

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WILLOW POINTE SECTION ONE

TABLE OF CONTENTS

Article No.	Article Title	Page No.
05/16/95 · 00016279 R397487 \$ 117.00		
ARTICLE	DEFINITIONS	2
ARTICLE II	WILLOW POINTE HOMEOWNERS ASSOCIATION, INC.	5
1.	Duties and Powers	5
2.	Membership	5
3.	Classes of Membership	6
4.	Non-Profit Corporation	7
5.	Bylaws	7
6.	Members' Easements of Enjoyment	7
7.	Extent of Members' Rights and Easements	7
8.	Enforcement of Declaration	9
ARTICLE III	COVENANTS FOR MAINTENANCE ASSESSMENTS	9
1.	Creation of the Lien and Personal Obligation of Assessments	9
2.	Purpose of Assessments	10
3.	Maximum Base Annual Assessment	10
4.	Special Assessments for Capital Improvements	11
5.	Declarant Assessment Liability	11
6.	Commencement of Base Annual Assessments; Due Dates	12
7.	Common Properties Exempt	12
8.	Duties of the Board of Directors	12
9.	Effect of Non-Payment of Assessments; Remedies of the Association; Liens Securing Assessments	12
10.	Subordination of the Lien to Mortgages	13
11.	Exempt Property	13
ARTICLE IV	NEW CONSTRUCTION COMMITTEE AND MODIFICATIONS COMMITTEE ..	13
1.	New Construction Committee; Tenure	13
2.	Rights of the New Construction Committee	14
3.	Modifications Committee	14
4.	General	15
5.	Submissions to New Construction Committee	15
6.	Time for Review of Plans	17
7.	Review of Revised Plans	17

17

[Handwritten signature]

8.	Changes in Approved Plans	18
9.	Variances	18
10.	Approved General Contractors	18
11.	Construction Time	18
12.	No Liability	18
13.	Rules and Regulations	19
ARTICLE V	EASEMENTS	19
1.	General	19
2.	Reservation of Easements	19
3.	Surface Areas of Utility Easements	19
4.	Public Streets and Common Properties	20
5.	Association's Right to Enter	20
6.	Governmental Agency's Right to Enter	20
7.	Drainage Easements	20
ARTICLE VI	UTILITY BILLS, TAXES AND INSURANCE	21
1.	Obligations of the Owners	21
2.	Obligations of the Association	21
3.	Disbursement of Proceeds	23
4.	Damage and Destruction	24
5.	Repair and Reconstruction	24
ARTICLE VII	CONDEMNATION	24
ARTICLE VIII	MAINTENANCE AND REPAIRS	25
1.	By the Owners	25
2.	By the Association	25
ARTICLE IX	RIGHTS AND OBLIGATIONS OF THE ASSOCIATION	25
1.	The Common Properties	25
2.	Sale of Common Properties	26
3.	Personal Property and Real Property for Common Use	26
4.	Rules and Regulations	26
5.	Implied Rights	26

ARTICLE X	RESTRICTIONS ON USE	27
1.	Residential Purposes Only	27
2.	Reasonable Enjoyment	27
3.	Animal Husbandry	27
4.	Trash and Rubbish Removal	28
5.	Oil and Mining Operations	28
6.	Prohibited Use	28
7.	Septic Tanks	29
8.	Declarant's Rights During Development Period	29
9.	Builder Rights	29
10.	Storage of Boats, Trailers and other Vehicles and Equipment	29
11.	Clothes Lines	30
12.	Construction Work	30
13.	Television and Radio Antennas and Satellite Dishes	30
14.	Electrical, Telephone and other Utility Lines	30
15.	House Numbers and Mail Boxes	30
16.	Signs, Advertisements, Billboards	30
17.	Lot Maintenance	31
18.	Removal of Dirt and Trees	31
19.	Roof Ventilators or Projections	32
20.	Window Coolers and Condensers	32
21.	Driveways	32
22.	Landscape	32
23.	Outbuildings	32
24.	Lot Drainage	33
25.	Building Requirements	33
26.	Walls and Fences	34
27.	Roofs	35
28.	Garages	35
29.	Hunting and Firearms	35
30.	Window Treatments	35
31.	Tree Protection	35
ARTICLE XI	ANNEXATION OF ADDITIONAL PROPERTY	36
1.	Annexation Without Approval of Membership	36
2.	Annexation With Approval of Membership	37

