators appointed in regard to a dispute arising out of matters covered by Section 5.3 hereof shall be experienced in (in excess of five (5) years) the management and operation of homeowner's association of similar size as the Association.

(f) Wherever arbitration is provided for in this Declaration as a determination of any issue, the decision resulting from such arbitration procedure shall be binding and conclusive on the parties and non-appealable.

Section 13.12. Continued Effectiveness of 1998 Amended Declaration. Any and all amendments, changes and deletions effectuated by this Declaration shall in no manner adversely affect, vitiate, impair, release or extinguish any terms or provisions of the 1998 Amended Declaration for any applicable periods of time prior to the Effective Date, all of which shall continue in full force and effect for all applicable time periods prior to the Effective Date.

[SIGNATURE PAGE FOLLOWS]

Witness the hand of authorized representatives of the Declarant on the acknowledgment date noted below.

DECLARANT:

FOREST/HILLCREST PARTNERS,
a Texas joint venture

By: Oly Hillcrest, L.P.,
a Texas limited partnership, a venturer

By: Oly Texas GP, LLC,
a Texas limited liability company,
its general partner

By: /s/ L. J. Johnson
L. J. Johnson, Vice President

By: Oly Forest Partners, LLC, a Texas limited liability
company, a venturer

By: Oly Hillcrest, L.P., a Texas limited partnership,
its sole and managing member

By: Oly Texas GP, LLC, a Texas limited
liability company, its general partner

By: /s/ L. J. Johnson
L. J. Johnson, Vice President