ARTICLE XII	GENERAL PROVISIONS	
1.	Enforcement	38
2.	Incorporation	38
3.	Compliance with Declaration and Other Documents	38
4.	Resolution of Conflicts Between Documents	38
5.	Covenants Running with Title	39
6.	Amendments	39
7.	Books and Records	39
8.	Indemnification and Hold Harmless	39
9.	Rights of Mortgagees and lienholders	40
10.	Right to Subdivide or Resubdivide	40
11.	Building Sites	40
12.	No Obligation as to Adjacent Property	41
13.	Renting or Leasing	41
14.	Notice	42
15.	Enforcement	42
16.	Power to Settle Claims	43
17.	Mergers	43
18.	Conflict with Deeds of Conveyance; Declarant's Rights	43
19.	Duration	44
20.	Severability	44
21.	Gender and Grammar	44
22.	Titles	44
23.	Successors in Title	44

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR WILLOW POINTE SECTION ONE

STATE OF TEXAS §
 §
 COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT THIS DECLARATION is made on the date hereinafter set forth by Winchester Associates, Ltd., a Texas limited partnership (hereinafter referred to as "Declarant"), through Great America Companies, a Texas corporation, its Managing General Partner, acting herein by and through its duly authorized officers.

WITNESSETH

WHEREAS, Declarant is the owner of certain property heretofore platted and subdivided into that certain residential subdivision known as Willow Pointe Section One and is recorded under Clerk's File No. R358289 and Film Code No. 367074 of the Harris County, Texas Map Records (comprised of 101 Lots) and shown in Exhibit "A" attached hereto (the "Initial Property"); and,

WHEREAS, Declarant desires to hold, sell and convey the Initial Property subject to the following covenants, conditions, restrictions, reservations and easements, which are for the purpose of establishing a uniform plan for the development, improvement and sale of the Initial Property, together with such other land constituting the Property from time to time brought within the terms hereof pursuant hereto, and to insure the preservation of such uniform plan for the benefit of both present and future owners of the residential subdivision Lots within the Property; and,

NOW, THEREFORE, Declarant hereby adopts the following covenants, conditions, restrictions, reservations and easements which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (hereinafter defined) and which shall be applicable to all of the Property (hereinafter defined) from time to time subject hereto, and shall run with the land and shall bind all parties having or acquiring any right, title, or interest therein or any part thereof, their heirs or successors in title and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

503-82-3306

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association, including any amendments thereto.

Section 2. "Assessable Tract" shall mean and refer to any Lot or Building Plot from and after the date on which paved public street access, and water and sanitary sewer service have been extended thereto.

Section 3. "Assessments" shall mean and refer to any or all of the Base Annual Assessments and Special Assessments (as defined below) referred to, contemplated or authorized herein or in any Supplemental Declaration from time to time filed of record.

Section 4. "Association" shall mean and refer to WILLOW POINTE HOMEOWNERS ASSOCIATION, INC., a non-profit corporation incorporated under the laws of the State of Texas, its successors and assigns.

Section 5. "Base Annual Assessments" shall mean and refer to the uniform assessment made against Assessable Tracts pursuant to Sections 3 and 5 of Article III hereof.

Section 6. "Board of Directors" and "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 7. "Business" or "Business Purpose" shall mean and include, but not limited to, any occupation or venture whether for profit or not; any commercial, industrial or professional dealings; any commercial establishment of any sort; any activity which includes one or more employees of any kind, who is not a member of the family or domestic employee residing on the premises; any establishment frequented by customers; and other activities which are commercial, profit-oriented, or not for profit, industrial, professional or manufacturing in nature and/or which involve the production, manufacturing, trade or sale of goods and services; or giving of services without a fee and/or any non-profit organizations which have one or more employees and/or which are frequented by customers.

Section 8. "Bylaws" means the Bylaws of the Association, including any amendments thereto.

Section 9. "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements dedicated or under contract to the Association for the use and benefit of the Owners of the Lots in the Property, and/or for the

benefit of other owners outside the Property, constructed on portions of one or more Lots or on acreage owned by Declarant (or Declarant and others) which has not been brought within the scheme of The Declaration. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: structures for recreation; lake and drainage facilities; structures for storage or protection of detention equipment; fountains; statuary; sidewalks; common driveways; landscaping; guardhouses; esplanades; walls and other similar and appurtenant improvements. References herein to "the Common Facilities" or any "Common Facility" shall mean and refer to Common Facilities as defined respectively in The Declaration and all Supplemental Declarations.

Section 10. "Common Properties" shall mean and refer to all those areas of land within the properties except the platted Lots and public streets shown thereon, together with such other land as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Plats, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title. References herein to the "Plats" shall mean and refer to all subdivision Plats from time to time filed of record in the Harris County, Texas Map Records with respect to Property covered by The Declaration.

Section 11. "Conveyance" shall mean and refer to conveyance of a fee simple title to a Lot.

Section 12. "Declarant" shall mean and refer to Winchester Associates, Ltd., the Declarant herein, and its successors and assigns if (i) such successors or assigns should acquire more than one Lot from Winchester Associates, Ltd., and (ii) such successors or assigns are designated in writing by Winchester Associates, Ltd., as a successor or assignee of all or part of the rights of Winchester Associates, Ltd., as Declarant hereunder.

Section 13. "The Declaration" shall mean and refer collectively to the covenants, conditions, restrictions, supplemental restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration of Covenants, Conditions and Restrictions for Willow Pointe Section One as supplemented and/or amended, including any and all Supplemental Declarations.

Section 14. "Easements" shall mean and refer to the various utility or other easements of record, those shown on the map or Plats of the subdivisions within the Property and such other easements as are created or referred to in The Declaration.

Section 15. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person or by a Single Family, excluding mobile homes or other non-permanent structures.

Section 16. "Lot" or "Building Plot" shall each mean and refer to each plot of land shown upon the recorded subdivision Plats from time to time within the boundaries of the Property and designated by Lot and block number, and to the Living Unit and other improvements constructed or to be constructed thereon, but shall not mean or include any other portions of the Property.

Section 17. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 18. "Modifications Committee" shall mean and refer to the committee created by the Board of Directors of the Association to exercise exclusive jurisdiction over the modifications, additions, or alterations made on or to existing Living Units or other improvements located on Lots as provided in Article IV hereof.

Section 19. "New Construction Committee" shall mean and refer to the committee created by the Declarant to exercise exclusive jurisdiction over all original construction of Living Units upon the Lots within the Property as provided herein.

Section 20. "Occupant" shall mean any person legally entitled to occupy and use all or a portion of the Property.

Section 21. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or any other part of the Property or the surface estate thereof but excluding those having such interest merely as security for the performance of an obligation.

Section 22. The "Property" shall mean and refer to the Initial Property as defined above and any other tracts of real property annexed pursuant to Article XI or otherwise.

Section 23. "Residential Purposes" as used herein shall be defined as being for dwelling purposes, but held and construed to exclude hospitals, duplex houses, townhouses, condominiums, cooperative timeshares, and apartment houses, and to exclude commercial and professional uses or any other uses as a Business or for a Business Purpose, and uses for any immoral or illegal purposes.

Section 24. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been posted, published, mailed or otherwise given to Owners in accordance with the requirements of this Declaration.

Section 25. "Single Family" shall mean residential occupancy by members of a family who are related to each other by blood, adoption, or marriage, living together as a single housekeeping unit as distinguished from an apartment house, boarding house, commune or multi-family house.

503-82-3309

Section 26. "Supplemental Declaration" shall mean and refer to (i) any declaration of supplemental restrictions filed of record by Declarant, its successors or assigns, with respect to the Property, (ii) any supplemental declaration of annexation executed and filed of record by Declarant, its successors or assigns, bringing additional property within the scheme of The Declaration under the authority provided in the Declaration, and (iii) any supplemental declaration executed and filed of record by Declarant, its successors or assigns, purporting to do both of the foregoing. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to all or the respective Property covered by the relevant Supplemental Declaration.

Section 27. "Voting Power" means the total number of votes held by members (in a class of Members of the Association, or of Members other than Declarant, as the case may be) whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting.

**ARTICLE II
WILLOW POINTE HOMEOWNERS ASSOCIATION, INC.**

Section 1. Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for in The Declaration, and without limiting the generality hereof, the Association shall also discharge those functions necessary to the general maintenance of the Common Properties. The Board of Directors of the Association shall be empowered to oversee the activities of the Association and may take whatever lawful action that the Board, in its sole discretion, deems necessary to provide for the upkeep, development and aesthetic appearance of the Common Properties and Common Facilities and to enforce The Declaration for the common benefit of the Members of the Association. All rights of the Association herein and hereunder are vested in its Board of Directors unless specifically reserved to Declarant or a vote of the Members herein.

Section 2. Membership. Every person or entity who is a record Owner of any Lot, including Declarant, shall be a Member of the Association and be entitled to voting rights as herein provided. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association. Ownership of such land shall be the sole qualification for membership. Other lands may hereafter be annexed into the jurisdiction of the Association in the manner herein ascribed. If annexed, the Owners of Lots in each future section so annexed, as well as all Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Common Properties that

3-82-3310

may become subject to the jurisdiction of the Association as a result of such annexation, and the Common Facilities thereon, and shall be entitled to the use and benefit of the maintenance fund hereinafter set forth, provided that each future section must be impressed with and subject to the Assessments imposed hereby, and further, such sections shall be made by recorded Supplemental Declaration subject to all of the terms of this initial Declaration (as then amended and/or modified as herein permitted) and to the jurisdiction of the Association. Such additional stages of development may be annexed in accordance with the provisions of Article XI. Upon a merger or consolidation of the Association with another association, the properties, rights and obligations of the other association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association shall administer the covenants and restrictions established by The Declaration, together with the covenants and restrictions applicable to the properties of the other merged association, as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants and restrictions established by The Declaration. All Lots in the Property are subject to the covenants, restrictions and other matters contained in The Declaration.

Section 3. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of Assessable Tracts with the exception of the Declarant (unless and until its Class B Membership converts to Class A Membership as contemplated below), and each such Class A Member shall be entitled to one vote for each Lot owned by such person or entity. When more than one person holds an interest in a single Lot, all such persons shall be Members. The vote of such Lot shall be exercised as such co-owners among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. If the co-owners of a single Lot do not vote unanimously and in unison, no vote for that Lot shall be counted as there shall be no fractional vote.

Class B. Class B Members shall be the Declarant herein, as such term is defined in Article I, Section 12, who shall be entitled to five (5) votes in the Association for each Lot owned by it. Class B Membership shall cease and be converted to Class A Membership (and Declarant may thereafter cast one Class A vote for each Lot owned by it, regardless of whether Declarant pays any or its full share of Assessments) on the happening of the earliest to occur of the following two events (a or b):

- (a) when 75% of the Lots are deeded to homeowners; or
- (b) on the twentieth anniversary date of the date hereof;

At such time that additional Property is annexed into the Association, the Class B Membership of the Declarant, shall, if it had previously ceased due to one of the

conditions listed above in (a) or (b), be reinstated and shall apply to all Lots owned by Declarant in the newly annexed portion of the Property as well as to all Lots owned by Declarant in all other areas of the Property. Such reinstatement is subject to further cessation in accordance with the limitations set forth in the preceding paragraphs (a) and (b) of this Article, whichever occurs first. However, upon reinstatement due to annexation of additional Property, the period of time set forth in the preceding paragraph (b) of this Article shall be extended to the extent necessary such that in all circumstances it extends for a period no shorter than ten (10) years from the date of each such recorded annexation (i.e., Supplemental Declaration). Upon annexation of additional land into the Property, the 75% figure noted in the preceding paragraph (a) shall refer to 75% of the aggregate number of Lots from all sections of the Property and not merely 75% of the Lots from the Initial Property. The provisions of this grammatical paragraph shall be effective only to the extent not inconsistent with HUD/VA requirements. As used throughout this Declaration, HUD/VA requirements shall refer to those requirements, if any, applicable to the Property, imposed by the U.S. Department of Housing and Urban Development or the Veterans Administration.

Section 4. Non-Profit Corporation. WILLOW POINTE HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, has been or shall be organized, and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation. Declarant will convey the Common Properties to the Association upon final completion of construction of Common Facilities to be located thereon.

Section 5. Bylaws. The Association may make whatever rules or bylaws it may choose to govern the organization, provided that same are not in direct conflict with the terms and provisions hereof.

Section 6. Members' Easements of Enjoyment. Subject to the provisions of Section 7 below, every Member shall have a non-exclusive common right and easement of enjoyment in the Common Properties and Common Facilities and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

Section 7. Extent of Members' Rights and Easements. The rights and easements of enjoyment created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created in favor of Declarant or others as referred to or provided for in The Declaration, and shall also be subject to the following provisions:

- (a) The Association shall have the right to borrow money and, with the assent of Members entitled to cast not less than two-thirds (2/3) of the votes of Class A Members, to mortgage the Common Properties and Common Facilities.

503-82-3312

- (b) The Association shall have the right to take such steps as are reasonably necessary to protect the Common Properties and Common Facilities against foreclosure of any such mortgage.
- (c) The Association shall have the right to suspend the rights of any Member to enjoyment and use of the Common Properties and Common Facilities for any period during which an Assessment or other amount owed by the Member to the Association remains unpaid.
- (d) The Association shall have the right to establish reasonable rules and regulations including the setting of usage fees and deposits, governing the Members' use and enjoyment of the Common Properties and Common Facilities, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for each and any infraction of such rules and regulations.
- (e) Resident owners or occupants of dwellings within an area owned by the Declarant or its General Partner in the vicinity of but not within the Property may, with Declarant's or its General Partner's written authorization, use, on terms no more favorable than those made available to the Members, the Common Properties, together with a Common Facilities now or hereafter located thereon. The right of Declarant to grant such use privileges is hereby reserved by Declarant.
- (f) The Association shall have the right to dedicate, sell or convey all or any part of the Common Properties, or interests therein, to any public agency, authority, or utility or any utility district, or to any third party whomsoever, for such purposes and subject to such conditions as may be agreed to by a vote of the Members as hereinbelow provided. No conveyance of Common Properties other than the granting of utility easements upon the Common Properties, shall be made without such vote. No such dedication or conveyance (except granting of utility easements) shall be effective unless an instrument agreeing to such dedications or conveyance signed by Members entitled to cast not less than two-thirds (2/3) of the votes of Class A Members has been recorded.
- (g) The Association shall have the right to use, rent or lease any part of the Common Properties and/or Common Facilities for the operation (for profit or otherwise) of any service activity intended to serve a substantial number of residents in the Property, as well as property owners outside the Property, provided that any such use or contract providing for use of Common Properties and Common Facilities by property owners outside the Property shall be approved, prior to being entered into, by Members entitled to cast no less than two-thirds (2/3) of the aggregate of the votes of both Classes of Members voting in person or by proxy, at a meeting duly called for this purpose (or such

→ DELETED PER 7th Amend

→ DELETED PER 6th Amend

503-82-3313

an agreement may be entered into unilaterally by Declarant so long as it controls two-thirds (2/3) of the aggregate votes in the Association).

- (h) The Association shall have the right, but not the obligation, to contract on behalf of all Assessable Tracts, for garbage and rubbish pickup, and to charge the Owner (exclusive of Declarant) of each Assessable Tract for his pro rata share of the cost thereof, such pro rata share to be determined by dividing the number of Assessable Tracts being served into the total cost of providing such garbage and rubbish pickup. If the Association so elects, the charge to each Owner for garbage and rubbish pickup shall be in addition to or part of the Assessments described in Article III hereof.

- (i) The Association shall have the right, but not the obligation, to contract on behalf of a Assessable Tracts, for volunteer fire department, security and/or emergency medical ambulance services, and to charge the Owner (exclusive of the Declarant) of each Assessable Tract for his pro rata share of the cost thereof, such pro rata share to be determined by dividing the number of Assessable Tracts being served into the total cost of providing such security and/or emergency medical ambulance service. If the Association so elects, the charge to each Owner for security and/or emergency medical ambulance service shall be in addition to or part of the Assessments described in Article III hereof.

Section 8. Enforcement of Declaration. The Association shall have the power and authority to enforce the terms and provisions of The Declaration by legal action or other means provided for herein.

**ARTICLE III
COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association as hereafter set forth in this Article III, Sections 3 & 4: (1) Base Annual Assessments or charges, and (2) Special Assessments, such Assessments to be established and collected as hereinafter provided. The Base Annual and Special Assessments, together with interest, collection costs and reasonable attorney's fees, shall be a charge on the Lot and shall be secured by a continuing Vendor's lien herein reserved and retained in favor of the Association upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, collection costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them, but shall be secured by the above-referenced continuing lien on the Lot so transferred as security for the delinquent obligation of

the prior Owner, and may be enforced against such Lot notwithstanding any such Conveyance.

503-82-3314

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to improve, beautify, maintain, manage and operate the Common Properties and Common Facilities, and to pay taxes and insurance premiums thereon, and to promote the recreation, health, safety, convenience and welfare of the Members, such benefits to include, by way of illustration but not limitation: providing professional management or financial services; providing patrol or watchman service; providing service contractors to manage and maintain recreational facilities; providing and maintaining lighting standards, fixtures and facilities; providing and maintaining mechanical and electrical fixtures, plumbing equipment and drainage systems for the Common Properties and Common Facilities; fogging for insect control; providing garbage and rubbish pickup; maintaining the unpaved portion of, and any esplanades on, any street or right of way adjoining the Property; maintaining landscaping and other improvements (including, without limitation walls, retaining walls, monuments, signage and irrigation systems) contained within esplanades and cu-de-sacs in any public streets located within the Property, or in any landscape reserves; enforcing the provisions contained in The Declaration; employing, at the request of the Modifications Committee and/or New Construction Committee, one or more architects, engineers, attorneys, or other consultants, for the purpose of advising such Committees in carrying out their duties and authority as set forth herein or, at the option of the Board of Directors of the Association, for the maintenance and/or improvement of the Common Properties or Common Facilities or for the benefit of the Members. The foregoing uses and purposes are permissive and not mandatory, and the decisions of the Board of Directors of the Association shall be final as long as made in good faith and in accordance with the Bylaws of the Association and any applicable governmental laws, rules and regulations. The proceeds of the assessments shall not be used to finance or reimburse the Declarant for any capital expenditure incurred in construction or other improvements within the subdivision. Notwithstanding any provision of The Declaration, all Common Properties shall be conveyed, unencumbered to the Association before HUD insures the first mortgage.

Section 3. Maximum Base Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the Board of Directors shall levy on each Assessable Tract and collect from the Owner thereof a Base Annual Assessment for each Building Plot, which shall be due and payable as provided hereinafter. Anything contained herein to the contrary or seemingly to the contrary notwithstanding, the Base Annual Assessments provided for herein shall be payable by the Owners of each of the Building Plots comprising Assessable Tracts within the boundaries of the Property, in the manner hereinafter set forth:

- (a) From and after January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the maximum Base Annual Assessment may

be increased by an amount in excess of 15% in a given year (over the maximum Base Annual Assessment permitted in the prior year) by the vote or written assent of at least 51% of a quorum of the Members present and voting at a meeting thereof duly called and held for such purpose.

- (b) The Board of Directors shall from time to time set, fix and levy the Base Annual Assessment at an amount not in excess of the maximum permitted herein.
- (c) The Base Annual Assessments shall be levied on a uniform basis as follows:
 - (1) Building Plots owned by Declarant, its designated successors and assigns.....None
 - (2) Building Plots conveyed by Declarant, to builders for the purposes of constructing a residence thereon.....50% of the Base Annual Assessments.
 - (3) Building Plots with completed residences sold to individuals (including corporate or other entity) homebuyers.....100% of the Base Annual Assessment

Section 4. Special Assessments for Capital Improvements. In addition to the Base Annual Assessments authorized by Section 3 hereinabove, the Association may levy against the Assessable Tracts in any calendar year one or more "Special Assessments" applicable to that year only, for the purpose of generating funds reasonably anticipated to be needed for purposes stated in Section 2 of this Article III, for capital improvements, replacements, and repairs; and provided that said Special Assessments are levied on a uniform basis as set forth above in Section 3(c) of this Article.

Section 5. Declarant Assessment Liability. As long as there is a Class B Membership, Declarant shall be responsible only for any shortages in the accounts of the Association, but only in the event that the maximum Base Annual Assessments chargeable under the provisions of Article III, Section 3 of The Declaration, are insufficient to cover the actual costs of maintaining the Property in accordance with the provisions of Article VIII, Section 2 of The Declaration or the actual costs of discharging the Association's other responsibilities under The Declaration.. If shortages can be reduced before Declarant's subsidy by a reduction in excess of non-life threatening services, such as trash removal, then those services may (and, if requested by Declarant, shall) be reduced to enable the Association to operate within its budget under the constraints of the limitations of Section 3 of this Article III and with the least possible subsidy from Declarant. This Section 5 shall be in effect for the first two (2) years following January 1 of the year immediately following the conveyance of the first Building Plot to an Owner.

503-82-3316

Section 6. Commencement of Base Annual Assessments; Due Dates. The Base Annual Assessments provided for herein shall commence on each Assessable Tract on a date established by the Board of Directors of the Association, provided, however, that the Base Annual Assessments shall not commence with respect to any Lot or Building Plot until such Lot or Building Plot becomes an Assessable Tract as defined herein. The Base Annual Assessment on each Assessable Tract for the first year of such Assessment shall be due and payable on the day a Lot or Building Plot becomes an Assessable Tract, and shall be pro rated for that year. After the first year, the Base Annual Assessment on such Assessable Tract for each such subsequent calendar year shall be due and payable on the first day of January in said year.

Section 7. Common Properties Exempt. All Common Properties as defined in Article I, Section 10, and all portions of the Property owned or otherwise dedicated to any political subdivision or municipal utility district (excluding portions of public or private utility easements located upon or within the boundaries of Lots, which shall not be exempt), shall be exempt from the Assessments and liens created, reserved and/or contemplated herein.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall determine the amount to be levied against each Assessable Tract for each calendar year, subject to the criteria and limitations set out in Sections 3, 4 and 5 of this Article. The Board of Directors of the Association shall cause to be prepared a roster of the Assessable Tracts showing the amount of each Assessment, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. The Association shall upon demand at any time, furnish to any Owner a certificate in writing signed by an officer or agent of the Association setting forth whether or not there are any unpaid Assessments against said Owner's Lot or Lots. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid, as to any third party who in good faith relies thereon to his economic detriment.

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association; Liens Securing Assessments. Any Base Annual Assessment or Special Assessment not paid within thirty (30) days after the due date shall bear interest at the maximum per annum ceiling rate allowed by applicable Usury laws from the due date until paid. The Association may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the Building Plot, or pursue both such remedies to the extent not mutually exclusive. Interest, court and other collection costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such Assessment or charge. Each such Owner, by his acceptance of a deed to a Building Plot, hereby expressly vests in the Association, or its agents, the right and power (i) to bring actions against such Owner personally for the collection of such charges as a debt, and (ii) to enforce the aforesaid lien by methods available for the enforcement of such liens, including non-judicial foreclosure

503-82-3317

pursuant to Section 51.002, Tex. Prop. Code Ann. (Vernon 1983), and such Owner hereby expressly grants to the Association a private power of sale in connection with said lien. The Association may from time to time appoint trustees or substitute trustees for the purposes of enforcing such private power of sale. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of a Building Lot Owners. No Owner may waive or otherwise escape same for the Assessments provided for herein by non-use of the Common Properties or abandonment of his Building Plot. Mortgagees are not required to collect Assessments. Notwithstanding any contained herein to the contrary, failure to pay Assessments does not constitute a default under any HUD/VA or other insured mortgage.

Section 10. Subordination of the Lien to Mortgages. The lien securing any Assessment provided for herein shall be subordinate to the lien of any first mortgage(s) now or hereafter placed upon a Building Plot subject to the Assessment. In addition to the automatic subordination provided for above, the Association, in the discretion of its Board of Directors, may voluntarily subordinate the lien securing any Assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine. No such voluntary subordination shall be effective unless given in writing by the Association upon a vote of the Board of Directors.

Section 11. Exempt Property. The Assessments and liens created in this Article III shall apply only to Assessable Tracts.

ARTICLE IV NEW CONSTRUCTION COMMITTEE AND MODIFICATIONS COMMITTEE

Section 1. New Construction Committee; Tenure. The Declarant shall initially appoint a New Construction Committee, consisting of not less than three (3) members, who need not be Members of the Association. The persons serving on the New Construction Committee, or their successors, shall serve until such time as all Lots subject to the jurisdiction of the Association shall have completed Living Units constructed thereon, at which time the New Construction Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Directors of the Association. In the event undeveloped land is annexed into the Association after resignation of the original New Construction Committee, the Board of Directors may appoint a replacement New Construction Committee to act with the authority and purpose of the original New Construction Committee with respect to new construction, for such a term as the Board may designate, and subject to the Board's continuing right to remove members thereof and fill vacancies in such Committee. In the event of the death or resignation of any person serving on the New Construction Committee, the remaining person(s) serving on the Committee shall designate a successor, or successors (unless same occurs during the Declarant control period specified in Section 2 hereof, in which event Declarant shall make such

